

Comments of Edward B. Witte, Godfrey & Kahn
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To the City of Milwaukee Zoning, Neighborhoods & Development Committee

Regarding Agenda Item 180285 “An Ordinance relating to floodplain maps and map revisions adopted by the City”

June 12, 2018

Good morning, my name is Edward Witte, I am an attorney with Godfrey & Kahn law firm and I am appearing this morning on behalf of my client, the Forest County Potawatomi Community (FCPC), in regard to agenda item 180285 before the City of Milwaukee Zoning, Neighborhoods and Development Committee and pertaining to an ordinance relating to floodplain maps and map revisions adopted by the City. FCPC has been working with the City and Commissioner Korban’s team on these issues for three years. Today is an important step forward, but it is not the end of the cooperative effort.

The action taken by the Committee today will adopt the base flood elevations and floodplain determinations identified through the Conditional Letter of Map Revision, or CLOMR, process that the City of Milwaukee Department of Public Works has pursued with the Federal Emergency Management Authority (FEMA), dating back almost 20 years. FCPC has a keen interest in the accurate identification of these floodplain boundaries because, as currently proposed, the CLOMR would expand the identification of certain floodplain designations in the lower Menomonee Valley and would place structures owned by FCPC in the floodplain for the first time. As one of the largest holders of real estate in the Menomonee Valley, the state’s number one tourist attraction and one of the City’s largest employers FCPC wants to place these comments on the record of this committee because, as I will note, although the CLOMR is before the Committee today for approval, the work related to the revision of the floodplain and the base flood elevations in the Valley is not complete.

As proposed, the CLOMR indicates that substantial portions of the land occupied by FCPC in the Valley will now be in the floodplain. This floodplain restricted land includes the casino, the hotel, the anaerobic digester installed and operated by FCPC to generate renewable energy, and parking lots to support these functions. Newly designated floodplain also includes properties recently acquired by FCPC or under consideration by FCPC. Other areas include lands owned by the City of Milwaukee owned by railroad interests including CP Rail.

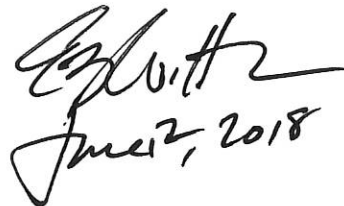
There are several primary causes for why the City and FEMA have determined these lands will now be in the floodplain, but the primary reasons appear to be poor data that was utilized in producing the last generation of floodplain maps (around 2008) and source of flooding caused by a “bottleneck” in the Menomonee River at the bridge owned and maintained by CP Rail just east of 27th Street. The Milwaukee Metropolitan Sewerage District assumed jurisdiction over the lower Menomonee River upstream from the estuary where the river joins the Milwaukee River in 2016 following a resolution from the City of Milwaukee. MMSD has been conducting a closer evaluation of floodplain, including the bathymetric conditions of the Menomonee River

above and below the CP Rail bridge. MMSD has preliminary data showing that the degree of flooding, or water that gets out of the river channel in a 10 year or 100 year flood event, is not as extensive as is represented in the base flood elevations that are depicted in floodplain maps that are associated with the CLOMR the Committee is considering adoption of through its action today. However, FCPC respects that the FEMA Letter of Map Revision process calls for the City to approve the CLOMR today, understanding that the City, MMSD and FCPC will work together to amend the CLOMR and the related base flood elevation/floodplain maps when certain events occur in the future.

One of these critical future events is due to the fact that under applicable Wisconsin law, CP Rail is required to maintain and improve a bridge it owns and that impairs the flow of water in rivers it crosses, including on an ongoing basis, to adapt to changes in the flow capacity of the river. The City, MMSD and FCPC met with CP Rail in 2017 and were turned away without the rail company's cooperation. Over the last six months, MMSD has developed better data that indicates that the degree of flooding in heavier storm events caused by the 27th Street CP Rail bridge may be approximately one-quarter of the extent of flooding identified by the CLOMR before the Committee today. However, even this amount of flooding is unacceptable to FCPC and its operations. Therefore, once MMSD completes its flood flow evaluation, FCPC anticipates the City will promptly take actions to consider and adopt the revised floodplain base flood elevations and will expeditiously work with FEMA to amend the CLOMR. Further, at that time, FCPC anticipates that the City will join with FCPC and MMSD to approach CP Rail for a full solution to the flooding related to the insufficient design and maintenance of CP Rail's bridge.

The City and MMSD have been valuable partners to FCPC in this effort because of shared interests. MMSD shares the interest of FCPC in minimizing the degree of flooding, where water gets out of the river channel but ultimately enters the combined sewer and requires management by MMSD's operations. FCPC and the City share the interest of the accurate and, ideally, the most restrictive extent of the Menomonee River floodplain possible. This result benefits the City because, as a Valley landowner itself, this will reduce the limitations on development that naturally coincide with a floodplain designation. The City also will benefit when FCPC can maximize its existing operations and future development operations free from the limitations of floodplain designation on those lands. As a valued partner to the City in the extensive job creation and recreational and hotel related revenue generation tied to real estate, FCPC anticipates and will count on the City's continued proactive cooperation to accomplish the jointly shared objective of amending the CLOMR and addressing solutions to the cause of remaining flooding in the future.

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Bob Witt
June 2, 2018