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April 25, 2014

Jessica Hutson Polakowski
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SENT VIA E-MAIL
AND MESSENGER

Mary Kolar
Dane County Zoning & Land Regulation
Committee
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

Al Matano
Dane County Zoning & Land Regulation
Committee
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

Patrick Miles
Dane County Zoning & Land Regulation
Committee
210 Martin Luther King Jr. Blvd.
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Bob Salov
Dane County Zoning & Land Regulation
Committee
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

Jerome Bollig
Dane County Zoning & Land Regulation
Committee
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

Dear Committee Members:

Re: Petition Number DCPREZ-2014-10672
CUP Number DCPCUP-2014-02279

I write, unfortunately for the second time, in opposition to the above-referenced petition to build a 486 foot FM Broadcast Tower (the "Proposed Tower"). My husband and I own the parcel immediately adjacent to the Proposed Tower, which, according to the materials submitted, shares a boundary of 2410 feet with the parcel to be affected by the proposed zoning change.

Procedural History

As this Committee is assuredly aware, a nearly identical application was submitted as CUP no. 2157, Preliminary Application no. RECU25799 (the "Initial Application") several years

ago. I wrote to this Committee in January, 2011¹ opposing that application. After a lengthy series of quite thorough, well-attended hearings held by the Town of Rutland (the "Town") the Town rejected the Initial Application. In the Findings of Fact for Denied Conditional Use Permits² issued with respect to the Initial Application, the Town denied the Initial Application for failure to satisfy the following standards:

- 1. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or welfare.
- 2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.
- 3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Subsequent to the Town's denial, the County also denied the CUP application. Specifically, this Committee found in its August 9, 2011 findings that:

the proposed zoning change and conditional use for an FM radio broadcast tower is essentially a commercial use that is inconsistent with an agricultural preservation area. The proposal is inconsistent with goals, objectives, and policies of the *Town of Rutland Comprehensive Plan* component of the *Dane County Comprehensive Plan*, which call for preserving the agricultural and rural character of the town, avoiding or minimizing potential conflicts between incompatible land uses and limiting commercial uses to rural-oriented businesses that provide services needed by residents of the town. The proposed rezoning would not satisfy two of the four required statutory standards for rezoning land out of a farmland preservation zoning district as enumerated in s. 91.48(1)(a)(1) and (2) Wis. Stats. Specifically, the land is *not* better suited for a use not allowed in the farmland preservation zoning district; and the rezoning is *not* consistent with the applicable comprehensive plans.

The proposed zoning change was denied on August 18, 2011; the issue of the CUP was never reached.

¹ A copy of my January 19, 2011 letter to the ZLR Committee is attached hereto as Ex. 1.

² A copy of the Town's Findings is attached hereto as Ex. 2.

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Magnum Communications, Inc. then sued the Town of Rutland, Town of Rutland Board of Supervisors, and the Dane County Board of Supervisors, claiming, among other things, that the Town's denial was arbitrary and capricious, and that Dane County denied Magnum Communications, Inc. its due process rights. Dane County Judge Foust dismissed the complaint.

One might think that the story would end there. It has not. A provision was inserted into last year's budget bill restricting local governments' ability to regulate siting of towers. Now codified at Wis. Stat. 66.0406(4), if a political subdivision denies a request by any person to "place, construct, or modify radio broadcast service facilities in the political subdivision, the denial may be based only on the political subdivision's public health or safety concerns."

Legal Argument

There are two components to the current petition: there is a rezone request, and a petition for conditional use permit. Technically speaking, the request to "construct" the tower is part and parcel of the conditional use permit. The rezone stands separate from that request, and, the request to rezone must comply with all applicable law and regulations pertinent to that request. Essential to this application is the fact that the parcel to be rezoned is currently zoned "A-1Ex." It is part of an A-1 Exclusive Agriculture District.

Dane County Ordinance § 10.123(12) provides that "No land in the Exclusive Agriculture District shall be rezoned except in accordance with s. 91.48, Wis. Stats." Wis. Stat. ch. 91 is entitled "Farmland Preservation." Wis. Stat. § 91.48 provides that no property may be rezoned out of A-1Ex unless the political subdivision finds *all* of the following: 1) the land is better suited for use not allowed in the farmland preservation zoning district; 2) the rezoning is consistent with any applicable comprehensive plan; 3) the rezoning is substantially consistent with the county certified farmland preservation plan; and 4) the rezone will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

The Applicant *cannot* establish compliance with each of these four conditions. The Town and this Committee have both made finding that the Proposed Tower is inconsistent with the Town's Comprehensive Plan, which calls for preservation of the Town's rural character. Given that the current application is, in all respects, similar to the Initial Application, this finding is not likely to change. Likewise, rezoning the parcel as suggested is likely to substantially impair use of our property. We had planned, eventually, to have animals (likely cows) on our property. The risk of ice falls onto our property is substantial, and causes us great concern as we consider this use. There is no evidence whatsoever that the land is "better suited" for the Proposed Tower than as A-1Ex. In fact, most Town residents would argue that the opposite is true. The proposed rezone would not be in compliance with Wis. Stat. § 91.48.

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There is nothing in budget bill provision or the legislative history that would indicate that Wis. Stat. § 66.0406 was intended to trump Wis. Stat. § 91.48.³ And, statutes that appear to be in conflict must be construed to be in harmony with each other, and read in a way that will give each full force and effect. The only way to read these two statutes in harmony, giving each full force and effect, is to impose the interpretation suggested herein.

We are the Dairy State. It is difficult to think of a more important public policy than that which is protected by Wis. Stat. § 91.48, *Farmland Preservation*. It would be shocking to allow what some might characterize as a "fly by night" footnote in a budget bill with obviously unintended consequences to override this protection of this policy which is essential to our State.

Safety Concerns

There are real and significant health and safety concerns related to this application. Several years ago (coincidentally, during the pendency of the Initial Application), the West Beltline was shut down for a period of time due to ice falling from the guyed TV tower on the west side of Madison. Apparently, windshields of parked cars were shattered. While that tower is larger than the Proposed Tower, the size of the Proposed Tower cannot be understated. For reference the height of the Capitol building is 284 feet. The Proposed Tower is nearly twice that size. Ice forming on guy wires is nearly impossible to prevent entirely. My husband, along with our family and friends regularly hunt on our property in the late fall, early winter, and early spring months. We, along with family and friends, also enjoy snowshoeing on our property, and many other recreational activities. We have seen and heard many horror stories of ice falls from towers like this that make the prospect of a 486 foot guyed tower that sits nearly on our property line quite disturbing.

Also during the pendency of the Initial Application, a 2000 foot TV tower collapsed. That collapse was believed to be caused by ice build-up and wind gusts. Fortunately, there were no homes nearby the Eau Claire tower. Such is not the case here. While that tower was old, so too will the Proposed Tower become old, one day. In Wisconsin, one thing we can always be sure of is ice and wind.

³ This is unsurprising. Again, because this passed as part of the budget bill, there is very little legislative history discussing its purpose or effect.

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The Proposed Tower does carry serious health and safety risks. My family and I are, of course, most directly impacted by those risks. I find them to be unacceptable, and I sincerely hope that this Committee, along with the Dane County Board, find them to be unacceptable as well.

Very truly yours,



Jessica Hutson Polakowski

Encs.

cc: Dane County Board of Supervisors (w/encs.)
Town of Rutland Board (w/encs.)

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January 19, 2011

Jessica Hutson Polakowski
Direct Dial: 608-229-2219
jpolakowski@reinhartlaw.com

SENT BY E-MAIL AND
FIRST-CLASS MAIL

Dane County Zoning and Land
Regulation Committee
210 Martin Luther King Jr. Blvd., Rm.
201
Madison, WI 53703

Dear Members of the Committee: Re: CUP Application, CUP # 2157,
Preliminary Application # RECU25799

I write in opposition to the above-referenced CUP application to build a 488' FM radio tower in the Town of Rutland (the "Proposed Tower"). My husband and I recently purchased the land immediately adjacent to the Proposed Tower.¹

The CUP Application, is not only deficient in several respects, but also violates both Dane County and Town of Rutland Ordinances.

Violations and Noncompliance with Applicable Ordinances

1. Dane County Ordinance ("DCO") § 10.194 requires the Committee to "apply the standards under § 10.255(2) when considering an application for a conditional use permit. . . " DCO § 10.255(2)(h) provides:

No application for a conditional use shall be granted by the town board or zoning committee unless such body shall find that all of the following conditions are present:

¹ We purchased our property (Parcel No. 0510-341-8300-0) on September 7, 2010 from Dave Kolitz. We learned of the Proposed Tower hours after the closing, when we received a call from Mr. Majid Allan.



- 1) That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare;
- 2) That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use;
- 3) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;
- 4) That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;
- 5) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and
- 6) That the conditional use shall conform to all applicable regulations of the district in which it is located.

DCO § 10.255(2)(h).

These conditions are not permissive; they are mandatory. Each of the conditions *must be met* before an application for the CUP may be granted.

The application for the Proposed Tower does not meet the conditions set forth by DCO § 10.255(2)(h). Most obviously, it violates the ordinances set forth by the Town of Rutland (which, in turn, violates DCO § 10.255(2)(h)6.). Specifically, Town of Rutland Ordinance 12.5, titled "An Ordinance Relating to Changes to Zoning District Boundaries and Conditional Use Permits Requested to Allow the Construction

and Operation of Communication Towers," requires as a condition precedent to "recommendation of approval of a conditional use permit" that:

Towers shall be set back from all residential, farm and commercial buildings, lot lines and public roadways by a minimum distance of the design fall-down radius of the tower, including all antennas and attachments.

Town of Rutland Ordinance 12.5(8)(b)vi.

The "fall-down radius" of the Proposed Tower is 610 feet (Application, p. 2). However, the center of the tower is located only 377.6 feet from our lot line, and approximately 362.5 feet from the lot line separating the property owned by Terry and Linda Lund (Parcel No. 0510-344-8500-3) from the property where the Proposed Tower is to be located. The 23 foot anchor that docks the guy wires (clearly, an "attachment" to the Proposed Tower) is *less than 100* feet from our lot line and appears to be located almost directly on the Lund's lot line. This noncompliance with Dane County and Town of Rutland Ordinances alone is sufficient basis to deny the CUP for the Proposed Tower.

2. The Town of Rutland Ordinance requires the town to consider "the extent to which the proposed Communication Tower will be visible from lands owned by the Wisconsin Department of Natural Resources or the U.S. Fish and Wildlife Service or the Bass Lake of Island Lake areas." Town of Rutland Ordinance 12.5(7)(a)viii.

The Proposed Tower is wedged between two of the wildlife areas referenced in the above ordinance. It is located adjacent to the Lund Waterfowl Production Area, as well as the Bad Fish Creek DNR property. The location of tower among these wildlife properties also runs contrary to Town of Rutland Ordinance 12.5(7)(a)(viii).

The Proposed Tower will be lit 24 hours each day, with white strobe lights during the daytime hours, and red strobe lights at night. Not only will the structure of the Proposed Tower be visible from the Lund Waterfowl Production Area and the Bad Fish Creek DNR property, the lights will also be visible during dusk and hours of darkness.

3. Town of Rutland Ordinance 12.5 also requires the Town Board to consider whether the Proposed Tower is located at a "preferred site," and whether it will cause "objectionable noise, glare, physical activity or effects that will impair the peaceful enjoyment of the neighboring properties;" "the extent to which sight lines from existing homes and roadways would be adversely effected;" and "the extent to which the design, location or other features of the proposed Communication Tower will adversely affect the aesthetics of natural areas and the extent of the applicant's efforts to minimize such impacts." Town of Rutland Ordinance 12.5(a).

Each of these factors weighs against granting the CUP for the Proposed Tower. Because these factors are likely to be addressed at some length in submission of other Town of Rutland residents who oppose the Proposed Tower, we will not address them herein.

Deficiencies in Application

The Application, in addition to failing to comply with Dane County and Town of Rutland Ordinances, is incomplete in several respects.

1. The Applicant has failed to answer all of the questions submitted to the Applicant by the County's radio frequency engineering consultant (Evans Associates). Specifically, the Application at page 4 lists, "Question 4: What other sites have you investigated, and why were they rejected? If the rejection was based on coverage, submit a Longley-Rice coverage map for that site."

There is no answer to question number 4 in the Application. This deficiency is telling. Pursuant to DCO § 10.194(2), no CUP may be issued unless the Applicant presents "credible evidence" establishing that either no existing tower exists within the area "in which the applicant's equipment must be located," or a tower does exist, but is inadequate to meet the applicant's needs.

The Application admits that there is a tower located approximately one mile from the proposed site, and offers only the statement that it is "insufficient height for FM tower." (Application, p. 3.) This statement, without any evidence or analysis explaining precisely why the existing tower is inadequate, or the expense that would be incurred in altering the currently existing tower to accommodate the Proposed Tower, is insufficient under DCO § 10.194(2).

Dane County Zoning and Land Regulation Committee

January 19, 2011

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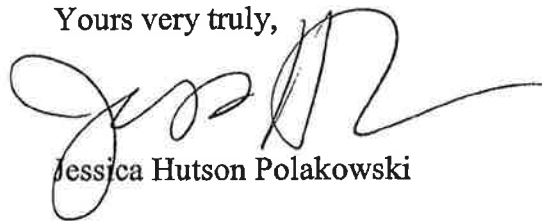
2. The Application fails to address the collocation requirements contained in DCO § 10.194(5). Specifically, the Ordinance requires that the grant of any CUP be "conditioned upon the applicant placing or constructing the communication tower so as to accommodate, at a minimum height of 150 feet, the collocation of two additional antenna arrays similar in size and function to that placed on the tower by the applicant."

Additional transmission capacity of an additional two antennae would likely require the construction of a building on the site. Because the guyed tower encompasses the majority of the 15.472 acres proposed for the site, the construction of an additional building/s on the proposed site would pose additional problems.

All new equipment buildings will adversely affect the aesthetics of the site where the Proposed Tower will be located, as there will be additional control buildings.

In conclusion, we vehemently oppose the CUP for the Proposed Tower. The Application's lack of detail and noncompliance with Dane County and Town of Rutland Ordinances demonstrates a general disrespect for the process, and for the property owners within the Town of Rutland itself. The process and standards enumerated by the Ordinances should be adhered to, and the Application should be rejected.

Yours very truly,



Jessica Hutson Polakowski

REINHART\5342302JHP:JHP

cc Chair, Town of Rutland
Clerk, Town of Rutland

FINDINGS OF FACT FOR DENIED CONDITIONAL USE PERMITS

If the Conditional Use Permit application is denied, please complete the following section. For each of the standards, indicate if the standard was found to be satisfied or not satisfied. Please note the following from section 10.255(2)(b):

"No permit shall be granted when the zoning committee or applicable town board determines that the standards are not met, nor shall a permit be denied when the zoning committee and applicable town board determine that the standards are met."

PLEASE INDICATE THE APPROPRIATE FINDING FOR EACH STANDARD (CHECK ONE / STANDARD)

- | | |
|---|---|
| 1. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or welfare. | 1. <input type="checkbox"/> SATISFIED / <input checked="" type="checkbox"/> NOT SATISFIED |
| 2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use. | 2. <input type="checkbox"/> SATISFIED / <input checked="" type="checkbox"/> NOT SATISFIED |
| 3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. | 3. <input type="checkbox"/> SATISFIED / <input checked="" type="checkbox"/> NOT SATISFIED |
| 4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made. | 4. <input checked="" type="checkbox"/> SATISFIED / <input type="checkbox"/> NOT SATISFIED |
| 5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. | 5. <input checked="" type="checkbox"/> SATISFIED / <input type="checkbox"/> NOT SATISFIED |
| 6. That the conditional use shall conform to all applicable regulations of the district in which it is located. | 6. <input checked="" type="checkbox"/> SATISFIED / <input type="checkbox"/> NOT SATISFIED |

THIS SECTION IS RESERVED FOR FURTHER EXPLANATION OF THE FINDINGS:

At a Rutland Town Board meeting held on May 3, 2011, the Board unanimously voted to accept the Planning Commission's unanimous recommendation to submit an updated Town Action Report to reflect the following Findings of Fact. Each standard was voted on separately. Standard #1 was found to be "not satisfied" because: a. The Comprehensive Plan calls for preservation of the Town's rural character, and the tower would conflict with that; b. The tower would be lighted causing the tower lights to be visible to nearby residents every night; c. The tower would be visible from much of the town, including nearby wildlife areas; d. The Town's assessor estimated a 5% to 15% assessment drop for properties within a half mile of the tower. We have had multiple owners say that they would not have purchased their parcels had the tower been there or had they known the tower was being proposed. e. There have been multiple studies that have shown that lighted towers can have negative impacts on bird populations. f. The Town's Communication Tower ordinance calls for the Town to consider the impact of towers on the viewscape from wildlife areas, two of which are very near this proposed tower.

Standard #2 was found to be "not satisfied" for all of the same reasons stated above for Standard #1.

Standard #3 was found to be "not satisfied" for all of the same six reasons stated in Standard #1 and Standard #2.



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June 9, 2014

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SENT VIA E-MAIL

Dale Beske
Town of Rutland, Board
4177 Old Stage Road
Brooklyn, WI 53521

Jeanette Walker
Town of Rutland, Board
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Brooklyn, WI 53521

James Lunde
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Milt Sperle
Town of Rutland, Board
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Shawn Hillestad
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Timothy Wood
Town of Rutland, Board
4177 Old Stage Road
Brooklyn, WI 53521

Steve Kittelson
Town of Rutland, Board
4177 Old Stage Road
Brooklyn, WI 53521

Dear Board Members:

Re: Magnum Communications Memorandum
dated May 22, 2014

My husband and I own the parcel of land adjacent to the parcel on which Magnum Communications ("Magnum") proposes to build a 500' radio tower. We, along with our counsel, have had an opportunity to review the memorandum submitted by Magnum on May 22, 2014. We submit this letter in response thereto.

June 9, 2014

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Magnum argues that, because of the passage of Wis. Stat. § 66.0406, radio towers are no longer required to comply with zoning codes. As an initial matter, this is absurd. Taking this interpretation to its logical conclusion, anyone could build a radio tower anywhere, whether it be in a school zone, downtown Madison, in the middle of a subdivision, or on top of a farm. This cannot be what the legislature intended. This section applies, as Magnum points out, not to 100 foot cell towers, but to towers like the one Magnum here proposes: 500 foot monstrosities that dwarf even the state capitol building. This proposed interpretation is facially absurd.

Moreover, it must be noted that Wis. Stat. § 66.0406 does not purport to trump or override any state *Statute*. Wis. Stat. § 91.48 is not an "ordinance or resolution." It is a State Statute. And, it specifically states that a political subdivision may rezone land out of A1-Ex *only if* the political subdivision finds all of the following: 1) the land is better suited for use not allowed in the farmland preservation zoning district; 2) the rezoning is consistent with any applicable comprehensive plan; 3) the rezoning is substantially consistent with the county certified farmland preservation plan; and 4) the rezone will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use. The Town and County have each, independently, already determined that these prerequisites have not been met.

Thus, even if the Board determines that Dane County Zoning Ordinances do not apply, Wis. Stat. § 91.48 is still a valid law, and must be followed. As explained in my April 25, 2014 letter, the only way to read Wis. Stat. §91.48 and Wis. Stat. §66.0406 to give both statutes effect is to read them as suggested herein.

Finally, Magnum's argument that he need not comply with applicable zoning codes, is not supported by the language of the statute itself. Parsing the language of § 66.0406, it is clear that the legislature did not intend to preempt all applicable zoning codes of local authorities (had it so intended, it could have simply stated as such). Instead, the language indicates that if a political subdivision has in effect an ordinance that is inconsistent with the requirements of §66.0406(2), the existing ordinance does not apply. Dane County's zoning code is not "inconsistent" with the requirements of (2).

Wis. Stat. § 66.0406(2) requires that:

- a) An ordinance. . . has a reasonable and clearly defined public health or safety objective, and reflects the minimum practical regulation that is necessary to accomplish that objective.
- b) The ordinance . . . reasonably accommodates radio broadcast services and does not prohibit, or have the effect of prohibiting, the provision of such services in the political subdivision.

The Dane County Zoning Codes have the clear purpose of protecting the public health and safety of its residents. Thus, the Zoning Code meets the requirement of Wis. Stat. §66.0406(2)(a). And, looking specifically at the ordinance at issue, the purpose of the A-1 Exclusive Agriculture District is specifically set forth at Dane County Ordinance § 10.123(1), and clearly includes important health and safety objectives:

1. Provide for a wide range of agricultural accessory uses, at various scales. The A-1(EX) district accommodates as permitted uses all activities typically associated with the primary production and harvesting of crops, livestock, animal products or plant materials. **Such uses may involve noise, dust, odors, heavy equipment, use of chemicals and long hours of operation.**
2. Allow for incidental processing, packaging, storage, transportation, distribution or other activities intended to add value to agricultural products produced on the premises or to ready such products for market. **Such uses are conditional as they may have the potential to pose conflicts with agricultural use due to: volumes or speed of vehicular traffic; residential density; proximity to incompatible uses; environmental impacts; or consumption of agriculturally productive lands.**
3. Allow for other incidental activities, compatible with agricultural use, to **supplement farm family income and support the agricultural community.**
4. **Preserve productive agricultural land for food and fiber production.**
5. **Preserve productive farms by preventing land use conflicts between incompatible uses.**
6. Maintain a viable agricultural base to support agricultural processing and service industries.
7. Reduce costs for providing services to scattered non-farm uses.
8. Pace and shape urban growth.
9. Meet the criteria for certification as a Farmland Preservation Zoning District under s. 91.38, Wis. Stats.

Thus, Dane County Ordinance §10.123 meets the first requirement of Wis. Stat. §66.0406(2).

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And, § 66.0406(2)2. states that an ordinance must "reasonably accommodate radio broadcast **services**" and "does not prohibit, or have the effect of prohibiting, the provision of such **services** in the political subdivision." This next point is crucial: Wis. Stat. § 66.0406(1) defined "Radio broadcast **services**" separate from "Radio broadcast service **facilities**."

"Radio broadcast **services**" is defined at Wis. Stat. § 66.0406(1)(b) as "the regular provision of a commercial or noncommercial service involving the transmission, emission, or reception of radio waves for the transmission of sound or images in which the transmissions are intended for direct reception by the general public."

"Radio broadcast service **facilities**" is defined at Wis. Stat. § 66.0406(1)(c) as "commercial or noncommercial facilities, including antennas and antenna support structures, intended for the provision of radio broadcast services."

As a proud resident of Dane County and the Town of Rutland, I can tell you that there is no shortage in the provision of radio services in our community. And, it cannot be said that the Dane County Zoning Code has the impact of prohibiting the regular provision of such services; radio seems to be booming in Dane County (likely why Magnum seeks to locate here). Finally, there has been discussion of whether Magnum could collocate on another tower. This is certainly an option for Magnum, though it seems to be one that has not been fully explored. Thus, the existing Dane County Zoning code meets the requirements of Wis. Stat. §66.0406(2) and therefore cannot be "bypassed."

Magnum's interpretation of Wis. Stat. § 66.0406(2)(b) conflates Radio broadcast **services** (which cannot be prohibited under the statute) with Radio broadcast service **facilities** (which is clearly defined to include structures such as the tower Magnum seeks to construct). Under Wis. Stat. §66.0406, an existing ordinance cannot have the impact of prohibiting **services**, but the statute says nothing about prohibiting the construction of **facilities**. This makes sense. But for this distinction, a tower such as the tower currently proposed could be placed on top of wetlands, next to schools, on farms, etc. But, the legislature drew a firm line between prohibition of provision of services, and prohibition of the construction of facilities. The Dane County Ordinance must be applied.

The reason Magnum seeks so desperately to avoid the application of the Dane County Ordinance is because its application necessitates the denial of Magnum's request. As discussed above, the Town and County have each, independently, already determined that the prerequisites set forth in Dane County Ordinance §10.123 and Wis. Stat. §91.48 have not been met.

Magnum may argue that, if the Board adopts the above-referenced reading of the statute, § 66.0406(4), which specifically states that denial of placement, construction, or modification of radio broadcast service facilities must be for health and safety reasons alone,

June 9, 2014
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is null and void. This is not the case. As in my letter dated April 25, 2014, Magnum's request has two components: a request to rezone, and a petition for a conditional use permit. The request to "construct" the tower is part of the request for a conditional use permit. The rezone stands separate from that request, and for the reasons discussed above, must comply with Dane County Ordinance § 10.123(12) and Wis. Stat. § 91.48.

Because Magnum's request is not in compliance with Dane County Ordinance §10.123(12), Town of Rutland's Ordinance No. 12.5, and Wis. Stat. § 91.48, we respectfully request that the Town deny Magnum's request.

Very truly yours,



Handwritten signature of Jessica Hutson Polakowski in black ink, featuring a stylized 'J' and 'H'.

Jessica Hutson Polakowski

15428208

Lane, Roger

From: Kolar, Mary
Sent: Monday, April 28, 2014 1:14 PM
To: Deana Zentner
Cc: Lane, Roger
Subject: RE: rezone in Rutland Township

Thank you for your email, Deana. I will include it in my considerations.

Mary
Mary M. Kolar
Supervisor
District 1
kolar.mary@countyofdane.com

From: Deana Zentner [deanazentner@yahoo.com]
Sent: Monday, April 28, 2014 12:27 PM
To: Kolar, Mary
Subject: rezone in Rutland Township

Hello, As a farmette owner in Rutland Township at 97 Shady Willow Road, Brooklyn, WI 53521, I am writing to state my opposition to the proposed rezoning to serve the Magnum 488' broadcasting tower. Thank you, Deana Zentner

Lane, Roger

From: Kolar, Mary
Sent: Monday, April 28, 2014 1:13 PM
To: info2@actualsizeartworks.com
Cc: Lane, Roger
Subject: RE: Radio Tower application

Thank you for your email, Gail. I will include it in my considerations.

Mary
Mary M. Kolar
Supervisor
District 1
kolar.mary@countyofdane.com

From: info2@actualsizeartworks.com [info2@actualsizeartworks.com]
Sent: Monday, April 28, 2014 12:31 PM
To: Kolar, Mary
Subject: Radio Tower application

Dear Mary,

I am writing to appeal to you to turn down the application from Magnum Communications for rezoning a parcel of land in Rutland Township for the construction of a 486' radio tower. I am a resident of the town of Rutland and am very concerned about the criteria for rezoning a parcel of land out of the "A1-Ex" designation. This proposed use is in enormous conflict with the Farmland Preservation criteria – the land is not better suited for this purpose, it is not consistent with Rutland's or the county's preservation plan, and it will impair future agricultural use of the surrounding property.

Residents of the town of Rutland don't agree about everything, but there was emphatic consensus about this issue when it came before the Town Board in 2011. At the public hearing hundred of community members turned out and pleaded with the town board to turn down the request, which it did as a reflection of their own convictions and the desires of the community. We continue to oppose the construction of this radio tower and urge you to stand by us in this matter. You have the power and legal grounds to do so; please defend the common good!

Thank you

Gail Simpson

673 Center Rd.