

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DUANE R. STEIEN,

Plaintiff,

v.

JACKSON COUNTY ZONING  
COMMITTEE,

Defendant.  
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ORDER

04-C-0012-C

Plaintiff Duane R. Steien is challenging a decision by defendant Jackson County Zoning Committee denying him a permit to build a cellular communications tower on his farm in Jackson County, Wisconsin. Plaintiff contends that the committee's decision violated the Telecommunications Act of 1996 and his rights to due process under the United States Constitution and various provisions of the Wisconsin Statutes. Initially, plaintiff brought his challenge as a petition for a writ of certiorari in the Circuit Court for Jackson County. That court issued the writ, requiring defendant to produce the records of all prior proceedings within 30 days. Before the 30-day period ran, defendant removed the case to this court, alleging that the case involved a federal question, giving the court jurisdiction to

hear it under 28 U.S.C. § 1331.

Although the case has been removed, the writ remains in effect. 28 U.S.C. § 1450 (when case is removed to federal court, all injunctions and orders issued before the removal remain in force until dissolved or modified by district court). Defendant has moved for its dissolution; plaintiff opposes the motion, saying that dissolving the writ would deprive him of rights he would have had in state court. Because I can see no reason why the dissolution of the writ would do anything but clarify defendant's obligations as they relate to two different courts, the motion will be granted.

Plaintiff is concerned that without the writ, the zoning committee records will not be made available to this court for review. He need not worry. No decision can be made on his case without the records. Defendant will be required to produce them; the only difference is that they will be produced to this court and not to the state circuit court, where no case is pending.

Plaintiff has filed two additional motions. One is for an expedited hearing; the other is to strike defendant's answer and affirmative defenses. The magistrate judge has set a schedule for resolution of this case. His doing so resolves the request for an expedited hearing. The matter will be reached in accordance with the court's February 12, 2004 pretrial conference order.

Plaintiff's motion to strike is based on his assertion that responsive pleadings are not

permitted in a certiorari action. As defendant points out, however, plaintiff has raised matters in his pleadings that go beyond those that may be raised in a petition for a writ of certiorari, raising issues of substantive violations of federal and state law. Defendant cannot be denied an opportunity to answer those allegations and to raise any affirmative defenses it has.

#### ORDER

IT IS ORDERED that defendant Jackson County Zoning Committee's motion to dissolve the writ of certiorari served on defendant on December 10, 2003, is GRANTED; plaintiff Duane R. Steien's motions to strike defendant's answer and affirmative defenses is DENIED; plaintiff's motion for expedited review of this matter is DENIED to the extent that plaintiff seeks prompter judicial action than is specified in the preliminary pretrial conference order entered on February 12, 2004.

Entered this 4th day of March, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge