



Dane County Planning and Development Department

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7/24/2015

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Enbridge Energy Company
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Zoning
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RE: Conditional Use Permit #2291 Revised

Dear Mr. Madsen,

Dane County Zoning Division has received a written opinion from Dane County Corporation Counsel regarding the recent State legislative changes concerning insurance requirements for interstate petroleum pipelines. See attached. As you are aware, Conditional Use permit #2291 was approved with specific conditions regarding insurance requirements.

As a result of the enactment of State Budget Bill, 2015 Wisconsin Act 15, Section 59.70(25), counties are prohibited in requiring additional insurance of an operator of an interstate hazardous liquid pipeline beyond the comprehensive general liability insurance coverage that includes coverage for sudden and accidental pollution liability.

Conditional Use Permit #2291 has been revised to reflect this change in State legislation. See attached.

Please keep a copy of this letter for your records. If you have any questions, please contact the Dane County zoning office at 266-4266.

Respectfully,

Roger Lane
Dane County Zoning Administrator

CC: Town of Medina Clerk
Zoning and Land Regulation Committee



OFFICE OF THE CORPORATION COUNSEL

July 17, 2015

Mr. Roger Lane
Dane County Zoning Administrator
Room 116, City-County Building
Madison, WI 53703

RE: Insurance Conditions of CUP #2291

Dear Mr. Lane:

The Zoning and Natural Resources Committee (ZLR) issued Conditional Use Permit (CUP) # 2291 to Enbridge Energy Company (Enbridge) that included a condition requiring Enbridge to obtain additional liability insurance. A recent enactment of the legislature that was included in the Budget Bill prohibits counties from requiring an operator of an interstate hazardous liquid pipeline to obtain insurance if the company carries comprehensive general liability coverage that includes sudden and accidental pollution liability. Since Enbridge has the required general liability coverage, the CUP condition requiring additional insurance is unenforceable by the county.

Enbridge operates a pipeline through Northeastern Dane County that is a preexisting legal nonconforming use. They currently have comprehensive general liability insurance on the pipeline and its facilities that includes sudden and accidental pollution liability coverage. Enbridge applied for a CUP for a new pumping station in the Town of Medina. CUP #2291 as approved by ZLR included the following conditions regarding insurance:

7. Enbridge shall procure and maintain liability insurance as follows:
\$100,000,000 limits in General Liability insurance with a time element exception to the pollution exclusion (currently in place), and \$25,000,000 of Environmental Impairment Liability insurance. Enbridge shall list Dane County as an Additional Insured on the total \$125,000,000 of combined liability insurance.
8. The required General Liability Insurance and Environmental Impairment Liability insurances shall meet the technical insurance specifications listed in Appendix A of the insurance consultant's report, which is incorporated herein by reference.

Appendix A of the CUP included additional insurance specifications.

Corporation Counsel

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Mr. Roger Lane
July 17, 2015

The state Budget Bill, 2015 Wisconsin Act 55, was enacted on July 12, 2015 and published on July 13, 2015. Pursuant to Wis. Stat. §991.11, the provisions of the Budget Bill became effective on July 14, 2015. Section 1923e of the Budget Bill created Wis. Stat. §59.70(25), entitled "Interstate Hazardous Liquid Pipeline," which states:

A county may not require an operator of an interstate hazardous pipeline to obtain insurance if the pipeline operating company carries comprehensive general liability insurance coverage that includes coverage for sudden and accidental pollution liability.

There is no doubt that §59.70(25) was adopted by the legislature to specifically apply to Enbridge's pipeline in Dane County. But, it is not an unconstitutional local bill prohibited by Art. IV, Section 18 of the Wisconsin Constitution. It is not a closed class, and in fact applies to all counties through which Enbridge's pipelines (and other companies) run, and is a topic of statewide interest. *City of Brookfield v. Milwaukee Metropolitan Sewerage District*, 144 Wis. 2d 896 (1988).

A county's zoning authority is subject to the control of the legislature. The law is clear that a county is a creature of the legislature, and has only those powers that the legislature by statute provides. *Jackson County v. State, Department of Natural Resources*, 293 Wis.2d 497, 510-511(2006) (Citing multiple authorities). Conversely, the legislature has the authority to limit by statute a county's authority. In *State ex rel. Ziervogel v. Washington County Bd. Of Adjustment*, 269 Wis.2d 549 (2004) the Supreme Court made clear that a county's limited home rule authority does not authorize it exercise its zoning authority inconsistent with the legislature's will as set forth in state statute.

Section 59.70(25) expressly prohibits a county from requiring a pipeline operator to obtain insurance if they have the required coverage. Therefore, Dane County has no authority to require Enbridge to obtain additional insurance coverage. There is no issue of retroactive application of the statute. By the express language of the statute, effective July 14, 2015 the county is prohibited from requiring the insurance coverage. When the CUP was approved is irrelevant. The insurance conditions are rendered unenforceable prospectively by the language of §59.70(25).

Please contact me if you have questions regarding this opinion.

Sincerely,



David R. Gault
Assistant Corporation Counsel



Dane County Zoning Division

City-County Building
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Madison Wisconsin 53703
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DANE COUNTY CONDITIONAL USE PERMIT #2291

THE ZONING AND LAND REGULATION COMMITTEE OF THE DANE COUNTY BOARD PURSUANT TO SECTION 10.255(2) OF THE DANE COUNTY CODE OF ORDINANCES DOES HEREBY:

GRANT Conditional Use Permit #2291 for Petroleum Pumping Station pursuant to Dane County Code of Ordinances Section 10.123(3)(c) and subject to any conditions contained herein.

EFFECTIVE DATE OF PERMIT: **April 21, 2015**

Revised: July 24, 2015

THE CONDITIONAL USE SHALL BE LOCATED ON THE PROPERTY DESCRIBED AS FOLLOWS: **5635 Cherry Lane, Section 14, Town of Medina, Dane County, Wisconsin (tax parcel ID: 0812-144-8002-0)**

CONDITIONS:

1. The pumping station shall be located and constructed as depicted in the presented plans.
2. Enbridge shall be responsible for obtaining a road use agreement with the Town of Medina prior to the construction of the pumping station to ensure repairs for any damage to local roadways.
3. A spill containment basin shall be constructed around the pumping station to handle a minimum of a 60 minute flow prior to the operation of the pumping station.
4. The pumping station shall be designed and constructed to limit the operating noise to a maximum of 50 decibels dba as measured at property lines.
5. Exterior lighting shall be down-shrouded to limit light pollution onto adjoining property.
6. Enbridge shall agree to indemnify and hold harmless Dane County for pollution losses Per the terms as detailed in Enbridge's proposal titled "CONDITIONAL USE PERMIT ("CUP") CONDITIONS", submitted and entered into the public record on January 27, 2015, which is incorporated herein by reference.
7. Applicant shall maintain an Emergency Response Plan that is in compliance with the applicable requirements of local, state and federal agencies with jurisdiction. A copy

of the Emergency Response Plan shall be made available to the Dane County Department of Emergency Management Hazardous Materials Planner within 30 days of permit approval.

8. The applicant warrants that it will at all times have available, on the county and/or regional level, sufficient emergency response staff, equipment, and materials to immediately and fully respond to any spill, leak, rupture or other release of Petroleum Products or Hazardous Substances from applicant's facilities.
9. On a biennial basis, the applicant shall conduct training exercises for first responders in coordination with the Fire Chiefs in the Waterloo and Marshall area. The first such exercise shall be conducted within 30 days of completion of the pumping station, with future exercises scheduled in consultation with the Fire Chiefs. The applicant shall provide advance notice of the scheduled training exercises to the Dane County Hazardous Materials Planner and invite his/her participation and involvement at the exercises.
10. These emergency response conditions do not relieve the applicant of any applicable regulatory responsibilities related to safety and emergency response planning.

THE ZONING AND LAND REGULATION COMMITTEE AFTER PUBLIC HEARING AND IN THEIR CONSIDERATION OF THE CONDITIONAL USE PERMIT MADE THE FOLLOWING FINDINGS OF FACT:

1. That the establishment, maintenance and operation of the proposed conditional use will not be detrimental to or endanger the public health, safety, morals comfort or general welfare.
2. That the uses, values, and enjoyment of other property in the neighborhood for purposes already permitted will not be substantially impaired or diminished by the establishment, maintenance, and operation of the proposed conditional use.
3. That the establishment of the proposed conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. That adequate utilities, access roads, drainage and other necessary site improvements will be made.
5. That adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the proposed conditional use does conform to all applicable regulations of the district in which it is proposed to be located.

EXPIRATION OF PERMIT

In addition to any time limit established as a condition in granting this CUP, Section 10.25(2)(n) of the Dane County Code of Ordinances provides that any use for which a conditional use permit has been issued, upon its cessation or abandonment for a period of one year, will be deemed to have been terminated and any future use shall be in conformity with the ordinance.