City of Waupun

201 E. Main Street
Phone: 920-324-7917
Fax: 920-324-7939

"Wild Goose Center of Wisconsin"

April 15, 2016

TO: Plan Commission Members
FROM: Mayor, Kyle Clark
SUBJECT: Plan Commission meeting scheduled for **Wednesday, April 20, 2016, at 4:45 p.m.** in the Council Chambers, City Hall, Waupun.

AMENDED AGENDA

1. Call to Order
2. Roll Call
3. Recognition of Council Member to the Plan Commission as approved by the Common Council.
4. Approve minutes of the March 16, 2016 meeting.
5. Discuss / Approve Site Plan for parking lot for Flexographic Packaging at 21 Taylor St.
6. Discuss / Approve – Letter of Intent – Land Division Request – Bruce VandeZande at N11363 STH 26.
7. Discuss League of Wisconsin Municipalities "Regulation of WITN's Poles in Local Right-of-Ways".
8. Discuss / Possible action of Wisconsin Technology Networking LLC Right-of-Way Utilization Permit Application.
9. Adjournment

Cc: Mayor & Common Council
City Attorney
Department Managers
Media
A Glewen & Sons Excavating
Flexographic
Bruce VandeZande
Wisconsin Technology Networking LLC

It is possible that members of and possibly a quorum of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No action will be taken by any other governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice.

Please note that, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service contact Angie Hull, City Clerk at 920-324-7900.

CITY OF WAUPUN
PLAN COMMISSION
MINUTES OF THE MARCH 16, 2016 MEETING
(**DRAFT**)

1. Call to Order:
   The Plan Commission met at 4:45 p.m. in the Council Chambers, City Hall, Waupun.

2. Roll Call:
   Members Present: Kyle Clark, Fred Lueck, Nancy Vanderkin, Elton TerBeest, Jerry Medema, and Derek Drews
   Members Excused: Dick Flynn
   Staff Present: None

3. Chairman Clark called for the approval of the minutes of the February 17, 2016 meeting. Motion by Vanderkin, seconded by TerBeest to approve the minutes of the February 17, 2016 meeting, motion carried, minutes approved.

4. Public Hearing – Conditional Use Permit application for Waupun Methodist Church at 199 E Jefferson St. Chairman Clark read the call of the hearing and its purpose. Marty Sell, Architect, appeared to discuss the churches construction plans. He pointed out that the old church building will be demolished and a new building will replace it at the same location. They intend to save the existing steeple and put it back on top of the new construction. Lueck questioned whether they have submitted any erosion control plans for the construction. Mr. Sell said he has talked to Sue Leahy about it but hasn't submitted anything yet as he said the existing elevations will be maintained.

   A staff memo from Susan Leahy, City Zoning Administrator was placed into the record, briefly describing the project in the R-4 Central Area Single Family Residential Zoning District, the Zoning Ordinance section requiring the Conditional Use Permit, the Site Plan approval and other zoning restrictions. Her recommendation is to approve the Conditional Use Permit as presented.

   No further facts were presented for or against this project so Chairman Clark declared the hearing closed.

   Motion by Medema, seconded by TerBeest to approve a Conditional Use Permit for the replacement of the Waupun United Methodist Church Sanctuary at 199 E Jefferson St.

   Vote: Drews, Medema, TerBeest, Vanderkin, Lueck, and Clark – "AYE"
   Motion carried, unanimously.

5. Discuss parcel split on CTH "MMM"
   Jeff and Matt Navis appeared and said they are proposing to purchase a 10.45 acre parcel from the Rock River Country Club. The parcel lies within the City limits of Waupun and is for the most part a wetland or marshy area. Their intent is to use the land for hunting purposes. Chairman Clark noted a neighbor in this area sent a letter to the City indicating she is opposed to creating the parcel for hunting within the City limits. The Navis's indicated they would only use the land for bow hunting. Police Chief Heeringa appeared to discuss hunting within the City

limits of Waupun. He said a City Ordinance was adopted in 2012 for hunting deer within the City. State law requires a bow hunter must be 100 yards from a residence and the trajectory of the arrow must be downward, such as from a tree stand. He also noted that the Governor recently signed Act 71 which would supersede the City's ordinance.

The Navis's indicated they would access the parcel by a 10' easement across a relative's property in the adjacent Town of Waupun, therefore, the proposed parcel will not physically abut CTH MMM.

Lueck pointed out that Section 17.5(4) Certified Map section of the City's Subdivision Ordinance indicates that all lots created by a division of land less than a subdivision shall front on a public road for a minimum distance of sixty six feet (66') if unsewered. Therefore, their proposal will not comply with the City's Subdivision Ordinance.

The Navis's indicated they cannot buy a 66' strip as it might then involve several more family members. Lueck pointed out that an easement is a legal document but as a way to access property it can become very frustrating in the future resulting in feuds between property owners as land uses tend to change under the easement or the parcel itself. Right now they only want to use the 10 acre parcel for deer hunting, however maybe in 10 years they or a future owner would want to build a hunting shack on the site or drain the lot for agriculture use or build a home on a high spot with only a 10' walking easement they have no way to develop the site if they want to, and it becomes a useless piece of property. It is the job of the Planning Commission to make sure that all lands within the City are developed in a manner so as to not create future problems for its citizens and to allow the creation of a lot without any permanent road frontage will result in a problem in the future. The Navis's asked what alternative they may have to create this parcel. One alternative would be to try and get a variance to the subdivision ordinance from the Zoning Board of Appeals if they can make the required findings and they put a deed restriction on the parcel that would limit its use to any open space uses, such as specific hunting as allowed by the City or the State within the City Limits. Another alternative would be to annex the lands to the Town of Waupun and let the Towns ordinances apply and they may or may not be more restrictive.

The Plan Commission decided the Navis's should consider other alternatives and come back at a later date.

6. Discuss application from the Wisconsin Technology Networking for a proposed new utility infrastructure facility. Chairman Clark noted that he has pulled this item off the agenda as they have not provided sufficient information to act on their request.

7. Motion by Vanderkin, seconded by Lueck to adjourn the meeting. Motion carried, meeting adjourned at 5:32 pm.

Fred Lueck
Secretary

EXISTING INLET
RIM: 891.65
12" INV. W 888.63
DEPTH = 3.02'

12" CONC. STO

CORE BACK OF INLET @ 889.0±

160'-- 8" STO (BY OTHERS)

EXIST. CONCRETE APRON

TAYLOR ST (66')

REMOVE EXISTING APRON

STO MH
RIM 893.8
8" INV. W,S 888.3

EXIST. CONCRETE APRON

REMOVE CURB BACK AT NEW ENTRANCE

BM2

MATCH WALK

CONCRETE WALK

S 89°47'44" W 132.52' (132')

(66')

LOT 7, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION

14" DIA. SPRUCE

LOWER WALK @ DRIVE AND MATCH BACK INTO EXISTING WALK AS SHOWN

REMOVE 18" DIA. WHITE PINE

LOT 10, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION

LOT 9, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION

EXIST. HSE.

6' HIGH CHAIN LINK FENCE W/ PRIVACY SLATS

INL
RIM 897.0
8" INV. N 893.5

REMOVE 16" DIA. RED PINE

LEGAL DESCRIPTION

Lot NINE (9), IN BLOCK FIVE (5) OF TAYLOR AND ACKERMAN'S ADDITION TO THE CITY OF WAUPUN, FOND DU LAC COUNTY, WISCONSIN

PARCEL ID: WPN-14-15-99-TC-265-00
PARCEL AREA: 10,000 Sq. Feet (0.23 Acres)
PARCEL ADDRESS: 21 TAYLOR ST.

N STATE ST (66')

(379.5') 380.94'

S 00°16'42" W 150.84' (150')

N

W E

S

BEARINGS ARE REFERENCED TO THE WISCONSIN COUNTY COORDINATE SYSTEM FOR FOND DU LAC COUNTY THE EAST LINE OF THE NORTH STATE STREET, BEARS N00°16'42"E.

SCALE IN FEET
0 5' 10' 20'

NOTES:

1. INSTALL 6" THICK CONCRETE WALK AND APRON @ DRIVE; 4" THICK WALK @ OTHER LOCATIONS

STORM SEWER SIZING

7200 S.F. ASPHALT GENERATES APPROXIMATE 0.5 CFS STORM WATER FOR 10 YEAR STORM.

CAPACITY OF 8" STO @ 5.93% SLOPE IS 3 CFS (SITE) AND AT 0.8% IS 1.1 CFS (STREET)

EXISTING LEGEND

- = POWER POLE
- = CATCH BASIN
- = UNDERGROUND GAS LINE
- = STORM SEWER
- = OVERHEAD POWER LINE
- 900 = EXISTING CONTOUR
- = UNDERGROUND ELECTRIC
- = 3/4" DIA. ROUND REBAR FOUND
- = 1" DIA ROUND IRON PIPE FOUND.
- = 3/4" DIA ROUND IRON PIPE FOUND.
- ( ) = RECORDED AS

PROPOSED LEGEND

- x899.0 = PROPOSED ELEVATION
- = PROPOSED DIRECTION OF DRAINAGE

Benchmarks

BM1 TAG BOLT HYDRANT NORTH SIDE TAYLOR ST. 1ST HYD EAST OF SITE
ELEV. = 894.74 (NAVD 88)

BM2 SPIKE IN SW FACE PP SOUTH SIDE TAYLOR ST. NORTH SIDE OF SITE
ELEV. = 895.83 (NAVD 88)

CHAIN LINK FENCE

6' HIGH WOOD FENCE

LOT 12, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION

POWER POLE

GUY WIRE

S 89°47'43" W 132.28' (132')

(66')

ALLEY (13.5')

ASPHALT PAVEMENT

LOT 13, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION

LOT 11, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION

N 00°16'42" E

NW COR LOT 7, BLOCK 2
TAYLOR & ACKERMAN'S ADDITION

LOT 5, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION

1" DIA. IRON PIPE FND. S00°22'04"W 0.74' OF LOT COR.

LOT 4, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION

REVISIONS

SCHULER & ASSOCIATES, INC.
LAND SURVEYORS & ENGINEERS
2711 N. MASON STREET, Suite F APPLETON, WI 54914-2126 (920) 734-9107

SITE/ DRAINAGE/ GRADING PLAN
PARKING LOT
21 TAYLOR ST
CITY OF WAUPUN, FOND DU LAC COUNTY, WI
For: A GLEWEN & SONS EXCAVATING, INC.
N3228 MARSHVIEW RD., WAUPUN, WI 53963

DRAWN	MJF
DATE	03-02-16
SCALE	1"=10'
JOB NO.	4426
SHEET	1

C:\Carlson Projects\4400\4426SITE.dwg, 3/11/2016 10:32:40 AM, DWG To PDF.pc3

EXISTING INLET
RIM: 891.65
12" INV. W 888.63
DEPTH = 3.02'
12" CONC. STO

EXIST. CONCRETE APRON
TAYLOR ST (66')
EXIST. CONCRETE APRON
894
BM2
895
CONCRETE WALK
896
897
898
S 89°47'44" W
(66')
66.30'
(66')
S 89°47'44" W 132.52'
(132')
(66')
LOT 7, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION
14" DIA. SPRUCE
CONCRETE
CONCRETE
898
899
18" DIA. WHITE PINE
LOT 10, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION
EXIST. HSE.
150.84'
(150')
0.8'
16" DIA. RED PINE
LOT 8, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION
10,000 Sq. Feet
0.23 Acres
900
150.84'
(150')
LOT 11, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION
6.0'
901
6' HIGH WOOD FENCE
N STATE ST (66')
(379.51')
380.94'
S 00°16'42" W
150.84'
(150')
N 00°16'42" E
S 00°22'04" W
S 00°21'43" W
LOT 12, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION
900
899
POWER POLE
5.9'
1.1'
(66')
S 89°47'43" W
(132')
132.28'
(66')
S 89°47'43" W
66.29'
(66')
GUY WIRE
ASPHALT PAVEMENT
ALLEY (13.5')
POWER POLE
LOT 13, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION
898
NW COR LOT 7, BLOCK 2
TAYLOR & ACKERMAN'S
ADDITION
LOT 5, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION
1" DIA. IRON PIPE
FND. S00°22'04"W 0.74'
OF LOT COR.
LOT 4, BLOCK 5
TAYLOR & ACKERMAN'S ADDITION
CHAIN LINK FENCE

LEGAL DESCRIPTION

Lot NINE (9), BLOCK FIVE (5) OF TAYLOR AND ACKERMAN'S ADDITION TO THE CITY OF WAUPUN, FOND DU LAC COUNTY, WISCONSIN

I, MICHAEL J. FRANK, WISCONSIN PROFESSIONAL REGISTERED LAND SURVEYOR, HEREBY CERTIFY THAT I HAVE SURVEYED THE ABOVE DESCRIBED PROPERTY AND THAT THE MAP SHOWN IS A TRUE AND ACCURATE REPRESENTATION THEREOF TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED THIS _____ DAY OF _____, 2016

MICHAEL J. FRANK S-2123
WISCONSIN REGISTERED LAND SURVEYOR

N
W E
S

BEARINGS ARE REFERENCED TO THE WISCONSIN COUNTY COORDINATE SYSTEM FOR FOND DU LAC COUNTY THE EAST LINE OF THE NORTH STATE STREET, BEARS N00°16'42"E.

SCALE IN FEET
0' 5' 10' 20'

EXISTING LEGEND

- POWER POLE
- CATCH BASIN
- GAS — UNDERGROUND GAS LINE
- OHP — OVERHEAD POWER LINE
- 900 — EXISTING CONTOUR
- ELE — UNDERGROUND ELECTRIC
- ■ = 3/4" DIA. ROUND REBAR FOUND
- ◉ = 1" DIA ROUND IRON PIPE FOUND.
- ◑ = 3/4" DIA ROUND IRON PIPE FOUND.
- ( ) = RECORDED AS

Benchmarks

BM1 TAG BOLT HYDRANT NORTH SIDE TAYLOR ST.
1ST HYD EAST OF SITE
ELEV. = 894.74 (NAVD 88)

BM2 SPIKE IN SW FACE PP SOUTH SIDE TAYLOR ST.
NORTH SIDE OF SITE
ELEV. = 895.83 (NAVD 88)

REVISIONS

SCHULER & ASSOCIATES, INC.
LAND SURVEYORS & ENGINEERS
2711 N. MASON STREET, Suite F APPLETON, WI 54914-2128 (920) 734-5107

BOUNDARY/TOPOGRAPHIC SURVEY
LOT 9, BLOCK 5, TAYLOR & ACKERMAN'S ADDITION
21 TAYLOR ST. WAUPUN, WI 54963
CITY OF WAUPUN, FOND DU LAC COUNTY, WI
For: A GLEWEN & SONS EXCAVATING, INC.
N3228 MARSHVIEW RD., WAUPUN, WI 53963

DRAWN	MJF
DATE	03-11-16
SCALE	1"=10'
JOB NO.	4426
SHEET	1

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Dodge County
Land Resources and Parks Department

127 East Oak Street · Juneau, WI 53039-1329
PHONE: (920) 386-3700 · FAX: (920) 386-3979
EMAIL: landresources@co.dodge.wi.us

DATE SENT TO CITY: ***MARCH 23, 2016***

DEADLINE FOR CITY DENIAL: ***APRIL 23, 2016***

LETTER OF INTENT NOTIFICATION

Please find attached a copy of the minor subdivision letter of intent(s) submitted to our department for approval.

NAME	TOWN	ACTIVITY NUMBER
BRUCE VANDE ZANDE	CHESTER	2016-0116

Please notify our department of your City's position on the enclosed letter(s) of intent. If your City does not return the completed form by the above deadline or file a request that the County review be delayed until a date after which your City has reviewed the proposal, we will assume that the City is in favor of the land division request and we will then proceed with scheduling County Planning Committee review at their next available meeting.

CONTACT: Land Resources and Parks Department
ATTN: Land Division
127 E. Oak Street
Juneau, WI 53039

Phone: (920) 386-3700
FAX: (920) 386-3979

Thank you!

CITY'S RECOMMENDATION

APPROVE ☐ **DENY** ☐ **NO RECOMMENDATION** ☐

LAYOVER TO DATE: _____ ☐

COMMENTS: _____

_____

_____

_____
CITY REPRESENTATIVE

DODGE COUNTY
LAND RESOURCES AND PARKS DEPARTMENT
127 E. OAK STREET • JUNEAU, WI 53039
PHONE: (920) 386-3700 • FAX: (920) 386-3979
E-MAIL: landresources@co.dodge.wi.us

THIS AREA FOR OFFICE USE ONLY

Activity No.	Expiration Date
160116	
Application Date: 3/22/16	Receipt #: 894098

MINOR LAND DIVISION LETTER OF INTENT FORM

Application Fee: $75 (Non-Refundable)

NAMES & MAILING ADDRESSES	PROPERTY DESCRIPTION
Applicant (Agent): Jeffrey S. Butzke d/b/a Compass Surveying, LLC	Parcel Identification Number (PIN): 010-1315-0844-000 & 010-1315-0843-000
Street Address: 611 Kingswood Avenue	Town: Chester; T 13 N; R 15 E
City • State • ZipCode: Fond du Lac, WI 54935	1/4: SE & SW; 1/4: SE; Section: 8; Acreage of Parent Parcel: 75.502; Acreage of Proposed Lot(s): 9.200 & 64.569
Property Owner (If different from applicant): Bruce Vande Zande d/b/a Vande Holsteins LLC	Subdivision (Name, lot and block) or CSM # (Volume/Page/Lot):
Street Address: N11363 STH 26	Site Address Of Property (DO NOT Include City/State/ZipCode): N11363 S.T.H. 26
City • State • ZipCode: Waupun, WI 53963	Is this property connected to public sewer? ☐ Yes ☒ No

CONTACT PERSON

Name and daytime phone number (include area code) of a person we can contact if we have any questions about your application.

Name Jeffrey S. Butzke Daytime Phone (920) 517 - 1683

CURRENT PROPERTY USE	PROPOSED USE
☐ Vacant Property	☒ Single Family Residential
☒ Single Family Residential	☐ Duplex (Two-family Residential)
☐ Duplex (Two-Family Residential)	☐ Multi-Family Residential
☐ Multi-Family Residential	• Number of residential units: _____
• Number of residential units: _____	☐ Agricultural Use Only – No residential structures
☐ Active Working Farm Operation	☐ Open Space Recreational / Wetlands - No residential structures
☐ Recreational / Wetlands / Wooded Parcel	☐ Business / Industrial / Commercial Use (Describe Below)
☐ Business / Industrial / Commercial Use (Describe Below)	☐ Other (Describe Below)
☐ Other (Describe Below)	

A SKETCH PLAN SHOWING THE PROPOSED LAND DIVISION IS REQUIRED TO BE SUBMITTED WITH THIS APPLICATION.

CERTIFICATE

I, the undersigned, hereby apply for Minor Land Division approval and certify that all the information both above and attached is true and correct to the best of my knowledge. I hereby authorize members of the Dodge County Land Resources and Parks Department to enter the above-described property for purposes of obtaining information pertinent to my request.

Signature Valerie VandeZande Date 3/21/2016

Daytime Contact Number (920) 960 - 4153

OFFICE USE ONLY

☐ **CUP Required (App _____)** ☐ **REZONE Required (App _____)** ☐ **Restriction Release Required**

Notes:

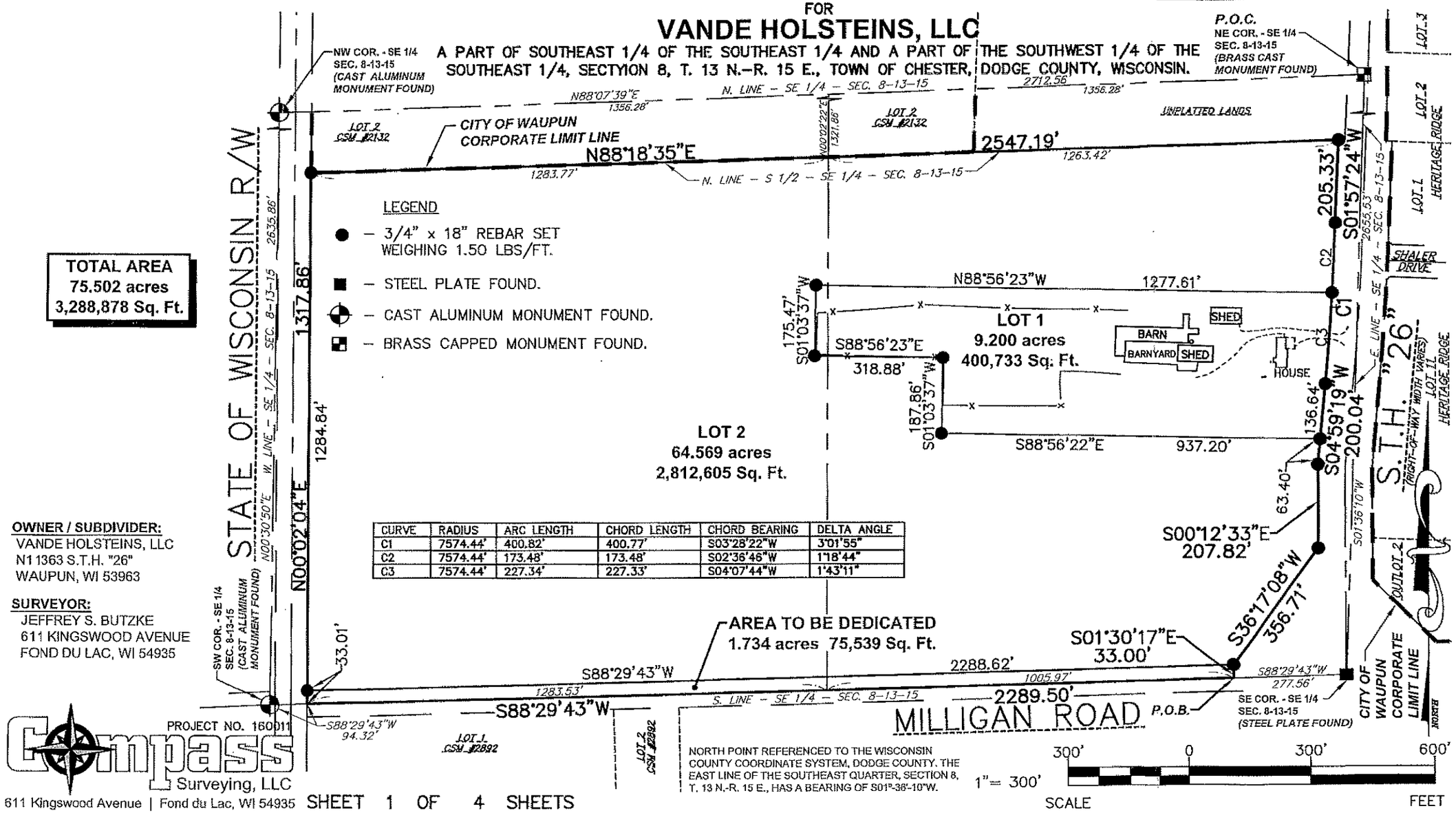
APPROVED	DENIED	LAND RESOURCES AND PARKS DEPARTMENT
☐	☐	_____ Date _____

DODGE COUNTY CERTIFIED SURVEY MAP NO. _____

FOR

VANDE HOLSTEINS, LLC

A PART OF SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 AND A PART OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4, SECTYION 8, T. 13 N.–R. 15 E., TOWN OF CHESTER, DODGE COUNTY, WISCONSIN.



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	7574.44'	400.82'	400.77'	S03°28'22"W	3°01'55"
C2	7574.44'	173.48'	173.48'	S02°36'46"W	1°18'44"
C3	7574.44'	227.34'	227.33'	S04°07'44"W	1°43'11"

NORTH POINT REFERENCED TO THE WISCONSIN COUNTY COORDINATE SYSTEM, DODGE COUNTY. THE EAST LINE OF THE SOUTHEAST QUARTER, SECTION 8, T. 13 N.-R. 15 E., HAS A BEARING OF S01°-38'-10"W.

OWNER / SUBDIVIDER:
VANDE HOLSTEINS, LLC
N1 1363 S.T.H. "26"
WAUPUN, WI 53963

SURVEYOR:
JEFFREY S. BUTZKE
611 KINGSWOOD AVENUE
FOND DU LAC, WI 54935

PROJECT NO. 160011

Compass Surveying, LLC
611 Kingswood Avenue | Fond du Lac, WI 54935

LEAGUE OF WISCONSIN MUNICIPALITIES

The League-L

This is the second edition of the League-L, the League of Wisconsin Municipalities legal bulletin for cities and villages. It will bring you up to speed quickly on recent court decisions, arguments and cases that impact local government operations and is sent only when there is legal news you need to know.

The April 13, 2016 League-L:

- **Has Your Municipality Received an Application to Put Poles in the Right-of-Way?**
- **Change to Alcohol Laws Prohibits Economic Rebates/Grants for Reserve License Initial Issuance Fees**
- **Sales Tax Exemption for Material Sold to Contractors for Inclusion in Municipal Projects**

Has Your Municipality Received an Application to Put Poles in the Right-of-Way?

In response to questions received from a large number of member municipalities regarding applications received from a company named Wisconsin Networking Technology, LLC (WITN) to place utility poles in the local right-of-way (ROW), the League retained Attorney Anita Gallucci (Boardman & Clark) to prepare a memo. Attorney Gallucci's memo addresses WITN's right to place poles in the ROW, a municipality's right to regulate WITN's proposed use of the ROW, what sort of regulations a municipality may apply to WITN's use of the right of way, and what a municipality may do if it has not already adopted ROW regulations. Attorney Gallucci's memo and a 1998 model ROW ordinance created by the former Wisconsin Alliance of Cities (now the Urban Alliance) is available on the League's website in Legal News: http://www.lwm-info.org/1266/Legal-News

boardman & clark llp
LAW FIRM

Anita T. Gallucci, Attorney

1 SOUTH PINCKNEY STREET, FOURTH FLOOR, P.O. BOX 927, MADISON, WI 53701-0927
Telephone 608-283-1770
Facsimile 608-283-1709
agallucci@boardmanclark.com

MEMORANDUM

TO: Claire Silverman, Legal Counsel
League of Wisconsin Municipalities

FROM: Anita Gallucci

DATE: April 12, 2016

RE: Regulation of WITN's Poles in Local Right-of-Way

The League has been contacted by several members regarding requests they have received from Wisconsin Technology Networking, LLC ("WITN") to place utility poles in local rights-of-way ("ROW"). In response, I have been asked for a memorandum addressing the following questions:

1. What right does WITN have to place poles in local ROW?
2. What right does a municipality have to regulate WITN's proposed use of local ROW?
3. What sort of regulations may a municipality apply to WITN?
4. What may a municipality do if it has not adopted regulations that would apply to utility poles placed in local ROW?

BACKGROUND

WITN has submitted permit applications to various municipalities in southeast Wisconsin, seeking to install one or two 120' "transport utility poles and facilities" in local ROW. WITN's cover letter, submitted with its applications, states that:

> WITN is an alternative telecommunications utility ["ATU"] regulated by the Wisconsin Public Service Commission ["PSCW"] to provide intrastate telecommunications service, whether switched or dedicated, including all telecommunications service available, such as intraLATA and interLATA toll telecommunications, access service to telecommunications providers and private-line service.

The letter also states that it is "deploying a hybrid transport network" that can be used to "support a variety of technologies and services that required connectivity to the internet,"

including "mobile service providers." According to the letter, the "transport utility poles and facilities are not dedicated to any particular customer, and, to the extent capacity on the structures is available, are available to be used by other entities, including the [municipality]." In addition, plans submitted by WITN show that the company intends to install two microwave dishes on the poles and install fiber up to the poles.

According to records maintained on the PSCW's website, WITN is listed as an active competitive local exchange carrier (a "CLEC") and, therefore, has ATU status under Wisconsin law. The original certification was granted on June 20, 2007 to a company called Mobilitie, LLC, in PSCW Docket No. 3778-NC-100 (PSC REF#: 77803), and was subsequently transferred to WITN. On April 5, 2016, a company called Mobilitie Management, LLC, applied to the PSCW for authorization to provide competitive local telecommunications services throughout Wisconsin. It is not clear what, if any, connection Mobilitie Management has to WITN and its current build out efforts.

DISCUSSION

A. WHAT RIGHT DOES WITN HAVE TO PLACE POLES IN LOCAL ROW?

Under Wis. Stat. § 182.017(1r), certain "companies" have the right to place their facilities in local ROW subject "to reasonable regulations made by any municipality through which [their] transmission lines or systems may pass." A "company," as defined in the statute, may include a limited liability company organized to furnish telecommunications service[1] to the public or for public purposes. Wis. Stat. § 182.017(1g)(b)1.

An ATU, such as WITN, is a company within the meaning of the statute. Accordingly, WITN has the right to place its utility poles in local ROW. However, that right is a qualified one. WITN must comply with all "reasonable" regulations imposed by the municipality with jurisdiction over the affected ROW.

As an ATU, WITN also has the right to challenge any municipal regulations that it believes are "unreasonable." Those challenges are heard by the PSCW. Wis. Stat. § 182.017(8).

B. WHAT RIGHT DOES A MUNICIPALITY HAVE TO REGULATE WITN'S UTILITY POLES?

Municipalities have police power authority to regulate local ROW. With respect to a company's use of local ROW, such regulations must be reasonable. League members have several questions regarding what is "reasonable regulation" with regard to WITN's utility poles. These questions are addressed as follows:

[1] "Telecommunications service" is very broadly defined as "the offering for sale of the conveyance of voice, data, or other information, including the sale of service for collection, storage, forwarding, switching, and delivery incidental to such communication regardless of the technology or mode used to make such offering." Wis. Stat. § 182.017(1g)(cq).

1. *May a municipality adopt a moratorium on the placement of 120' poles in the ROW in order to have time to put regulations in place that would apply to such structures?*

   No. According to Wis. Stat. § 182.017(8)(am), a municipal regulation is unreasonable if it "has the effect of creating a moratorium on the placement of company lines or systems" in local ROW.

2. *How much time can a municipality take in acting on WITN's permit application?*

   60 days. According to Wis. Stat. § 182.017(9), a "municipality shall approve or deny a permit application no later than 60 days after receipt of the application." If it fails to act within that time period, then the application is deemed granted. In addition, if the application is denied, the "municipality shall provide the applicant a written explanation of the reasons for the denial" at the time of the denial.

3. *May a municipality charge WITN rent for use of its ROW?*

   No. According to Wis. Stat. § 182.017(8)(b), a municipality may not charge rent to an ATU for use of the ROW. It may only charge fees that compensate the municipality for certain "management functions," such as

   - Registering companies, including the gathering and recording of information necessary to conduct business with a company.
   - [I]ssuing, processing, and verifying excavation or other company permit applications, including supplemental applications.
   - Inspecting company job sites and restoration projects.
   - Maintaining, supporting, protecting, or moving company equipment during work in municipal ROWs.
   - Undertaking restoration work inadequately performed by a company after providing notice and the opportunity to correct the work.
   - Revoking company permits.
   - Maintenance of databases.
   - Scheduling and coordinating highway, street, and ROW work relevant to a company permit.

4. *May WITN's poles be regulated on the basis of aesthetics?*

   No. Municipal regulations are reasonable if they regulate on the basis of an adequate health, safety, or welfare concern. According to the PSCW's ROW rules, a project's

negative aesthetic impact is not an adequate justification for the regulation of utility poles in local ROW. *See* Wis. Admin. Code Ch. PSC 130 (Municipal Regulation of Municipal Rights-of-way).

C. WHAT SORT OF REGULATIONS MAY A MUNICIPALITY APPLY TO WITN?

A municipality may regulate the placement of WITN's poles as it does any other utility structures in the ROW (e.g., telephone or electric utility poles). The following requirements, among others, could be applied to WITN:

- Permit and registrations fees.
- Bonding and insurance requirements during construction in ROW.
- Fall zone and set back restrictions.
- Siting restrictions based on safety factors; for example:
  - Line of sight restrictions (i.e., prohibit the placement of poles in places where a driver's line of sight may be obstructed).
  - Siting restriction due to interference with the provision of municipal police or fire services (e.g., prohibit the placement of the poles within a certain distance of buildings so that the poles do not impede the work of firefighters should the building catch fire).
- Removal requirements for when a pole is no longer serving a permitted use.
- Requirements to comply with all applicable state and local building codes and electric codes.
- Proof of strength requirements (i.e., when equipment is placed on the poles, the company must ensure that the weight of the equipment will not compromise the structural integrity of the pole).

Care should be taken that any such regulations, as applied to WITN's use of local ROW, be competitively neutral and nondiscriminatory. *See* 47 U.S.C. 253(c).[2] Under state law, the municipality's regulations will be judged on the basis of reasonableness. The PSCW's ROW rules, cited above, and Wis. Stat. § 182.017(8) provide some guidance on what the PSCW will consider reasonable regulation.

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[2] That federal statutory provisions provides:

> **(c) State and local government authority**
> Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

D. MAY WITN'S POLES BE REGULATED AS CELL PHONE TOWERS?

League members have also asked whether their zoning ordinances applicable to cell phone towers can be applied to WITN. Such ordinances would apply if WITN's poles are considered "mobile service support structures" within the meaning of Wis. Stat. § 66.0404[3]. According to the plans it submitted to various municipalities, WITN intends to install two microwave dishes on its poles, and it apparently intends to offer backhaul and other support services to mobile service providers,[4] among others. While WITN's poles and equipment may be used to support the provision of mobile services[5] by others, it does not appear that such a facility was intended to be treated as a "mobile service facility"[6] within the scope of Wis. Stat. § 66.0404. In other words, WITN is not initially, at least, planning to provide cell phone service using the equipment to be installed on the poles. It is likely that WITN will lease or license pole space and/or equipment to cell phone providers in the future. The future installation of cell phone antennas and other such equipment on WITN poles would be subject to municipal regulations either consistent with or adopted pursuant to Wis. Stat. § 66.0404.[7]

While the municipality's cell tower regulations would not apply at this time, a municipality's ROW regulations would, of course, apply. A municipality should review its ordinances to see if other regulations might apply. For example, some communities regulate the placement of microwave towers. Such regulations would likely apply here because the poles will be used to support microwave equipment for the provision of back haul and other support services.

E. WHAT MAY A MUNICIPALITY DO IF IT HAS NOT ADOPTED REGULATIONS THAT WOULD APPLY TO UTILITY POLES PLACED IN LOCAL ROW?

A municipality has broad police power authority to manage and control the public ROW under its jurisdiction and may exercise its regulatory powers by, among other things, license,

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[3] This statute was adopted as part of 2013 Wis. Act 20 and greatly restricts the ability of municipalities to regulate cell phone towers and related facilities.

[4] In this context, backhaul service provides the link between a carrier's cell site (e.g., base station at the cell tower) and its mobile switching facility and then to the public switched telephone network.

[5] Under 47 U.S.C. § 153(33), "mobile service" is defined as:

> . . . a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90–314; ET Docket No. 92–100), or any successor proceeding.

[6] A "mobile service facility" is defined as "the set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure." Wis. Stat. § 66.0404(1)(L).

[7] The municipality should consult with its attorney regarding any such regulations and their applicability to facilities located in the ROW.

regulation, fine, and other necessary or convenient means. *See* Wis. Stat. § 62.11(5) (for cities) and § 61.34(1) (for villages). Accordingly, if a municipality currently has no ROW regulations to apply to the placement of utility poles in local ROW and if it does not have time to do adopt such regulations within the 60-day time period for acting on permit applications, then alternatively, the municipality could enter into a license agreement with WITN.[8]

The terms and conditions to be considered for such an agreement might include:

- A provision granting the company a license to use the ROW, subject to the terms and conditions of the license and setting out the scope of the license (i.e., permitted uses).
- A description of the licensed area (i.e., a legal description of the area of the ROW where the pole(s) will be installed).
- A provision for a license fee, which covers the cost of regulation as discussed above.
- A provision setting out the term of the license agreement and conditions for termination. The agreement should be in place for as long as the pole is being used for a permitted purpose in accordance with the agreement.
- A removal provision, setting out the time frame for removal of the company's equipment from the ROW and the conditions under which removal is required.
- A provision stating what the permitted uses are.
- A requirement to submit construction plans and schedule and list of contractors.
- A requirement that a traffic control plan be submitted in advance of construction if one is necessary.
- Requirements regarding set back and fall zone.
- A requirement that the company be responsible for any damage it does to private property.
- A requirement that the company be responsible for all locates under Wis. Stat. § 182.0175.
- Insurance, indemnification, and bonding requirements.
- A requirement that the company comply with all application laws, regulations, and codes (e.g., Wis. Stat. §§ 86.16(2) and 182.017 and the Wisconsin State Electrical Code).

[8] The right to regulate ATU and public utility use of local ROW by contract is recognized in Wis. Stat. §§ 182.017(1g)(bm); 182.917(8); 196.58(1g); and 196.58(1r)(a).

- Company responsible for maintenance and improvements.

- Requirement that the licensed area be free from debris, etc.

CONCLUSION

A municipality has 60 days in which to act on WITN's permit application. It is important that, during this relatively short time period, the municipality work with the company to ensure that the public's interest in local ROW is protected. If the municipality's ROW regulations are inadequate or do not exist, the municipality should consider entering into a license agreement with WITN to address the terms and conditions under which the company will be permitted to use local ROW. Care should be taken not to impose any non-neutral, unduly discriminatory, or unreasonable requirements on WITN. Finally, now may be a good time for the municipality to consider adopting a generic ROW ordinance, as these same issues are likely to arise in the future.

Wisconsin Technology Networking, LLC

March 3, 2016

Richard Flynn, Director of Public Works
201 East Main Street
Waupun, WI 53963
dick@cityofwaupun.org

RE: Wisconsin Technology Networking's Permit Application Submission

Dear Mr. Flynn:

Please find the enclosed Wisconsin Technology Networking, LLC's ("WITN") Right of Way Utilization Application (the "application") for its proposed new utility infrastructure facility in Waupun ("City"). Along with the attached application, please also find a set of drawings and a sample photo simulation for WITN's proposed pole.

WITN is an alternative telecommunications utility regulated by the Wisconsin Public Service Commission to provide intrastate telecommunications service, whether switched or dedicated, including all telecommunications services available, such as intraLATA and interLATA toll telecommunications, access services to telecommunications providers and private-line service. To meet the growing demand for connectivity, WITN is deploying a hybrid transport network that provides high-speed, high-capacity bandwidth in order to facilitate the next generation of devices and data-driven services. This network can support a variety of technologies and services that require connectivity to the internet, including, but not limited to, driverless and connected vehicles (commercial, personal and agricultural), remote weather stations and mobile service providers. These transport utility poles and facilities are not dedicated to any particular customer, and, to the extent capacity on the structures is available, are available to be used by other entities, including the City.

Based on our initial research, WITN did not identify any specific requirements to access the City's right of way. As such, WITN is submitting its standard form application as an introduction of its project. WITN plans to construct the applied for utility infrastructure within the next eighteen (18) months and formally requests the City to identify a single point of contact to streamline the application communications for the benefit of both parties.

WITN's hybrid transport network is an industry changing approach that seeks to improve backhaul connectivity for the City's residents. We are excited to work with the City and available to answer questions. If you have questions please contact me at (312) 638-5359.

Thank you for your attention to this matter.

Respectfully submitted,

Yemi Giwa
NRE Specialist

*Enclosure

869 E. Schaumburg Rd, #324, Schaumburg, IL 60194-3653

WISCONSIN TECHNOLOGY NETWORKING, LLC	RIGHT OF WAY UTILIZATION APPLICATION

Date Submitted	3/3/2016	**Submitted By**	Yemi Giwa

JURISDICTION INFORMATION

Jurisdiction Name	City of Waupun						
Address	200 E. Main	**City**	Waupun	**State**	WI	**Zip Code**	53963
Jurisdiction Contact	Richard Flynn, Director of Public Works		**Phone Number**	(920) 324-7918			

APPLICANT INFORMATION

Applicant Name	Wisconsin Technology Networking, LLC						
Address	869 E. Schaumburg Rd, #324						
City	Schaumburg		**State**	IL	**Zip Code**	60194-3653	
Applicant Contact	Yemi Giwa	**Phone Number**	(312) 638-5359	**Email**	yemi.giwa@ITBUtility.com		

EMERGENCY CONTACT

Name	NOC	**Phone Number**	888-597-1175

SITE INFORMATION

ITB ID	9WIX000239A						
Latitude	43.636408	**Longitude**	88.73249				
Address	Monroe St & N Forest St	**City**	Waupun	**State**	WI	**Zip Code**	53963

PROJECT DESCRIPTION

Install a transport utility pole in the public right of way.

Est. Cost of Work	$15,000.00

PERMIT ISSUANCE

Permit Number		**Permit Number**	
Permit Fee		**Permit Fee**	

9WIX000239A

43.636408, -88.73249

Waupun, WI 53963

Know what's below.
Call before you dig.

GENERAL NOTES

THE FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. A TECHNICIAN WILL VISIT THE SITE AS REQUIRED FOR ROUTINE MAINTENANCE. THE PROJECT WILL NOT RESULT IN ANY SIGNIFICANT DISTURBANCE OF EFFECT ON DRAINAGE; NO SANITARY SEWER SERVICE, POTABLE WATER OR TRASH DISPOSAL IS REQUIRED AND NO COMMERCIAL SIGNAGE IS PROPOSED.

SITE INFORMATION

POLE ID:	9WIX000239A
LATITUDE:	43.636408
LONGITUDE:	-88.73249
ADDRESS/CROSS STREET:	
CITY, STATE ZIP:	Waupun, WI 53963
PROPERTY OWNER	PUBLIC RIGHT-OF-WAY
APPLICANT	Wisconsin Technology Networking, LLC
APPLICANT ADDRESS	869 E Schaumburg Rd, #324 Schaumburg, IL 60194-3653

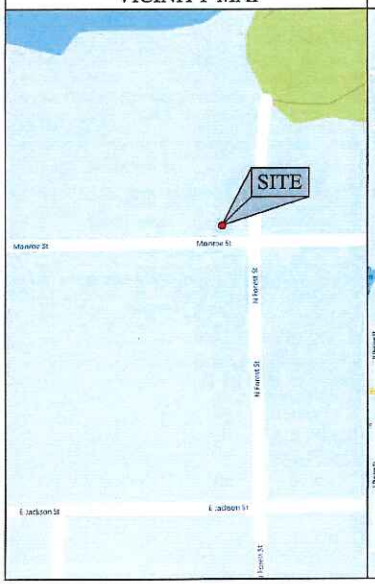
DO NOT SCALE DRAWINGS

CONTRACTORS SHALL VERIFY ALL PLANS, EXISTING DIMENSIONS & FIELD CONDITIONS ON THE JOB SITE & SHALL IMMEDIATELY NOTIFY THE ARCHITECT/ENGINNER IN WRITING OF ANY DISCREPANCIES BEFORE PROCEEDING WITH THE WORK OR BE RESPONSIBLE FOR SAME.

LOCATION MAPS

NORTH

VICINITY MAP



REGIONAL MAP

PROJECT DESCRIPTION

END USER PROPOSES TO INSTALL A NEW UTILITY POLE WITHIN AN EXISTING RIGHT-OF-WAY. THE SCOPE WILL CONSIST OF THE FOLLOWING:

1. INSTALL PROPOSED 120' UTILITY POLE

CODES

2015 INTERNATIONAL BUILDING CODE
2014 NATIONAL ELECTRICAL CODE

SHEET INDEX

SHEET #	SHEET DESCRIPTION
0.0	TITLE SHEET
1.0	EXHIBIT PHOTO & SITE PLAN
2.0	UTILITY POLE ELEVATIONS
3.0	ELECTRICAL

ENGINEER

Wisconsin Technology Networking, LLC

PROJECT NUMBER:	9WIX000239A
DRAWN BY:	####
CHECKED BY:	####

IT IS A VIOLATION OF THE LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT

SITE INFORMATION
9WIX000239A
43.636408,--88.73249
Waupun, WI 53963
UTILITY POLE

SHEET TITLE
TITLE SHEET

SHEET NUMBER
0.0

1 EXHIBIT PHOTO – GENERIC (NOT SITE SPECIFIC)
SCALE: N.T.S.

2 AERIAL SITE LOCATION
SCALE: N.T.S.

NOTE:
THIS SITE PLAN WAS GENERATED WITHOUT THE USE OF A SURVEY. PROPERTY LINES, POWER & TELCO UTILITY PINT CONNECTIONS/ROUTES AND EASEMENTS SHOWN ON THESE PLANS ARE ESTIMATED.

TRUE NORTH

NOTE:
PROPOSED 120'0" POLE IN THE R.O.W.
R.O.W. BOUNDARIES TO BE CONFIRMED AFTER SURVEY

3 ENLARGED SITE PLAN
SCALE: N.T.S.

INTERSTATE TRANSPORT AND BROADBAND

Wisconsin Technology Networking, LLC

PROJECT NUMBER:	9WIX000239A
DRAWN BY:	####
CHECKED BY:	####

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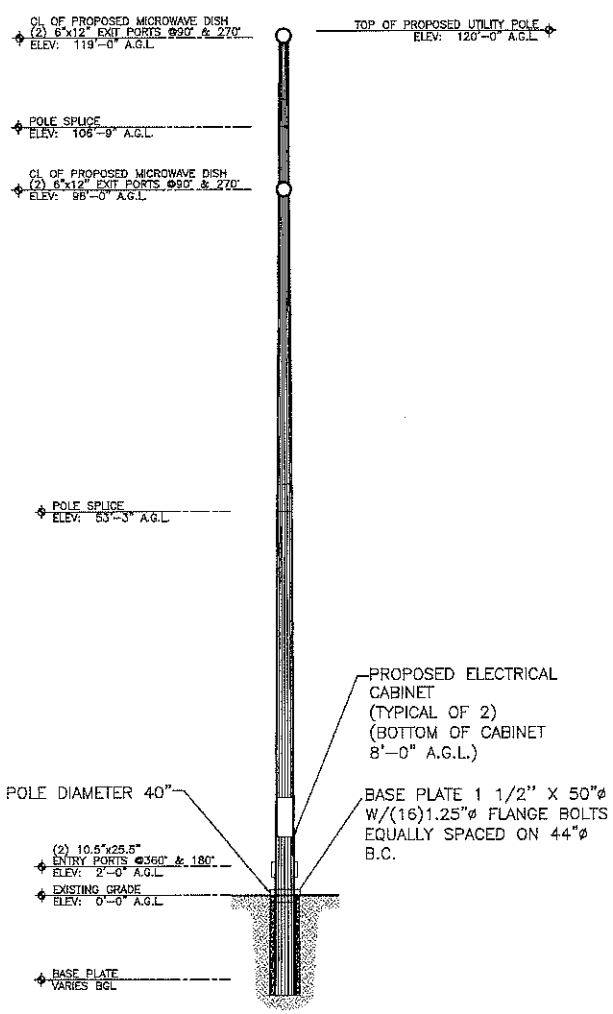
SITE INFORMATION
9WIX000239A
43.636408,-88.73249
Waupun, WI 53963
UTILITY POLE

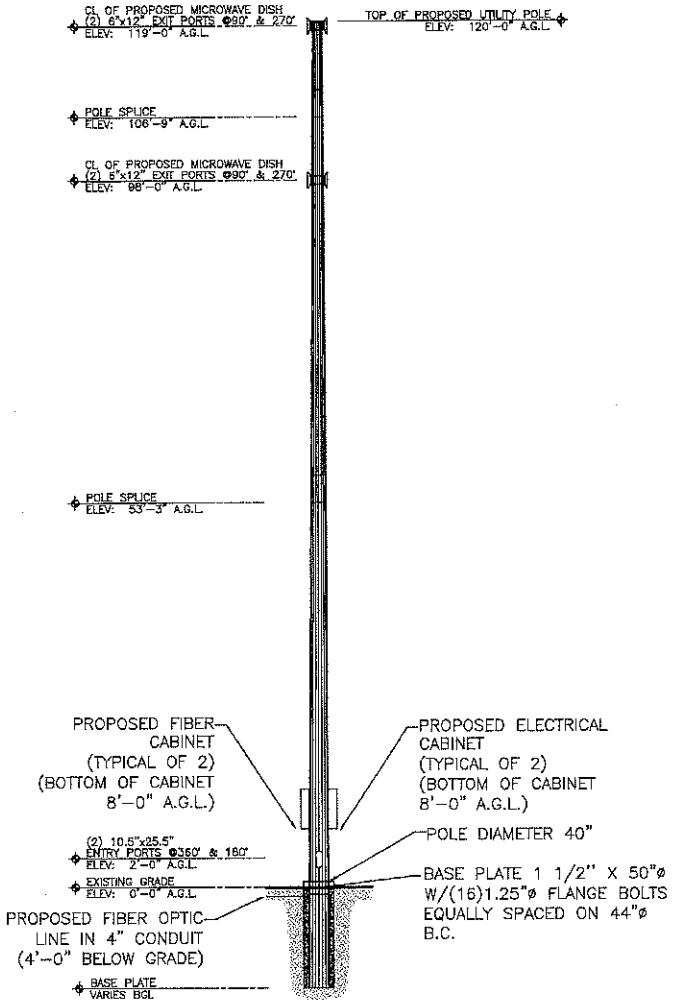
SHEET TITLE
EXHIBIT PHOTO & ENLARGED SITE PLAN

SHEET NUMBER
1.0



1 FRONT UTILITY POLE ELEVATION
SCALE: 0.010399

GRAPHIC SCALE: 1/8"=1'-0"



1 SIDE UTILITY POLE ELEVATION
SCALE: 1/8" = 1'-0"

GRAPHIC SCALE: 1/8"=1'-0"

INTERSTATE TRANSMIT AND RECEIVING

Wisconsin Technology Networking, LLC

PROJECT NUMBER:	SWX000239A
DRAWN BY:	####
CHECKED BY:	####

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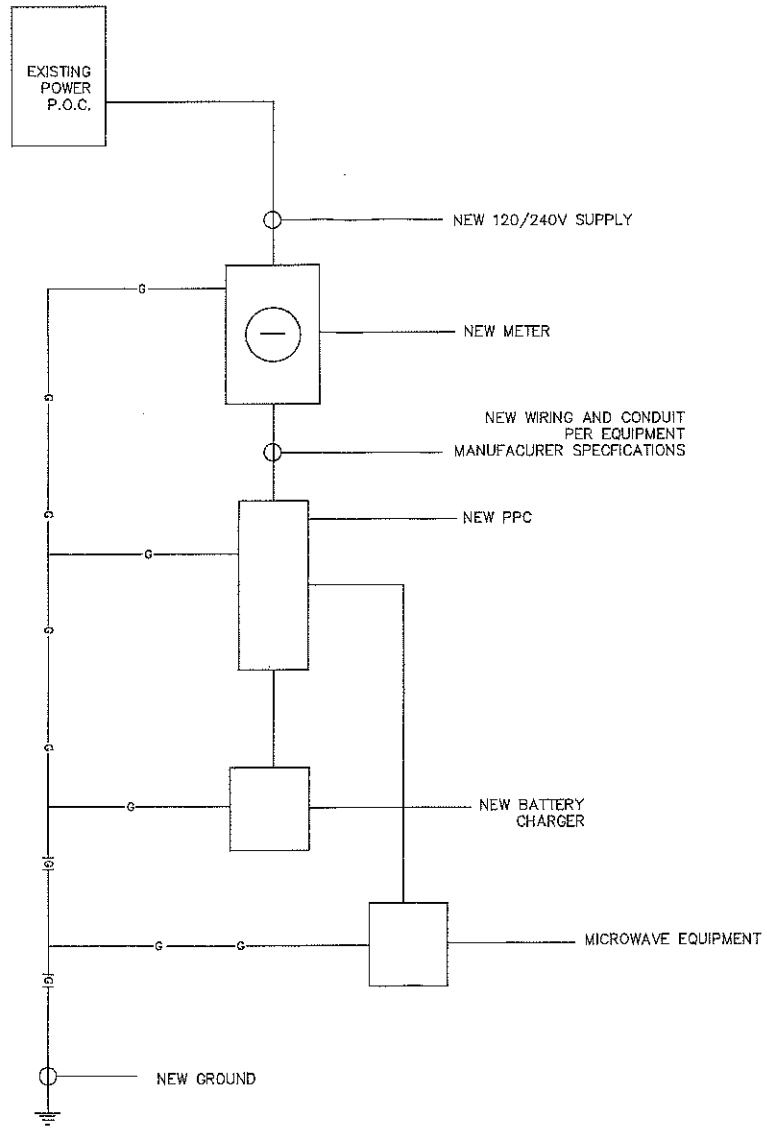
SITE INFORMATION
SWX000239A
43.636408,-88.73249
Waupun, WI 53963
UTILITY POLE

SHEET TITLE
UTILITY POLE ELEVATIONS

SHEET NUMBER
2.0



ONE LINE DIAGRAM

Wisconsin Technology Networking, LLC

PROJECT NUMBER:	SWX00023BA
DRAWN BY:	###
CHECKED BY:	###

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SITE INFORMATION

SWX00023BA

43.636408,-88.73249

Waupun, WI 53963

UTILITY POLE

SHEET TITLE

ELECTRICAL

SHEET NUMBER

3.0