

** MINUTES **
* * OUTAGAMIE COUNTY BOARD SPECIAL MEETING * *

Office of the County Clerk, July 20, 2016.

The Board met pursuant to adjournment, and was called to order by Chairperson Nooyen at 6:30 p.m. in the County Board Room, located at 410 South Walnut Street, Appleton, Wisconsin.

On July 12, 2016, the Outagamie County Clerk received a [Special Meeting Request](#) petition from the Outagamie County Board to hold a special meeting on July 20, 2016, at 6:30 p.m., pursuant to Sec. 2-20(d) of the County Board Rules and Sec. 59.11(2)(a), Wis. Stats. to consider Eminent Domain proceedings to obtain the Goodland Drive property for just compensation.

ROLL CALL: 28 present, 8 absent. Members present: Thompson, Miller, Patience, Gabrielson, Strenn, Hammen, Lamers, McDaniel, Wegand, De Groot, Vanden Heuvel, Lemanski, Spears, Thomas, Thyssen, Klemp, Pleuss, Nooyen, Duncan, Culbertson, Buchman, Griesbach, Clegg, VanderHeiden, O'Connor-Schevers, Rettler, Melchert, and Suprise. Member absent: Grady, T. Krueger, J. Krueger, Meyer, Groat, Stueck, Hagen, and Sturn.

The Board Chairperson requested the Board's confirmation to excuse Supervisors Grady, T. Krueger, J. Krueger, Meyer, Groat, Stueck, Hagen, and Sturn. No objections; so ordered.

The Pledge of Allegiance was led by Chairperson Nooyen.

Chairperson Nooyen reported that the Special Order of Business, Presentation on Structure and Process of County Government by Joe Guidote, would be deferred until possibly September in order to allow for Public Participation to occur more quickly. No objection; so ordered.

MINUTES OF JULY 12, 2016

Supervisor Thyssen moved, seconded by Supervisor Suprise, to approve the minutes of the July 12, 2016, County Board meeting.

ROLL CALL: 27 aye, 1 abstain, 8 absent. MINUTES OF THE JULY 12, 2016, BOARD MEETING ARE APPROVED.

SPECIAL ORDER OF BUSINESS – None.

ESTABLISH ORDER OF THE DAY

Supervisor Thyssen requested that Resolution No. 22 be held in committee. No objection; so ordered.

Supervisor Lemanski requested Resolution No. 20 be withdrawn. No objections; so ordered.
RESOLUTION NO. 20—2016-17 IS WITHDRAWN.

COMMUNICATIONS

Chairperson Nooyen noted the following correspondence was placed on the supervisor desks:

- Letter from Foley & Lardner LLP, counsel for J.F. Ahern Company, regarding Resolution No. 28—2016-17 objecting to the County's use of condemnation authority for the property.
- McMahon and Associates Sheriff LEC site comparison (preliminary) information.

Chairperson Nooyen reported that information was circulated that the Special Meeting Request date/time of the meeting was set in order to be in conflict with the City of Appleton's Common Council meeting. He reported that the date of July 20, 2016, was set as July 19, 2016, was a conflict date for several supervisors who served on municipal boards and the meeting was set due to critical timing of the resolution.

PUBLIC PARTICIPATION FOR A PERIOD OF FIFTEEN MINUTES (PERTINENT TO THE RESOLUTIONS OF THE DAY)

Supervisor Spears requested that additional time be allowed for Public Participation. Chairperson Nooyen reported that everyone would be allowed to speak and that he could extend the period of Public Participation.

City of Appleton Mayor Tim Hanna spoke against Resolution No. 28. Mayor Hanna reported that in mid-June, county staff visited Appleton staff to discuss the search for a suitable location for the Sheriff Law Enforcement (LE) relocation. A number of sites were evaluated, with the county determining that the 3030 E. Goodland Drive, Appleton, site as being the best option. The City of Appleton was not thrilled with the idea, but the City of Appleton realized the property was on the market for several months and they reported they would work with the County on the transfer. A few weeks later, however, another local company visited the City reporting they had an accepted offer on the same property. The firm was currently located in the NE industrial park, they were looking to expand with adding employees, and to expand their footprint in the Appleton area. Approximately two weeks later, Mayor Hanna received a phone call from Executive Nelson reporting that things happened with offers going back and forth, and that the County was thinking of using eminent domain. Mayor Hanna reported the aforementioned is what he knew. Mayor Hanna reported that process aside, he was more concerned about the ramifications of the decision with government not being considered friendly to business. As business is currently in a timeframe of expansion, the county should consider their action carefully due to the competitive nature of business and the need for economic development. Because of the need for business in the area and the message use of eminent domain would place on the business community, Mayor Hanna requested the county reconsider the use of eminent domain and vote against Resolution No. 28. He requested that the county consider other alternatives.

John Pfefferle, Newmark Grubb Pfefferle, spoke against Resolution No. 28. Mr. Pfefferle noted that he had been on the Board for 12 years. He reported he wanted to set the record straight regarding the county's ability to offer. His company, Newmark Grubb Pfefferle, was hired to search for a new location for the J.F. Ahern firm, who currently has a property in the NE Appleton industrial park. A number of properties were reviewed and the 3030 E. Goodland Dr. property was selected. An initial Offer to Purchase was rejected by the property owner with the property owner countering for full price, which was subsequently accepted by the J.F. Ahern firm. During the time, the company and their agent were not aware of the County's desire for the property. Mr. Pfefferle reported that they learned yesterday about the county's possible exercise of eminent domain. Mr. Pfefferle reported the offer was accepted one month ago, and the Ahern's have spent money conducting due diligence on study, environmental tests, surveys, and they learned yesterday that there's a major issue with the entire transaction. He requested the County Board defeat the resolution in order to allow the business to expand their footprint in Appleton.

Tony Ahern, Executive Vice President of Fabrication and Operations for J.F. Ahern, spoke against Resolution No. 28. The J.F. Ahern firm is headquartered in Fond du Lac with an office

at 312 E. Capitol Dr., Appleton. The firm has an accepted offer for 3030 E. Goodland Dr., Appleton, property. J.F. Ahern currently has approximately 1,300 employees with approximately 200 of them working in and out of the Appleton facility. Over the last six years, J.F. Ahern added 300 employees. The job growth is expected to continue in the future as this year the firm is experiencing a 30% growth in business. The firm has run out of space in their current facility. Staff works with high schools, local technical colleges, and local unions to obtain the skilled trade employees that they need. Mr. Ahern reported the public would be better served by J.F. Ahern ownership as it would remain on the tax role and they have a long-term goal to expand the facility. In addition, J.F. Ahern has a long term history of job creation. This facility is three times the footprint of the current facility. The owner submitted a counter offer to the original J.F. Ahern offer, and J.F. Ahern accepted the counter offer, which was higher than the original offer provided by the county. The process of procurement was under local, experienced real estate brokers. Since the accepted offer, J.F. Ahern has expended time and dollars to close the transaction. If the County pursues eminent domain, J.F. Ahern's growth plans will be set back by at least one year. The company was not aware of the Sheriff's needs at the time of the offer. Mr. Ahern requested that the County Board not consider the eminent domain action. Instead, the county should work with the city, county, and other property owners to find a suitable location for the Sheriff's needs.

Kathleen Plank, Appleton District 7 and Common Council President, spoke against Resolution No. 28. She reported that several other Appleton Council members were also in attendance. Ms. Plank reported that she understands the value of \$2 million savings in county government. However, she disagreed with the use of eminent domain for a property that has an accepted offer for business expansion. She noted that county government should prioritize economic development over the usage of the property for a Sheriff's facility. She requested that the County Board not use eminent domain for the property as it would send a negative message to the business community and would take \$1.7 million off the tax role. She requested Outagamie County find an alternative site.

Chair Nooyen reported he would extend public participation for another 15 minutes.

Ron Metzler, Green Bay attorney who represented the owner of the 3030 E. Goodland Dr., Appleton, property, spoke regarding Resolution No. 28. Mr. Metzler reported that the owner of the building is not present to tell the County Board what to do regarding the property. However, the County Board may be acting on misinformation. The client found out about the Outagamie County eminent domain use after selling the property. The owner feels bad for the Sheriff and for those working on the project. Mr. Metzler reported that two offers were outstanding. The County met with the owner and on June 21, an email was received reporting that the county could not counter if the counter was on price. Because the owner had two offers at the time, the owner countered the one that didn't say anything about countering on price and the owner received full price. Based upon the email, the owner felt the county had a chance. If the deal is delayed, then both companies will have costs as the owner had to clear out the property due to the accepted offer.

John Ross, J. Ross & Associates, current listing agent for the owner of 3030 E. Goodland Dr., Appleton, property, spoke against Resolution No. 28. The owner was in a very enviable position with two qualified buyers. The owner looked at price, contingencies, how likely the deal would close, and how quickly the deal would close. The owner reviewed those items and chose the Ahern offer as the county was provided opportunity to counter. Mr. Ross requested the Board vote against the use of eminent domain.

Dennis Jochman, Bouchard Group, original listing broker for the 3030 E. Goodland Dr., Appleton, property, spoke regarding Resolution No. 28. Mr. Jochman noted that he worked with the county since August 2015. He worked with Planner Kara Homan, Sheriff Gehring, and County Executive Nelson. Two other major companies were looking at the property and both still haven't found anything, but they are still reviewing sites in Appleton. There are two other brokers involved with those two other companies. This past spring, the seller hired a consultant from Florida to handle his real estate portfolio. The owner then wanted his own team, and he replaced Mr. Jochman with John Ross. Mr. Jochman reported he knows the 3030 E. Goodland Dr. building very well. The facility has stainless steel gutters, and he knows how much water is piped into the building. Confusion occurred because of multiple brokers being involved. The offer from Ahern was submitted on June 16. The county had their appraisal speeded up. The appraisal was presented to the seller along with the offer on June 20. Mr. Jochman met with seller and he explained to him because of multiple brokers that if there were more than one offer, procedures included countering a particular or offering multiple counter offers. Mr. Jochman reviewed forms with the seller. The counter was drafted for the Ahern Company and submitted for their signature. The county never had a chance to counter. The county asked for a counter, and they never received a counter. Mr. Jochman submitted that the county was used in this transaction as the county did the appraisal and came in with the number for the facility. This gave the seller the opportunity to counter the other offer. Mr. Jochman reported that the owner thought he could still counter with the county. However, the county was not provided the opportunity and should have had that opportunity.

APPOINTMENTS - None.

REPORT BY THE COUNTY EXECUTIVE - County Executive Thomas Nelson reported he had nothing to report.

REPORT AND PRESENTATION OF COUNTY LOBBYIST - County Lobbyist Mark Wadium was not able to attend the meeting.

UNFINISHED BUSINESS

Resolution No. 20—2016-17 – Health and Human Services Committee. Oppose proposed legislation which would make changes to the current law governing veteran's affairs, changes to powers of officials or employees of the Department of Veterans Affairs, changes to the powers of the Board of Veterans Affairs, and changes regarding the maintenance of veteran's homes.

This resolution was originally introduced February 9, 2016, as Resolution No. 135—2015-16 and was held in committee initially and at each subsequent meeting since its introduction. At the June 14, 2016 County Board meeting, Chairperson Nooyen reported that Resolution No. 135—2015-16 was converted to Resolution No. 20—2016-17 to coincide with the current session. No objection; so ordered. Supervisor Meyer moved, seconded by Supervisor Lemanski, for adoption of Resolution No. 20—2016-17. After discussion regarding the resolve clause language, Supervisor Duncan moved, seconded by Supervisor Pleuss, to refer back to the committee. Motion carried. At the June 28, 2016 and July 12, 2016 County Board meeting, Supervisor Lemanski requested that Resolution No. 20 be held in committee at each meeting. No objection; so ordered.

At the July 20, 2016 meeting, Resolution No. 20 was withdrawn (see Establish Order of the Day).

Resolution No. 22—2016-17 – Legislative/Audit & Human Resources Committee. Approve

Administrative Rule 16-04 amending the AS&P Personnel Manual and all Interim Personnel Policy Manuals by reducing the number of deferred compensation vendors the county currently partners with from two to one.

At the June 28, 2016 and July 12, 2016 County Board meetings, Supervisor Thyssen requested that Resolution No. 22 be held in committee. No objections, so ordered.

At the July 20, 2016 meeting, Resolution No. 22 was held in committee (see Establish Order of the Day).

NEW BUSINESS

Resolution No. 28—2016-17 – Property, Airport, Recreation & Economic Development Committee. Declares and determines in accord with Wisconsin Statutes Section 32.07(2) the necessity to acquire for a Sheriff's Department law enforcement facility Tax Parcel #311672311, and that the acquisition involve an exercise of the power of eminent domain by Outagamie County in accord with Wisconsin Statute 32.06.

Supervisor Culbertson moved, seconded by Supervisor Duncan, for adoption.

Chair Nooyen requested a suspension of the rules to allow Planner Kara Homan, Sheriff Gehring, and Corporation Counsel Guidote, to speak and answer questions prior to debate. No objection; so ordered.

Planner Kara Homan reported the process and timing for the site selection for the Sheriff Law Enforcement facility.

Timeline:

- Predesign phase occurred in approximately five months with McMahon Associates.
- Mid-April – Space programming was finalized with a master spreadsheet for space needs for all departments, which included the Sheriff's needs (including identification of the Law Enforcement portion being moved offsite). April 17, the space programming was finalized.
- April 24 – Started tabulation of available sites for sale. Sites included vacant properties (including County owned) and buildings listed for sale. Planning GIS used a GIS tool to review the sites for utilities, zoning, environmental concerns, etc. The tool was overlaid with 26 parcels with 17 sites. Three sites were existing buildings with the remaining sites having vacant land (two of them being County owned).
- May 4 – Planning met with the Sheriff and Maintenance Dept. to review HVAC, plumbing, and other building considerations. During analysis, all 26 sites were reviewed which included four sites in the Town of Greenville, nine in the Town of Grand Chute, one in the Village of Little Chute, and three sites in Appleton. The sites were chosen from coordinates from Hwy. 96 following a buffer along Hwy. 41 to CTH OO. Criteria considered the cost per acre and sq. foot. From that analysis, five properties were considered "yes" and two were "maybe." Two properties were existing buildings. The existing brokers were contacted to tour the existing facilities.
- May 11 – Tours were conducted of the two properties with one of the properties being the 3030 E Goodland Dr., Appleton, property. Following tours, sites were considered with all being eliminated but two properties. The final sites included the 3030 E. Goodland Dr., Appleton, property and the STH 15/Casaloma property.
- May 15 Week – McMahon was hired to provide additional services for cost comparison for building a new facility for Sheriff LE facility at STH 15/Casaloma site versus costs for remodeling (included adding ballistic glass and remodeling for evidence processing in the

warehouse) the 3030 E. Goodland Dr. property for LE facility. The two costs were presented to the Property Committee.

- June 8 – Cost documentation from McMahon was presented to the Project Oversight and Property Committees. A new site at STH 15/Casaloma came in at an estimated \$5.4 million. The 3030 E Goodland Dr., Appleton, site procurement and remodeling came to approximately \$3.455 million. At the time of analysis, there was a property for sale to the north of the 3030 E. Goodland Dr. property for \$150,000. However, there is an accepted offer from a different party on that vacant site. Because the 3030 E. Goodland Dr. site administrative and warehouse space could be doubled, it was decided the additional property acquisition was not necessary.
- Pro/Con analysis for the 3030 E. Goodland Sr. site vs. a New Build on STH 15/Casaloma – Those pros/cons were listed on the McMahon handout provided to the County Board on their desks. The 3030 E. Goodland Dr., Appleton, was chosen. An offer to purchase was drafted and submitted along with the appraisal.
- June 11 – The Space & Security Oversight Committee was briefed in closed session.
- June 15 - The Property Committee was briefed regarding the administration's intentions to submit an offer to purchase.
- June 17 – A meeting was held with City of Appleton to inform them of the intentions to proceed with procurement of the 3030 E. Goodland Dr. property.
- June 20 - Appraisal came in and the offer was made to the owner of the 3030 E. Goodland Dr. property. The offer was made on full appraisal, with contingency regarding a variance from the City of Appleton on their covenants. Several days later the administration found the offer was not accepted.

Since the situation, the Planning Department has continued to monitor other properties, including existing buildings. A suitable vacant site is available at STH 15/Casaloma Dr., but no other suitable properties are available in Outagamie County. One site for square footage with office space is available, but it is not within the county, and it does not provide the warehouse space. No other existing buildings are available with the logistics and proximity to the outlying area.

During question and answer, discussion took place on the STH 15/Casaloma property. The 20 acre site has nine acres that are developable. Multiple offers have been received on the property, but those offers have been for apportioning the property. Last year, road access was added to the property; brush was cleared; and this year, the property was tilled and planted. The wetland delineation was completed 3½ years ago expiring the end of 2017. Planner Homan reported that if the eminent domain does not proceed, the downtown project would fall back nine months. If a facility for the Sheriff is built on the site, the remaining portions of the property would be included on the Planning Department's inventory of all vacant county sites with recommendations for their disposition. The Solid Waste and Highway Department locations were reviewed for possible footprint sites for building. Since the review, the Solid Waste Department identified land needed to stockpile top soil, and the site was then no longer identified as a buildable footprint.

Corporation Counsel Guidote reported on how the offers and counter offer occurred. He noted that the county was not allowed to counter offer. On June 20, an offer was provided to the seller. On June 22, the county learned of the accepted offer from another buyer.

During question and answer of Corporation Counsel Guidote, discussion took place on the ability of the county to negotiate for property with being allowed leeway to offer additional funds. Corporation Counsel Guidote reported that decisions regarding funding have to be made

in open session. While strategy can occur in closed session, absolute authority is required to be done in open session.

Sheriff Gehring reported that the idea of relocating the LE division has been before the Board for 15 years. The past 16 months debate occurred about that move. Various realtors have submitted potential properties for the LE division. The 3030 E. Goodland Dr., Appleton, came available in May 2015. A tour was conducted by Sheriff staff. In reviewing sites, the Sheriff considered not only the downtown LE needs but also the evidence storage needs. Staff noted in their tour of the Goodland Dr. property that the facility had sufficient office space, was a recently constructed building, provided adjacent parking, was located 60-90 seconds from US 41/441, had CCTV cameras installed, provided office space for command staff to be on the same floor, and provided a warehouse for operating efficiencies for property storage, rescue operations storage (SWAT vehicles and snowmobiles) with the facility requiring very little remodeling. In addition, the proximity to the Highway Department was advantageous for equipment maintenance.

During discussion, the subject of the value of the restrictive covenants and the procedures for eminent domain were considered. Corporation Counsel Guidote noted that eminent domain should only be used for a public purpose and just compensation must be provided to the land owner. There is a 60 day time period for the transaction to be consummated. If not, then a condemnation committee/circuit court process must proceed. The Sheriff LE facility use qualifies as sufficient public purpose. The only other issue to be determined is valuation. The county can also use eminent domain to cover the covenants, and a valuation of the covenants would need to be considered. Covenants indicate certain specific uses, and a LE facility is not one of the specified uses. The underlying zoning ordinance would allow the LE facility. Because the restrictive covenants are a private interest, eminent domain could be used. Corporation Counsel Guidote also reported that the legal requirements for proceeding with eminent domain should not approach six figures.

A five minute recess was called according to the County Board rules. The meeting was reconvened at 8:15 p.m.

Supervisor Culbertson moved, seconded by Supervisor Duncan, for adoption of Resolution No. 28.

Supervisor Spears moved, seconded by Supervisor Strenn, to amend paragraph 3 on page 1 to add after the words, "just compensation" "and to include payment in lieu of taxes to the City of Appleton, Appleton School District, the technical college, and the State of Wisconsin."

Corporation Counsel Guidote reported that the amendment is only in the descriptive section of the resolution and that an additional resolve clause should be added.

Supervisor Spears changed her amendment, seconded by Supervisor Strenn, to also add a resolve clause prior to the last resolve clause to read, "BE IT FURTHER RESOLVED, that Outagamie County include payment in lieu of taxes to the City of Appleton, Appleton School District, the technical college, and the State of Wisconsin, and".

Supervisor Thomas questioned if the amendment would require a 2/3 majority as it might make a budgetary change. Corporation Counsel Guidote reported that he was uncertain whether the monies could be obtained from current budgetary funds. If that weren't true, then he reported this amendment was an advisory amendment, and a budgetary change would require a 2/3 vote.

ROLL CALL to amend: 1 aye, 27 nay, 8 absent. AMENDMENT IS DEFEATED.

Supervisor McDaniel moved, seconded by Supervisor Patience, for the question.

ROLL CALL to call the question: 19 aye, 9 nay, 8 absent. DEBATE IS CUT OFF.

ROLL CALL: 17 aye, 11 nay, 8 absent. RESOLUTION NO. 28—2016-17 IS ADOPTED.

Resolution No. 29—2016-17 – Property, Airport, Recreation & Economic Development Committee. Authorize granting WE Energies an easement for the area described in the Warranty Deed recorded in the Office of the Register of Deeds for Outagamie County as Document No. 640137, as noted on the attached drawing, marked Exhibit “A”.

Supervisor Lemanski moved, seconded by Supervisor Culbertson, for adoption.

ROLL CALL: 27 aye, 1 abstain, 8 absent. RESOLUTION NO. 29—2016-17 IS ADOPTED.

Supervisor Culbertson moved, seconded by Supervisor Lemanski, to reconsider Resolution No. 29 for the purpose of lock in.

ROLL CALL to reconsider: 25 aye, 2 nay, 1 abstain, 8 absent. RESOLUTION NO. 29—2016-17 IS RECONSIDERED.

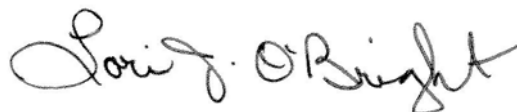
ROLL CALL to adopt & lock in: 26 aye, 1 nay, 1 abstain, 8 absent. RESOLUTION NO. 29—2016-17 IS ADOPTED & LOCKED IN.

REPORTS – None.

Chairperson Nooyen reported that a Committee Chairs meeting will be held July 28, 2016, at 4:00 p.m.

Supervisor Lemanski moved, seconded by Supervisor McDaniel, to adjourn until August 9, 2016, at 6:30 p.m.

The meeting adjourned at 8:55 p.m.



Lori O'Bright, County Clerk