



OFFICE OF THE CORPORATION COUNSEL

July 17, 2015

Mr. Roger Lane
Dane County Zoning Administrator
Room 116, City-County Building
Madison, WI 53703

RE: Insurance Conditions of CUP #2291

Dear Mr. Lane:

The Zoning and Natural Resources Committee (ZLR) issued Conditional Use Permit (CUP) # 2291 to Enbridge Energy Company (Enbridge) that included a condition requiring Enbridge to obtain additional liability insurance. A recent enactment of the legislature that was included in the Budget Bill prohibits counties from requiring an operator of an interstate hazardous liquid pipeline to obtain insurance if the company carries comprehensive general liability coverage that includes sudden and accidental pollution liability. Since Enbridge has the required general liability coverage, the CUP condition requiring additional insurance is unenforceable by the county.

Enbridge operates a pipeline through Northeastern Dane County that is a preexisting legal nonconforming use. They currently have comprehensive general liability insurance on the pipeline and its facilities that includes sudden and accidental pollution liability coverage. Enbridge applied for a CUP for a new pumping station in the Town of Medina. CUP #2291 as approved by ZLR included the following conditions regarding insurance:

7. Enbridge shall procure and maintain liability insurance as follows:
\$100,000,000 limits in General Liability insurance with a time element exception to the pollution exclusion (currently in place), and \$25,000,000 of Environmental Impairment Liability insurance. Enbridge shall list Dane County as an Additional Insured on the total \$125,000,000 of combined liability insurance.
8. The required General Liability Insurance and Environmental Impairment Liability insurances shall meet the technical insurance specifications listed in Appendix A of the insurance consultant's report, which is incorporated herein by reference.

Appendix A of the CUP included additional insurance specifications.

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The state Budget Bill, 2015 Wisconsin Act 55, was enacted on July 12, 2015 and published on July 13, 2015. Pursuant to Wis. Stat. §991.11, the provisions of the Budget Bill became effective on July 14, 2015. Section 1923e of the Budget Bill created Wis. Stat. §59.70(25), entitled "Interstate Hazardous Liquid Pipeline," which states:

A county may not require an operator of an interstate hazardous pipeline to obtain insurance if the pipeline operating company carries comprehensive general liability insurance coverage that includes coverage for sudden and accidental pollution liability.

There is no doubt that §59.70(25) was adopted by the legislature to specifically apply to Enbridge's pipeline in Dane County. But, it is not an unconstitutional local bill prohibited by Art. IV, Section 18 of the Wisconsin Constitution. It is not a closed class, and in fact applies to all counties through which Enbridge's pipelines (and other companies) run, and is a topic of statewide interest. *City of Brookfield v. Milwaukee Metropolitan Sewerage District*, 144 Wis. 2d 896 (1988).

A county's zoning authority is subject to the control of the legislature. The law is clear that a county is a creature of the legislature, and has only those powers that the legislature by statute provides. *Jackson County v. State, Department of Natural Resources*, 293 Wis.2d 497, 510-511(2006) (Citing multiple authorities). Conversely, the legislature has the authority to limit by statute a county's authority. In *State ex rel. Ziervogel v. Washington County Bd. Of Adjustment*, 269 Wis.2d 549 (2004) the Supreme Court made clear that a county's limited home rule authority does not authorize it exercise its zoning authority inconsistent with the legislature's will as set forth in state statute.

Section 59.70(25) expressly prohibits a county from requiring a pipeline operator to obtain insurance if they have the required coverage. Therefore, Dane County has no authority to require Enbridge to obtain additional insurance coverage. There is no issue of retroactive application of the statute. By the express language of the statute, effective July 14, 2015 the county is prohibited from requiring the insurance coverage. When the CUP was approved is irrelevant. The insurance conditions are rendered unenforceable prospectively by the language of §59.70(25).

Please contact me if you have questions regarding this opinion.

Sincerely,



David R. Gault
Assistant Corporation Counsel