



Dane County

Minutes - Final Unless Amended by Committee

Zoning & Land Regulation Committee

Tuesday, April 14, 2015

7:00 PM

City - County Building, ROOM 201
210 Martin Luther King Jr. Blvd., Madison

Note meeting room changed to 201
210 Martin Luther King Jr. Blvd., Madison

A. Call to Order

Chair Miles called the meeting to order at 7:04pm.

B. Public comment for any item not listed on the agenda

There were no comments made by the public.

C. Consideration of Minutes

[2015](#)
[MIN-018](#)

Minutes of the March 11, 2015 Zoning and Land Regulation Committee meeting

Attachments: [03-11-15 ZLR work meeting minutes.pdf](#)

A motion was made by Kolar, seconded by Bollig, to approve the minutes of the March 11, 2015 ZLR Committee meeting. The motion carried by a voice vote.

[2015](#)
[MIN-019](#)

Minutes of the March 24, 2015 Zoning and Land Regulation Committee meeting

Attachments: [03-24-15 ZLR Public Hearing minutes.pdf](#)

A motion was made by Kolar, seconded by Bollig, to approve the minutes of the March 24, 2015 ZLR Committee meeting. The motion carried by a voice vote.

E. Zoning Map Amendments and Conditional Use Permits from previous meetings

[CUP 2291](#)

PETITION: CUP 2291

APPLICANT: WISCONSIN ELECTRIC POWER / ENBRIDGE ENERGY

LOCATION: 5635 CHERRY LANE, SECTION 14, TOWN OF MEDINA

CUP DESCRIPTION: pumping station for an existing petroleum pipeline

Attachments: [CUP 2291 staff update.pdf](#)

[CUP 2291 Town.pdf](#)

[Dybdahl Enbridge Insurance Report final draft 4-8-15.pdf](#)

[Enbridge submitted CUP Insurance Conditions \(4-10-15\).pdf](#)

[Insurance Consultant Proposal.pdf](#)

[Corporation Counsel letters.pdf](#)

[Enbridge letters.pdf](#)

[Madison 350 letters.pdf](#)

[Need for Dane County and other affected counties to have appropriate insurance to cover environmental remediation in the event of an Enbridge tar sands \(Madison 350, 4-6-15\).pdf](#)
[Severe and Lasting Ecological Consequences after BP Deepwater Horizon Gulf Oil Spill \(Madison 350, 4-6-15\).pdf](#)
[proposed insurance conditions.pdf](#)

[CUP 2291 Map.pdf](#)

[CUP 2291 Map 2.pdf](#)

[CUP 2291 Enbridge Presentation.pdf](#)

[CUP 2291 Sound Study.pdf](#)

[CUP 2291 Letters of opposition.pdf](#)

[CUP 2291 Letters of Support.pdf](#)

[SenTiffanySupportLetter 2015-02-18.pdf](#)

[Miles Response to Senator Tiffany's 2015-02-18 Letter ver 2.pdf](#)

[EEP Q3 2014 10Q.PDF](#)

[Enbridge FERC Financial Report 2013 Yr End \(2\).pdf](#)

[NAS Oil Sands Report.pdf](#)

[2291 App.pdf](#)

A motion was made by Kolar, seconded by Bollig, to approve the conditional use permit subject to the following twelve (12) 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. 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.
 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.

Condition #6 detail (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 Conditional Use Permit ("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

Section 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 laws, 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.

Condition #8 detail (Technical insurance specifications from insurance consultant's report):

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 contaminants 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.

Discussion: Committee members asked several questions of the insurance expert, David Dybdahl, requesting clarification of the findings and recommendations included in his report titled, "An Insurance and Risk Management Report on the Proposed Enbridge Pumping Station". The report is available on the county's website, here: <https://dane.legistar.com/View.ashx?M=F&ID=3698452&GUID=DA21D80D-3E11-45BD-B129-7CA758EDDD05>

Further discussion ensued.

Motion by Matano to amend the initial motion to approve with conditions by adding a time limit of 10 years to the Conditional Use Permit. Motion failed for lack of a second.

The initial motion to approve the Conditional Use Permit with 12 conditions carried by a voice vote. Per committee rules and procedures, the motion to

approve with conditions is inclusive of findings of fact that the standards in sections 10.255(2)(h) and 10.123(5) are satisfied.

Registrants in Favor: Tom Pyper, Aaron Madsen, Jeff Vercauteren, Dr. Ruprecht Nitschke, Elizabeth Nitschke, Gary Cox, Jim O'Brien, Jeff Hruby, Karla Koplien, John Koplien, Allen Weinkaul, Todd Staffen, Steve Mueller, Derek Skomas, Wayne Schmeiser, Beth Esser, Nicholas Henke, Spencer Statz, Joseph Lotegelucki, Scott Watson, Daniel Burke, Dean Hackl, Jim Foye, Terry Nelson, James Meicher, Paul Zimmer, Harry Pennett, Chris Behrendt, Mark Fuller, Kent Miller, Tom Lemew, Casey Healy, Jeff Crocken, Anthony Anastasi, Dave Branson, Bill Dionne, William Kilgour.

Registrants in Opposition: Mary Elliot, Jody Clowes, Kermit Hovey, Tim Cordon, Marilee Sushorebn, Marilyn Feil, Nancy Harrison, Tony Gibent, Maria Drews, James Perczykoski, Michael Drews, Sarah Ahrens-Balwit, Jacob Ahrens-Balwit, Christine Ahrens, Don Ferber, James Balwit, Maxine Knetter, Steve Spieckerman, Janet Holte, Dawn Sabin, Benjamin Sabin, Patricia LaCross, Ed Jepsen, Kevin Corrado, Katherine Odell, Laura Schlachter, Patricia Brown, Nadine Wright, Margaret Bennett, Ronald Schutz, Cathy Loeb, Peggy LeMahieu, David Spitzer, Carl Whiting, Kate Schulte, Janette Rosenbaum, Pete LeMahieu, Judy Skog, Kevin McGettison, David Schwab, Daniel Edlebeck, Margaret Roark, Susan Nossal.

Registrants neither in favor nor opposition: David Dybdahl, Cynthia Dybdahl, Rod Meyer, Brandon Berden, Dean Rosenthal, Jeffrey Rasmussen, Thomas McDaniels, Chad Rogella, John Stanton.

F. Plats and Certified Survey Maps

[2014 LD-078](#) Midthun 4-lot Certified Survey Map
Town of Sun Prairie, Sections 12 & 13

Attachments: [2014_aerial.pdf](#)
[20150319133459.pdf](#)
[Sun Prairie Midthun CSM Review 032015.pdf](#)

A motion was made by BOLLIG, seconded by KOLAR, to approve the proposed 4-lot Certified survey Map. The motion carried by a voice vote.

[2015 LD-001](#) Final Plat - Wolf Hollow at Pleasant Prairie Creek, Town of Windsor, Sections 29 & 32
(68 lots, 40.9 acres)
Staff recommends conditional approval.

Attachments: [conditional approval letter to ZLR.pdf](#)
[2015-03-17 Final Plat of Wolf Hollow at Pleasant Prairie Creek.pdf](#)
[aerial.pdf](#)
[Windsor Wolf Hollow Plat Review 021015.pdf](#)

Motion was made by KOLAR and seconded by BOLLIG to approve the final plat subject to the following conditions:

1. Compliance with the Dane County Comprehensive Plan is to be established.
2. All public land dedications are to be clearly designated "dedicated to the public."
3. The public park land appropriation requirement is to be satisfied.
4. Street names with respect to Ch. 76 of the Dane County Code of Ordinances are to be assigned.
5. All lots and outlots are to meet the minimum area and width requirements of the zoning districts that are applicable.
6. Lot boundaries and zoning district boundaries are to be coterminous.
7. Utility easements are to be provided.
8. Compliance with Ch. 14.45 DCCO, Erosion Control Plans is to be established.
9. Compliance with Ch. 14.46 DCCO, Stormwater Control Permits is to be established.
10. Town of Windsor approval is to be obtained.
11. Village of DeForest approval is to be obtained (extraterritorial jurisdiction).

G. Resolutions

None.

H. Ordinance Amendment

None

J. Reports to Committee

[2015 RPT-016](#) Report of approved certified survey maps.

Attachments: [April.pdf](#)

The Committee reviewed a list of approved Certified Survey Maps. No action taken.

[2014](#)
[RPT-743](#)

No action taken.

K. Other Business Authorized by Law

There was no other business.

L. Adjourn

Motion by Matano, seconded by Kolar to adjourn the meeting at 8:07pm. The motion carried by a voice vote.

Questions? Contact Roger Lane, Planning and Development Department, 266-4266, lane.roger@countyofdane.com

NOTE: If you need an interpreter, translator, materials in alternate formats or other accommodations to access this service, activity or program, please call the phone number below at least three business days prior to the meeting.

NOTA: Si necesita un intérprete, un traductor, materiales en formatos alternativos u otros arreglos para acceder a este servicio, actividad o programa, comuníquese al número de teléfono que figura a continuación tres días hábiles como mínimo antes de la reunión.

LUS CIM: Yog hais tias koj xav tau ib tug neeg txhais lus, ib tug neeg txhais ntawv, cov ntawv ua lwm hom ntawv los sis lwm cov kev pab kom siv tau cov kev pab, cov kev ua ub no (activity) los sis qhov kev pab cuam, thov hu rau tus xov tooj hauv qab yam tsawg peb hnuv ua hauj lwm ua ntej yuav tuaj sib tham.