

## **Resolution of the Planning, Development and Parks Committee Regarding the Sale of the Forward Energy Center**

**WHEREAS**, the Dodge County Planning, Development and Parks issued a Conditional Use Permit (“CUP”) on May 3, 2007, to Forward Energy, LLC (“Forward”); specifically, permit number 2005-0162, authorizing the construction and operation of certain wind energy systems (“Facility”) in the Towns of Leroy and Lomira, County of Dodge, Wisconsin, consisting of 49 wind turbines; and,

**WHEREAS**, Forward, the holder of the permit, has entered into a Purchase and Sale Agreement with Wisconsin Public Service Corporation (“WPS”), Wisconsin Power and Light Company (“WPL”), and Madison Gas and Electric Company (“MGE”) (collectively “Buyers”) to sell the Facility and related assets to the Buyers; and,

**WHEREAS**, this matter has been submitted to the Wisconsin Public Service Commission for its consideration and is expected to be finalized on or before April 2, 2018; and,

**WHEREAS**, at the conclusion of the transaction, the Buyers will jointly own the Facility based on the following percentages: WPS-44.6%; WPL-42.6% and MGE-12.8% and,

**WHEREAS**, at the conclusion of the transaction, Invenergy Services LLC, an affiliate of Forward and current operations and maintenance provider for the Facility, will continue to operate the Facility and be the point of contact for local government and community stakeholders; and,

**WHEREAS**, as a part of the transaction, the Buyers will sign an Assignment and Assumption of Permits document which will assign the CUP #2005-0162, issued by Dodge County to the Buyers, thereby requiring the Buyers to assume and comply with all obligations of the CUP; and,

**WHEREAS**, the CUP requires that the owner of Facility assure funding of the removal obligations in the event of abandonment be secured by a letter of credit, cash or the equivalent held in trust in favor of Dodge County, in a form approved by the Dodge County Corporation Counsel, based on a per turbine formula; and,

**WHEREAS**, Buyers have requested that Dodge County approve the termination of the existing Escrow Agreement among Forward, Dodge County, and JPMorgan Chase Bank, N.A., (“Escrow Agreement”) which provides the financial security for the decommissioning and removal obligations under the permit and have same replaced with an Irrevocable Letter of Credit to ensure that ample funds are available to decommission and remove Facilities; and,

**WHEREAS**, Buyers shall remain obligated to remove the facility pursuant to the terms of the Permit regardless of the Irrevocable Letter of Credit; and,

**WHEREAS**, the Dodge County Corporation Counsel has reviewed the Assignment and Assumption of Permits, First Amendment to Escrow Agreement, and the Irrevocable Letter of Credit and approves same; and,

**WHEREAS**, Dodge County is satisfied that the documents referred to in the preceding recital meet the terms and conditions of the CUP issued by Dodge County and the action taken herein is not contrary to the public interest; and,

**SO, NOW, THEREFORE, BE IT RESOLVED**, by the Planning, Development and Parks Committee that the assignment and assumption of the CUP from Forward to and by Buyers for the Facility is hereby approved; and,

**BE IT FURTHER RESOLVED**, that the Committee hereby approves the termination of the Escrow Agreement subject to it being replaced by an Irrevocable Letter of Credit in an ample amount consistent with the formula set forth in the CUP; and,

**BE IT FINALLY RESOLVED**, that the Dodge County elected officials and Dodge County Corporation Counsel are hereby directed and authorized to execute any and all documents necessary to facilitate the change in financial security required under the CUP including the First Amendment to the Escrow Agreement and associated Joint Written Instructions.

All of which is respectfully submitted this 5th day of March, 2018.

**Dodge County Planning, Development and Parks Committee:**

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Thomas J. Schaefer

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Joseph Marsik

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William Muche

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Janice Bobholz

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Allen Behl

**DODGE COUNTY PLANNING, DEVELOPMENT AND PARKS COMMITTEE  
MINUTES  
February 19, 2018**

The Dodge County Planning, Development and Parks Committee met on February 19, 2018 at 7:00 p.m. on the 1<sup>st</sup> Floor of the Administration Building, Juneau, Wisconsin.

Chairman Schaefer called the meeting to order. Roll Call was taken. Members present were Tom Schaefer, Allen Behl, William Muche, Joseph Marsik and Janice Bobholz. The staff present at the request of the Chairman were Bill Ehlenbeck and Joseph Giebel.

The Chairman asked the staff to confirm compliance with the open meeting laws and the public hearing notice requirements. Mr. Giebel noted that the meeting was properly noticed in accord with the open meeting law and noted that the required notices for the public hearings listed on the agenda were posted, mailed and published in accord with the statute and code requirements.

The agenda was reviewed.

Motion by William Muche to approve the agenda and allow the Chairperson to go out of order as needed to efficiently conduct the meeting. Second: Joseph Marsik Motion carried.

**TOWN REZONING REQUESTS**

**Gary Loeffler** – Lot 1, CSM 1031 in V8 P144, being part of the NW ¼ of the NW ¼, Section 29 and part of the NE ¼ of the NE ¼, Section 30, Town of Portland, the site address being N855 County Road T. Petition to rezone 38.12-acres of land under the Town of Portland Zoning Ordinance, from the A-1 Farmland Preservation Zoning District to the A-2 General Agricultural Zoning District has been submitted by the Town of Portland Town Board to the Dodge County Board of Supervisors for approval. Committee review and recommendation to the County Board.

Motion by Allen Behl to submit a favorable recommendation on the petition to rezone 38.12-acres of land under the Town of Portland Zoning Ordinance, from the A-1 Farmland Preservation Zoning District to the A-2 General Agricultural Zoning District

Second by William Muche Vote 4-0 Motion carried.

**The hearing procedures were read into the record.**

**PUBLIC HEARING**

**Duffy Rental Properties LLC** – Request for a Conditional Use Permit under the Shoreland Protection Ordinance, Dodge County, Wisconsin to allow filling and grading within 300 feet of a navigable waterway associated with a landscaping project on this site. The property is known as Lot 6 & that part of Lot 5 Blk 9 Birdsey & Inglasge's addition located in part of the NW ¼ of the SW ¼, Section 18, Town of Elba, the site address being W12395 State Road 16 & 60.

Motion by Joseph Marsik to approve the conditional use permit application to allow filling and grading within 300 feet of a navigable waterway associated with a landscaping project on this site subject to the following conditions:

1. It shall be the responsibility of the applicant to obtain all other permits or approvals that

may be required (e.g., Wisconsin Department of Natural Resources and/or U.S. Army Corps of Engineers) for the proposed project.

2. All disturbed areas shall be leveled and graded (as needed) and seeded to permanent vegetation as soon as possible to prevent erosion of silt/sediment into the waterway.
3. All spoil piles shall be seeded to permanent vegetation as soon as possible to prevent erosion of silt/sediment into the waterway.
4. The proposed project shall not obstruct flow and shall not increase the regional flood height.
5. All erosion control measures required by the applicable Federal, State, County and Local codes shall be in place and shall be maintained throughout the duration of the project in accordance with Best Management Practices.
6. All work shall be done in accord with the plans and specifications submitted on September 11, 2017.
7. The decision of the Committee is valid for one year.

Second by William Muche    Vote 5-0    Motion carried.

### **PUBLIC HEARING**

**New Frontier Land Surveying, agent for Mary and John Braker** - Request for a Conditional Use Permit under the Land Use Code, Dodge County, Wisconsin to allow for the creation of an approximate 1.8-acre nonfarm single family residential lot within the A-1 Prime Agricultural Zoning District. The property is located in part of the NE ¼ of the NE ¼ and part of the NW ¼ of the NE ¼, Section 5, Town of Calamus, the site address being W11337 County Road FW.

Motion by Janice Bobholz to approve the conditional use permit to allow for the creation of an approximate 1.8-acre nonfarm single family residential lot within the A-1 Prime Agricultural Zoning District at this location subject to the following conditions:

1. The applicant shall obtain the required land division approvals for the proposed lot from the County and local municipalities if required, prior to the creation of these lots;
2. The proposed non-farm residential lot shall not exceed 2.38-acres in area unless the lot is successfully rezoned out of the A-1 Prime Agricultural Zoning District;
3. Only one single family residential unit may be located on the proposed non-farm residential lot unless this lot is successfully rezoned into a zoning district which allows additional residential units;
4. The acreage of the proposed non-farm residential lot shall count towards the total non-farm residential acreage that can be created from the base farm tract for this property;
5. A "Notice of Zoning Limitations" document shall be recorded with the Dodge County Register of Deeds Office for the following parcels which make up the "base farm tract" which notifies the potential buyers of these parcels that there may be limitations as to the number of new lots that can be created from this base farm tract:
  - 008-1113-0511-001 and 008-1113-0512-002.
6. The owner and subsequent owners of this non-farm residential lot hereby agree to comply with Subsection 9.2, Right to Farm provisions of the Dodge County Land Use Code and that they will not cause unnecessary interference with adjoining farming operations producing agricultural products and using generally accepted agricultural practices, including access to active farming operations;
7. The decision of the Committee is valid for one year.

Second by Joseph Marsik    Vote 5-0    Motion carried.

## **ADMINISTRATIVE BUSINESS**

### Planning and Development

1. Discuss transfer of conditional use permit #2005-0162 to new owners – Wind Energy Systems Turbine Facilities - Forward Energy LLC/Invenergy LLC. Towns of Leroy and Lomira.

Mr. Giebel informed the committee that the Forward Energy LLC Wind Energy Turbine Facilities in the Towns of Leroy and Lomira are being sold to a public utility company. The new buyers would like a resolution from the County Board that states that the conditional use permit conditions will transfer to the new owners and that the existing facilities can continue in operation without any changes to the CUP. Mr. Giebel informed the Committee that a Letter of Credit to cover the cost of decommissioning the towers would need to be updated for the new owners and indicated that the Department is working with the Corporation Counsel to work out the details of the resolution. This proposed resolution will be brought back to the Committee for review and action at the March 5, 2018 meeting.

2. Discuss and consider Land Information Committee consolidation proposal.

Bill Ehlenbeck informed the Committee that the County Board Chairman is considering combining the Land Information Committee duties with the Planning, Development and Parks Committee duties thereby allowing the elimination of one of the County Board Committees. Bill provided the Committee with a brief overview of the Land Information Committee duties and indicated that the final decision would most likely be made by the County Board Chairman after the election cycle.

### Parks

1. Discuss, consider and take action on request for wedding use of Harnischfeger Park north barn;

Bill Ehlenbeck reviewed a proposed special use permit request that the Department received to use the north barn at Harnischfeger Park for a wedding ceremony. The request includes the rental of the clubhouse for the reception and they would like to use the area near the north barn for the wedding ceremony. Bill reviewed a copy of a proposed contract with the Committee and discussed the proposed conditions that would be placed in the contract. Bill indicated that this is the first request of this nature and indicated that the staff would monitor the event to determine if there would be any adverse impacts on the neighbors with this type of an event.

Motion by Joseph Marsik to approve the special use permit as proposed.

Second by Allen Behl     Vote: 5-0     Motion carried

2. Gold Star Memorial Trail Status update.

Bill Ehlenbeck provided the committee with a brief update on the status of the Gold Star Memorial Trail and the proposed funding requests that will be going to the County Board on Wednesday.

**OTHER BUSINESS**

1. Review, consider and act on the petition to amend the Dodge County Floodplain Zoning Ordinance.

Mr. Giebel informed the Committee that the proposed petition to amend the Floodplain Zoning Ordinance will incorporate the results of a 2017 Dam Failure analysis that was completed by MSA Professional Services for the Upper Beaver Dam River Dam located in Section 4, City of Beaver Dam. The proposed amendment request is to adopt the 2017 revised dam failure analysis, the Dam Failure Map Panels 1 through 7, the Dam Failure Profile Panels 1 through 4 and the Dam Failure Floodway Data Table for those portions of the floodplain that cover lands located outside of the City limits of the City of Beaver Dam for the Upper Beaver Dam River Dam located in Section 4, City of Beaver Dam. The analysis was prepared by MSA Professional Services dated April 6, 2017 and was approved by the Wisconsin Department of Natural Resources on April 10, 2017.

The proposed amendment also includes two text changes to Section 1.5 (1) (a) of the ordinance that are necessary in order to comply with recently amended Wisconsin State Statutes (2017 Wis. Act 115). According to the statute changes, the provisions of the Floodplain Zoning Ordinance would not apply to lands adjacent to farm drainage ditches under certain circumstances. If the Committee approves the petition, a public hearing will be set up for the proposed amendment.

Motion by Joseph Marsik to sign the petition to amend the Dodge County Floodplain Zoning Ordinance and set up a public hearing and review by the Committee.

Second by William Muche            Vote: 5-0            Motion carried.

2. Review consider and act on the petition to amend the Dodge County Shoreland Protection Ordinance;

Mr. Giebel informed the Committee that several Acts were passed into law in 2017 which affect the Shoreland Protection Ordinance and the proposed amendments are necessary in order to bring the County's regulations into compliance with the recently enacted laws.

The petition includes amendments related to the public hearing notice requirements, the criteria for issuing a conditional use permit, the criteria for establishing conditions for a conditional use permit and the expiration date for a conditional use permit. The petition also includes amendments related to the clarification of the standards for granting certain variances, the burden of proof standards for the applicant and the expiration date for variance decisions. Additionally, the petition includes amendments related to the repair, rebuilding, and maintenance of certain nonconforming structures and the clarification of the regulations dealing with the enforcement of shoreland related violations that have been in place for more than 10 years. The proposed changes are necessary in order to comply with the recently amended Wisconsin State Statutes (2017 Acts 67 & 68). If the Committee approves the petition, a public hearing will be set up for the proposed amendment.

Motion by Janice Bobholz to sign the petition to amend the Dodge County Shoreland Ordinance and set up a public hearing and review by the Committee.

Second by Allen Behl            Vote: 5-0            Motion carried.

3. Review consider and act on the petition to amend the Dodge County Land Use Code

Joe Giebel informed the Committee that several Acts were passed into law in 2017 which affect the County Zoning Code. The proposed amendments to the Dodge County Land Use Code are necessary in order to bring the County's regulations into compliance with the recently enacted laws.

The proposed amendments to the Code include changes to the conditional use permit, non-conforming structure, variance, substandard lot and lot merger provisions of the Code. The amendments also include changes to the certified survey map and plat submission provisions of the Code and a series of miscellaneous housekeeping changes that are necessary in order to clarify certain uses that are allowed in the code, to clarify the filling, grading, dredging, ditching, tiling and excavation regulations allowed under the Code, to clarify the provisions relating to the accommodations that are allowed for the disabled, to remove the Administrative Adjustment provisions of the Code and to clarify certain definitions used in the Code. If the Committee approves the petition, a public hearing will be set up for the proposed amendment.

Motion by Allen Behl to sign the petition to amend the Dodge County Land Use Code and set up a public hearing and review by the Committee.

Second by Joseph Marsik           Vote: 5-0           Motion carried.

4. The minutes from the February 5, 2018 meeting were reviewed by the Committee.

Motion by Joseph Marsik to approve the minutes as written.

Second by William Muche           Vote: 4-0 (Bobholz abstained)           Motion carried.

5. No Committee Member Reports

6. No Additional Per Diems

Motion by order of the Chairman to adjourn the meeting. Motion carried.

Meeting adjourned at 8:15 p.m.

Respectfully Submitted,

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Allen Behl, Secretary

Disclaimer: The above minutes may be approved, amended or corrected at the next committee meeting.