DANE COUNTY BOARD OF ADJUSTMENT

APPEAL OF DENIAL OF CONDITIONAL USE PERMIT #2481

APPLICANTS: Tillman Infrastructure, LLC and AT&T Mobility

BRIEF OF DANE COUNTY IN SUPPORT OF THE ZONING & LAND REGULATION COMMITTEE DECISION

SUMMARY

Tillman Infrastructure, LLC and AT&T Mobility (Applicants) appeal the decision of the Dane County Zoning & Land Regulation Committee (zoning committee/ZLR) to deny proposed Conditional Use Permit (CUP) #2481 for a new communication tower in the Town of Albion. The zoning committee's decision is supported by substantial evidence and should be affirmed.

The applicants propose to build a 260 foot lattice-style communication tower with aviation lighting beacons within approximately 400 feet of an existing 160 foot communication tower owned by SBA Communications. AT&T is currently collocated on the SBA tower. The property in question is zoned FP-1 (Small Lot Farmland Preservation), a state certified farmland preservation zoning district.

Dane County regulates the siting and location of communication towers under its zoning ordinance as authorized by Wis. Stat. §66.0404(2). Both the county ordinance and state statute promote the shared use of facilities, emphasizing "collocation" as the preferred siting option. Indeed, if an applicant proposes not to collocate, the statute requires the applicant to explain "why the applicant did not chose collocation." Wis. Stat. §66.0404(2)(b)6. The statute further provides that "a political subdivision may disapprove an application if an applicant refuses to

evaluate the feasibility of collocation within the applicant's search ring…" Wis. Stat. §66.0404(2)(e). That is one of the reasons why the zoning committee denied this application.

As stated, AT&T is currently collocated on the existing SBA tower. They argue that the new tower is needed because collocation on the SBA tower has become "economically burdensome." They presented no evidence in support of this claim other than vague speculation. What the evidence shows is they seek to move for economic gain, a better deal, not economic burden. This is evidenced by the "build to suit" agreement the co-applicants signed in 2017. As indicated in the sworn statement in support of the application, "AT&T has entered into nationwide development and master lease agreements with Tillman…whereby,…Tillman will construct at its own expense and own communications towers upon which AT&T will lease space to install its Wireless Facilities." As announced in company press releases and reported in various industry publications, the joint agreement (which also includes Verizon) is intended to achieve cost savings for the carriers at existing collocation sites they've identified as "high cost." The sworn statement indicated that SBA has resisted these tactics. However, that fact that AT&T can get a better deal from Tillman does not mean continued colocation on the SBA tower is an economic burden to AT&T, and does not override the county's legitimate interest in minimizing the number of communication towers.

AT&T has also failed to pursue other options to resolve their alleged economic burden. SBA's CUP for the existing tower has a condition requiring collocation be provided at "prevailing market rates" and "upon contractual provisions standard in the industry." In initial pre-application discussions with AT&T's agents, county staff informed them that if there was merit to their claims of economically burdensome lease rates, it may constitute a violation of SBA's CUP. The zoning committee could revoke SBA's CUP for violation of the conditions.

AT&T chose not to pursue that remedy. Additionally, they failed to engage in discussions with SBA following its written offer to renegotiate the terms of the existing lease.

This proposed CUP is a direct challenge to the principles underlying the county's tower ordinance and state statute which require the shared use of cell towers when and where feasible. Contrary to the allegations by the applicants, the zoning committee's denial of this CUP was based upon substantial evidence establishing that the applicants failed to meet all of the standards required for approval of a CUP and specifically that they failed to evaluate the feasibility of continued collocation on the existing tower.

SCOPE OF REVIEW

The zoning committee is authorized by DCO §10.101(7)(c)2 and Wis. Stat. § 59.69(2)(bm) to grant conditional use permits (CUP) . Prior to granting a CUP, §10.101(7)(c)2e requires that the zoning committee must determine that the proposed conditional use meets the following standards:

i. General standards for approval of a conditional use under § 10.101(7)(d);

ii. Any prescribed standards specific to the applicable zoning district.

iii. Any prescribed standards specific to the particular use under § 10.103.

The zoning committee must deny a CUP if it finds these standards are not met, and must approve the CUP if it finds the standards are met. DCO §10.101(7)(c)2 f & g. Any person aggrieved by the grant or denial of a CUP may appeal the decision to the Board of Adjustment within 30 days of the final action of the zoning committee. DCO §10.101(7)(c)4, Wis. Stat. § 59.694(7)(a).

The Wisconsin Supreme Court defined a board of adjustment's scope of review in *Osterhues v. Board of Adjustment for Washburn County*, 2005 WI 92, ¶2, 282 Wis.2d 228:

> When reviewing the decision to grant or deny a conditional use permit, a county board of adjustment has the authority to conduct a de novo review of the record and substitute its judgment for the county zoning committee's judgment. Moreover, under the applicable state statute, a board has authority to take new evidence.

Therefore, when considering an CUP appeal, the board should consider the entire record of evidence presented to the zoning committee *de novo* and render an independent decision on whether the applicable standards are met to grant a CUP.

BURDEN OF PROOF

The Zoning Code clearly states that the zoning committee, and this board on appeal, must deny a CUP if it finds that the standards for approval are not met. "The burden of proof at all times remains with the applicant." *Delta Biological Resources, Inc. v. Board of Zoning Appeals of the City of Milwaukee*, 160 Wis.2d 905, 914, 467 N.W.2d 164 (Ct. App. 1991); *AllEnergy Corporation v. Trempealeau County Environment & Land Use Committtee*, 2017 WI 52, ¶95, n.37, 375 Wis.2d 329. The applicant in this case must prove that the general standards for approval of a CUP under DCO §10.101(7)(d), the standards specific to a communication tower in §10.103(9), and the standards applicable to Farmland Preservation Districts in §10.220(1)(a) are met. Denial of the CUP is required if any one of the standards are not met. *Eco-Site, LLC v. Town of Cedarburg*, 2019 WI App. 42, ¶22, 388 Wis.2d 375; DCO §10.101 (c)2f.

THE ZONING COMMITTEE'S DECISION WAS BASED UPON SUBSTANTIAL EVIDENCE

The zoning committee's decision was based upon substantial evidence in the record. The committee made the following findings:

> 1. As detailed in the attached engineering report, the applicant has failed to substantiate justification for the proposed new tower based on the requirements of the county ordinance and state statutes.
> 2. As detailed in the attached engineering report the applicant has failed to substantiate the need for a tower exceeding 195' in height.
> 3. The applicant has not provided substantial evidence demonstrating that the proposed conditional use satisfies all requirements and conditions required by county ordinance.
> 4. The applicant is currently collocated on an existing tower approved under Conditional Use Permit #1683 and has refused to evaluate the feasibility of continued collocation on the existing communication tower located within the applicant's search ring.
> 5. The applicant failed to provide substantial evidence demonstrating that the proposal satisfies standards b,c,f and g for approval of a conditional use permit found in section 10.101(7)(d)1 and further detailed in the staff report ...[1]
> 6. The applicant failed to provide substantial evidence demonstrating that the proposal meets standard 2 under section 10.220(1)(a) for conditional uses in the FP-1 Farmland Preservation zoning district. [2]

The applicant bears the burden to prove that all CUP standards established by the county are supported by substantial evidence. Wis. Stat. §59.69(5e)(b)2. The legislature has defined "substantial evidence" for purposes of that statute as 'facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an

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[1] DCO §10.101.(7)(d)1 standards found not met:
b. 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.
c. 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.
f. That the conditional use shall conform to all applicable regulations of the district in which it is located.
g. That the conditional use is consistent with the adopted town and county comprehensive plans.

[2] DCO §10.220(1)(a)2: The use and its location in the Farmland Preservation Zoning district are reasonable and appropriate, considering alternate locations, or are specifically approved under state or federal law.

applicant must meet to obtain a conditional use permit that reasonable persons would accept in support of a conclusion. Wis. Stat. §59.69(5e)(a)2. Likewise, "the county's decision to approve or deny the permit must be supported by substantial evidence." Wis. Stat. §59.69(5e)(b)2. In this context, the Wisconsin Supreme Court has held "Substantial evidence is evidence of such convincing power that reasonable persons could reach the same decision as the local governmental entity, even if there is also substantial evidence to support the opposite decision. Reasonable inferences may be drawn from credible evidence." *AllEnergy Corporation v. Trempealeau County Environment & Land Use Committee*, 2017 WI 52, ¶75, 375 Wis.2d 329.

The applicants did not present substantial evidence to establish that all of the conditional use standards were met. Rather, the material presented by the applicants stated their personal preferences to relocate to get a better economic deal and were speculative. The sworn statements that were provided attempting to establish economic burden were speculative and did not include any verifiable information regarding AT&T's actual costs for collocation on the existing SBA tower. Nor was any evidence presented to demonstrate that their desire to relocate was anything beyond cost savings as opposed to economic burden.

The zoning committee's findings are supported by substantial evidence. The committee specifically relied upon "the attached engineering report" which was a reference to the report of CityScape Consulting, an independent third party expert that reviewed the application. Given the complex nature of cellular communications networks, Dane County engages the services of an independent radio frequency engineering consultant to review communication tower applications. This is a common practice throughout Wisconsin and the nation and has been required since 1997 when Dane County first adopted a communication tower ordinance. The engineering consultant assists county staff in determining if an application contains all required

information. Once the application is deemed complete, the consultant reviews it and provides a detailed report regarding compliance with applicable federal, state, county regulations.

CityScape concluded that the proposal was contrary to the stated intent and purpose of the county's ordinance. They further concluded that based on the evidence submitted there was no merit to applicant's claim of economic burden by continued collocation on the SBA tower or to request for a variance to exceed a tower height of 195 feet. Some relevant specific findings by CityScape upon which the committee relied are:

- The Application submittals were vague and lacked sufficient explanation and/or definition to enable CityScape to reasonably verify Applicant's claims. (p.2)
- As indicated in multiple instances throughout the Application, including signed Applicant affidavit, the new tower is being proposed by Tillman Infrastructure as a cost-saving measure for AT&T. (p.2)
- The Applicant states there are no useable existing towers in the area and that this new tower is needed to provide AT&T service to Dane County. This statement is, at best, misleading because AT&T has existing service propagating from the existing SBA tower facility located 405 feet north of the proposed new location.
- Based on the Applicant's own submitted coverage maps, there is no substantial improvement in service or coverage between the Applicant's existing facility on the SBA tower and the proposed facility… (p. 3)

CityScape's findings and conclusions were not factually rebutted by the applicants and provided substantial evidence for the committee's decision.

The committee found that the proposed tower did not meet the requirement of DCO §10.220(1)(a)2 regarding Farmland Preservation Districts, that requires that the proposed use be

reasonable and appropriate, considering alternative locations. As established by the staff report, the subject property is comprised of 100% Class II prime farmland soils, is actively farmed and located within a designated farmland preservation area. The existing agricultural use of the property would be negatively impacted, as land would be converted from agricultural use to accommodate the driveway access, tower structure and compound. AT&T is currently collocated on the SBA tower 400 feet away and has failed to reasonably evaluate continued collocation. Moving to the proposed tower will not significantly enhance their coverage and is only intended to get them a better economic deal. Development of the proposed tower would unnecessarily convert land from agricultural use and is contrary to the farmland preservation plan and the interests of the public, all in the name of corporate greed.

Extensive testimony was also provided at the public hearing on November 26, 2019, by Town of Albion officials and residents regarding the negative impact of a second, taller tower, in close proximity to the existing tower. Testimony was also provided by a representative of SBA confirming the company's offer to renegotiate the lease agreement with AT&T. As argued above, the applicant's clearly never reasonably considered the possibility of continued collocation on the SBA tower. Taken together in its totality, there was substantial evidence to support the findings and conclusion of the zoning committee.

THE SWORN STATEMENT SUBMITTED IN SUPPORT OF A PERMIT APPLICATION DOES NOT STATISFY APPLICANT'S BURDEN OF PROOF

The sworn statement submitted in support of the application is a minimum requirement for a completed application. It does not conclusively establish facts and was not binding on ZLR. The applicant has the continuing burden to establish economic burden and show that all the applicable CUP standards are met.

When a county regulates communication towers through a zoning ordinance, Wis. Stat. §66.0404(2)(b) expressly requires a written application:

> **(b)** If a political subdivision regulates an activity described under par. (a), the regulation shall prescribe the application process which a person must complete to engage in the siting, construction, or modification activities described in par. (a). The application shall be in writing and shall contain all of the following information:
>
> **1.** The name and business address of, and the contact individual for, the applicant.
>
> **2.** The location of the proposed or affected support structure.
>
> **3.** The location of the proposed mobile service facility.
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> **4.** If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
>
> **5.** If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
>
> **6.** If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, ***including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.***

(emphasis added) That application requirement is set forth in DCO §10.103(9)(b).

Wis. Stat. §66.0404(2)(c) states: "If the applicant submits to a political subdivision an application for a permit to engage in an activity described under para. (a), which contains all of the information required under para. (b), ***the political subdivision shall consider the application complete."*** (emphasis added) But, that is not the end of the inquiry. Sub (d) then states that after receiving a completed application the county then has 90 days to review the application to

determine whether it complies with all applicable aspects of the political subdivision's …zoning ordinances and make a final decision whether to approve or disapprove the application.

The sworn statement required by §66.0404(2)(b)6, along with the other submittal requirements established by county ordinance and state statute, gets the application past the initial screening by the zoning administrator and before the zoning committee. The applicant still has the burden to submit factual evidence to establish that it meets all of the standards for the particular CUP, including economic burden in this case.

THE APPLICANT HAS FAILED TO PURSUE AN AVAILABLE REMEDY TO THE ALLEGED ECONOMIC BURDEN

The Applicant's equipment is currently located on a tower owned by SBA Communications that is subject to CUP #1683. Without any substantiation, the affidavit submitted by AT&T states that the SBA Tower is high cost relative to other sites in their portfolio. In a letter dated June 28, 2019, Kent Meier, Site Marketing Manager for SBA stated that AT&T recently signed a lease amendment, and "at no time in those negotiations did AT&T ask for a reduction in rent." Mr. Meier further stated that as of the date of that letter he had reached out to AT&T "to discuss their needs further." (Ex. C, Staff Report) At the public hearing before the zoning committee on November 26, 2019, Attorney Kevin Pollard on behalf of SBA "indicated that the company had offered and was still willing to renegotiate the terms of AT&T's lease, but that AT&T did not respond." (ZLR Minutes, Nov. 26, 2019, p. 11)

CUP #1683 includes a condition that requires the permittee to allow collocation and that "rates charged for collocation must conform to the prevailing market rate in the region and upon contractual provisions which are standard in the industry." Early in discussions between County

staff and the applicant, staff advised applicant that if SBA was charging above reasonable market rates they had an available remedy to cure the alleged economic burden:

> During those contacts with applicant's agents, staff repeatedly explained that this type of proposal would challenge the fundamental principle of collocation as a preferred siting option which underlies both the county ordinance and applicable state statute. Staff also explained that there is an existing remedy under the county ordinance to address the allegation of burdensome lease terms and costs. If there is merit to the complaints leveled against SBA regarding burdensome lease terms and costs, it may in fact constitute a violation of a condition of their permit which requires that collocation spots be made available, "*...at the prevailing market rate in the region and upon contractual provisions which are standard in the industry.*" If such a violation were discovered, and not remedied, it would be grounds for revoking the permit. Staff has shared this perspective with all the stakeholders from the outset, and suggested that should be the the first avenue pursued for remedy of the alleged economic burden.

(Staff Report, p. 5) In spite of this, the Applicant has made an intentional decision not to engage with SBA regarding rates or pursued the remedy of formally complaining that SBA is violating the terms of its CUP. [3] The Applicant's refusal to pursue these remedies and propose building another tower only 400 feet away has nothing to do with economic burden. It is simply to maximize profits at the expense of the public welfare.

Based upon the evidence presented, the ZLR made the following finding: "4. The applicant is currently collocated on an existing tower approved under Conditional Use Permit #1683 and has refused to evaluate the feasibility of continued collocation on the existing communication tower located within the applicant's search ring." The finding is based on substantial evidence. The Applicant argues in their Appeal filed December 26, 2019 that a denial based on their failure to exhaust remedies for collocation is inconsistent with Wis. Stat. §66.0404. They provide no rationale for this argument, because none exists. Requiring

[3] The Zoning Division cannot unilaterally pursue this issue without rate information from Applicant that they have refused to provide.

collocation if feasible and not an economic burden is completely consistent with §66.0404 and the county's ordinances.

A MORE COST EFFECTIVE OR PROFITABLE OPTION DOES NOT MAKE COLLOCATION ECONOMICALLY BURDENSOME

Wisconsin Statutes and Dane County Ordinances favor collocation of communication towers. The stated purpose of Dane County's ordinance regarding communication towers includes:

5. Minimizes the number of transmission towers throughout the County; and

6. Encourages the joint use of new and existing telecommunication facilities as a preferred siting option.

Wis. Stat. §66.0404(2)(e) authorizes a political subdivision to disapprove an application if the applicant refuses to evaluate the feasibility of collocation.

To further the goal of promoting collocation the applicant must establish that collocation is economically burdensome. The legislature has not defined the term "economically burdensome." In January 2019 Dane County adopted a comprehensive revision of its zoning ordinance that included the provision that "For purposes of this section, 'economically burdensome" means the cost of collocation exceeds the cost of construction of a new tower by 25 percent or more." DCO §10.103(9)(b)1bii. That provision was in effect at the time of this application. It was subsequently determined that the language was ambiguous and was rescinded effective January 28, 2020. The newly enacted ordinance states "For the purposes of this ordinance, cost savings or increased profitability shall not be considered an economic burden."

The definition of "economically burdensome" in effect at the time of this application is vague and ambiguous and cannot be rationally applied. It states "'economically burdensome' means that the cost of collocation exceeds the cost of construction of a new tower by 25 percent or more." But, over what period of time do you consider the cost of collocation? The applicants conveniently use a 20 year period. There is no indication that was the intent of the county board. Wisconsin law states that a statute (or ordinance) "is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses." *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶47, 271 N.W.2d 633. The test is to determine "whether well-informed persons should have been confused." *Id.* Likewise, a statute is unconstitutionally vague is whether appropriate legal analysis can result in a reasonably definite meaning. *State v. Hahn*, 221 N.W.2d 670, 682 (Ct. App. 1998). Clearly, the ordinance definition of "economically burdensome" is susceptible to multiple interpretations. There is no indication of what period of collocation should be used to determine if it exceeds the cost of construction of a new tower by 25%. There is no legal analysis that can provide a reasonably definite meaning. Therefore, the ordinance language is vague and ambiguous and cannot be applied.

Words not specifically defined in an ordinance should be accorded their commonly accepted meaning. This meaning may be established by reference to a recognized dictionary. *Weber v. Town of Saukville*, 197 Wis.2d 830, 837-38 (Ct. App. 1995). The term "burdensome" is an adjective that derives from the noun "burden." In this context a burden is something "oppressive," which means extreme harshness or severity. *Merriam-Webster On-line Dictionary*. Another definition for "burden" is "onerous." *Black's Law Dictionary*, 5th Ed.

In *Eco-Site, LLC v. Town of Cedarburg,* 2019 WI App 42, 388 N.W.2d 375 Presiding Judge Reilly clearly stated in a concurring opinion that "the fact that [the cellular company] wants to save money …is not a legitimate reason to override zoning regulations." *Eco-Site, LLC,* 2019 WI App 42, ¶29. Therefore, the applicants must prove more than locating on a new tower is more profitable or a better deal. They must prove that continued collocation is economically oppressive or onerous.

THE APPLICANT FAILED TO PRODUCE ANY EVIDENCE REGARDING THE FEASIBILTY OF CONTINUED COLOCATION

The zoning committee made a finding that "the applicant is currently collocated on an existing tower approved under Conditional Use Permit #1683 and has refused to evaluate the feasibility of continued collocation on the existing communication tower located within the applicant's search ring." Wis. Stat. §66.0404(2)(e) states that a political subdivision may disapprove an application if an applicant refuses to evaluate the feasibility of collocation. The applicant made unsubstantiated allegations of economic burden if they remain collocated on the SBA tower, but in fact they are just looking for a better deal. This may make economic sense for AT&T, but it does not outweigh the public's interest in minimizing the number of towers in an area. The ZLR finding was supported by substantial evidence in the record and this board should make a similar finding.

AT&T's wireless communications facilities are currently located on a tower owned by SBA Communications that is 400 feet from the site of the proposed tower. Although AT&T seeks to relocate due to "economically burdensome lease terms at existing tower," it presented no evidence to establish this assertion. They stated in the affidavit submitted in support of the application that:

- Remaining collocated on the SBA tower "would not result in the same cost-effective operation as compared to what AT&T could achieve if it relocated its Wireless Facilities to the Tillman Tower. (Para. 5)
- Current rent charged by SBA is over three times what Tillman will charge to co-locate. (Para. 6)
- The economic terms imposed by SBA are not cost effective when the Tillman Tower presents a more competitive option. (Para. 14)

None of these allegations were supported by facts, and indicate that what AT&T is really looking for a better deal, not that the current collocation is an economic burden.

Wis. Stat. §66.0404(2)(a) authorizes Dane County to enact a zoning ordinance to regulate the siting and construction of new communication towers. Pursuant to that authority, Dane County has adopted specific requirements for communication tower CUPs in §10.103(9). The stated purpose of those requirements is "to provide a uniform and comprehensive set of standards for the development and installation of telecommunication and related facilities,... The provisions of this section are intended to ensure that telecommunications facilities are located, constructed, maintained and removed in a manner that:

5. Minimize the number of transmission towers throughout the County;

6. Encourages the joint use of new and existing telecommunication facilities as a preferred siting option.

The legislature has provided in Wis. Stat. §66.0404(2)(b)6 that an application for a communication tower CUP under the County's zoning ordinance shall include information regarding the applicant's consideration of collocation:

> If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the

> applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.[4]

Wis. Stat. §66.0404(2)(e) states: "A political subdivision may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under par. (b)6." The Court of Appeals specifically considered this requirement in *Eco-Site, LLC v. Town of Cedarburg*, 2019 WI App. 42, 388 Wis.2d 375. The concurring opinion of Presiding Judge Reilly is particularly instructive regarding an applicant's consideration of collocation:

> T-Mobile has its antenna 1300 feet from the proposed site under contract through 2031. While T-Mobile can save approximately $230,000 by becoming the anchor tenant on Eco-Site's tower and Eco-Site will profit by selling the remaining locations on its tower to other communication companies, there is no showing that without Eco-Site's tower the communication needs of the Town would not be met. The fact that T-Mobile wants to save money and Eco-Site wants to make money is not a legitimate reason to override zoning regulations.

Id. ¶29.

In this case AT&T is collocated on SBA's tower just 400 feet from the proposed tower. AT&T has been collocated in on the SBA Tower since 2000 and recently negotiated an extension of its lease. SBA indicated their tower has the capability to accommodate more equipment on behalf of AT&T. AT&T has presented nothing more than unsubstantiated allegations of economic burden. The fact that the cell companies may be able to get a better deal on another tower does not constitute economic burden and does not outweigh the public's interest as set forth in the ordinance of minimizing the number of towers throughout the county.

[4] Dane County adopted this requirement as part of its application process in DCO §10.103(9)(b)1b.

The zoning committee's decision to deny the proposed CUP was based on credible and substantial evidence. The county has a valid interest in protecting the public welfare by limiting the number of communication towers in the county and in furtherance of that requiring collocation. This is not a situation where AT&T is unable to provide cell service to its customers. They have been collocated on the SBA tower since 2000 and the record shows that tower has capacity to handle their future needs. Their own data showed that their service coverage would not be increased by moving to the proposed tower. AT&T has presented no evidence to establish an economic burden if they remain on the SBA tower. They certainly aren't losing money. They want to relocate to get a better deal, plain and simple. The fact that it may be more "cost effective" to relocate does not out-weigh the public interest. In addition the zoning committee made findings that the proposed tower would impede the use and development of neighboring property, was inconsistent with applicable land use plans, and failed to meet the CUP standards in a Farmland Preservation District. For all of the foregoing reasons the decision of the zoning committee should be affirmed and the CUP denied.

Dated March 5, 2020

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