



Staff Report

Zoning and Land Regulation Committee

Public Hearing: **October 28, 2014**

Zoning Amendment:
None

Acres: 43.85
Survey Req. No

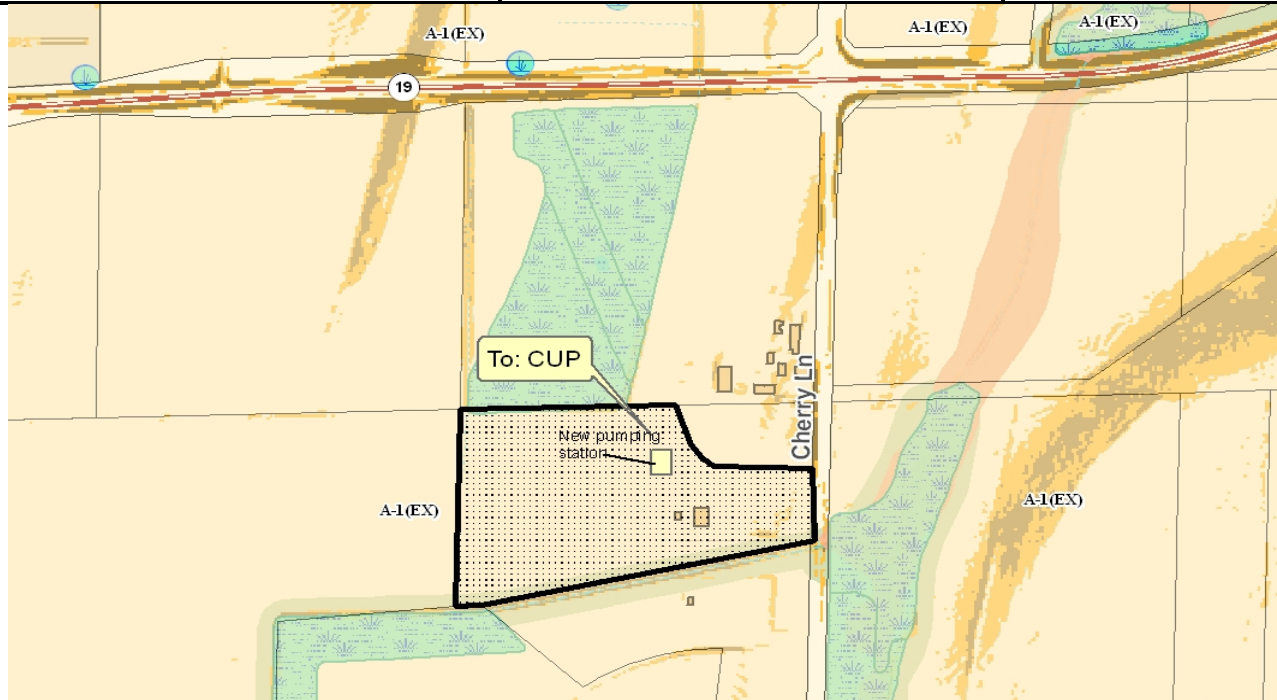
Reason:
Allow an additional pumping station for an existing petroleum pipeline

Petition: **CUP 2291**

Town/sect:
**Medina
Section 14**

Applicant
**Wisconsin Electric
Power Co / Enbridge**

Location:
5635 Cherry Lane



DESCRIPTION: Enbridge is requesting a conditional use permit on land owned by Wisconsin Electric Power Company to allow expansion of the existing Enbridge “Waterloo” pumping station for Enbridge’s “Line 61” petroleum pipeline. There is an existing American Transmission Company electric distribution sub-station, as well as the existing pipeline and pumping station located on the property. The pumping station will consist of a new 10,000+ sqft utility building housing four 6,000 horse power electric pumps. Station facilities would be secured and fenced. The pump station would operate 24 hours year round, with 1-2 employees monitoring operations at the site.

OBSERVATIONS: There are two rural residences located in relatively close proximity to the property – one residence is located approximately 600’ northeast of the proposed new pumping station, and the other residence is located approximately 1,600’ southeast of the property. Several additional residences are located over 2,500’ away. A noise impact analysis submitted by the applicant indicates that noise associated with operations at the site will be less than a modest 50db at the property line. Protective barriers / berms and other safety measures will be installed. The facility has an emergency response action plan in place, and copies of the plan have been provided to the Waterloo and Marshall fire departments. Local first responders will also participate in a training exercise with Enbridge upon completion of the new station.

TOWN PLAN: The property is located in the town’s agricultural preservation area. The town plan does not include specific policies regarding installation / operation of utility uses. Utility services are a conditional use in the A-1EX zoning district, which is the county’s primary state-certified farmland preservation zoning district.

RESOURCE PROTECTION: There are no resource protection corridors located on the property.

STAFF: There are a number of land use issues related to the proposed conditional use. It’s important to note that concerns / issues related to public health and safety are governed exclusively under the Federal Pipeline Safety Act (see attached corporation counsel opinion). Staff has recommended two conditions addressing noise and lighting, below.

TOWN: Town has approved with conditions (signed agreement with town for use of town roads, and minimum spill basin size). The town conditions have been included in the recommended conditions, below.

CUP 2291
Wisconsin Electric Power Co / Enbridge
Continued

10/28 ZLR: The petition was postponed due to public opposition and concerns raised by the Committee. The Committee requested additional information regarding insurance/bonding, approval from other municipalities, information on the product being pumped, content of DNR environmental assessment report, and reporting of spills.

Insurance/bonding

During the public hearing, it was suggested that Enbridge be required to have insurance or bonding to ensure clean up of any potential spills. In checking with other municipalities that granted approvals, no municipality has required a bond regarding spill clean up. Staff is hesitant to suggest a condition that requires bonding for a spill clean up due to the scope of the conditional use permit being the pump station itself. The Committee may want to entertain a condition for insurance/bonding, but it is suggested to have it pertain to the pump house property exclusively. Further guidance from Corporation Counsel is suggested prior to pursuing this type condition. Enbridge is opposed to the insurance/bonding condition as noted in the attached letters.

Approvals from other municipalities

All approvals have been granted from the other 11 municipalities for the additional pumping stations needed for the Line 61 upgrade project. Most municipalities required a road use permit be obtained to correct and damage that may occur to the roadway during construction of the pump stations. Some municipalities required screening and buffering of the projects. No municipalities required insurance or bonding for spills.

Information for product being pumped

Enbridge has provided the Material Safety Data Sheets (MSDS) for the products being pumped. The MSDS sheets have been provided to the Marshal and Waterloo Fire Departments. The emergency response plans have been reviewed with both departments.

DNR Environmental Assessment Report

The Environmental Assessment Report was prepared by the DNR in 2006. The report describes the design of the pipeline, the products being transported, and the sensitive environmental features that would be crossed. The operating pressure of the pipeline is designed for 1275 psi. The proposed pumping station will raise the pressure to 1000 psi. It appears that the proposed upgrade is consistent with the contents of the Environmental Assessment Report.

Reporting of Spills

Staff contacted David Bursack from Dane County Emergency Management regarding procedures on the reporting of spills. He stated that Enbridge needs to operate under the Federal Reporting Requirements. The Local Emergency Planning Agency (Dane County Emergency Management), the Department of Natural Resources, and the National Spill Center must be notified regarding any spills. Representatives will be prepared to summarize the procedures of spill detection, notification, and response actions at the meeting.

11/11 ZLR: The Committee postponed action to acquired additional information.

1. The Committee would like more information regarding the 2006 WDNR Environmental Assessment Report regarding Enbridge Line 61. The Committee would like to know if the report accounted for the proposed increase in pressure of pipeline and the transportation of tar sands.
2. The Committee also requested that Enbridge produce documentation regarding proof of insurance for a catastrophic event.
3. The Committee would like the WDNR to review the scope of the pipeline assessment to see if an Environmental Impact Statement is needed.

Staff Update (4/8/15):

1. The county contracted with David Dybdahl of American Risk Management Resources Network, LLC to provide a review and recommendations on insurance issues raised by the committee. Mr. Dybdahl's report is attached and his recommendations are included in the list of possible conditions of permit approval, below.
2. Staff has also provided several optional conditions that incorporate emergency response procedures that reflect offers or assurances Enbridge has made. These include providing a copy of the required Emergency Response plan to Dane County Emergency Management; assurance that Enbridge will have sufficient emergency response staff, equipment and materials available; and a requirement that Enbridge conduct training exercises with local first responders on a recurring basis.

Proposed Conditional Use Permit # 2291

In order for an applicant to obtain a Conditional Use Permit, the Zoning and Land Regulation Committee must find that all of the following standards are met for the proposed land use:

1. The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or welfare.
2. The uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.
3. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being made; and
5. That adequate measures have been or will be being taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and
6. That the conditional use shall conform to all applicable regulations of the district in which it is located.

Staff has prepared a list of conditions that may be used in order to meet the six standards as listed above to allow the conditional use on the property. Please note that the conditions may need to be changed or additional conditions added to address potential nuisances that may come to light during the public hearing.

Recommended conditions of approval for CUP 2291

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. 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.

Other potential conditions:

9. 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.
10. 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.
11. 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.
12. These emergency response conditions do not relieve the applicant of any applicable regulatory responsibilities related to safety and emergency response planning.

CONDITIONAL USE PERMIT (“CUP”) CONDITIONS

I. Liability and Indemnification.

1. Enbridge shall defend, indemnify, protect, and hold harmless Dane County, Wisconsin, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively the “County”) from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature, including, without limitation, reasonable attorneys’ fees (collectively “Claim”) arising out of or resulting from the negligent or intentionally wrongful acts or omissions of Enbridge, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to Enbridge’s use of or installation of facilities governed by the CUP.
2. The County shall notify Enbridge promptly in writing of any such Claim and the method and means proposed by the County for defending or satisfying such Claim. The County shall cooperate with Enbridge in every reasonable way to facilitate the defense of any such Claim. The County shall consult with Enbridge respecting the defense and satisfaction of such Claim.
3. The County shall not settle any Claim subject to indemnification under this Part I without the advance written consent of Enbridge, which consent shall not be unreasonably withheld. Enbridge shall have the right to defend or settle, at its own expense, any Claim against the County for which Enbridge is responsible hereunder.
4. Nothing in this section shall impair any liability protection afforded the County pursuant to a claim of governmental immunity or limitation of damages under Wis. Stat. § 893.80 or any other provision of Wisconsin law, and any acknowledgement or concession of, or stipulation to, liability by the County shall be null and void where governmental immunity or limitation of damages would otherwise exist.

Appendix A: Recommended Liability Insurance Specifications

General Liability Insurance

Commercial General Liability Insurance or the equivalent

Insuring the operations and completed operations of the line 61 pumping station in Dane county.

Coverage shall be provided for Bodily Injury Liability, Property Damage Liability and Defense costs.

The pollution exclusion in this policy shall not apply to the escape or release of pollutants or contaminates that begin and are discovered in no less than 14 days and are reported to the insurer within no less than 30 days.

Insurance must be provided by an insurer with an A.M. Bests rating of at least A, XII.

Coverage shall be extended to Dane County as an Additional Insured.

This insurance shall be Primary and Non-contributory to any insurance Dane County may have available.

Any rights of subrogation against Dane County shall be waived.

The policy cannot contain an "Insured vs. Insured" exclusion applying to Dane County as an Additional Insured

The policy shall obligate the insurer to provide 60 days notices of cancellation or nonrenewal to Dane County

Minimum Limit of Liability \$100,000,000

Environmental Insurance Specification

Environmental Impairment Liability Insurance, Site Pollution Liability Insurance or the equivalent

Insured Location: The pumping Station on Line 61 in Dane County (optionally the policy may insure the pipe line in Dane County)

Insurance must be provided by an insurer with an A.M. Bests rating of at least A, XII.

Coverages To Be Included:

- On and off site Clean-up expenses
- Damages to Natural Resources
- Emergency response cost to at least \$1,000,000
- Bodily Injury Liability
- Property Damage Liability
- Contractual liability naming Dane County as an Additional Insured
- This policy must be Primary and Noncontributory to any insurance Dane County may have access to.
- The policy cannot contain an "Insured vs. Insured" exclusion applying to Dane County as an additional insured.
- This coverage can be excess over other collectable insurance and the deductible or self-insured retention amounts of the underlying insurances
- This policy shall provide difference in conditions coverage excess of the deductible or self-insured retentions in the primary General Liability insurance program.

- This insurance does not need to drop down below the Self Insured Retention amounts on the coverages provided by the Enbridge master insurance program.
- The policy shall obligate the insurer to provide 60 days notices of cancellation or nonrenewal to Dane County.

Limits of liability

\$25,000,000 per loss and in \$25,000,000 Annual Aggregate for all losses over the course of the policy term.

The pumping station and the pipe line located in Dane County will be considered a single location for the purpose of determining the aggregate limit of liability required.

If said insurance policy insures more than Dane County properties the policy shall have an Annual Aggregate Limit of \$50,000,000.

Self-Insured Retention

The maximum self-insured retention on this policy shall be the underlying insurance including the Self Insured retention in the Enbridge Master General Liability insurance program or \$1,000,000.

Evidence Of Insurance

Upon request by Dane County, Enbridge shall furnish a certificate of insurance to the county which accurately reflects that the procured insurances fulfill these insurance requirements.