

**Date: Tuesday, January 5, 2016**

**Time: 7:30 PM**

**Place: City Hall**

**Committee meetings will begin at 5:50 pm before this full Council meeting. City Council members frequently attend the committee meetings to gather information. A majority of the Council members may be present at these committee meetings.**

## **CITY OF MONROE COMMON COUNCIL AGENDA**

A. CALL TO ORDER & ROLL CALL

B. CORRECTION OF MINUTES

C. PRESENTATION OF PETITIONS AND COMMUNICATIONS

D. BUSINESS BY MAYOR

Updates regarding Mayor's activities

1. POLICE DEPARTMENT EXCEPTIONAL SERVICE AWARDS

Individual Requesting Item	Chief Kelley
Expected Length of Discussion	5 min.

E. APPEARANCES BY THE PUBLIC

F. CONSENT AGENDA (ROLL CALL VOTE)

1. RESOLUTION GRANTING MISCELLANEOUS LICENSES
2. APPROVE CLAIMS AS PRESENTED ON CLAIMS LIST

1. RESOLUTION GRANTING A TEMPORARY CLASS "B" FERMENTED MALT BEVERAGE LICENSE TO MONROE THEATRE GUILD

Individual Requesting Item	City Clerk/DOGG
Expected Length of Discussion	5 min.

Documents: [SKMBT\\_C35151221120700.pdf](#)

G. PLAN COMMISSION (KOCH)

1. ORDINANCE REZONING PROPERTY #157  
**(Hold Public Hearing) (Roll Call Vote)**

Individual Requesting Item	Plan Commission
Expected Length of Discussion	5 min.

Documents: [rezoning157.pdf](#)

H. FINANCE AND TAXATION COMMITTEE (STANGEL)

1. RESOLUTION APPROVING PURCHASE AND DEVELOPMENT AGREEMENT WITH EASTLAND FEED AND GRAIN  
**(Roll Call Vote)**

Individual Requesting Item	Martin Shanks
Expected Length of Discussion	10 Minutes

Documents: [2015-12-28 Eastland PDA.pdf](#)

I. SALARY AND PERSONNEL COMMITTEE (BAUMAN)

1. RECEIPT OF LETTER OF RESIGNATION FROM DIRECTOR OF PUBLIC WORKS

Individual Requesting Item	City Admin.
Expected Length of Discussion	5 min.

J. PUBLIC SAFETY COMMITTEE (BEER)

1. RESOLUTION APPROVING PURCHASE OF POLICE VEHICLES BUDGETED FOR 2016

**(Roll Call Vote)**

Individual Requesting Item	Public Safety Committee
Expected Length of Discussion	5 min.

K. BOARD OF PUBLIC WORKS (KOCH)

1. RESOLUTION APPROVING CHANGE ORDERS #17 AND #18 FOR WASTEWATER TREATMENT FACILITY UPGRADE

**(Roll Call Vote)**

Individual Requesting Item	Board of Public Works
Expected Length of Discussion	5 min.

L. AIRPORT BOARD OF MANAGEMENT (MILLER)

1. RESOLUTION APPROVING REVISED 2016 AIRPORT OPERATIONS CONTRACT

**(Roll Call Vote)**

Individual Requesting Item	Airport Board
Expected Length of Discussion	5 min.

Documents: [D-AirportOperatorCont\\_Revised-2016\\_2015-12-17.doc](#)

M. COUNCIL AS A WHOLE (STANGEL)

1. SPRING PRIMARY

*The Council may need to decide whether or not to hold a Spring Primary in the city if there are 3 or more candidates for any city office for the April 2016 Election.*

Individual Requesting Item	City Clerk/Director of General Government
Expected Length of Discussion	5 min.

2. RESTRUCTURING OR REDUCING THE MEMBERSHIP OF VARIOUS COMMITTEES INCLUDING ALTERNATE COMMITTEE MEMBERS, AND ATTENDANCE AT MEETINGS BY NON-COMMITTEE MEMBERS

*Questions and discussion with City Attorney*

Individual Requesting Item	Mayor
Expected Length of Discussion	15 min.

Documents: [Memorandum to Alderpersons with attachments 2015-12-28.pdf](#)

3. ORDINANCE REPEALING AND RECREATING SECTIONS 2-1-1 AND 2-1-4 OF THE MONROE CITY CODE: REDUCING SIIZE OF BOARD OF PUBLIC WORKS  
**May include discussion regarding the restructuring of the committee membership including the possible appointment of staff members**

**(Roll Call Vote)**

Individual Requesting Item	Admin. Rath
Expected Length of Discussion	5 min.

Documents: [Sections 2-1-1 and 2-1-4 Reduction in Size or BPW 2015-11-18.pdf](#)

4. SURVEY RESULTS AND OPTIONS RELATED TO THE FUTURE CITY HALL REMODEL PROJECT

Individual Requesting Item	City Administrator
Expected Length of Discussion	20 minutes

N. BUSINESS PRESENTED BY ALDERPERSONS

May make brief informative statements or bring up items to be discussed at a future meeting

O. BUSINESS PRESENTED BY DEPARTMENT HEADS

May make brief informative statements or bring up items to be discussed at a future meeting

P. BUSINESS PRESENTED BY THE PRESS

Q. ADJOURNMENT

**This Council may take any action it considers appropriate related to any item on this agenda.**

Requests from persons with disabilities who need assistance to participate in this meeting, including need for an interpreter, materials in alternate formats, or other accommodations, should be made to the Office of the City Clerk at (608) 329-2564 with as much advance notice as possible so that proper arrangements can be made.

fol. 12-17-15  
\$40.00

APPLICATION FOR TEMPORARY CLASS "B"/"CLASS B" RETAILER'S LICENSE

See Additional Information on reverse side. Contact the municipal clerk if you have questions.

FEE \$ 10.00

Application Date 12/16/2015

Town  Village  City of MONROE County of GREEN

The named organization applies for: (check appropriate box(es).)

- A Temporary Class "B" license to sell fermented malt beverages at picnics or similar gatherings under s. 125.26(6), Wis. Stats.
- A Temporary "Class B" license to sell wine at picnics or similar gatherings under s. 125.51(10), Wis. Stat.

at the premises described below during a special event beginning 1/22/16 and ending 1/30/16 and agrees to comply with all law, resolution, ordinances and regulations (state, federal or local) affecting the sale of fermented malt beverages and/or wine if the license is granted.

1. ORGANIZATION (check appropriate box)  Bona fide Club  Church  Lodge/Society  Veteran's Organization  Fair Association

(a) Name MONROE THEATRE CLUB

(b) Address 910 16<sup>TH</sup> AVE, MONROE, WI  
(Street)  Town  Village  City

(c) Date organized 1972

(d) If corporation, give date of incorporation 7/15/1975

(e) Names and addresses of all officers:

President KATIE DOYLE-BAUMANN 2602 22<sup>ND</sup> AVE, MONROE

Vice President KEITH HOESLY, 2107 8<sup>TH</sup> ST. MONROE

Secretary TAMMY SMILES, 7031 18<sup>TH</sup> AVE, MONROE

Treasurer TULLIE SACKS, 1703 COUNTRY LANE, MONROE

(f) Name and address of manager or person in charge of affair: RICIE MALTSZEWSKI (Contact person)  
PRODUCER

2. LOCATION OF PREMISES WHERE BEER AND/OR WINE WILL BE SOLD:

(a) Street number 910 16<sup>TH</sup> AVE Block entire inside building

(b) Lot 1 C.S.M 4348

(c) Do premises occupy all or part of building? SOUTH PART

(d) If part of building, describe fully all premises covered under this application, which floor or floors, or room or rooms, license is to cover: SOUTH WEST QUARTER OF GROUND FLOOR

3. NAME OF EVENT Chris Suckup - licensed bartender mixes to be allowed on premises

(a) List name of the event COMEDY NIGHT

(b) Dates of event JANUARY 22, 2014 thru JANUARY 30, 2015

Jan, 22, 23, 29, 30 2015  
DECLARATION

The Officer(s) of the organization, individually and together, declare under penalties of law that the information provided in this application is true and correct to the best of their knowledge and belief.

Officer Katie Doyle Bau  
(Signature/date)

MONROE THEATRE CLUB  
(Name of Organization)  
Officer KE C. TH  
(Signature/date)

Officer \_\_\_\_\_  
(Signature/date)

Officer \_\_\_\_\_  
(Signature/date)

Date Filed with Clerk 12-17-15

Date Reported to Council or Board \_\_\_\_\_

Date Granted by Council \_\_\_\_\_

License No. \_\_\_\_\_

Public Hearing Date: 01/05/2016

**ORDINANCE REZONING PROPERTY  
#157**

THE COMMON COUNCIL of the City of Monroe do ordain as follows:

SECTION I:

The following described properties shall hereby be rezoned from M-1 (Light Industrial District) to B-2 (General Business District)

Tax Parcel # 23-251-2420, #23-251-2421, #23-251-2423  
730 8<sup>th</sup> Ave., 720 8<sup>th</sup> Ave., 801 8<sup>th</sup> St. Bader property

Part of the Southwest 1/4 of the Northeast ¼ of Section 34, T2N, R7E, City of Monroe, Green County, Wisconsin, more fully described as follows:

Commencing at the North ¼ corner of said Section 34; thence S0°14'44"W along the West line of the Northeast quarter of said section 34, a distance of 2273.75 feet; thence N89°01'54" E, 289.45 feet to the Easterly right of way of 8<sup>th</sup> Avenue and the point of beginning: Thence N89°02'07"E, 393.47 feet; thence S00°14'44"W, 241.91 feet; thence S83°42'34"W, 133.92 feet; thence S00°14'44"W, 78.89 feet to the Northerly Right of Way of 8<sup>th</sup> Street; thence N84°22'27"W along said northerly right of way, 73.64 feet; thence N89°55'41"W along said northerly right of way, 85.91 feet to the Easterly right of Way of 8<sup>th</sup> Avenue; thence N12°35'42"W along said easterly right of way, 43.38 feet; thence S89°13'57", 27.62 feet to the Easterly right of way of 8th Avenue; thence N12°38'26"W along said Easterly right of way, 153.24 feet; thence N12°37'23"W along said Easterly right of way, 133.23 feet to the point of beginning.

Tax Parcel #23-251-2424.11 620 8<sup>th</sup> Avenue  
Storage Haus, LLC

Part of the Southwest ¼ of the Northeast ¼ of Section 34, T2N, R7E, City of Monroe, Green County, Wisconsin, more fully described as follows:

Lot 1 of Certified Survey Map Number 860 recorded in Volume 3 of Certified Survey Maps of Green County on Page 6 as Document Number 307993.

Tax Parcel # 23-251-2422.000  
Meyers Property

815 8<sup>th</sup> Street

Part of the Southwest 1/4 of the Northeast ¼ of Section 34, T2N, R7E, City of Monroe, Green County, Wisconsin, more fully described as follows:

Commencing at the North ¼ corner of said Section 34; thence S0°14'44"W along the West line of the Northeast quarter of said section 34, a distance of 2273.75 feet; thence N89°01'54" E, 289.45 feet to the Easterly right of way of 8<sup>th</sup> Avenue; thence N89°02'07"E, 393.47 feet; thence S00°14'44"W, 241.91 feet to the point of beginning: Thence continuing S00°14'44"W, 66.54 feet; thence S53°42'53"W, 59.91 feet to the Northerly right of way of 8<sup>th</sup> Street; thence N84°19'16"W along said northerly right of way, 85.29 feet; thence N00°14'44"E, 78.89 feet; thence N83°42'43"E, 133.92 feet to the point of beginning.

Tax Parcel Number: 23-25- 2424.0000  
Smith Property

819 8<sup>th</sup> Street

All that part of the Southwest Quarter of the Northeast Quarter lying south of a parcel of land situated in the City of Monroe, Green County, Wisconsin, described as follows:

Commencing at the Northeast corner of the Southwest Quarter of the Northeast Quarter of Section 34, T2N, R7E, thence West along a fence line 1285.2 feet to center line of State Trunk Highway 81, thence S12°50' East along said center line of State Trunk Highway 81, 974.25 feet, thence N88°18' East along the North line of Roy E. Chesebro property a distance of 801.2 feet to an iron stake on railroad right-of-way, thence N53°54' East along said railroad right-of-way 256.2 feet to iron stake, thence N0°23' West along a fence line 783.6 feet to iron stake and the point of beginning, being a part of the Southwest Quarter of the Northeast Quarter of Section 34, T2N, R7E, except land conveyed for highway purposes. Lying East of a certain part and parcel of the Southwest Quarter of the Northeast Quarter of Section 34 lying north and west of the Illinois Central Railroad right-of-way, containing three acres be the same more or less, and more particularly described as follows: Lying East of cement highway Number 81, being bounded on the south by cement highway Number 11, on the east by a line drawn parallel to the West boundary of said quarter section No 34, at a point 683.36 feet east of said quarter section line, and bounded on the north by a line drawn parallel with the south boundary of said quarter section at a point 385 feet north of the center line of the cement road, being Number 11; now known as 9th Street; Being located in the City of Monroe, County of Green and State of Wisconsin, Town 2 North, Range 7 East. Lying northwesterly of Illinois Central Railroad right-of-way.

SECTION II:

This ordinance shall be numbered Special Ordinance #157.

SECTION III:

This ordinance shall be in full force the day following its passage and official publication.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2016

Published this \_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



# CITY OF MONROE

Office of the Assistant City Administrator  
Martin Shanks  
(608) 329-2521  
mshanks@cityofmonroe.org

1110 18th Avenue  
Monroe, Wisconsin 53566  
(608) 329-2500  
www.cityofmonroe.org

## MEMORANDUM

**DATE:** December 29, 2015  
**TO:** Finance & Taxation Committee/Common Council  
**FROM:** Martin Shanks  
**RE:** Prospective Buyer of Honey Creek Industrial Park

Attached is a draft purchase and development agreement with Eastland Feed and Grain LLC. Eastland approached City staff and Green County Development Corporation early in November with interest in the approximate 10 acre lot directly east of Badger State Ethanol in the Honey Creek Industrial Park. After working with Eastland on the PDA, both sides feel comfortable bringing forward the draft agreement for your consideration.

Eastland currently employs a little over 40 full time employees in their core business and has annual sales of \$200 million. The site in Honey Creek Industrial Park would be utilized by Eastland to build a feed mill that runs primarily dairy feed, but would have the capability to run all species. The mill would give Eastland increased capacity and better geographic access to their markets.

The mill will employ 4 people on site with 6-10 more employees added in their transportation division. Once the mill is up and running Eastland anticipates adding a distribution warehouse and a retail store in the future.

The creation of the PDA was a highly collaborative staff effort, which included myself, Al Gerber, Ryan Lindsey, Attorney Ewald and Mike Johnson at GCDC. I commend all of these individuals for their efforts, reliability and expediency in moving this project forward.

The agreement is our standard approach with a few items to note:

- Paragraph 6 relates to language of a storm water main currently existing on the site in the NE corner. This section articulates an easement for the City.
- Paragraph 14(D) relates to the City Council offering a resolution of support to the Wisconsin Commissioner of Railroad for a rail crossing of 4<sup>th</sup> Avenue West. Eastland intends at some point to construct a rail spur.
- Paragraph 16 grants an easement on City owned property east of 4<sup>th</sup> Avenue West for a rail spur.
- Paragraph 17(A) clarifies that Eastland understands and will take care of the existing structure on the property.
- Paragraph 17(H) includes the standard stipulations for the minimum fair market value requirements. They will expire at the end of TID in 2019.
- Paragraph 21 will release Eastland from the fair market value requirements if they hit \$2,000,000 in value on January 1 of any year.

# History of Eastland Feed and Grain Inc.

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In the late 80's, the Coulthard family was spending time looking in southern Wisconsin and northern Illinois for a farm to buy. During one of our trips to Illinois our realtor pulled in at a feed mill that had just been listed. The thought of leaving farming was not given a lot of consideration at first but struggling to find a farm that felt right it became the decision to buy the feed mill and elevator. Besides, we all know that land was too high priced in the late 80's.....so we bought the mill and opened the doors in March of 1990. We started with a staff of four people. There were several expansions in the 90's with both the grain business and the feed business growing in tandem. More feed required more grain; more grain required more staff. More staff allowed for more feed and more grain, an endless cycle, just like farming.

In 2001, we started our own metal shop building augers and conveying equipment, repairing and fabricating equipment for the mill. We run the mill and elevator hard and downtime wasn't an option. Farmers started to bring equipment in for repair also and in 2003 Eastland Fabrication was born. A new shop was constructed near Lanark and they (my middle son Steve and a long term employee Mike) were in business on their own. They continue to grow, working on fabrication and welding repair of all farm equipment, grain trailers, etc. With a staff of six fabricator welders, if you can break it, they can probably fix it. This year they are adding a new division and will soon be breaking ground for a sales and parts center for a new business called E and S Equipment. They will handle sales, service and parts for Houle manure handling equipment.

In 2005, the decision was made to expand the feed mill. Construction lasted a long 12 months. The new mill addition gave us an extra 30 tons per hour of mixing capability while at the same time increased mixing accuracy while decreasing loading and unloading times. With the growth of the feed business, we also found the need to handle more bulk commodities, dry and wet distillers, gluten feeds, cottonseed, etc. In 2013 we added a commodity shed to help smooth out the big ingredient demand days. In 2014 we added a robot to the mill to help with the bagging chores. Our customer base includes dairies from 20 to 4,000 cows, swine operations from 6 to 6,000 sows, and a large number of cow calf and cattle feedlot operations from producers growing a couple of freezer beef to feedlot with several thousand head. We are comfortable working with producers of any size with a variety of needs. The doors open to the feed mill every morning at 4:00 a.m. and we are not done until the job is done, just like farming.

In the grain business, we can handle the grain or help you handle your grain. We understand hedging, basis, spreads, and freight. We presently have 30 delivery points that we sell grain to excluding the feed customers. We currently work with grain producers in northern Illinois, southern Wisconsin and eastern Iowa finding outlets to find to the best market available for their grain.

In 2009, we started construction of Lost River, a grain facility here in Shannon. It has been a multiyear build, but we started with a very good base and it works well. The new facility is set up with a quick dump pit and three 425,000 bushel bins. At harvest we can turn a semi on and off the property every six minutes.

Our 2011 construction included the beginning of Area 51 which is located south of Hanover on the Savanna Army depot property. Area 51 is operated as a country elevator but has nearby access to the Burlington Northern Railroad and long term we are working toward a goal of loading unit trains. Currently we have 875,000 bushels of space at Area 51 to handle wet corn, dry corn, beans and wheat.

# History of Eastland Feed and Grain Inc.

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In 1990 we had storage for 150,000 bushels of grain and manufactured about 30 ton of feed a day. Currently we have 2,500,000 bushels of grain storage and manufacture about 45 tons of feed an hour.

In 21 years, we have grown from a staff of 4 to a staff of over 40. Our oldest staff member is 77 and our youngest is 20. If you want to know about something, we either have someone on staff that has done it or we have someone that isn't afraid to try it and tell you how it worked out. During these years, we have grown to fill agricultures need. Eastland is a family operation where the door is opened at 4:00 a.m. by one son and closed at night by another. We are agriculture.

**HONEY CREEK INDUSTRIAL PARK  
PURCHASE AND DEVELOPMENT AGREEMENT  
Eastland Feed and Grain, Inc., Purchaser**

**This Agreement** entered into as of the \_\_\_\_ day of January, 2016, between Eastland Feed and Grain, Inc. [the “Purchaser”] and the City of Monroe, a municipality organized under the laws of the State of Wisconsin [the “City”].

**RECITALS**

**Whereas** the City has designated the Honey Creek Industrial Park located west of 4<sup>th</sup> Avenue West in the City as property which is suitable for commercial and industrial development [the “Honey Creek Industrial Park”], and,

**Whereas** pursuant to Section 66.46 [now Section 66.1105] of the Wisconsin Statutes, the City created Monroe Tax Incremental District Number 5 [the “TIF District”] in order to facilitate economic development of lands within the TIF District, and

**Whereas** the Purchaser wishes to acquire a parcel of land about 10.2 acres in size within the TIF District, which parcel is identified on **Figure 1** as the “Development Site” [the “Development Site”], and

**Whereas** Purchaser plans to construct certain improvements on the Development Site, as more particularly set forth in this Agreement for use as a processing and storage facility for feed and grain [the “Business”], and

**Whereas** the Monroe Common Council has found that the improvement of the Development Site as proposed by the Purchaser is in furtherance of the City’s goals for the TIF District, and

**Whereas** the City is willing to sell the Development Site to the Purchaser on the terms and conditions set forth in this Agreement.

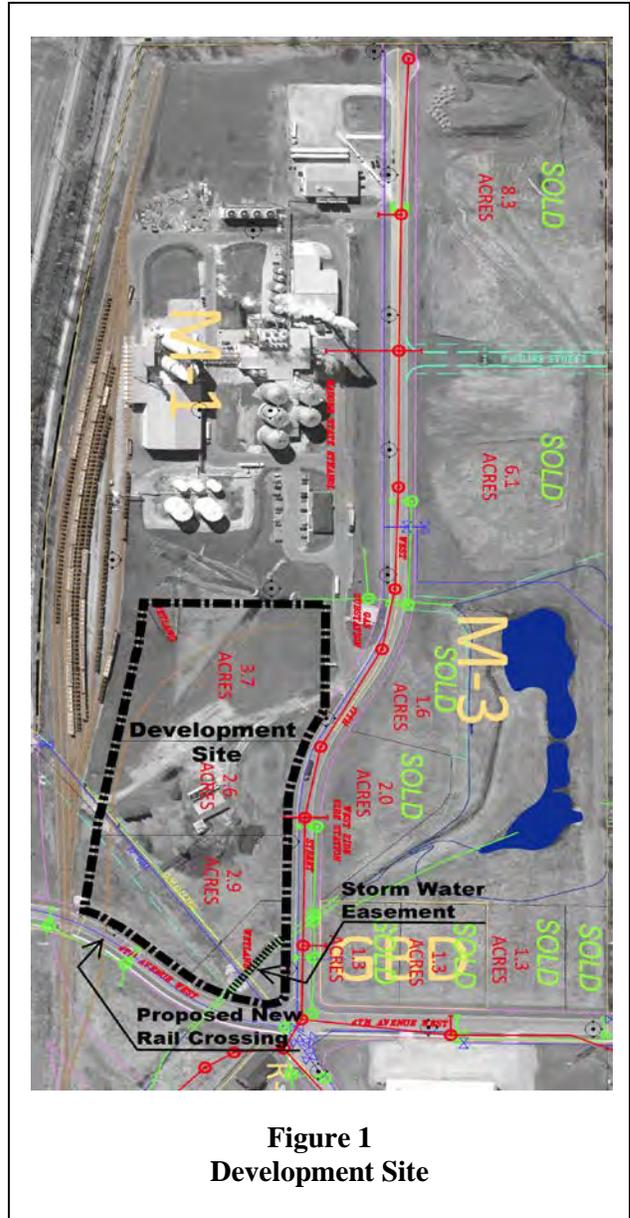
**AGREEMENT**

**Now, Therefore,** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Purchase.** Purchaser shall purchase the Development Site for the sum of \$71,400.00 payable as follows:

A. The sum of \$10.20 shall be paid in cash at the closing.

B. The balance of the purchase price shall be paid on a date 12 months following the date of Closing. Interest shall accrue on such balance at the rate of 18 percent per annum computed from the Date of Closing to the date of payment. Notwithstanding the foregoing, as a development incentive, the obligation pursuant to this



**Figure 1  
Development Site**

Draft - December 28, 2015

# HONEY CREEK INDUSTRIAL PARK - PURCHASE AND DEVELOPMENT AGREEMENT

Eastland Feed and Grain, Inc., Purchaser

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subparagraph B. shall be deemed to be fully satisfied if the improvements on the Development Site required by paragraph 17 of this agreement are substantially completed when payment is due.

2. **Date of Closing.** This transaction is to be closed at the office of Purchaser's mortgagee or at the office of the City's legal counsel on or before March 1, 2016, or at such other time and place as may be agreed in writing.

3. **Warranties and Representations of the City.** The City hereby warrants the following:

A. **Authority.** The City possesses the full power and authority to enter into this Agreement and to conclude the transaction described herein, and no contract or Agreement to which the City is a party prevents the City from concluding the transaction described herein, nor is the consent of any third party required, other than as specified herein.

B. **Flood Plain.** The Development Site is not located in a flood plain.

C. **Wetland.** The Development Site is partially located in a wetland.

D. **Zoning.** The Development Site is zoned in a manner authorizing the operation of the Business thereon, including the reconstruction of improvements thereon in case of damage by fire or other casualty.

E. **Pending Events.** The City has no notice or knowledge of any:

1) Planned or commenced public improvements which may result in special assessments or otherwise materially affect the Development Site.

2) Government agency or court order requiring repair, alteration or correction of any existing physical condition of the Development Site.

3) Underground storage tanks or any structural, mechanical, or other defects of material significance affecting the Development Site, including but not limited to the presence of any dangerous or toxic materials or conditions affecting the Development Site.

4) Wetland and shoreland regulations affecting the Development Site other than wetland regulations affecting that portion of the Development Site that has been formally designated as a wetland.

F. **Executory Contracts or Agreements.** The City is not a party to any lease or other agreement affecting the Development Site that relates to any period beyond the Date of Closing, whether written or oral.

G. **Laws, Regulations & Ordinances.** The City has complied with all laws, regulations, and ordinances applicable to the Development Site to the date of this Agreement.

H. **Litigation.** The City represents and warrants that there is no litigation or proceeding pending to the City's knowledge against or relating to the City, or the City's properties or business that may hinder or prevent consummation of the transaction contemplated by this agreement; nor does the City know or have reasonable grounds to know of any basis of any such litigation or proceeding relative to the City, or the City's properties or business, except any litigation or proceeding disclosed in writing to Purchaser within 10 days following execution of this Agreement by the City.

# HONEY CREEK INDUSTRIAL PARK - PURCHASE AND DEVELOPMENT AGREEMENT

Eastland Feed and Grain, Inc., Purchaser

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4. **Warranties and Representations of the Purchaser.** The Purchaser hereby warrants the following:

A. **Authority.** The Purchaser possesses the full power and authority to enter into this Agreement and to conclude the transaction described herein, and no contract or agreement to which Purchaser is a party prevents the Purchaser from concluding the transaction described herein, nor is the consent of any third party required to conclude such transaction, other than as specified herein.

B. **Litigation.** There is no litigation or proceeding pending to the Purchaser's knowledge against or relating to the Purchaser, or the Purchaser's properties or business; nor does the Purchaser know or have reasonable grounds to know of any basis of any such litigation or proceeding relative to the Purchaser, or the Purchaser's properties or business, except any litigation or proceeding disclosed in writing to the City within 10 days following execution of this Agreement by the Purchaser.

5. **Survey.** For purposes of conveyance the City shall cause a certified survey of the Development Site to be prepared and recorded at the City's sole expense.

6. **Easement for Storm Water Main.** The City may retain an easement 60 feet wide within a corridor crossing the Development Site in the approximate location graphically shown on Figure 1 as "Storm Water Easement" allowing the City to test, maintain, inspect, operate, replace, change, abandon in place, or remove an underground system for the conveyance of storm water, and associated appliances, equipment, manholes, or markers.

7. **Conveyance.** The City shall convey the Development Site by warranty deed, or other conveyance provided herein, free and clear of all liens and encumbrances, excepting: covenants of this agreement, municipal and zoning ordinances, recorded easements for public utilities serving the Development Site, recorded building and use restrictions and covenants and general taxes levied in the year of closing, provided none of the foregoing prohibit present use, and the City shall complete and execute the documents necessary to record the conveyance.

8. **Legal Possession.** Legal possession of the Development Site shall be delivered to Purchaser on Date of Closing.

9. **Occupancy.** Occupancy of the Development Site shall be given to Purchaser on the Date of Closing.

10. **Special Assessments.** Special assessments, if any, for work on site actually commenced or levied prior to date of this Agreement, shall be paid by the City. All other special assessments shall be paid by Purchaser.

11. **Title Evidence.** The City shall give evidence of title in the form of an owner's policy of title insurance in the amount of the purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. The City shall pay all costs of providing title evidence to the Purchaser. The Purchaser shall pay all costs of providing title evidence required by the Purchaser's lender, if any. If requested by the Purchaser, the City shall provide a "gap" endorsement or equivalent gap coverage at the Purchaser's cost to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy exclusions and exceptions, provided the title company will issue the endorsement. If a gap endorsement or equivalent gap coverage is not available, the Purchaser may give written notice that title is not acceptable for closing.

12. **Provision of Merchantable Title.** For purposes of closing, title evidence shall be acceptable if the required title insurance commitment is delivered to the Purchaser's attorney or the Purchaser not less than 15 days prior to the Date of Closing, showing title to the Development Site as of a date no more than 15 days before delivery of such title evidence to be merchantable, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

Draft - December 28, 2015

# HONEY CREEK INDUSTRIAL PARK - PURCHASE AND DEVELOPMENT AGREEMENT

Eastland Feed and Grain, Inc., Purchaser

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13. **Title Not Acceptable for Closing.** If title is not acceptable for closing, the Purchaser shall notify the City in writing of objections to title within 10 days after delivery of the title commitment to the Purchaser or the Purchaser's attorney. In such event, the Closing Date shall be extended for 30 days and the City shall have a reasonable time, but not exceeding 5 days from the Purchaser's delivery of the notice stating title objections, to deliver notice to the Purchaser stating the City's election to remove the objections by the Date of Closing. In the event that the City is unable to remove said objections, the Purchaser may deliver to the City written notice waiving the objections, and the Date of Closing shall be extended accordingly. If the Purchaser does not waive the objections, the Purchaser shall deliver written notice of termination and this agreement shall be null and void. Providing title evidence acceptable for closing does not extinguish the City's obligations to give merchantable title to the Purchaser.

14. **Contingencies.** The obligation of the parties to close the sale of the Development Site to the Purchaser contingent upon the following:

A. **Council Resolution.** The obligation of the Purchaser to close is contingent upon the City delivering to the Purchaser a duly executed copy of its resolution authorizing the transaction described herein, which resolution shall form a part of this Agreement.

B. **Purchaser Authority.** The obligation of the City to close is contingent upon the Purchaser delivering to the City a duly executed copy of its resolution, or other document authorizing the transaction described herein, which resolution or other document shall form a part of this Agreement.

C. **Electricity and Natural Gas Utility Services.** The obligation of the Purchaser to close is contingent upon the City providing to the Purchaser documentation showing that electric and natural gas distribution lines with sufficient capacity to service connections serving Purchaser's improvements are located immediately adjacent to the Development Site.

D. **Resolution Supporting Rail Crossing of 4<sup>th</sup> Avenue West.** The obligation of the Purchaser to close is contingent upon the City providing to the Purchaser a certified copy of a resolution adopted by the City Council that supports approval by the Wisconsin Commissioner of Railroad of a new rail crossing of 4<sup>th</sup> Avenue West at the location identified as "Proposed New Rail Crossing" on Figure 1.

E. **Financing Commitment.** The obligation of the City to close is contingent upon the Purchaser delivering to the City a financing commitment or other proof that is satisfactory to the City Attorney demonstrating that the Purchaser is financially able to perform the covenants required by this Agreement.

F. **Representations and Warranties Remain Correct.** The representations and warranties made by each party herein shall be substantially correct on the Date of Closing, as though such representations and warranties had been made on the Date of Closing, except to the extent such representations and warranties are affected by transactions contemplated herein or changes occurring in the ordinary course of business.

G. **Failure of Contingency.** If any contingency provided herein shall not be met in whole or in part, then the party for whose benefit such contingency exists may declare this Agreement to be null and void.

15. **Loss/Damage.** If the Development Site, excluding existing structures, is damaged by fire or elements prior to the Date of Closing in an amount of not more than five per cent of the selling price, the City shall be obligated to repair the Development Site and restore it to the same condition that it was on the date of this Agreement. If such damage shall exceed such sum, this Agreement may be cancelled at option of Purchaser. Should Purchaser elect to carry out this Agreement despite such damage, Purchaser shall be entitled to the insurance proceeds relating to damage to the Development Site.

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# HONEY CREEK INDUSTRIAL PARK - PURCHASE AND DEVELOPMENT AGREEMENT

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16. **Easement for Rail Spur.** Contemporaneous with the closing the City shall grant to the Purchaser a non-exclusive easement allowing the purchaser to construct and use in the Business a rail spur that intersects with the existing Wisconsin & Southern Railroad Co. rail line at a point approximately 350 feet east of the east right of way for 4<sup>th</sup> Avenue West and running across land owned by the City lying east of 4<sup>th</sup> Avenue West to the location identified as “Proposed New Rail Crossing” on Figure 1. Contemporaneous with the closing the Purchaser grant to the City a non-exclusive easement allowing the City or its assignee to construct and use a rail spur that runs from the location identified as “Proposed New Rail Crossing” on Figure 1 across the Development site to a location on the west boundary of the Development Site that abuts property owned by Badger State Ethanol, LLC, the location and elevation of which enables the extension of such rail spur across West 17<sup>th</sup> Street to provide rail service to property located north of West 17<sup>th</sup> Street.

17. **Purchaser’s Obligations.** Upon closing, the Purchaser shall undertake the following:

A. **Existing Structures.** The Purchaser accepts that structures are currently located on the Development Site. If demolition of such existing structures is necessary their demolition and removal, including any poured concrete floors and below-grade foundations or footings shall be at the Purchaser’s expense.

B. **Construction of Improvements.** Prior to January 1, 2017, the Purchaser shall construct all improvements on the Development Site contemplated by this agreement.

C. **Paving of Parking Lot.** By December 31, 2017 the Purchaser shall install asphalt or concrete paving over the parking lot and the driveway associated with the Purchaser’s improvements on the Development Site.

D. **Sidewalks.** Unless a waiver is granted by the City’s Board of Public Works, the Purchaser shall within 12 months following the Date of Closing install a concrete sidewalk according to standard City specifications in the terrace area of West 17<sup>th</sup> Street and 4<sup>th</sup> Avenue West.

E. **Construction Standards.** Each of the improvements required by this subparagraph shall:

1) Be constructed with quality materials and finished in a manner that projects a quality image for the Purchaser and other potential occupants of the Honey Creek Industrial Park.

2) Be fully landscaped with plantings or other landscaping that have been approved by the City. Approval by the City of such landscaping shall not be unreasonably denied, provided however, the City may require landscaping which will be in keeping with the objective of enhancing the overall image of the Honey Creek Industrial Park.

3) Be served by a paved driveway and parking area. The Purchaser shall obtain the prior approval of the City for the location, construction and materials used for the driveway and parking area. Approval by the City shall not be unreasonably denied, provided however, the City may require construction which will be in keeping with the objective of enhancing the overall image of the Honey Creek Industrial Park.

F. **Unforeseen Circumstances.** The Purchaser shall not be in default if the construction required by this subparagraph cannot be completed within the time provided due to circumstances beyond the Purchaser’s control, including without limitation, adverse weather conditions which preclude timely completion of construction.

G. **City Right of Access to Development Site.** Purchaser shall permit representatives of the City to have access to the Development Site and any improvements constructed thereon at all reasonable times when the City deems access necessary to insure compliance with the terms and conditions of this Agreement, including

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**HONEY CREEK INDUSTRIAL PARK - PURCHASE AND DEVELOPMENT AGREEMENT**

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but not limited to, access for inspection of all work being performed in connection with the construction of the improvements.

**H. Minimum Fair Market Value of Land and Improvements.** The Purchasers shall achieve and maintain the fair market value of the improved Development Site at the following minimum levels as of January 1 of the year indicated [the “Minimum Fair Market Value”]:

<b>Year</b>	<b>Minimum Fair Market Value</b>	<b>Year</b>	<b>Minimum Fair Market Value</b>
2017	\$920,000.00	2019	\$920,000.00
2018	\$920,000.00		

**I. Non-performance Penalty.** If the Purchasers shall fail to achieve the required Minimum Fair Market Value for any year, then the City may impose a Non-performance Penalty.

1) **Maximum Non-performance Penalty.** As used in this Agreement the Maximum Non-performance Penalty for any year shall be the following [the “Maximum Penalty”]:

<b>Year</b>	<b>Maximum Penalty</b>	<b>Year</b>	<b>Maximum Penalty</b>
2017	\$24,472.00	2019	\$24,472.00
2018	\$24,472.00		

2) **Computation of Non-performance Penalty.** The Non-performance penalty imposed for any year shall be determined by the following formula:

$$\text{Maximum Penalty} \times (1 - (\text{Actual Fair Market Value} / \text{Minimum Fair Market Value}))$$

3) **Notice of Non-performance Penalty.** If a Non-performance Penalty shall be due for any year, the City may provide Purchasers with a Notice of Non-performance Penalty setting forth a calculation of the amount of the Non-performance Penalty [the “Notice of Non-performance Penalty”].

4) **Payment of Non-performance Penalty.** Commencing with the 2017 calendar year, and for each year thereafter until termination of this agreement, the Purchasers shall pay to the City the amount of any Non-performance Penalty for which the City has provided the Purchasers with a Notice of Non-performance Penalty. Payment of the Non-performance Penalty shall be in a single installment due on or before a date 15 days following delivery of the Notice of Non-performance Penalty. Purchasers’ payments shall be made to a segregated fund maintained by the City for property originally located in the TIF District.

5) **Interest on Unpaid Non-performance Penalty.** If the City has delivered the Notice of Non-performance Penalty, then in addition to the principal amount of the Non-performance Penalty, the Purchasers shall pay the City interest at the rate of 18.0% per annum, computed on the principal amount of the Non-performance Penalty, from a date 15 days following delivery of the Notice of Non-performance Penalty.

6) **Security for Performance.** To secure performance of the covenants of this agreement the Purchasers shall deliver to the City at the closing a State Bar of Wisconsin Form 6-L Mortgage, properly executed and in a form suitable for recording [the “Mortgage”]. The Mortgage shall secure payment of the

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**HONEY CREEK INDUSTRIAL PARK - PURCHASE AND DEVELOPMENT AGREEMENT**

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unpaid amount of any Non-performance Penalty or any other amount due the City pursuant to this agreement and any interest and costs charged to Purchasers pursuant to this Agreement. Upon demand, the City shall from time to time subordinate the lien of the Mortgage to the lien of a mortgage or other security given or to be given to a commercial lender who either has extended financing to Purchasers or proposes to extend financing to Purchasers for purposes which are directly related to construction of improvements on the Development Site or operation of the Business. Notwithstanding the foregoing, the City shall not be required to subordinate the lien of the Mortgage in any amount which leaves less than 20% of the fair market value of the Development Site and any improvements placed thereon by the Purchasers reachable by the lien of the mortgage.

7) **Release of Mortgage.** Upon termination of this agreement the City shall satisfy the Mortgage, provided that all Non-performance Penalties or other sums due pursuant to this agreement, including interest have been paid in full.

8) **Costs and Reasonable Fees.** If Purchasers shall fail to pay any Non-performance Penalty within 15 days following delivery of the Notice of Non-performance Penalty, or fail to perform any other covenant of this agreement within 90 days following delivery of a notice of such non-performance from the City, then the City may commence proceedings to foreclose the Mortgage and the Purchasers agree to pay, in addition to all other sums due the City, all costs and expenses of any legal proceeding, plus a reasonable sum as attorney’s fees for foreclosure of the Mortgage.

9) **No Waiver.** Failure of the City to provide Purchasers with any notice required by this agreement or otherwise enforce payment in one or more years shall not be deemed a waiver of the right to enforce payment at a later time, together with interest and any costs or attorney’s fees due pursuant to this agreement.

18. **No Arms Length Transaction.** The Purchaser and the City each acknowledges that Purchaser’s acquisition of the Development Site is not the product of an arms-length transaction and the Purchase Price for the Development Site does not reflect the actual fair market value for the Development Site. Neither the Purchaser nor the City shall use the Purchase Price as evidence of fair market value in any judicial or quasi-judicial proceeding where the fair market value of the Development Site is at issue.

19. **Notices.** Notices required by this Agreement shall be sent to the respective parties at the addresses set forth below. The place of notice may be changed by appropriate registered or certified mailing to the parties at the following addresses:

**Notice to Purchaser:**

Roger K. Coulthard  
Eastland Feed and Grain, Inc.  
210 N. Stanton Street  
Shannon, Illinois 61078

**Notice to City:**

Carol J. Stamm  
City Clerk  
City of Monroe  
1110 18th Avenue  
Monroe, Wisconsin 53566

20. **Assignment.** This agreement may be assigned by either party, but only if the assignee executes an instrument expressly assuming liability for the covenants of the assignor pursuant to this agreement. The assignment shall not release the assignor from liability for performance of the covenants of this agreement.

21. **Termination.** This Agreement shall terminate upon the occurrence of any one or more of the following events:

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A. If the fair market value of the improved Development Site is equal to or greater than \$2,000,000 on January 1 of any year.

B. Upon dissolution of the TIF District.

C. On December 31, 2021.

22. **Choice of Law.** This Agreement shall be governed by and construed under the laws of the State of Wisconsin.

23. **Paragraph Headings.** The various paragraph headings are inserted for convenience of reference only, and shall not affect the meaning or interpretation of the Agreement or any section thereof.

24. **Severability.** If any provision of this Agreement is held to be unenforceable, in whole or in part, by a court of competent jurisdiction, the remaining provisions, or portions thereof, shall not be affected thereby and effect shall be given to the intent manifested by the provisions, or portions thereof, held to be enforceable.

25. **Binding Effect.** This Agreement shall bind and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the parties hereto.

**In Witness Whereof**, the parties have hereunto set their hands and seals as of the date first above written.

**CITY OF MONROE**

By: \_\_\_\_\_ [Seal]  
William M. Ross Jr., Mayor

By: \_\_\_\_\_ [Seal]  
Philip Rath, City Administrator

Countersigned: \_\_\_\_\_ [Seal]  
Bridget Schuchart, Comptroller

**EASTLAND FEED AND GRAIN, INC.**

By: \_\_\_\_\_ [Seal]  
Roger K. Coulthard, President

By: \_\_\_\_\_ [Seal]  
Kathy K. Coulthard, Secretary

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## AIRPORT OPERATIONS AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, entered into by and between the CITY OF MONROE, State of Wisconsin a municipal corporation existing by and under the authority of the State of Wisconsin, hereinafter referred to as the ("City") and Touch & Go Aviation, Inc., hereinafter referred to as the ("Supervisor") as follows:

- I. **APPOINTMENT:** In consideration of the salary compensation and agreements herein contained, the Supervisor is hereby appointed Supervisor of Airport Operations and does hereby agree to assume responsibility for management of the Monroe Municipal Airport under the following terms and conditions:
- II. **TERM OF AGREEMENT:** This Agreement shall be in effect from January 1, 2016 through December 31, 2016 unless sooner terminated as provided in paragraph VIII. This Agreement may be renewed for additional terms of one year each, commencing January 1, 2017 upon mutual agreement between the parties.
- III. **SERVICES TO BE PERFORMED BY SUPERVISOR:** Under policy established by the City, the Supervisor is in charge of, and is responsible for, the administration, operation and maintenance of the Monroe Municipal Airport. The Supervisor, as part of their duties and responsibilities, shall:
  - (A) Provide such personnel as may be necessary to properly assist the public in the use of the Airport. The airport shall be staffed with qualified personnel so as to promptly and efficiently answer the airport telephone, communicate with aircraft by radio, fuel aircraft, and perform such other tasks as are necessary to facilitate the efficient operation of the Airport. Adequate staff shall be provided each day of the year except the following holidays: ½ day New Year's Eve, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, ½ day Christmas Eve, and Christmas Day

*\*On such holidays, the Supervisor shall assure personnel are on call to fuel aircraft.*
  - (B) Assure the Airport is staffed by persons who shall possess adequate qualifications for the tasks assigned. Prior to hiring staff, the Supervisor shall submit a report to the Board setting forth the name, address and qualifications of each proposed staff person and the Board shall have the authority to approve or disapprove each such person. Either the Supervisor or qualified staff shall be present at the Airport available at all times during the following hours:
    1. Between January 1 and February 29 from 9:00 a.m. to 4:00 p.m. Monday - Friday
    2. Between March 1 and October 14 from 8:00 a.m. to 5:00 p.m. Monday - Friday
    3. Between October 15 and November 30 from 8:00 a.m. to 4:00 p.m. Monday - Friday
    4. Between December 1 and December 31 from 9:00 a.m. to 4:00 p.m. Monday - Friday
    5. All Saturdays until 12:00 p.m. with staff on call the remainder of the weekend
    6. A one-half hour duty free lunch will be provided during business hours
  - (C) Fuel aircraft for all pilots who request such service.
  - (D) Conduct or provide for daily inspections of all airport physical properties, including runways, taxiways, lighting systems, buildings, navigational equipment, automobile parking areas and access roads; personally make or direct others to make routine repairs,

replacements and improvements in a timely and efficient manner; requisition from the City or purchase, small equipment and supplies required in daily operation and maintenance; recommend the purchase of new equipment and other expenditures exceeding \$2,000.00; keep a complete and accurate record of all maintenance work performed on the airport, and make such reports to the City as may be required at such time and in the form requested by the City.

- (E) Determine current and potential program needs and prepare plans to fill these needs; make recommendations for current and future development of aviation facilities; coordinate all development and improvement with the proper local, state and federal agencies, engineers, architects and other professionals, aviation organizations, and public interest groups;
- (F) Recommend to the City various ordinances and regulations relating to the safe and efficient operation of the airport, and governing the use of the airport, including the leasing of floor space, parking, hangars and other property; assure enforcement of all ordinances and regulations concerning the airport;
- (G) Serve as a liaison between the City and the airport users and lessees relative to the preparation, negotiation, rates and charges, and terms of leases and agreements;
- (H) Develop and maintain effective liaison with the traveling and general public, commercial and general aviation interests, agencies having control over, or interest in, certain airport activities, tenants and their employees, and all entities with an interest in the airport;
- (I) Work with Airport Manager to establish appropriate airport accounts, prepare periodic and special operations and financial reports, including annual budget requests for the City;
- (J) Supervise the operating, maintenance, security, fire prevention, safety and custodial personnel;
- (K) Be responsible for coordinating and directing the timely and efficient snow plowing and mowing operation(s), as provided by the City or by written assignments and procedures with other city/county departments, or contractors;
- (L) Be responsible for notifying the Federal Aviation Administration Flight Service Station promptly of all conditions affecting the safe use of the airport;
- (M) Participate in conferences and meetings of aeronautical and civic organizations for the promotion of aviation activity in the community; give talks on airport progress and service; coordinate the plans and assure safe operating procedures are followed for air shows, demonstrations and exhibitions at the airport.

IV. **COMPENSATION:** The City does hereby agree to pay the Supervisor the sum of \$45,000.00 per year, payable in twelve (12) equal regular installments commencing January 31, 2016 and on the last day of each month thereafter.

V. **AIRPORT RULES AND REGULATIONS:** The Supervisor shall know, obey, and enforce all laws, ordinances, rules and regulations of any authority having jurisdiction over the conduct of operations at the Airport, including the City, the State of Wisconsin, or the United States.

VI. **INSURANCE:** After considering activities proposed to be undertaken by the Supervisor, the

Board shall require the Supervisor to carry property and liability insurance coverage which is required by the Monroe City Code.

- (A) All premiums for insurance coverage required hereunder shall be paid by the Supervisor.
- (B) The Supervisor shall cause to be filed with the City Clerk an insurance certificate certifying the City of Monroe is named as an additional insured on the foregoing policy or policies of insurance.
- (C) The Supervisor shall file appropriate certificates of insurance with the City Clerk reflecting any amended coverage as changing circumstances warrant.

**VII. GENERAL CONDITIONS:**

- (A) The Supervisor for themselves, their personal representatives, successors in interest, and assigns agrees that: (1) no person on the grounds of race, color, religion, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of all airport facilities; (2) in the construction and maintenance of any improvements on, over, or under such land and the furnishing of services thereon or therein, no person on the grounds of race, color, religion or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) the Manager shall use the premises in compliance with all other requirements imposed by or pursuant of Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21; Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (B) It is understood and agreed that nothing in this agreement shall be construed to authorize or grant to the Supervisor any exclusive right or privilege in connection with any business or activity on the airport in which the Supervisor may have an interest or association.
- (C) The Supervisor shall not assign or delegate any of their duties or responsibilities under this Agreement without the prior written approval of the Owner.
- (D) The Supervisor is not hereby appointed Airport Manager as such term is used in the Monroe City Code and the Supervisor shall not be considered Airport Manager unless such title is expressly conferred by resolution of the City Council.

VIII. **TERMINATION:** In the event that the Manager Supervisor fails to comply with the terms and conditions of this Agreement, the Owner shall notify the ManagerSupervisor, in writing, of the alleged violation of this Agreement and, if the violation has not been corrected within thirty (30) days from the date of the alleged violation or if the Owner has other reasonable and just cause, this Agreement may be terminated by the Owner upon thirty days written notice. The Manager Supervisor may terminate this Agreement at any time upon giving not less than thirty days written notice to the Owner.

IX. **DISPUTE RESOLUTION:** Any controversy or claim arising out of or relating to this Agreement or any alleged breach thereof which cannot be settled between the parties, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the dispute rendered by the arbitrator(s) shall be final and binding on the parties.

THIS CONTRACT entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20152016

CITY OF MONROE:

SUPERVISOR:

\_\_\_\_\_  
William M. Ross, Jr. Mayor

\_\_\_\_\_  
Touch & Go, Aviation, Inc. President

ATTEST:

\_\_\_\_\_  
Bridget Schuchart, Comptroller  
Clerk

\_\_\_\_\_  
Carol Stamm, City

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Monticello Office:  
211 North Main Street  
Monticello, Wisconsin 53570

## MEMORANDUM

**DATE:** December 28, 2015  
**TO:** Alderpersons  
**FROM:** Rex A. Ewald  
**RE:** Materials that are relevant to Eckstein matter and what constitutes a “Meeting” under the Open Meetings Law

In light of the Eckstein matter, Carol Stamm asked that I be prepared to discuss at the January 5 Council meeting whether alderpersons can be present at meetings of committees and commissions on which they do not serve.

Attached to this memorandum are two documents. One contains excerpts from previously decided appellate decisions on issues that were argued in the Eckstein matter. The other is an excerpt from the most recent Wisconsin Open Meetings Law Compliance Guide published by the Wisconsin Attorney General on the subject of what constitutes a “meeting” under the law. The most recent update of this publication is dated November, 2015 so the excerpt is quite current.

It is difficult to reconcile the Eckstein decision with the materials that are attached to this memorandum. I do not believe the decision stands for the proposition that there can never be a majority of alderpersons serving on a committee of the Council. Indeed, that circumstance was expressly addressed by the Wisconsin Supreme Court in the Badke decision, which I quote from in the attached materials. However, it was clearly a part of the settlement in the Eckstein matter that we reduce membership to less than a majority of all alderpersons on each committee or board.

What I believe the Eckstein ruling really represents is declaration by the court that if a committee consists of a majority of a parent body and violates the open meetings law the parent body is legally precluded from acting to repair the damage because the committee’s violation is imputed to the parent body. Applying the logic of the Eckstein decision it follows that a tainted committee decision can never be fixed by the parent body. This creates an untenable level of risk for the parent body and the only sure way to alleviate the risk is to not have committees, boards or commissions that contain a majority of the alderpersons.

I wish that I could advise you that the presence of a majority of alderpersons at a committee meeting will not be a problem as long as the committee membership consists of less than a majority of alderpersons. Unfortunately, there is no such safe harbor in the Open Meetings Law. In fact, the Open Meetings Law clearly provides that if one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body [Wis. Stat. § 19.82(2)]. To complicate matters even further, information gathering, without discussion or debate, is considered exercising the responsibilities, authority, power or duties delegated to or vested in the body so I cannot advise that you are safe if you quietly sit in the gallery during a meeting of a committee, board or commission. Establishing that an alderperson was just listening and not participating in a committee meeting will not necessarily rebut the presumption.

The rebuttable presumption is not new. It has been part of the Open Meetings Law since it was adopted. However, in view of the Eckstein decision, where the court seemed predisposed to apply a rigid interpretation of the law’s guiding principles, I think you are well advised to proceed with caution.

# Selected Quotes from Wisconsin Cases Interpreting and Applying the Wisconsin Open Meetings Law

## January 5, 2016

### OPEN MEETINGS: Agenda Description

Quote from State ex rel. Epping v. City of Neillsville, 218 Wis. 2d 516, 581 N.W.2d 548 (Ct. App. 1998):

*“On April 18, 1996, Neillsville's personnel committee and common council each met in closed session. The agendas for these sessions read:*

*“Closed session per Sec. 19.85(1)(c) Wis. Stats. to consider employment, promotion, compensation, performance or evaluation of public employees [over] which the City of Neillsville has jurisdiction or exercises responsibility, and will reconvene in open session.”*

Agenda description from Salary and Personnel Committee Agenda – September 10, 2013:

#### E. BUSINESS: CLOSED

Under Wis. Stats. 19.85(1)(c) considering employment, promotion, compensation, performance or evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

##### 1. Preliminary Consideration Of Employee Issues Addressed By Utilities Director

Note: In Epping the Court of Appeals did not find an open meetings law violation based on the public notice of the meeting.

### OPEN MEETINGS: Majority of Council Serving on Salary and Personnel Committee

Quote from St. ex rel. Badke v. Greendale Village Bd., 173 Wis. 2d 553, 494 N.W.2d 408 (1993)

*The notice of the Plan Commission meeting alone does not alert the public of the importance of the meeting because it does not notify the public that a quorum of the Village Board will also be present to gather information upon which they will base their final vote. If the public knows that the Village Board's trustees are going to the Plan Commission meeting they will likely realize that the meeting is important and that the proposal discussed is probably something over which the Village Board will ultimately exercise final decisionmaking authority. ... Accordingly, notice of the Plan Commission meeting alone is not enough to satisfy the requirements of the open meeting law.*

*The Village Board raises the concern of the effect of our holding on situations where a quorum or a negative quorum is present at a meeting of a second governmental body merely because all of the individual members of the quorum make up the membership of the second governmental body. That presents a different situation than in this case. In this case, had the quorum of the Village Board attended the Plan Commission meetings regularly because all of the individuals who made up the quorum of the Village Board also constituted the membership of the Plan Commission, separate notice would not have been required. In such a situation, notice of a Plan Commission meeting alone gives the public the fullest knowledge possible because it gives it notice of the individuals from the Village Board who will be present, as they make up the membership of the Plan Commission. However, anytime a regular attendance of a quorum is present such that the gatherings are not social or chance and one or more of the members of the quorum is not also a member of the second governmental body, separate notice must be given.*

**OPEN MEETINGS: Action in closed session**

Quote from Wisconsin Open Meetings Law-A Compliance Guide-2010 [published by the Wisconsin Attorney General]:

*The language of the exemption [section 19.85(1)(c)] refers to a “public employee” rather than to positions of employment in general. The apparent purpose of the exemption is to protect individual employees from having their actions and abilities discussed in public [emphasis added by RAE] and to protect governmental bodies “from potential lawsuits resulting from open discussion of sensitive information.” Oshkosh Northwestern Co. v. Oshkosh Library Bd., 125 Wis. 2d 480, 486, 373 N.W.2d 459 (Ct. App. 1985). It is not the purpose of the exemption to protect a governmental body when it discusses general policies that do not involve identifying specific employees.*

Quote from Wisconsin Open Meetings Law-A Compliance Guide [published by the Wisconsin Attorney General]:

***E. Voting In An Authorized Closed Session.***

*The Wisconsin Supreme Court has held that Wis. Stat. § 14.90 (1959), a predecessor to the current open meetings law, authorized a governmental body to vote in closed session on matters that were the legitimate subject of deliberation in closed session. Cities S. O. Co., 21 Wis. 2d at 538. The Court reasoned that “voting is an integral part of deliberating and merely formalizes the result reached in the deliberating process.” *Id.* at 539. In Schaeve, 125 Wis. 2d at 53, the Court of Appeals commented on the propriety of voting in closed session under the current open meetings law. The Court indicated that a governmental body must vote in open session unless an exemption in Wis. Stat. § 19.85(1) expressly authorizes voting in closed session. *Id.* The Court’s statement was not essential to its holding and it is unclear whether the Supreme Court would adopt a similar interpretation of the current open meetings law. Given this uncertainty, the Attorney General advises that a governmental body vote in open session, unless the vote is clearly an integral part of deliberations authorized to be conducted in closed session [emphasis added by RAE] under Wis. Stat. § 19.85(1). Stated another way, a governmental body should vote in open session, unless doing so would compromise the need for the closed session. Accord, Epping, 218 Wis. 2d at 524 n.4 (even if deliberations were conducted in an unlawful closed session, a subsequent vote taken in open session could not be voided). None of the exemptions in Wis. Stat. § 19.85(1) authorize a governmental body to consider in closed session the ratification or final approval of a collective bargaining agreement negotiated by or for the body. Wis. Stat. § 19.85(3); 81 Op. Att’y Gen. 139.*

RAE Note: The underlined text in the foregoing quotes also appears in the November, 2015 update of the Wisconsin Open Meetings Law-A Compliance Guide.

## Definition of “Meeting”

A “meeting” is defined as:

[T]he convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter . . . .<sup>65</sup>

The statute then excepts the following: an inspection of a public works project or highway by a town board; or inspection of a public works project by a town sanitary district; or the supervision, observation, or collection of information about any drain or structure related to a drain by any drainage board.<sup>66</sup>

- **The Showers Test**

The Wisconsin Supreme Court has held that the above statutory definition of a “meeting” applies whenever a convening of members of a governmental body satisfies two requirements: (1) there is a purpose to engage in governmental business and (2) the number of members present is sufficient to determine the governmental body’s course of action.<sup>67</sup>

- **The Purpose Requirement**

The first part of the *Showers* test focuses on the purpose for which the members of the governmental body are gathered. They must be gathered to conduct governmental business. *Showers* stressed that “governmental business” refers to any formal or informal action, including discussion, decision or information gathering, on matters within the governmental body’s realm of authority.<sup>68</sup> Thus, in *Badke*,<sup>69</sup> the Wisconsin Supreme Court held that the village board conducted a “meeting,” as defined in the open meetings law, when a quorum of the board regularly attended each plan commission meeting to observe the commission’s proceedings on a development plan that was subject to the board’s approval. The Court stressed that a governmental body is engaged in governmental business when its members gather to simply hear information on a matter within the body’s realm of authority.<sup>70</sup> The members need not actually discuss the matter or otherwise interact with one another to be engaged in governmental business.<sup>71</sup> The Court also held that the gathering of town board members was not chance or social because a majority of town board members attended plan commission meetings with regularity.<sup>72</sup> In contrast, the Court of Appeals concluded in *Paulton v. Volkmann*,<sup>73</sup> that no meeting occurred where a quorum of school board members attended a gathering of town residents, but did not collect information on a subject the school board had the potential to decide.

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<sup>65</sup> Wis. Stat. § 19.82(2).

<sup>66</sup> Wis. Stat. § 19.82(2).

<sup>67</sup> *Showers*, 135 Wis. 2d at 102.

<sup>68</sup> *Id.* at 102-03.

<sup>69</sup> *Badke*, 173 Wis. 2d at 572-74.

<sup>70</sup> *Id.* at 573-74.

<sup>71</sup> *Id.* at 574-76.

<sup>72</sup> *Id.* at 576.

<sup>73</sup> *Paulton v. Volkmann*, 141 Wis. 2d 370, 375-77, 415 N.W.2d 528 (Ct. App. 1987).

- **The Numbers Requirement**

The second part of the *Showers* test requires that the number of members present be sufficient to determine the governmental body's course of action on the business under consideration. People often assume that this means that the open meetings law applies only to gatherings of a majority of the members of a governmental body. That is not the case because the power to control a body's course of action can refer either to the affirmative power to pass a proposal or the negative power to defeat a proposal. Therefore, a gathering of one-half of the members of a body, or even fewer, may be enough to control a course of action if it is enough to block a proposal. This is called a "negative quorum."

Typically, governmental bodies operate under a simple majority rule in which a margin of one vote is necessary for the body to pass a proposal. Under that approach, exactly one-half of the members of the body constitutes a "negative quorum" because that number against a proposal is enough to prevent the formation of a majority in its favor. Under simple majority rule, therefore, the open meetings law applies whenever one-half or more of the members of the governmental body gather to discuss or act on matters within the body's realm of authority.

The size of a "negative quorum" may be smaller, however, when a governmental body operates under a super majority rule. For example, if a two-thirds majority is required for a body to pass a measure, then any gathering of more than one-third of the body's members would be enough to control the body's course of action by blocking the formation of a two-thirds majority. *Showers* made it clear that the open meetings law applies to such gatherings, as long as the purpose requirement is also satisfied (*i.e.*, the gathering is for the purpose of conducting governmental business).<sup>74</sup> If a three-fourths majority is required to pass a measure, then more than one-fourth of the members would constitute a "negative quorum," etc.

- **Convening of Members**

When the members of a governmental body conduct official business while acting separately, without communicating with each other or engaging in other collective action, there is no meeting within the meaning of the open meetings law.<sup>75</sup> Nevertheless, the phrase "convening of members" in Wis. Stat. § 19.82(2) is not limited to situations in which members of a body are simultaneously gathered in the same location, but may also include other situations in which members are able to effectively communicate with each other and to exercise the authority vested in the body, even if they are not physically present together. Whether such a situation qualifies as a "convening of members" under the open meetings law depends on the extent to which the communications in question resemble a face-to-face exchange.

- **Written Correspondence**

The circulation of a paper or hard copy memorandum among the members of a governmental body, for example, may involve a largely one-way flow of information, with any exchanges spread out over a considerable period of time and little or no conversation-like interaction among members. Accordingly, the Attorney General has long taken the position that such written communications generally do not constitute a "convening of members" for purposes of the open meetings law.<sup>76</sup> Although the rapid evolution of electronic media has made the distinction

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<sup>74</sup> *Showers*, 135 Wis. 2d at 101-02.

<sup>75</sup> *Katayama Correspondence* (Jan. 20, 2006).

<sup>76</sup> *Merkel Correspondence* (Mar. 11, 1993).

between written and oral communication less sharp than it once appeared, it is still unlikely that a Wisconsin court would conclude that the circulation of a document through the postal service, or by other means of paper or hard-copy delivery, could be deemed a “convening” or “gathering” of the members of a governmental body for purposes of the open meetings law.

- **Telephone Conference Calls**

A telephone conference call, in contrast, is very similar to an in-person conversation and thus qualifies as a convening of members.<sup>77</sup> Under the *Showers* test, therefore, the open meetings law applies to any conference call that: (1) is for the purpose of conducting governmental business and (2) involves a sufficient number of members of the body to determine the body’s course of action on the business under consideration. To comply with the law, a governmental body conducting a meeting by telephone conference call must provide the public with an effective means to monitor the conference. This may be accomplished by broadcasting the conference through speakers located at one or more sites open to the public.<sup>78</sup>

- **Electronic Communications**

Written communications transmitted by electronic means, such as email or instant messaging, also may constitute a “convening of members,” depending on how the communication medium is used. Although no Wisconsin court has applied the open meetings law to these kinds of electronic communications, it is likely that the courts will try to determine whether the communications in question are more like an in-person discussion—*e.g.*, a rapid back-and-forth exchange of viewpoints among multiple members—or more like non-electronic written correspondence, which generally does not raise open meetings law concerns. If the communications closely resemble an in-person discussion, then they may constitute a meeting if they involve enough members to control an action by the body.<sup>79</sup> In addressing these questions, courts are likely to consider such factors as the following: (1) the number of participants involved in the communications; (2) the number of communications regarding the subject; (3) the time frame within which the electronic communications occurred; and (4) the extent of the conversation-like interactions reflected in the communications.

Because the applicability of the open meetings law to such electronic communications depends on the particular way in which a specific message technology is used, these technologies create special dangers for governmental officials trying to comply with the law. Although two members of a governmental body larger than four members may generally discuss the body’s business without violating the open meetings law, features like “forward” and “reply to all” common in electronic mail programs deprive a sender of control over the number and identity of the recipients who eventually may have access to the sender’s message. Moreover, it is quite possible that, through the use of electronic mail, a quorum of a governmental body may receive information on a subject within the body’s jurisdiction in an almost real-time basis, just as they would receive it in a physical gathering of the members.

Inadvertent violations of the open meetings law through the use of electronic communications can be reduced if electronic mail is used principally to transmit information one-way to a body’s membership; if the originator of the message reminds recipients to reply only to the originator, if at all; and if message recipients are scrupulous about minimizing the content and distribution of

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<sup>77</sup> 69 Op. Att’y Gen. 143 (1980).

<sup>78</sup> *Id.* at 145.

<sup>79</sup> *Krischan Correspondence* (Oct. 3, 2000).

posted in each place where meeting notices are generally published or posted for each governmental body involved.<sup>89</sup>

The kinds of multiple meetings presented in the *Badke* case, and the separate meeting notices required there, must be distinguished from circumstances where a subunit of a parent body meets during a recess from or immediately following the parent body's meeting, to discuss or act on a matter that was the subject of the parent body's meeting. In such circumstances, Wis. Stat. § 19.84(6) allows the subunit to meet on that matter without prior public notice.

- **Burden of Proof As to Existence of a Meeting**

The presence of members of a governmental body does not, in itself, establish the existence of a "meeting" subject to the open meetings law. The law provides, however, that if one-half or more of the members of a body are present, the gathering is presumed to be a "meeting."<sup>90</sup> The law also exempts any "social or chance gathering" not intended to circumvent the requirements of the open meetings law.<sup>91</sup> Thus, where one-half or more of the members of a governmental body rode to a meeting in the same vehicle, the law presumes that the members conducted a "meeting" which was subject to all of the requirements of the open meetings law.<sup>92</sup> Similarly, where a majority of members of a common council gathered at a lounge immediately following a common council meeting, a violation of the open meetings law was presumed.<sup>93</sup> The members of the governmental body may overcome the presumption by proving that they did not discuss any subject that was within the realm of the body's authority.<sup>94</sup>

Where a person alleges that a gathering of less than one-half the members of a governmental body was held in violation of the open meetings law, that person has the burden of proving that the gathering constituted a "meeting" subject to the law.<sup>95</sup> That burden may be satisfied by proving: (1) that the members gathered to conduct governmental business and (2) that there was a sufficient number of members present to determine the body's course of action.

Again, it is important to remember that the overriding policy of the open meetings law is to ensure public access to information about governmental affairs. Under the rule of liberally construing the law to ensure this purpose, any doubts as to whether a particular gathering constitutes a "meeting" subject to the open meetings law should be resolved in favor of complying with the provisions of the law.

Public Hearing Date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

**ORDINANCE REPEALING AND RECREATING SECTIONS 2-1-1 AND 2-1-4  
OF THE MONROE CITY CODE: REDUCING SIZE OF BOARD OF PUBLIC WORKS**

**THE COMMON COUNCIL** of the City of Monroe do ordain as follows:

**SECTION 1:** Section 2-1-1 of the Monroe City Code is hereby repealed and recreated to read as follows:

**2-1-1: Composition of Board:** A Board of Public Works is hereby established. The word "Board" when used in this Chapter shall be construed to mean the Board of Public Works. The Board shall be composed of four alderpersons, three of whom shall be designated voting members and one of whom shall be designated as an alternate member. Members of the Board shall be appointed by the Mayor annually and shall serve for a term from their appointment through the Monday preceding the third Tuesday in April of the succeeding year. The alternate member may act with full power and authority when any other member of the Board is absent. The alternate member may participate in Board discussion and may be appointed to any committee which requires the participation of a member of the Board. The members of the Board shall, on the first Tuesday in May of each year, choose a president and a vice-president of the Board from their number, and the city clerk shall be secretary of the Board by virtue of his or her office.

**SECTION 2:** Section 2-1-4 of the Monroe City Code is hereby repealed and recreated to read as follows:

**2-1-4: Quorum; record; report:** Two members of the Board shall constitute a quorum for doing business and if necessary alternate members shall be counted to determine such quorum. The secretary shall keep a record of all the proceedings, subject to the inspection of any elector of the city.

**SECTION 3:** This ordinance shall be in full force the day following its passage and official publication.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.  
Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.  
Published this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

Draft - November 18, 2015