

Village of Mukwonago
SPECIAL VILLAGE BOARD MEETING
Notice of Meeting and Agenda
Wednesday, September 7, 2016

Time: **5:30 p.m.**
Place: **Mukwonago Municipal Building/Board Room, 440 River Crest Court**

1. Call to Order
2. Announcement of closed session pursuant to Wis. Stat. **§19.85(1)(e)** for discussion and possible action involving the potential acquisition and sale of properties.
3. New Business
Discussion and Possible Action on the Following Items
 - A. Agreement with We Energies for permission for restoring Mukwonago River Bank and Ingress and Egress on We Energies Right of Way and Substation Property - Mukwonago River Shoreline Restoration Project
 - B. Working Agreement with We Energies for the installation of conservation practices - Mukwonago River Shoreline Restoration Project
 - C. Continued presentation on purpose of a Community Development Authority (CDA) under Wisconsin Statutes
4. Convene into closed session pursuant to Wis. Stat. **§19.85(1)(e)** (*Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session*) for discussion and possible action involving the potential acquisition and sale of properties.
5. Reconvene into open session pursuant to Wis. Stats. **§19.85(2)** for possible additional discussion and/or action concerning any matter discussed in closed session and/or any unfinished item remaining on the agenda
6. Adjournment

It is possible that members of, and possibly a quorum of, members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice. Please note that, upon reasonable notice, efforts will be made to accommodate the needs of individuals with disabilities through appropriate aids and services. For additional information or to request this service, contact the Clerk's Office, 440 River Crest Court, (262) 363-6420, Option 4.



Committee/Board:	Utilities
Topic:	Mukwonago River North Shoreline Restoration Project
From:	Dave Brown
Department:	Utilities
Presenter:	Dave Brown
Date of Committee Action (if required):	9/6/16
Date of Village Board Action (if required):	9/8/16

Information

Subject:

WE Energies Mukwonago River Bank Restoration Project Agreement/Contract Approval

Background Information/Rationale:

This project restores the river bank at WE Energies site on Front Street. By doing this project the Village Storm Water Utility would be able to use this for Phosphorus trading credits to help meet some of the utilities imposed phosphorus limits by eliminating run off and erosion to the Mukwonago River. We Energies will not operate as Sponsor but will give permission to do the work. Leaving the Village as the Sponsor, they are also requiring higher insurance requirements than state statute limits WSS 893.80 require. Further more liabilities that are normally passed on to the contractor are being placed onto the Village as Sponsor.

Key Issues for Consideration: Attorney Mark Blums concerns need to be addressed in the Contract and Agreement. This project has to be completed by end of September or its will not be done this year and we start all over trying to get the grant again next year. I have noticed that in the past few months attending the SEWFRC meetings they are not as eager to pay for 100% of the projects trying to spread their money out to get more projects done.

Fiscal Impact (If any):

\$0 Village dollars, 100% funded by SEWFRC

Requested Action by Committee/Board:

Approve Contracts/Agreement upon Attorney’s change requests made to Contract/Agreement

Attachments

- WE Energies Shoreline Restoration Attorney Review
- WE Energies Working Agreement
- WE Energies Shoreline Restoration Agreement

August 11, 2016

To: Waukesha County, Southeastern Wisconsin Fox River Commission, and Village of Mukwonago

To Whom It May Concern:

RE: WE FILE #09-0036: Permission for restoring Mukwonago River Bank and Ingress and Egress on We Energies Right of Way and Substation Property.

Wisconsin Electric Power Company, a Wisconsin corporation, doing business as We Energies, hereinafter referred to as "Company," hereby gives permission to **Waukesha County, Southeastern Wisconsin Fox River Commission "SEWFRC", and the Village of Mukwonago,** hereinafter collectively referred to as "Permittee," along with its invitees to restore certain portions of the river bank located along Company's lands along the Mukwonago River as hereinafter described and located westerly of Company's Phantom Lake Substation, along the north side of the Mukwonago River, south of Front Street and east of County Trunk Highway "ES" also known as Main Street, hereinafter referred to as "Premises", being part of the Northeast 1/4 of Section 35, Township 5 North, Range 18 East, Village of Mukwonago, Waukesha County, Wisconsin. The location of such lands is as shown on the attached map marked Exhibit "A", and made a part hereof.

This permission is given subject to the following conditions, agreements and stipulations:

1. **Non-Interference/Access:** That there will be no interference by Permittee and/or Permittee's contractors or agents with any overhead or underground electric line, or substation facilities of Company or American Transmission Company (ATC) located on its Premises.
2. **Work Standards:** That all work done in proximity to any electric line facilities shall be performed in conformance with the provisions and requirements of all applicable laws, rules and regulations, including without limitation all laws, rules and regulations such as O.S.H.A. Safety and Health Regulations for construction dealing with safe work practices and the operation of equipment near electrical lines and equipment, and the provisions of the Wisconsin State Electrical Code and any amendments thereto.
3. **Representations, Warranties & Liability:** That Company has made no representations or warranties regarding said lands or the conditions thereof or regarding facilities which it or others may have on said lands; that Permittee may go on said lands only at Permittee's sole risk; and that Permittee hereby releases, Company and its affiliated corporations from all claims, damages, injury and liability, arising out of or resulting from this permission, against Company and its affiliated corporations which it might otherwise make or have.

4. **Indemnification/Insurance:**

PERMITTEE

Permittee shall protect, indemnify, save and hold harmless the Company and its affiliated corporations and their directors, officers, agents and employees from any and all claims,

demands, actions, and all liability, costs and expenses (including attorney's fees) in connection therewith, which may be made or brought against or incurred by the Company and its affiliated corporations or their directors, officers, agents or employees as a result of injury or death of any person (including employees of the Company and its affiliated corporations or Permittee) or damage to any property arising out of or in any way connected with the permission herein given or as a result of the actions of Permittee, or its agents and/or subcontractors or their employees while on the premises included under the permission herein given. Permittee shall maintain general public liability insurance, in the amount of at least \$1,000,000 per individual, \$2,000,000 per occurrence, \$500,000 property damage and name Company as an Additional Insured. Permittee shall, prior to the exercising of the rights granted under this agreement, furnish to Company a Certificate of Insurance certifying that such a Policy of Insurance is in effect and that the insurance company will give the Company 30 days prior written notice of any material change in, or cancellation of, such insurance.

COMPANY

The Company shall protect, indemnify, save and hold harmless Permittee from any and all claims, demands, actions, and all liability, costs and expenses (including reasonable attorney's fees) in connection therewith, which may be made or brought against or incurred by Permittee as a result of damage to any equipment or other property of Permittee located on the premises included under the permission herein given, but only to the extent that such damage arises solely out of the negligence or willful misconduct of the Company or any of its agents, contractors or employees while on such premises.

5. **Damages:** Permittee agrees that any damages caused by Permittee to the facilities or property of Company and ATC and/or other permittee's equipment or improvements on land shall be repaired at the Permittee's expense. Please use caution around fence and asphalt walking path. Path should be closed to the public for safety.

6. **Drainage/Erosion:** Permittee agrees that there shall be no impairment of natural or of installed drainage facilities occasioned by the aforementioned use of Company's lands. Permittee further agrees to abide by the State's "Wisconsin Storm Water Construction Technical Standards" for the control of erosion and sediment during construction alterations of Company property.

7. **Hazardous Materials:** Permittee, its agents, employees, contractors, and invitees shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Lands or Premises or Company's adjoining lands. The use and/or storage of Hazardous Material by or for any assignee is prohibited. Permittee shall not discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, storm water or sanitary sewer system, or any body of water, if such material (as determined by the Company or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the Premises or elsewhere; or (b) the condition, use, or enjoyment of any other real or personal property.

As used herein, the term "Hazardous Material" means:

a. Any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder;

b. Any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder;

- c. Any oil, petroleum products, and their byproducts; and
- d. Any substance which is or becomes regulated by any federal, state, or local governmental authority.

Permittee agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Hazardous Material kept on the Premises by the Permittee and the Permittee shall give immediate notice to the Company of any violation or potential violation of the provisions of this section. Permittee shall defend, indemnify, and hold harmless Company and its agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorneys' and consultant fees, court costs, and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to:

aa. The presence, disposal, release, or threatened release of any such Hazardous Material which is on, from, or affects soil, water, vegetation, buildings, personal property, persons, animals, or otherwise;

bb. Any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material;

cc. Any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Material; or

dd. Any violation of any laws applicable thereto. The provisions of this Section shall be in addition to any other obligations and liabilities Permittee may have to Company at law or equity and shall survive the transactions contemplated herein and shall survive the termination of this Permission.

If Permittee excavates any contaminated materials, Permittee is responsible for testing, handling and disposing of contaminated materials and will be listed as the generator of such materials.

8. **Diggers Hotline:** Permittee, contractors and agents are required to contact Diggers Hotline at (800) 242-8511 at least 5 working days prior to any work, excavation, or construction on Company's lands in order to determine the location of electric, telephone and gas facilities within Company's said lands and the applicable clearance requirements for work performed in proximity to such facilities. Permittee shall not commence any work until Diggers Hotline marks property.

9. **Notification:** Permittee agrees to contact Rollie Simatic at 414-944-5955 and Mike Grisar at 414-221-5426 within the specified time limits to inform him about the following occurrences:

- a. At least 7 calendar days prior to the commencement of the project herein permitted.
- b. Within 7 calendar days after the end of the project herein permitted with a plan for restoration.
- c. Within 7 calendar days after the restoration has been completed.
- d. Within 7 calendar days after a lapse of 6 months since Permittee accepted this permit if the project herein permitted has not been undertaken by such date.

10. **Fill:** Permittee agrees that all fill material must be clean fill; no contaminated soils or construction debris can be used.

11. **Access:** Permittee agrees that Company and approved third parties will not be denied access or be inhibited in any manner to their facilities on Company's land at any time. Company access shall be

maintained at all times. Storage and parking is not permitted on Company's property. Only equipment used to perform work is allowed on site and limited to work zone area.

12. **Fee:** Company agrees to waive fee for this permission.

13. **Term:** Permittee will have access to Company's lands beginning August 29th, 2016 and expiring on December 31st, 2016. Company reserves the right to cancel and terminate this permission at any time and for any reason considered sufficient by it without prior written notice to Permittee and upon notice of such cancellation or termination, Permittee will immediately cease to use the Premises. Permittee agrees that any and all restoration required shall be completed not later than 60 days thereafter.

14. **Violation of Terms in Agreement:** Permittee understands that this agreement can and will be terminated if the Permittee violates any terms of this agreement.

15. **Permits/Plans:** Any work proposed within or along wetlands, or rivers or riverbanks, The Permittee must obtain the appropriate permits from the Wisconsin Department of Natural Resources ("WDNR") and the Army Corps of Engineers ("ACOE") and any other permits that would apply. The Permittee must provide final plans and permit applications to Company prior to submitting permit applications to the respective permitting authorities. The Permittee must provide a copy of final permits to Company prior to working within or along the wetland/riverbank areas and provide Company a reasonable time to review said permits before project can commence.

Permittee may remove weeds and other invasive plant species and replace with low lying plants and plant life that will reach a mature height of ten feet or less on part of Company's lands.

Permittee shall notify in advance and shall seek written approval from Company of any changes of plans.

Permittee shall obtain and provide to Company lien waivers from contractor(s) proving payment in full for said work on this project.

At the completion of the project, Permittee shall provide to Company a completed set of "as built" plans.

Preliminary plans must be submitted by Permittee to Company for initial approval. If the Company finds acceptable then, Permittee may proceed with project. Permittee must submit final project plans including proposed "slope cutting or fill" close to Company's facilities. Permittee must provide final plans to Company at a minimum of 30 days prior to starting project. No work may commence on property until Company approves final plans.

16. **Compliance with Local Ordinances:** Permittee shall, in the use and occupancy of the Premises comply with all laws, ordinances, rules and regulations of the Village of Mukwonago and other governmental bodies having jurisdiction, over the operation of Permittee's or Company's business or occupation of the Premises.

17. **Successors and Assigns:** This grant is subject to the right of Company, its successors and assigns, to use, occupy and enjoy its lands for such purposes, and in such manner and at such times, as it shall desire, the same as if this permission had not been executed by it.

18. **Company agrees to:**

- Contact American Transmission Company and seek guidelines for this project.

- Sign WDNR permit application(s) as required.
- If necessary, Company will participate in site showing and/or preconstruction meetings with Permittee and invitees.
- Allow Permittee to enter the project area for post-project monitoring, minor activities to maintain restored vegetation, and site visits, if necessary, minor activities include replanting vegetation and vegetation management (i.e. herbicides or hand pulling invasive or other weed species). Company permits up to two years after executing this document for the purposes of inspecting and replanting as necessary. No trucks, vehicles or mechanical equipment may be used excepting a small 4 wheel vehicle. Permittee must seek approval from Company for any additional work performed on said lands. Permittee is required to notify Company of entrance onto lands 5 (five) working days in advance.

Please indicate acceptance of such permission, in accordance with the terms recited, by signing two of the copies of this letter in the space provided and returning the same to Julie Simmons of Property Management in the return envelope provided. When we have received these items, this letter will be signed by the Company and one copy will be returned to you. **THIS PERMIT DOES NOT TAKE EFFECT UNTIL A COPY SIGNED BY THE COMPANY IS RETURNED TO YOU.**

If you have any questions concerning this matter, please feel free to contact me at the above address or by calling (414)221-2715.

Sincerely,

Julie M. Simmons
 Right of Way Agent
 Property Management

Permission is hereby accepted under the terms and conditions set forth hereinabove.

WAUKESHA COUNTY

By: _____ Dated: _____
 NAME
 TITLE

Permission is hereby accepted under the terms and conditions set forth hereinabove.

SOUTHEASTERN WISCONSIN FOX RIVER COMMISSION

By: _____ Dated: _____
 NAME
 TITLE

Permission is hereby accepted under the terms and conditions set forth hereinabove.

VILLAGE OF MUKWONAGO

By _____ Dated: _____
NAME
TITLE

Permission is hereby granted under the terms and conditions set forth hereinabove.

WISCONSIN ELECTRIC POWER COMPANY

By: _____ Dated: _____
James T. Raabe
Manager of Property Management

LAW OFFICES OF

HIPPENMEYER, REILLY, MOODIE & BLUM, S.C.

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MARK G. BLUM
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WILLIAM F. REILLY
(1932-2007)

EMAIL: MGBLUM@HRMBLAWFIRM.COM

August 23, 2016

Via Email (dbrown@villageofmukwonago.com)

Mr. Dave Brown, Utility Director
Village of Mukwonago
440 River Crest Court
Mukwonago, WI 53149

Re: Waukesha County Agreements

Dear Dave:

I have now had the opportunity to review the Agreements you forwarded to me from Waukesha County regarding the installation of conservation practices in SEWRPC right-of-way. The Village is identified as the sponsor of this work and it states that we are approving the Scope of Services. In that regard, there is a Memo to the Village from WE Energies which references stream bank restoration along the Mukwonago River. It also says that we will indemnify and hold them harmless from any and all claims, actions or liability arising from the performance of the work to the extent that such liability is incurred by WE Energies. It also says that it will maintain liability insurance in the amount of \$1,000,000.00 for individual; \$2,000,000.00 in the aggregate; and \$500,000.00 with respect to property damage coverage. We are also required to provide them with a Certificate of Insurance. It also indicates that we are going to indemnify them against any claims arising from the presence of hazardous materials on the site and the cost of their disposal.

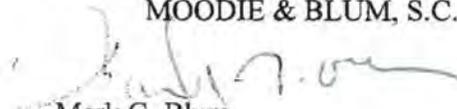
My concern with these Agreements is that the Village is indemnifying the other parties with respect to the bidding procedures and contract activities on the site; as well as WE Energies with respect to the work performed in their right-of-way; as well as any hazardous materials that are found on site. Normally, any claim that is made against the Village is subject to the limitations and immunities as provided for under Wisconsin Statute Section 893.80. These Agreements do not provide for this limitation and in essence, we would be extending our responsibility beyond that which would normally exist under law. While I can agree to the terms of the Agreements otherwise, I think both of them need to be modified to provide that any indemnity being made by the Village would be subject to the limitations set forth in Wisconsin Statute Section 893.80, and that execution the Agreements shall not constitute a waiver of those limitations. Quite frankly, I cannot imagine that the County or the Southeast Wisconsin Fox River Commission would want to do this either. As the contractor is actually performing the work in this area, it would seem to me that they would be responsible for this indemnity as opposed to the municipalities. Normally, these kinds of risks are transferred from the governmental entity to the contractors through the Agreement.

Mr. Dave Brown
Village of Mukwonago
August 23, 2016
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Please let me know if you have questions or further concerns regarding this issue.

Sincerely,

HIPPENMEYER, REILLY,
MOODIE & BLUM, S.C.



Mark G. Blum
Village Attorney

MGB/jb

Cc: Mr. John Weidl
Mr. Ron Bittner

Working Agreement for the Installation of Conservation Practices

This agreement has been developed to help clarify the roles and responsibilities of WEPCO ("Landowner"), Village of Mukwonago ("Sponsor"), Waukesha County ("Project Manager"), Contractor ("Applied Ecological Services") and the Southeastern Wisconsin Fox River Commission ("SEWFRC") for the installation of a conservation practice that is cost-shared by the SEWFRC on private lands. All parties must sign this agreement prior to any construction work. Please read carefully before signing.

I. Landowner's Responsibilities (WEPCO):

- 1) Approve final construction plans.
- 2) Provide a Letter of Permission with terms and conditions for the project.
- 3) Participate in a pre-construction conference with the Sponsor, Project Manager and Contractor. Discuss any interim management requirements during construction work (parking, fill placement, fences, etc.).
- 4) Approve any modifications made to construction plans.

I understand and agree to carry out my responsibilities as listed above:

Landowner's Signature & Date

II. Sponsor's Responsibilities (Village of Mukwonago):

- 1) Agree to terms and conditions as listed on the WEPCO Letter of Permission.
- 2) Approve construction plans based on planning decisions made by the Landowner and Project Manager following applicable technical standards and specifications.
- 3) Authorize and indemnify the Project Manager to oversee project bidding procedures and construction activities by execution of this agreement.
- 4) Hire the Contractor for all services rendered, as agreed to prior to construction work.

I understand and agree to carry out my responsibilities as listed above:

Sponsor's Signature & Date

III. Project Managers' Responsibilities (Waukesha County):

- 1) Prepare construction plans based on planning decisions made by the Landowner, Sponsor, Project Manager, Wisconsin Dept. of Natural Resources and United States Army Corp of Engineers following applicable technical standards and specifications.
- 2) Explain thoroughly and provide copies of construction plans, bidding procedures and working agreement to the Landowner, Sponsor and Contractor and SEWFRC.
- 3) Oversee project bidding procedures and conduct site showing and/or pre-construction conference(s) on behalf of and in cooperation with the Landowner and Sponsor.
- 4) Agree to terms and conditions as listed on the WEPCO Letter of Permission.
- 5) Assist with practice layout and staking as agreed prior to construction.
- 6) Coordinate scheduling and oversee all construction activities on behalf of the Landowner and Sponsor. Alert the Contractor and Landowner of any safety hazard, variance from construction plans or other problems that may arise during construction. (The Project Manager may stop work at their discretion.) Approve any modifications made to construction plans or costs.
- 7) Provide periodic inspection of materials and work performed by the Contractor. Immediately notify Sponsor, Landowner, SEWFRC and/or Contractor of any work not in accordance with construction plans, permit(s) or specifications.
- 8) Authorize changes in construction plans if they are in accordance with design standards, approved by the Landowner and Contractor. Provide proper documentation of approved changes as applicable for cost-sharing purposes.
- 9) Certify for Contractor payment that all completed construction work meets County/State/Federal technical standards and specifications.
- 10) Provide periodic status reports to the SEWFRC during the project period at a regular Commission meeting or provided in writing prior to a regularly scheduled Commission meeting.

I understand and agree to carry out my responsibilities as listed above:

Project Manager's Signature & Date

IV. Contractor's Responsibilities (Applied Ecological Services):

- 1) Read and understand the SEWFRC bidding and cost-sharing procedures.
- 2) Participate in site showing and/or pre-construction conference with the Sponsor, Project Managers and owner.
- 3) Review and fully understand the construction plans and associated specifications before submitting a bid or beginning construction.
- 4) Agree to terms of payment with the Southeastern Wisconsin Fox River Commission prior to any construction activity.
- 5) Provide certificate of insurance to the Sponsor, Project Manager and Landowner.
- 6) Agree to terms and conditions as listed on the WEPCO Letter of Permission.
- 7) Obtain required materials, supplies and equipment to complete construction work according to plans and specifications.
- 8) Notify the Landowner, Sponsor and Project Managers a minimum of 24 hours in advance of start of construction. Also notify the Project Manager prior to critical stages of construction as agreed to prior to start of construction.
- 9) Ensure that all buried utilities are located and marked prior to any construction activity.
- 10) Layout and construct conservation practice(s) according to plans and specifications. Ask for assistance from the Project Manager as needed. Follow applicable OSHA safety standards during construction. Notify the Project Manager of any proposed changes in construction plans or of any additional costs anticipated. All changes must be documented and approved on a CHANGE ORDER form. Understand that all additional costs must be pre-approved by the Project Sponsor and SEWFRC.
- 11) Provide proper documentation of materials, supplies and/or construction methods as needed.
- 12) All equipment used for the project shall be de-contaminated for invasive and exotic viruses and species prior to use and after use.
- 13) Submit itemized bills (or bid invoice) within 30 days to the Project Manager so that payment can be processed. Provide lien waivers from suppliers upon request.

Project: Mukwonago River Shoreline Stabilization Project in the Village of Mukwonago

I understand and agree to carry out my responsibilities as listed above:

Applied Ecological Services Signature & Date

V. Southeastern Wisconsin Fox River Commission Responsibilities (“SEWFRC”)

- 1) Pay the Contractor for 100% of the actual construction costs upon receipt of a Construction & Planting Certification letter from the Project Manager.

I understand and agree to carry out my responsibility as listed above

SEWFRC Signature & Date

LAW OFFICES OF
HIPPENMEYER, REILLY, MOODIE & BLUM, S.C.

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EMAIL: MGBLUM@HRMBLAWFIRM.COM

April 13, 2016

Via Email (jweidl@villageofmukwonago.com)

Mr. John Weidl
Village of Mukwonago Administrator
440 River Crest Court
P.O. Box 206
Mukwonago, WI 53149

Re: Community Development Authorities

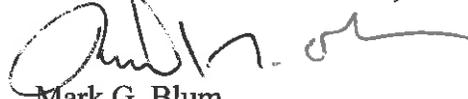
Dear John:

Enclosed is a memo I put together regarding the subject of Community Development Authorities at your request. Please look this over and then advise me as to whether this addresses the questions you had on this subject. It is my understanding the Village Board has asked for this information; so if there are additional questions that need to be addressed, please let me know and I would be happy to revise this Memo accordingly.

Thank you for your attention to this matter.

Sincerely,

HIPPENMEYER, REILLY,
MOODIE & BLUM, S.C.



Mark G. Blum
Village Attorney

MGB/jb
Enc.

MEMORANDUM

TO: Village of Mukwonago
FROM: Attorney Mark G. Blum
SUBJECT: Community Development Authorities
DATE: April 13, 2016

Community Development Authorities are statutorily created entities pursuant to Wisconsin Statute Section 66.1335. That Statute allows for a Community Development Authority to be created by a City or Village. The purpose of the Community Development Authority is to carry out blight elimination, slum clearance, urban renewal programs and housing projects. The CDA can also act as the agent of the municipality in planning and carrying out community development programs.

Pursuant to the statute, a municipality may create a CDA by adopting an ordinance or resolution so providing. In order to adopt a CDA ordinance or resolution, 2/3 of the members of the governing body must approve it. Under the law, the CDA is what's referred to as a separate body politic, meaning that it is an independent municipal entity though it derives its authority from the underlying municipality and at least two of its members must come from the governing body of the municipality. Interestingly, the CDA's authority to acquire land by eminent domain is somewhat broader than that of the municipality. For example, cities are not able to acquire real estate for industrial purposes; however, a CDA can. The reason for this is that the eminent domain statute, which limits the authority of the governing body, does not apply to a CDA because it is not technically part of the municipal entity. Of course this can create issues, for example the CDA would need to be independently covered for liability insurance purposes.

CDAs also have the authority to implement housing programs, for example Federal government voucher housing or tax credit housing.

With respect to the issue of financing redevelopment, the CDA would work with the municipality in implementing a tax incremental financing district. It also would have the authority to issue double tax exempt debt, which does not count against the Village's general obligation borrowing limit. The CDA would be able to borrow money and issue bonds, notes or other forms of indebtedness to secure that debt. It also would have the ability to apply for and receive Federal or State grants, to enter into contracts, acquire lands real or personal property by negotiated purchase, lease or eminent domain and then in turn sell, lease, subdivide, retain or mortgage the property which it acquires.

The CDA would also have the authority to loan or grant funds to projects deemed to aid in the elimination of blight and facilitate rehabilitation.

In general, CDAs can be more efficient in implementing redevelopment plans. They also have powers which are not available to the City Council in the area of eminent domain and to enter into public/private partnerships such as loans or grants or redevelopment with a sale to a private party. The CDA would also have the authority to issue revenue bond financing subject to the Village Board approval, but which would not be subject to the debt

limits of the community, i.e. the general obligation borrowing ceiling. I would encourage you to discuss this issue further with your financial advisor, should you have questions.

Since the CDA would be considered a separate body politic under the Wisconsin Statutes, it would have the authority to sue or be sued and therefore, has a level of independence from the governing body. With that said, there are some actions of the CDA which must also be approved by the governing body, as well as the CDA itself. These would include blight determination and spot blight findings; any action that would require a taxing authority; and the issuance of lease revenue bonds.

As noted above, CDAs have the authority to engage in eminent domain, which is authority that otherwise would only be vested in the Village Board. With respect to blight determination and spot blight findings, the CDA could determine that a particular property is an example of spot blight. That assessment would involve a review of issues such as environmental contamination or simply under-utilization by the existing property owner. Specifically, under Wisconsin Statute Sec. 66.1333, a blighted area can refer to slum areas where there is dilapidation, deterioration, age or obsolescence which endangers life or property; but it can also be situations where there is a diversity of ownership; defective or unusual conditions of title; or any other combinations of such factors which substantially impairs or limits the sound growth of the municipality. It can also refer to areas which, because of faulty layout in relation to size, adequacy of accessibility or usefulness, obsolete platting or other circumstances which adversely impact the ability of the lands to be used productively or which substantially impairs or arrests the sound growth of the municipality. Under those circumstances, the CDA would have the authority to make a spot blight determination or blight determination and therefore, to engage in eminent domain for the purposes of acquiring such lands and in accordance with a redevelopment plan remedying conditions that would otherwise prevent them from being used for productive purposes. Once the defective conditions are addressed, the CDA can sell the lands to make them productive.

The CDA would also have the authority to receive and administer grants from the federal or state governments; to loan or grant funds to projects within the redevelopment area and aid in the elimination of blight or rehabilitation; and as noted above, to borrow money and issue bonds, notes or other forms of indebtedness.

The area of authority for a CDA is defined either by the redevelopment area plan that is adopted or by spot blight designation as referenced above. In general, the CDA would have powers not available to the governing body to undertake public, private partnerships and to issue revenue bond financing that is not subject to the debt limits as would be the case with general obligation financing.

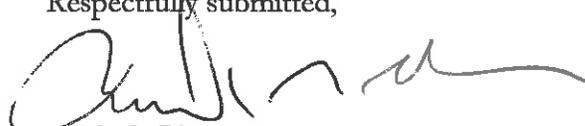
As you can see, Community Development Authorities have significant powers which can be useful to municipalities in promoting economic redevelopment. The CDA can be an important partner in the overall economic development of a municipality.

If the Village Board wishes to look further into this issue, I can provide the form of an adopting resolution, as well as potential by-laws for the CDA. I think it would also be appropriate for the Village Board to consider what area of the community it would like the

CDA to operate in. Typically, a redevelopment district or blighted area is identified and this is the area over which the CDA would have planning and development authority. CDAs can be a valuable tool in the redevelopment of a community, particularly where there is need for property or active government intervention in the form of acquisition of land and improvement of infrastructure.

Thank you for your consideration of this matter.

Respectfully submitted,



Mark G. Blum

MGB/jb