

# AGENDA FOR THE CITY OF BARABOO PUBLIC SAFETY COMMITTEE

Members noticed must notify Committee Chairman Wedekind at least 24 hours before the meeting if they will not be able to attend.

**Date and Time:** Monday, September 26, 2016 – 1:00 P.M.  
**Location:** City Services Center – 450 Roundhouse Court, Baraboo, Wisconsin  
**Members Noticed:** Phil Wedekind, Tom Kolb, Michael Plautz  
**Others Noticed:** Administrator E. Geick, Mayor M. Palm, Attorney A. Bolin, Police Chief M. Schauf, Fire Chief K. Stieve, T. Pinion, R. Koss, W. Peterson, Bev Shook, Bill Bray ([bray03@charter.net](mailto:bray03@charter.net)), and Library.

1. **Call to Order**
  - a. Note compliance with the Open Meeting Law.
  - b. Roll call.
  - c. Approve agenda.
  - d. Approve minutes of August 31, 2016 Public Safety Committee meeting.
  
2. **New Business**
  - a. Consideration of Request for 2<sup>nd</sup> Driveway at 208 Washington Avenue by Bev Shook.
  
  - b. Consideration of request for a new sidewalk connecting the Pleasant View and Rolling Meadows developments on the northeast side of Baraboo to the existing sidewalk network on 8<sup>th</sup> Street & CTH T or 12<sup>th</sup> Street & Lincoln Avenue by Bill Bray.
  
  - c. Consideration of creating an ordinance to regulate the use of the City's public right-of-ways by utilities.
  
  - d. Consideration of Proposed Resolution Urging State Legislature to Improve Transportation Funding in the upcoming State Budget.
  
3. **Reports**
  - a. Utility Superintendent's Report
  
  - b. Street Superintendent's Report
  
  - c. Police Chief's Report
  
  - d. Fire Chief's Report
  
4. **Adjournment**

Phil Wedekind, Chairperson

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Agenda Prepared by Kris Jackson  
Agenda Posted by Donna Munz September 22, 2016

**PLEASE TAKE NOTICE** that any person who has a qualifying disability as defined by the Americans with Disabilities Act, that requires the meeting or materials at the meeting to be in an accessible location or format, should contact the Municipal Clerk (135 Fourth Street or phone 355-2700) during regular business hours at least 48 hours before the meeting so that reasonable arrangements can be made to accommodate each request.

It is possible that members of and possibly a quorum of members of other governmental bodies of the City of Baraboo, who are not members of the above Council, committee, commission, or board, may be in attendance at the above stated meeting to gather information. However, no formal action will be taken by any governmental body at the above stated meeting, **other than the Council, committee, commission, or board identified in the caption of this notice.**

**FOR INFORMATION ONLY, NOT TO BE PUBLISHED**

## Minutes of the Public Safety Committee Meeting – August 31, 2016

**Members Present:** Phil Wedekind, Tom Kolb, and Mike Plautz. **Others Present:** Kevin Stieve, Mike Palm, Ed Geick, Chief Schauf, Attorney Bolin, Robert Koss, Tom Pinion, Wade Peterson, and Kris Jackson.

**Call to Order** - Committee Chairman Phil Wedekind called the meeting to order at 2:30 P.M. at the City Services Center, 450 Roundhouse Court, Baraboo, Wisconsin. Compliance with the Open Meeting Law was noted. It was moved by Kolb, seconded by Plautz to approve the agenda as posted and by voice vote, the motion carried. It was moved by Plautz, seconded by Kolb to approve the minutes of the July 25, 2016 minutes. By voice vote the motion carried.

### New Business

- a. Review Bid Tabulation for 8<sup>th</sup> Street Mill & Overlay project – Pinion said that the two outside lanes will be milled and overlaid, a total of 4,935 feet from pavement edge to pavement edge, just east of Ash to just west of Taft Avenue, just west of Lincoln. Pinion then explained the procedure that would take place. He said that the work will be done under traffic. He said that there was just a single bidder, which was D.L. Gasser. The bid for the job is \$311,587.40, which is below the \$500,000 that was slated for the project. He said that he has been negotiating with them to make it more economical. He said that initially he had anything that they milled would have to be paved the same day; however, in talking with them, they can be more efficient and more cost-effective if they can work full days instead of half days, because the miller works the first half of the day and the paver works the second half, so he asked them to give him a price for milling all of it and then top it the next day. He said that another thing that would save money is if the City provided the trucking to haul the millings away. He said that Gasser is interested in the millings because it is a mixed product, but the City could use it for base course. He said that he will be finalizing this by the end of the week and will have the new number in the resolution for consideration on the 13<sup>th</sup>. He said that the project will be slated for the end of September, early October. It was moved by Kolb, seconded by Plautz to recommend approving the project to the low bidder, providing that the price of \$311,587.40 is the top. Motion carried unanimously.
- b. Review prospective alley reconstruction projects for 2016 – Pinion provided the prospective alleys for 2016 and also the alleys that were reconstructed in 2015 in the Committee's packet. He said that there was a list of 14 last year, of which five were completed, so the alleys remaining were reprioritized based strictly on asphalt condition. Therefore, based on Koss, and Pinion driving through town and receiving feedback from the garbage and recycling trucks, staff believes that these alleys are the worse and the first two on the list; between 9<sup>th</sup> and 10<sup>th</sup> Avenues, Oak Street west, and between 8<sup>th</sup> & 9<sup>th</sup> Avenues, Birch to West Street will be total reconstructions and three and four, between 5<sup>th</sup> & 6<sup>th</sup> Avenue, Center to West, and between 12<sup>th</sup> & 13<sup>th</sup> Streets, Warren to Barker, Pinion feels that we can get by with just patching a couple of the bad areas instead of total reconstruction. It was moved Plautz, seconded by Kolb to approve the prospective alley reconstruction as suggested by Pinion. Motion carried unanimously.
- c. Review concept design of a roundabout at the intersection of South Blvd. & Lynn Street – Pinion then presented the proposed roundabout at the intersection of South Blvd. and Lynn Street, in front of St. Vincent de Paul. He said as part of the Public Safety Administration building staff has looked at a conceptual roundabout. Pinion presented how the roundabout would work at this intersection and said that staff is going to try and work this in to the overall project, unless there is huge opposition to it.
- d. Review prospective capital projects for 2017 budget – Pinion said that this is an open discussion, if anyone on the Committee has any special projects that they would like considered for the 2017 budget. Wedekind said that there are a couple blocks on Broadway and portions of Lake Street should be reconstructed. Pinion said that in terms of the Capital Plan there is no new money slated for 2017 for road construction. He said this current year, 2016 we budgeted 1.5, we should have about a \$200,000 savings on 8<sup>th</sup> Street, and about a \$180,000 on the balance of the projects, so we should have some money to spend on streets next year and a couple blocks of Broadway probably a mill and overlay and Lake Street is a big project and should be done from beginning to end, but we do not have the resources to do that, but there is a possibility to do some of it. He said the Mill Race was also brought up at a staff level discussion. Koss said that he would like the Committee to think about Sumac because Deppe would like to pave his other half; therefore, it would be nice to do it at the same time, although it is a dead end and only services to duplexes, and the dance studio. Pinion said that he will put together cost estimates for budget purposes. Lake Street reconstruction was then discussed, Koss felt that to do the entire project the cost would be \$1,000,000. It was stated that the worst part of Lake Street is by Deppe's Pond. It was Pinion's hope to stretch the money far enough to do Broadway and still address the worse part of Lake Street. Island Court and Mill Race were also discussed regarding the condition.
- e. Consider accepting Public Improvements in Rolling Meadows North Subdivision – Pinion said that this is the next phase, which is a 23-lot residential subdivision, east side of T, south of Man Mound Road. He said that the public improvements are complete, sewer, water, and storm sewer are all in, they have also included electric, telephone, gas, and cable. He said that the pavement went down last week, and the topsoil is going down at this time. He said that the only listed improvements that are not done are street trees and streetlights. Pinion said that street trees are typically put in after the houses are in so that they don't put them in the way of a driveway, and streetlights are on Alliant's schedule to do. It was moved by Kolb, seconded by Plautz to recommend accepting Public Improvements in Rolling Meadows North Subdivision. Motion carried unanimously.
- f. Review and approval of monthly Billing Adjustments/Credits for Sewer and Water Customers for the months of July and August 2016 – Peterson presented all adjustments. It was moved by Kolb, seconded by Plautz to approve monthly Billing Adjustments/Credits for Sewer and Water Customers for the months of July and August, 2016 as presented. Motion carried unanimously.

### Reports

- a. Utility Superintendent's Report – Peterson said in the last two days 76 loads of bio-solids have been hauled out of the Treatment Plant. The Water crew has had numerous service repairs. He said they just finished up the water main on 4<sup>th</sup> Street with the contractor and there is a water leak that has to be dug up now on 4<sup>th</sup> Street.
- b. Street Superintendent's Report – Koss said that they are finishing the ball field at Pierce Park. He said that they will be moving into the alley construction and from there crack filling the rest of the year up until leaf pickup. Wedekind asked what will be done with the sidewalk on Summit Street. Pinion said that there are currently two sections of sidewalk that are temporarily closed, the one on Summit between 7<sup>th</sup> and 8<sup>th</sup> and the one on Oak, between 11<sup>th</sup> and 12<sup>th</sup>. He said that they are both bad situations and will be a battle as to who owns what as far as retaining walls, which is the expensive part of the job. He said the one on Oak Street appears to be the City's and looks like it was done in conjunction with the sidewalk. The one on Summit looks just the opposite, it is a makeshift retaining wall that is right on the property line and within eight feet of the deck on the home and he

doesn't know that the property owner would be prepared to incur the cost to fix the retaining wall; therefore, we may end up trying to slide the sidewalk closer to the curb. Positive statements were given regarding the new sidewalk on Elizabeth.

- c. Police Chief's Report – Chief Schauf said that the department had a busy summer between the fair, which was highly attended with very few problems. He said that the parade went well without any problems. He said that he has put in to add a position in the budget for 2017. He said that drill held with the school to keep them prepared for on-going violence situations was very well received. He said that there are people being recognized and there have been outside visitors coming in to see how we are preparing for situations so that they can replicate it. He said that the department should know by October 1<sup>st</sup> how the 12-hour shifts are working and should be when he gets the final decisions for patrol officers and the WPPA. Kolb asked if there have been any complaints. Schauf said that the biggest problem is nothing to do with 12-hour shifts, but everything to do with how the officers get ordered in. He said the majority did want it and as for administration it has been very effective, it has reduced overtime significantly, the department has saved money and provided better service to the City of Baraboo. Wedekind asked if the drug problem was better or worse. Schauf said that the department is working the heroin problem hard and there are two living houses in Baraboo, one for men and one for women, which is very important for their recovery. He said that the problem is as soon as heroin is being dealt with then meth return, and it has returned with a vengeance. He said with heroin, people tend to kill themselves, meth they tend to hurt other people.
- d. Fire Chief's Report – Chief Stieve gave kudos to Peterson and his staff for their work done for the department during their trench training. Stieve said that emergency preparedness with the School District is on-going. He said that Kwik Trip opened today and as part of their grand opening, and as part of that Chief Schauf and himself for their respective departments received \$1,000. He said that Kwik Trip does this every time they open up a new store; in fact the owners were there and are in attendance at every opening. He said that the replacement engine is in the budget for 2017 and is being worked on. He said that he also put money in the budget for some staffing for next year for weekends. Stieve then discussed training procedures.

Mayor Palm said that at the October Public Safety meeting he would like Emergency Management come in a give a brief presentation of what is done at Emergency Management and he would also like to invite the Committee to the Emergency Management Meeting on October 27 so the Committee can see who is in the room, what is talked about, how it works and see the coordination that goes on behind the scenes that a lot of people do not realize.

Geick said that he received a request from Bill Bray who lives up in the northeast subdivision and he would like to appear before the Committee at the next meeting to make a request for sidewalks to connect that subdivision with the rest of the City.

ADJOURNMENT – Kolb moved, Plautz seconded to adjourn the meeting at 3:14 p.m. Motion carried.

Respectfully submitted,

Phil Wedekind, Chairman

# MEMORANDUM

City of Baraboo

Date: September 22, 2016  
To: Public Safety Committee  
From: Tom Pinion

Re: Background for September 26<sup>th</sup> Meeting **@ 1:00 pm – City Service Center**

## **New Business:**

**Item A.** The property owner at 208 Washington Avenue is a corner lot and it currently has a steep driveway on the Washington Ave. side of their property. They would like to add a 2<sup>nd</sup> driveway on the south side of their property onto College Avenue. Although it does not really do it justice, here is a picture of the existing situation.



**Item B.** We have received several e-mails from Mr. Bill Bray, a resident on 20<sup>th</sup> Street in Rolling Meadows Estates, expressing his neighborhood's concern for the safety of the neighborhood residents due to the lack of sidewalk along CTH T between 8<sup>th</sup> and 20<sup>th</sup> Streets.

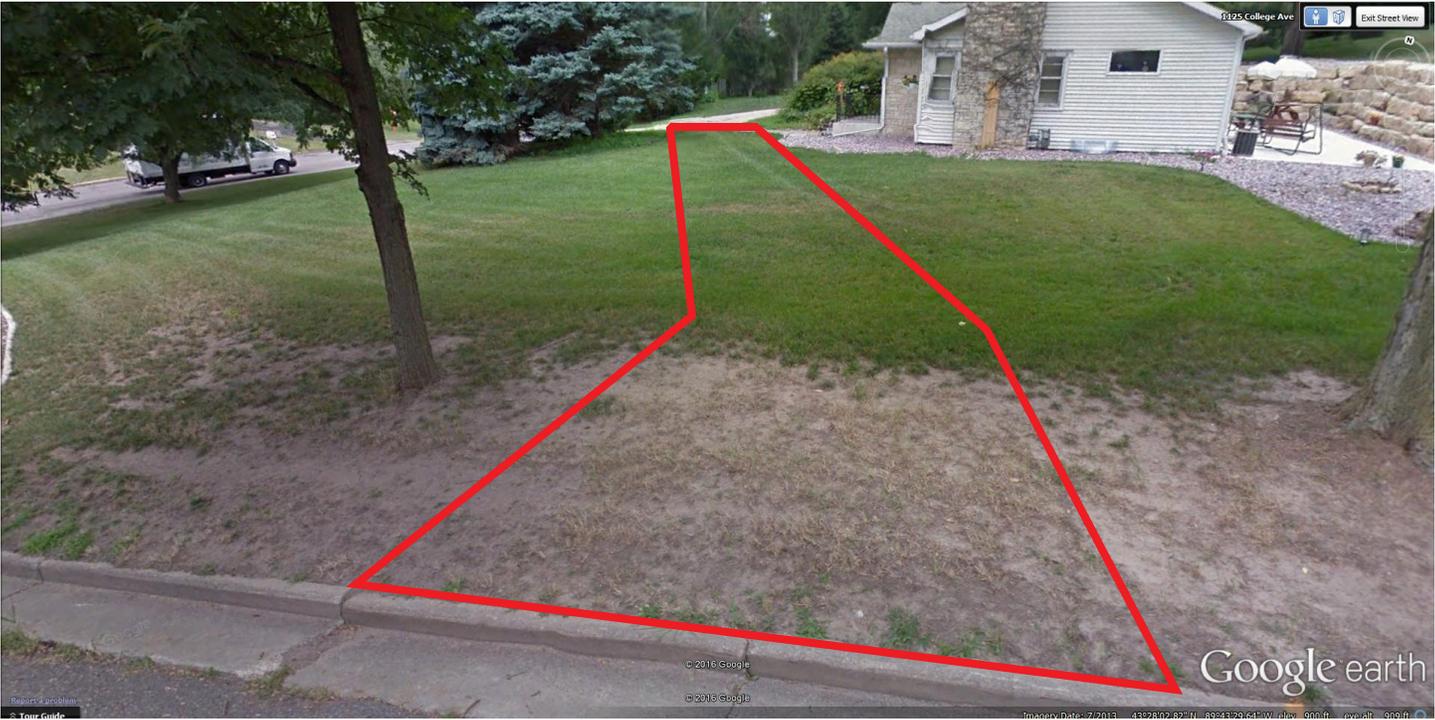
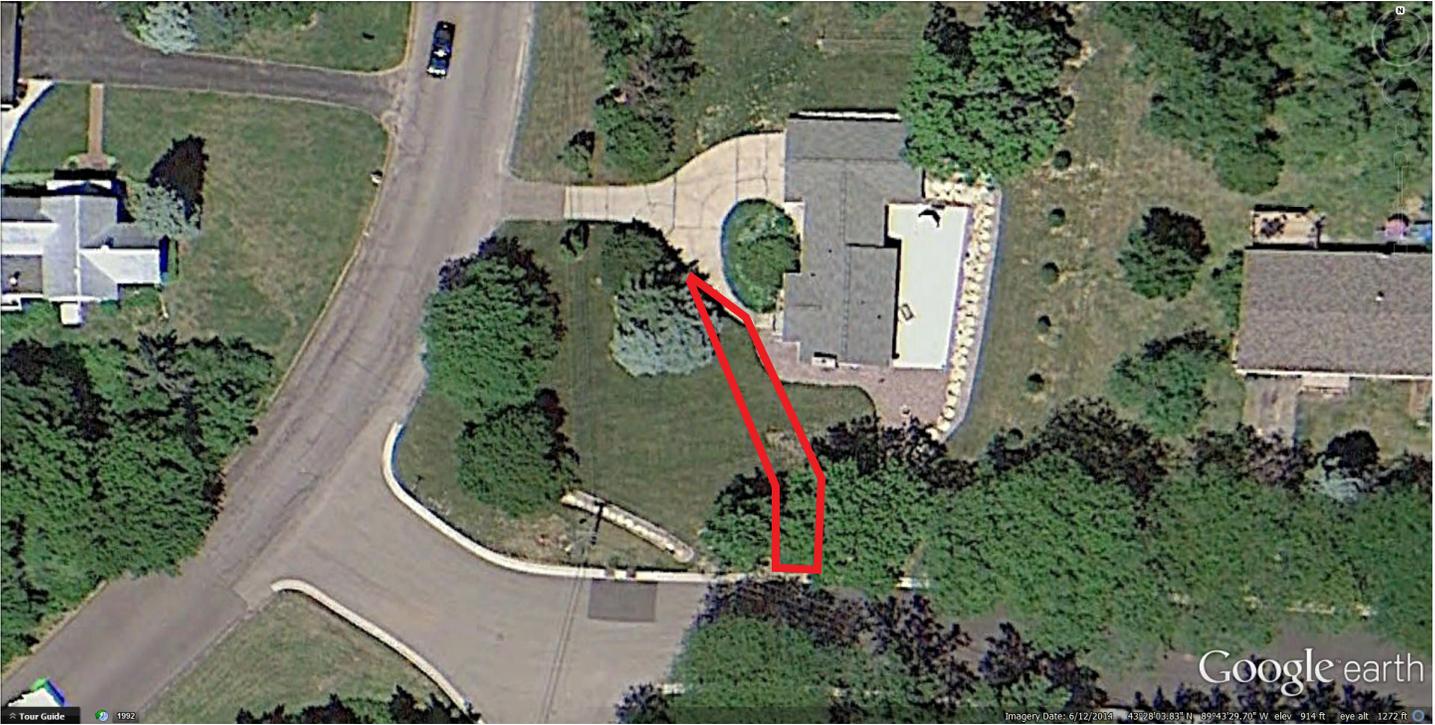
Providing sidewalk connectivity is certainly one of the challenges when a new subdivision is developed, especially when it is not contiguous to other residential development. One of the bigger "obstacles" in this instance, in my opinion, is that the City has no jurisdiction on CTH T (Taft Ave), which is the primary roadway connecting this neighborhood to STH 33 (8<sup>th</sup> Street). The County will not allow sidewalks their highway when it is a rural cross-section (no curb and gutter). CTH T would have to be reconstructed as an urban cross-section and since the County would only contribute toward the center 24 feet, the City would have to pick up the balance of the tab, in which case I suspect the County would want to "bow out" completely and transfer full jurisdiction to the City.

The closest existing sidewalk is at Lincoln & 12<sup>th</sup> Street, which is approx. 3,700 feet from 20th Street. There is also sidewalk at 8th & CHT T but that distance is more than 4,400 feet. The cost of a 5-foot wide sidewalk will be in the neighborhood of \$25 per foot so the associated cost for sidewalks on both sides of CTH T would be roughly \$250,000. This does not include the cost of rebuilding the existing road and adding the requisite curb & gutter and storm sewer.

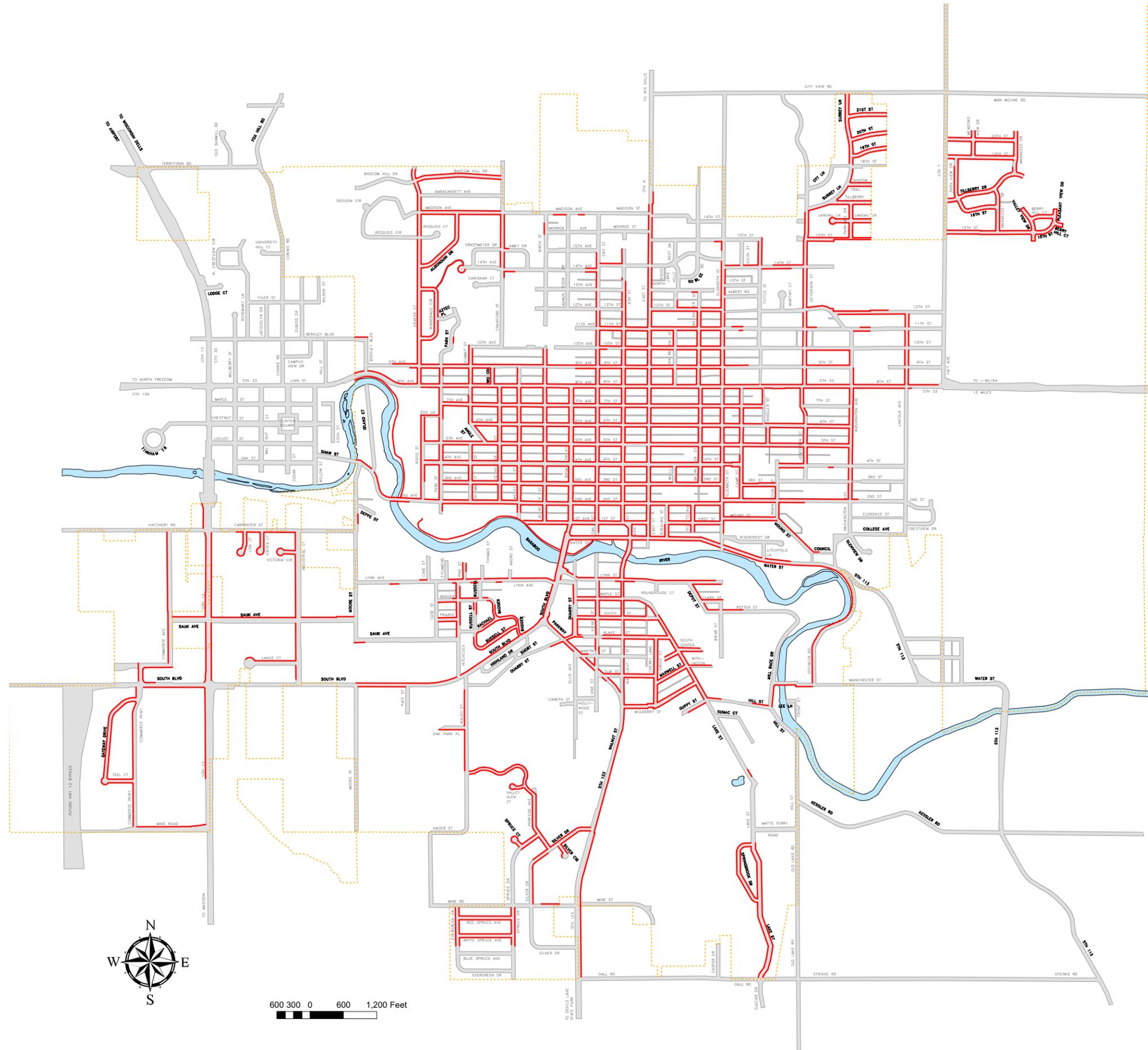
**Item C.** As advances in wireless technology continue, companies are seeking ways to locate their facilities in the public rights-of-way rather than on private property. Municipalities have the opportunity to reasonably regulate any such facilities, provided they have an ordinance establishing those regulations. Like most communities in Wisconsin, the City of Baraboo currently has no such ordinance. Staff is working on drafting an ordinance for the Committee's future consideration but we wanted to take this opportunity to introduce this topic. For your reference, I have included a letter drafted by the League of Wisconsin Municipalities that provides some additional background on this matter. Although the letter was triggered by one company's efforts to locate their facilities in public right-of-way, the contents can essentially be applied to any other similar type of company.

**Item D.** The League of Wisconsin Municipalities is soliciting its members' support to urge the legislature to appropriate additional funding for Transportation infrastructure. Included in the packet is a draft of a Resolution that will be considered by the Common Council on Tuesday evening.

Have a great weekend. See you at the **City Services Center on Monday!**



# CITY OF BARABOO EXISTING SIDEWALKS





NBR -

## A Resolution Urging the State to Improve Transportation Funding

RESOLUTION NO. 2016-

Dated: September 27, 2016

The City of Baraboo, Wisconsin

**Background** The League of Wisconsin Municipalities has conducted meetings around the State of Wisconsin to provide background information on the difficult situation that has been created for funding road improvements on both local and state routes. The State highway funding has not kept up with the need for current or future highway funding needs. The purpose of this resolution is to urge the Governor and the State Legislature to come to agreement for future funding.

**Note:** ( *one*) [ *x*] *Not Required* [ *Budgeted Expenditure*] [ *Not Budgeted*  
**Comments:** The Bureau of Aeronautics prepared the ALP.

### Resolved, by the Common Council of the City of Baraboo, Sauk County, Wisconsin:

WHEREAS, local government in Wisconsin is responsible for about 90% of the road miles in the state; and

WHEREAS, Wisconsin's diverse economy is dependent upon county and town roads as well as city and village streets and transit systems across the state; and

WHEREAS, according to "Filling Potholes: A New Look at Funding Local Transportation in Wisconsin," commissioned by the Local Government Institute of Wisconsin (LGI) the condition of Wisconsin's highways is now in the bottom third of the country; and

WHEREAS, state funding for local roads in Wisconsin has failed to keep up with costs over the past several decades which has adversely affected local transportation finances. According to "Filling Potholes," municipal transportation spending has declined from \$275 per capita in 2000 to \$227 in 2012; and

WHEREAS, high quality and fast transit systems are critical to attracting businesses and people to urban areas, yet state funding for transit is less today than it was five years ago; and

WHEREAS, levy limits do not allow local government to make up for the deterioration of state funding; and

WHEREAS, Wisconsin's over-reliance on borrowing eats away at the state's segregated funding sources – the state gas tax and vehicle registration fees – which increasingly pay debt service rather than fund transportation needs; and

WHEREAS, safety is a primary concern and responsibility of local governments across Wisconsin. Unfortunately, according to TRIP, a national non-profit transportation research group, Wisconsin had 347 non-interstate, rural road fatalities in 2013; and

WHEREAS, the Baraboo City Council recognizes that our state highway and interstate system is the backbone of our surface transportation system and plays a vital role in the economy of Wisconsin. Both local *and* state roads need to be properly maintained in order for our economy to grow; and

WHEREAS, from a competitive standpoint Wisconsin motorists pay significantly less than any of our neighbors when you combine the annual cost of the state gas tax and vehicle registration fees; and

WHEREAS, the Transportation Finance and Policy Commission, appointed by the

Governor and Legislature clearly found that if Wisconsin does not adjust its user fees, the condition of our state and local roads as well as local transit systems will deteriorate significantly over the next decade.

WHEREAS, the City of Baraboo is repairing Hwy 33 through the community at a cost of \$500,000 this year because the State does not have sufficient funds for do repairs on the highway and it is not currently in any long range plan of the state for highway reconstruction.

NOW, THEREFORE, BE IT RESOLVED by the Baraboo City Council to urge the Governor and Legislature to #JustFixItWI and agree upon a sustainable solution: one that includes a responsible level of bonding and adjusts our user fees to adequately and sustainably fund Wisconsin's multi-modal transportation system. Furthermore, the Baraboo City Council directs the Clerk to send a copy of this resolution to our State Legislators, Governor Scott Walker and the League of Wisconsin Municipalities.

**Offered by:** Finance/Personnel Comm.

**Motion:**

**Second:**

**Approved:** \_\_\_\_\_

**Attest:** \_\_\_\_\_



## 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

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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<sup>1</sup> 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:

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<sup>1</sup> “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).<sup>2</sup> 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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<sup>2</sup> 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<sup>3</sup>. 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,<sup>4</sup> among others. While WITN's poles and equipment may be used to support the provision of mobile services<sup>5</sup> by others, it does not appear that such a facility was intended to be treated as a "mobile service facility"<sup>6</sup> 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.<sup>7</sup>

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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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> 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.<sup>8</sup>

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).

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<sup>8</sup> 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.



# POLICE LINE

The Baraboo Police Department Newsletter

September 2016

## From the Chief

On October 18, 19 and 20, 2016, the Baraboo Police Department will be having an assessment by evaluators from the Wisconsin Law Enforcement Accreditation Group or WILEAG. We have been an accredited agency since 2010 and this is our third evaluation.

The process of accreditation is a list of best practice items that an agency needs to adhere to and provide what we refer to as "proofs". Every three years, agencies who have achieved their accredited standing are evaluated and reviewed to make sure they are following the best practices of law enforcement.

We are being evaluated on the 4<sup>th</sup> edition standards and have worked diligently to ensure we are maintaining the high standards and expectations of WILEAG and our community. Our assessment will review every aspect of the BPD and put our officers and processes to the test.

As part of our assessment, there is an opportunity for community input. There is a time in the assessment where evaluators are available to meet with the public in person or via phone to discuss the department, community and how we hold to our mission and core values. The date and time of that listening session is October 20<sup>th</sup> from 10 am and 11 am. You can call in at 355-7314 any time during that hour to speak to the evaluators.

## Alternate Side Parking

It is hard to believe we are in that season already, but October 1 marks the start of alternate side parking! Alternate side parking allows for the City crews to remove leaves in the fall and snow in the winter.



**Alternate side parking laws are in effect from October 1st through April 15th from midnight to 3:00 p.m. Vehicles must park on the odd numbered side of the street on odd numbered dates and the even side of the street during even numbered dates. The date is determined as of 1:00 a.m.**

**These rules do not apply where parking is prohibited on one side of the street or near churches and funeral homes during the times of services.**



## Anniversaries

This month we celebrate the anniversaries of Sgt. Matt Gilbert, 15 years; Officer Nate Lund, 8 years; Officer Carl Ustupski, 1 year.

## Equipment Profile

This month we are highlighting the Dji Osmo camera. This is the same camera that you see mounted on a drone taking video and pictures. We have the camera that is mounted to a gimbal allowing for the camera to pan smoothly or take smooth moving shots.



This camera can shoot video in 1080p or as high resolution as 4k. This allows us to get smooth clear video at a crime scene and produce a video representation of the scene that is clear for prosecutors and juries alike.

We have also used the camera to record training scenarios and worked with the Baraboo School District in completing an ALICE training video on a similar camera.

**Baraboo Police Department  
Monthly Activity Report  
August 2016**

<b>Calls for Service</b>	<b>Current Month</b>	<b>Current Year to Date</b>	<b>Prior Year to Date</b>	<b>Change</b>	<b>Percentage Change</b>
Burglaries	4	27	34	-7	-20.59%
Thefts	40	285	325	-40	-12.31%
Check Welfare Mental	14	89	0	89	#DIV/0!
Mental Commitment	3	30	25	5	20.00%
Criminal Damage	9	67	53	14	26.42%
Assist other agencies	84	685	558	127	22.76%
Assists - West Baraboo	2	42	40	2	5.00%
Animal Complaints	33	208	219	-11	-5.02%
Total of all Calls	843	6,807	6,358	449	7.06%

**Traffic Crashes**

Total Traffic Crashes	23	181	204	-23	-11.27%
Persons Killed	0	1	0	1	#DIV/0!
Persons Injured	1	35	40	-5	-12.50%
Pedestrians Injured	0	0	0	0	#DIV/0!

**Enforcement Activity**

Adult Notices of Appearance	59	686	653	33	5.05%
Drug Charges	5	107	85	22	25.88%
Traffic Citations	387	3583	3107	476	15.32%
OWI Arrests	8	60	44	16	36.36%
Seatbelt Violations	31	292	308	-16	-5.19%
Traffic Warnings	152	1565	1335	230	17.23%
Juvenile Offenses	15	237	296	-59	-19.93%
Curfew Violations	0	4	17	-13	-76.47%
Underage Alcohol Citations	2	24	63	-39	-61.90%
Parking Citations	121	1,663	1,795	-132	-7.35%

**Fines and Fees**

Court Fines	\$3,758.01	\$34,190.73	\$43,241.06	-\$9,050.33	-20.93%
Parking Fines	\$1,455.00	\$25,666.73	\$33,379.60	-\$7,712.87	-23.11%
Police Department Fees	\$75.52	\$1,692.19	\$1,739.35	-\$47.16	-2.71%