12/01/2015

STATE OF WISCONSIN
COUNTY OF DANE
BEFORE THE DANE COUNTY BOARD OF SUPERVISORS

In re Appeal of the Dane County Zoning & Land Regulation Committee's Approval of Conditional Use Permit No. 2291 for a Petroleum Pumping Station in the A-1 Exclusive Agriculture Zoning District in the Town of Medina	} } } } } } }

350-MADISON CLIMATE ACTION TEAM'S NOTICE OF APPEARANCE AND RESPONSE IN OPPOSITION TO THE APPEAL BY ENBRIDGE ENERGY OF CONDITIONAL USE PERMIT NO. 2291

PLEASE TAKE NOTICE that 350-Madison Climate Action Team (350-Madison) appears in this proceeding and seeks party status on behalf of its members, including Robert and Heidi Campbell, who reside in the Town of Medina next to the Enbridge Petroleum Pumping Station, and whose mailing address is 5721 Doshcadis Road, Waterloo, WI 53594.

350-Madison appears in opposition to the appeal to the Dane County Board (Board) taken on October 19, 2015 by Enbridge Energy Company and Enbridge Energy, Limited Partnership (Enbridge) to the Conditional Use Permit (CUP) issued by the Zoning and Land Regulation Committee (Zoning Committee) in its Docket CUP #2291 on April 21, 2015 (Appeal), and submits the following in reply.

ARGUMENT

Enbridge's pending Appeal should be summarily rejected because it contains no basis to reverse the considered decision of the Zoning Committee. Instead, in order to create the patina of grounds for its appeal, Enbridge has concocted a dishonest attempt to rewrite history by completely misstating the indisputable facts that transpired below.

The sole grounds for its present appeal eschews its earlier challenge to the authority of the Zoning Committee, at the time of the CUP's issuance on April 21, 2015, to have required clean-up insurance in the permit for the pumping station.[1] All that remains before the Board now is a single contention by Enbridge. The company's case hangs solely on the claim that a private letter written by the Zoning Administrator to Enbridge on July 24, 2015, which (honestly but incorrectly) sought to clarify the situation by unilaterally deleting the insurance requirement from the CUP, can constitute the official action of the whole Zoning Committee.

However, since by ordinance, only the Zoning Committee can issue, or modify, a conditional use permit by a majority vote of its members, among whom the Administrator does not number, and even by the Zoning Committee, only after consultation with the town, notice and public hearing,[2] that letter was not authorized, and without any legal effect, is *ultra vires*. Therefore, the Appeal fails to state any grounds to reverse the Zoning Committee, and it must be denied.

Background of the case

The putative Statement of Facts in Enbridge's Appeal is, as noted, almost entirely fictitious. Our response to correct the record is set forth in Appendix A attached to this Notice. The true facts relevant to the Board's consideration of the Appeal are included in the Background section that follows to help bring the Supervisors current with the salient issues.

Proposed project and its initial treatment. In 2013, Enbridge announced plans to expand the capacity of its Southern Access Line 61, one of its petroleum pipelines that diagonally transverses Wisconsin from Superior to Delavan. by adding nine and expanding four pumping stations to increase the flow rate through the pipe. One of the new pump stations was labeled the Waterloo Pump Station

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[1] The clean up insurance consisted of two parts. The first part required $25 million of Environmental Impairment Insurance, which is a policy specifically intended to pay to clean up oil spills, unlike the general liability policies routinely carried by companies, which is not, and only in certain instances may provide some coverage. The second part required $100 million of General Liability Insurance that meet a list of specific additional requirements, such as being issued by a high rated insurer. Enbridge was also required to list Dane County as an Additional Insured on the total $125,000,000 of combined liability insurance. Zoning Committee CUP#2291, at ¶7 and ¶8 (April 21, 2015)

[2] §10.255(2)(b), D.C.O.

(Waterloo is a town, and also a city, in Jefferson County).[3] It asked each of the counties where the pumping stations were proposed to treat the project as a permitted use, which are automatically approved, and on April 30, 2014, Dane County's Planning Department issued a routine approval for the project.[4]

Corrected treatment. On June 6, 2014, after 350-Madison acquired the coordinates for the "Waterloo" site, it found that the project site actually was situated in the Town of Medina in Dane County, in an area zoned A-1 Exclusive, and concluded from reading the law that petroleum pipelines were actually not exempt from the zoning ordinances, only natural gas pipelines were. 350-Madison immediately communicated these facts to the Zoning Administrator and requested conditional use treatment for the project.[5]

The Zoning Administrator agreed with 350-Madison that a petroleum pump station on agricultural land was a conditional and not a permitted use, as the company maintained. On June 12, 2015, he withdrew the erroneously issued approval prior to the scheduled start of construction on June 16th.[6] That began the conditional use proceeding that wound up with the Zoning Committee requiring clean up insurance, to which Enbridge objected, and for which it now has on appeal before the Board.

Importance of this case. To understand why so much attention has been directed at this project, the Waterloo Petroleum Pump Station is part of plans by the $42 billion Canadian pipeline company to triple the flow of tar sands oil, extracted out of the once vital boreal forests in Alberta, from 400,000 barrels per day (bpd) to 1,200,000 bpd. Enbridge plans to ship the additional volumes through Minnesota and Wisconsin in its Alberta Clipper and Southern Access pipelines, respectively, largely to its refinery in Flanagan, Illinois, and from there, in good measure, to the coast for export markets.[7]

For several important reasons, according to the analysis of the expanded pipeline prepared by one of the leading risk managers in the U.S. retained by the Zoning Committee, Enbridge's project

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3 Enbridge, *Line 61 Upgrade Project - Phase 2* , on-line at http://www.enbridgepublicinfo.com/MainlineEnhancementProgram/US/Line61UpgradeProjectPhase2.aspx (accessed 11/30/15).

4 Dane County Zoning Permit No. DCPZP-2014-00199 (April 30, 2014).

5 Email from Peter Anderson to Roger Lane, dated June 6, 2014, re: Enbridge's Waterloo Pumping Station in the Town of Medina.§10.123(3)(c), and §10.123(2)(g), D.C.O.

6 Letter dated June 12, 2014, from Roger Lane to Enbridge's Rich Kern ("your proposed use is not a permited use, and a conditional use permit is instead required").

7 Enbridge CUP Application (October 14, 2014). Enbridge Line 61 Upgrade Project Phase 2, on-line at http://www.enbridge.com/MainlineEnhancementProgram/US/Line61UpgradeProjectPhase2.aspx (accessed November 29, 2015). Anthony Swift, *Keystone XL: A Tar SandsPipeline to Increase Oil Prices* (NRDC, 2012).

raised a major set of issues for the Zoning Committee to consider. These involved the consequences of an oil spill in Dane County from such a large and risky oil transportation facility on prime agricultural farm land:

1. Tar sands oil itself and as further prepared for pipeline transport as diluted bitumen (or dilbit) contains volatile carcinogens, is abrasive and corrosive, and sinks instead of floats in water, which makes it exceedingly costly and difficult to clean up.

2. The internal pipe pressures required to triple the flow rate through the same pipe are as high as 1,200 pounds per square inch, which is greater than in any other U.S. pipeline, and, if there is a rupture, release as much as 2.1 million gallons per hour.

3. Enbridge was recently responsible for the worst catastrophic inland oil spill in the U.S. that cost $1.2 billion to remediate.

4. Enbridge is organized as a limited liability corporation, which corporate form is typically intended to minimize the assets available for attachment in the event it declines to undertake full remediation of an oil spill in Dane County in the future.

5. The pipeline's potential life exceeds 50 years during which extended time period, in a climate constrained world, the financial resources of this petroleum company can be expected to severely deteriorate, as is now already occurring in the coal industry where bankruptcies are becoming more prevalent.

6. The only time that the County has the authority to impose the necessary financial assurance protections for the risks that may not occur until decades hence is now as part of its CUP process.[8]

Although jurisdiction over setting the safety standards for the pipeline lie within the purview of the federal Pipeline and Hazardous Material Safety Administration, Dane County and other state and local agencies have jurisdiction over the interrelated non-safety issues such as siting and clean ups of oil spills.[9] As part of those peculiarly local matters, the County is one of the entities responsible to see that there are sufficient financial assurances to ensure that the company completes its responsibilities to clean up the site and to protect the affected public after a spill occurs.[10]

In this case, after it first commissioned a risk analysis by one of the nation's foremost experts,

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[8] David Dybdahl, CPCU, *An Insurance and Risk Management Reporton the Proposed Enbridge Pumping Station Report* (April 8, 2015), at p. 8.

[9] Congressional Research Service, *Proposed Keystone XL Pipeline: Legal Issues* (2012), at pp. 17-22.

[10] *Washington Gas & Light Co. v. Prince George's City Council*, 711 F.3d 412 (4th Cir. 2013); *Texas Midstream Gas Servs., LLC v. City of Grand Prairie*, 608 F.3d 200 (5th Cir. 2010). *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354, 357 (8th Cir. 1993); *Olympic Pipe Line Co. v. City of Seattle*, 316 F. Supp. 2d 900, 907 (W.D. Wash. 2004).

the Zoning Committee, by a unanimous vote, concluded that , under its governing ordinances,[11] it had an obligation to condition a permit on environmental impairment liability and related insurance to provide those assurances.[12]

Had the Zoning Committee not imposed the clean up insurance requirement, it could not have found, as the ordinance requires, that "the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare," along with five other criteria. Of critical import later, the fact that the Zoning Committee found it necessary to impose the insurance conditions means it was necessary to have done so if it were to be able to issue the permit at all.

Otherwise, the County's taxpayers would have wrongly been left responsible for the inevitable clean up costs, as documented in the Dybdahl Report, which would violate the ordinance. At some point in the future while the pipeline is still in service, the oil industry will enter the same kind of death spiral currently afflicting the coal industry, the Report explained. Enbridge's financial viability will also erode, it concluded, maintenance will be shortchanged, and oil spills will increase at the same time the company's capacity to adequately respond will deteriorate.

Legislative intervention. While the Zoning Committee was considering the insurance condition for the Waterloo Pump Station to which Enbridge objected, in January and February of this year, for the first time, the company retained the services of four lobbyists in the State Capitol.[13]

After the Zoning Committee adopted the insurance condition in April, some unnamed but well connected lobbyist, who has chosen to remain anonymous, in June used his or her influence to seek a legislative override of the insurance condition that appeared limited to benefiting Enbridge.

He or she convinced one or more members of the Legislature's Joint Finance Committee to

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[11] §10.255(2)(h), D.C.O., which states:
(h) Standards. 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. 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 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.

[12] Zoning and Land Regulation Committee, Conditional Use Permit #2291 (April 21, 2015), ¶¶7 and 8.

[13] Government Accountability Board, Eye on Lobbying: Enbridge Energy Company Inc., Principals 2015-2016.

add a rider to the State Budget, among 66 other riders, the night before the key vote that was consolidated into a so-called Super Amendment where legislative favors to only the most powerful lobbyists and constituents are customarily hidden.[14] That section stated that "[a] county may not require an operator of an interstate hazardous liquid pipeline to obtain [clean up] insurance."[15]

Investigative reporters later found drafting records showing that it was Enbridge lobbyist, Bill McCoshen, who convinced Assembly Speaker Robin Voss to include in the budget a related rider only benefitting Enbridge, which exempted the company from needing to retain sufficient assets to attach for damages as a condition for condemning land in the state.[16] Yet, in response to expressions of concern by Dane County officials about the company's abusive legislative tactics,[17] Enbridge rebuked their concern, swearing that it had absolutely nothing to do with the other budget provision overriding the Zoning Committee's insurance condition.[18] Is one then to believe that some other powerful company with no interest in the matter presumably expended the substantial capital that is necessary to get Enbridge's issue bundled into the Joint Finance Committee's Super Amendment?

Key events relevant to the appeal. On July 12, 2015, Governor Walker signed the budget and it became law.[19] Thereupon, Assistant Corporation Counsel, David Gault, wrote a letter stating that the "insurance conditions are rendered unenforceable prospectively by the language [of the budget amendment]."[20] Undoubtedly with the best of intentions, on July 24th the Zoning Administrator followed that opinion with a letter to Enbridge noting that:

> "As a result of the enactment of State Budget Bill, *** counties are prohibited in requiring additional insurance ***. Conditional Use Permit #2291 has been revised to reflect this change in State legislation."[21]

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14 Assembly Substitute Amendment 1, to Wisconsin Assembly Bill 21 (July 2, 2015).

15 §59.70(25), Wis. Stats., which states in full: "A county may not require an operator of an interstate hazardous liquid pipeline to obtain insurance if the pipeline operating company carries comprehensive general liability insurance coverage that includes coverage for sudden and accidental pollution liability."

16 §32.02(13), Wis. Stats. Danielle Kaeding, "Documents Show Energy Firm Helped Craft Changes To State's Eminent Domain Law, Enbridge Spokeswoman Said Change Fixes 'Outdated Language,' *Wisconsin Public Radio* (July 9, 2015).

17 Patrick Miles, "Enbridge's legislative end run" *Milwaukee Journal-Sentinel* (July 20, 2015).

18 Mark Maki, "Enbridge will do what's right," *Milwaukee Journal-Sentinel* (July 30, 2015).

19 2015 Wisconsin Act 55, SECTION 1923e.

20 Letter from David Gault (Corporation Counsel) to Roger Lane (Zoning Administrator), dated July 17, 2015.

21 Letter from Roger Lane (Zoning Administrator) to Aaron Madsen (Enbridge), dated July 24, 2015.

The question of what is the legal status of this letter is the defining element of the Appeal. That is explained in the next section to have been of no legal effect, which moots all of Enbridge's outstanding claims. In any event, the Zoning Administrator not only did not ask, he did not inform the Zoning Committee at the time of his letter purporting to modify the CUP, which only became public two months later.

On August 10, 2015, 350-Madison submitted to the Zoning Committee a Petition for Reconsideration and Rescission of the Conditional Use Permit and Imposition of a Trust Fund Requirement (Petition). It argued that, under the controlling ordinance, the Committee had only been able to grant a permit for the pump station because, at that time, clean up insurance could be required to provide the assurances that the ordinance demanded. If insurance now can no longer be prospectively enforced by virtue of the budget rider, then the only response, 350-Madison contended, was to rescind the CUP until it could be determined whether other alternative assurance mechanisms, not barred by the new law, could be substituted so that the conditional use criteria in the ordinance could be met. The Petition proposed replacing clean up insurance with a trust fund mechanism.

Not until September 29th when the Committee met and considered the Petition did the Zoning Committee members become aware of the Zoning Administrator's July 24th letter. On October 9th, it directed the Zoning Administrator to inform Enbridge that his July letter was issued in error without the necessary authority to have had any force or effect because only the Committee can issue or modify permits. Enbridge's attorney in his comments to the Committee attempted to mischaracterize the action as revoking the earlier CUP and newly imposing an insurance requirement. The Chair rebuked him and clearly stated the fact that there never was a July 24th CUP, and that the only CUP duly rendered by the Committee in compliance with the applicable procedures was the original one issued on April 21st.

Enbridge's grounds for appeal are without merit

Enbridge erroneously states that the Zoning Committee's decision on October 9th was "either to revoke or amend the [non-existent] July 24, 2015 CUP," which it says was "arbitrary, oppressive and unreasonable."[22]

Of course, in fact, there was no CUP on July 24th for the reasons that follow, and therefore all of the legal horrors that Enbridge complains of exist only in its imagination. The Dane County Ordinances clearly and unambiguously state who is empowered to issue conditional use permits:

[22] Appeal, at p. 10.

(b) Authority. Subject to sub. (c), *the zoning committee*, *after a public hearing*, shall, within a reasonable time, grant or deny any application for conditional use. Prior to granting or denying a conditional use, the zoning committee shall make findings of fact based on evidence presented and issue *a determination whether the prescribed standards are met.* 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.[23]

There is no ambiguity. First, under the applicable controlling ordinance, only the Zoning Committee, after public notice and hearing, may grant or deny an application for conditional use. There is no reference in any manner, shape or form that could be read to authorize the Zoning Administrator, who is not even on the Committee, to have done so.

Enbridge's counsel acts as if he is can convince the Board to believe that this is a scene out of the satirical movie, *Dr. Strangelove*, where a deranged Air Force General Jack D. Ripper ordered his base's B-52s to drop their 42 megaton atomic bombs on the Soviet Union. When the President learns of the impending conflagration, he bleats to his Chief General, Buck Turdigson, how could something like this have happened without Presidential authority? Nonplussed, Gen. Turgidson replies, as the bombers approach their targets, "That's right, sir, you are the only person authorized to do so. And although I, uh, hate to judge before all the facts are in, it's beginning to look like, uh, General Ripper exceeded his authority."

In the real world, the illegal acts of individuals in government acting outside of their authority, regardless of whether done in good faith, cannot be clothed in whatever official capacity they hold to make the illegal action lawful, nor to create illegal facts on the ground that contravene the law. Under a long line of legal authority, these sorts of illegal acts contrary to law are considered *ultra vires*, and without any force or effect. Not only may affected landowners not claim a vested right claiming that they relied upon such illegal acts, but they must be presumed to have known of their invalidity so that public's interest in zoning is not vitiated.[24]

Second, even if for the sake of argument, the Zoning Administrator did have the authority in place of the Committee to issue or modify CUPs – which he does not – even then his private July 24th letter could not qualify as the proper exercise of such hypothesized power. For one thing, there was no public notice or hearing. For another, inasmuch as the Committee's decision to include the insurance

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[23] §10.255(2)(b), D.C.O.

[24] Black's Law Dictionary (9th Ed., 2009), at pp. 1311–12, for the principles that government should not have to answer for actions taken by a government official that are beyond their authorization. See also *Miller v. Bd. of Adjustment*, 521 A.2d 642, 646 (Del. Super. Ct. 1986). *Corey Outdoor Advertising, Inc. v. Bd. of Zoning Adjustments*, 327 S.E.2d 178, 182 (Ga. 1985). *V.F. Zahodiakin Eng'g Corp. v. Zoning Bd. of Adjustment*, 86 A.2d 127, 132 (N.J. 1952). *City of Kiel v. Frank Shoe*, 240 Wis. 594, 597, 4 NW 2d 117 (1942). John D. Finerty, "Municipal Corporations: Remedies of the Private Contractor Against A Wisconsin Municipality Where the Contract is Ultra Vires or Defective," 48 *Marquette Law Review* 2 (Fall 1964), at p. 230.

condition on April 21st meant financial assurances were a necessary prerequisite to issue a permit, the fact that the County can no longer require it does not mean the condition is effectively removed by force of the new state law. If push were to come to shove, and a reconciliation of the CUP and the budget rider demanded, then the law is clear. The original CUP would have to be denied or another equivalent assurance mechanism would have to be substituted. That would be 350-Madison's preference, although we defer to the myriad other complicating factors that the Committee has to balance, just as we also acknowledge the sincerity of the Zoning Administrator.

As regards the other irrelevancies in Enbridge's argument that summarily fall once it is understood that there was no July 24th CUP issued after the new state law, which barred enforcement of the April 21st CUP's insurance condition:

1. *Revocation*. There simply is no issue of whether there was a proper basis to revoke the only CUP, the one issued on April 21st, because, Enbridge says, it did not violate any of the other non-insurance conditions, unaffected by that state law.[25] For one thing, the Zoning Committee made it abundantly clear on October 9th that it was not revoking anything because *ultra vires* acts have no legal force and there was nothing to revoke – notwithstanding, it should be noted, repeated disingenuous attempts by Enbridge's attorney then, as he brazenly attempts again now, to mischaracterize the situation otherwise.

2. *Vested rights*. Also, in its present posture, neither does this matter have anything to do with rights that might vest, as Enbridge claims seeking their protection.[26] For one thing, Dane County is not only not seeking to enforce the insurance condition, it also added a footnote to the April 21st CUP for readers noting the passage of the State Budget provision that it states affects the County's authority to prospectively enforce the condition. Even if there were some impending County enforcement action – which there is not – vesting rights cases are applicable to building permit cases, which are non-discretionary so long as established quantifiable standards are met, not conditional use cases, which are discretionary.[27]

CONCLUSION

At the time last April that the Zoning Committee issued the CUP for Enbridge's pump station, there were no legal impediments under either federal or state law that precluded a clean up insurance condition. Indeed, under the controlling local ordinance, based upon the evidentiary record, including Enbridge's disturbing record of costly oil spills and the compelling report by risk management expert,

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[25] Appeal, at p. 11. §10.255(2)(m).

[26] Appeal, at p. 12.

[27] *State ex rel. Skelly Oil Co. v. Common Council*, 58 Wis. 2d 695, 701 (1973); *Zealy v. City of Waukesha*, 201 Wis. 2d 365, 372 (1996); *Rainbow Springs Golf Co., Inc. v. Town of Mukwonago*, 284 Wis. 2d 519 (Ct. of App. 2005); and *City of Waukesha Police and Fire Commission*, 261 Wis. 2d 485 (Ct. of App. 2003).

David Dybdahl, the Zoning Committee was legally required to impose a financial assurance condition.

Subsequently, some entity, which has chosen to remain nameless, did lobby the Legislature to override the authority of the county to enforce that condition in the future. That said, and contrary to Enbridge's false claim – which does not acquire a veneer of truthiness by the mere act of repetition – there never was any subsequent lawful act that amended, revoked or modified the original CUP in any way.

Moreover, inasmuch as the newly enacted state law in July left in place the other state statutes empowering counties to zone, including procedures for conditional uses, and inasmuch as Dane County's conditional use procedures limit conditional use permits to cases where the conditions ensure that six enumerated public protections are met, including from risks of taxpayer bailouts, there exists no lawful way for Enbridge to recreate the world in its image with a permit that does not contain a financial assurance mechanism.

If Enbridge chooses to push the issue through proper legal procedures, the permit would either have to be denied, or be reissued with an equivalent non-insurance assurance mechanism, which would be substantially more expensive than insurance would have been.

The Appeal should be summarily rejected as frivolously filed and dishonestly advanced.

350-MADISON CLIMATE ACTION TEAM

/s/ Peter Anderson

By:_____
Peter Anderson, Chair
Risk Management Subcommittee

Appendix A
CORRECTION to ENBRIDGE'S MISSTATEMENTS of FACTS

Enbridge's putative Statement of Facts are replete with errors, omissions and misstatements. The following are only some of the more egregious of these, and may not be construed to concur in any other misstatements of fact made in its Appeal:

a. Enbridge Appeal ¶2 alleges that the purpose of Line 61 is to provide tar sands oil to the Midwest and East. No support is made for this allegation, and, it is contradicted by many studies, which show that the majority of the tar sands oil transported in Line 61 is exported, recognizing that the situation changes with time.

b. Enbridge Appeal ¶11 alleges that the proposed Waterloo Pump Station is "compatible with the neighboring agricultural uses has been demonstrated [because of] the nearly 20 years that Enbridge has had an existing pump station at the ... site." This statement is tautological: it is no more true, without more, than a statement that there have been murderers, rapists and muggers for the past 100 years, and therefore the perpetrators are compatible with civilized society.

c. Enbridge Appeal ¶14 alleges that all of the delays were due to the County, when in fact many of the delays have been due to the applicant.

d. Enbridge Appeal ¶17 references its general liability insurance policy with the apparent intent to imply to the Board that it has sufficient insurance without the additional policies required by the CUP. As has been documented by the Dybdahl Report, and will be discussed later herein, any such implication is false.

e. Enbridge Appeal ¶18 and ¶19 references the Oil Spill Liability Trust Fund (Spill Fund) with the apparent intent to imply to the Board that there is sufficient back-stop coverage to pay to clean up an oil spill. As has been documented by the Dybdahl Report, and will be discussed later herein, any such implication is false.

f. Enbridge Appeal ¶24 references a July 24, 2015, letter from the Zoning Administrator, but omits the key facts that the Administrator did not seek nor receive authority from the Committee to issue the letter, nor did he inform the Committee or the public that he had issued the letter at the time of issuance.

g. Enbridge Appeal ¶25 references 350's August 10, 2015 Petition for Reconsideration, its statement that 350 "cited no authority under the Dane County Code of Ordinances or otherwise for an advocacy group *to file* such a petition." (Emphasis added.) This statement is false. Section 4 of the Wisconsin Constitution establishes the inviolable right for citizens to petition the government. The paragraph also states that 350 "did not file an

appeal with the Dane County Board of Supervisors seeking review of the issuance of the July 24, 2015 CUP. As was determined by the Committee on October 9, 2015, there never was a July 24, 2015 CUP, nor for that matter, was there any public notice of the July 24, 2015 ultra vires letter.

h. Enbridge Appeal ¶27 makes the bald and incorrect assertion that Enbridge knows that the Committee's decision to not act on 350-Madison's Petition was "based on the opinion letter from Corporation Counsel." In fact, Enbridge has no actual knowledge whether that was the only or even dominant reason for the Committee's decision, or whether the decision was based on the company's improper use of threats to seek enactment of legislation hostile to Dane County's interests. The only supportable statement of fact is that the Committee decided to not act on the petition at this time.

i. Enbridge Appeal ¶30 and ¶31 are pure fabrications whose falsity underscore the fact that the company has no legal basis for its appeal. The Dane County ordinances only allow the Zoning and Land Regulation Committee to issue a CUP, not the Zoning Administrator, the Administrator had no power to unilaterally alter the CUP, and for that reason there never was a July 12, 2015 CUP to be "revoked," nor was any "new" CUP issued on October 9, 2015. In fact, all that the Committee did at that meeting to direct the Administrator to correct the error he had made, which left in place the April 21, 2015, which had never been lawfully altered.