

AGENDA FOR THE PLAN COMMISSION

Members noticed must notify the person who prepared agenda (see below) at least 24 hours before the meeting as to whether they will not be able to attend this meeting.

Date and Time: Tuesday, July 31, 2018, **5:15 PM**
Location: Council Chambers, Municipal Building, 101 South Blvd., Baraboo, Wisconsin
Plan Comm Notices: Mayor Palm, P. Wedekind, D. Thurow, R. Franzen, P. Liston, J. O'Neill, T. Kolb, K. Fitzwilliams
Others Noticed: T. Pinion, E. Geick, E. Truman, Craig Hendricks, Anita LaCoursiere, Gary Wegner, Bruce Braithwaite, Library, and Media.

PETITIONERS OR REPRESENTATIVES MUST BE PRESENT OR SUBJECT WILL NOT BE HEARD BY THE COMMISSION!

1. **Call to Order**
 - a. Note compliance with the Open Meeting Law.
 - b. Approve agenda.
 - c. Approve July 17, 2018 meeting minutes.
2. **Public Invited to Speak** (Any citizen has the right to speak on any item of business that is on the agenda for Commission action if recognized by the presiding officer.)
3. **New Business**
 - a. Consideration of Wisconsin Power & Light's (Owner) and American Transmission Company's (Applicant) request for a Conditional Use Permit to allow the expansion of the existing substation and the construction a new self-contained control house in a B-1 Central Business zoning district, located at their Lynn Street substation on the south side of the Baraboo River between Vine and Walnut Streets, 125 Vine Street, City of Baraboo.
 - b. Consideration of a Request from Bruce Braithwaite to rezone the 5.3-acre parcel on the north side of South Blvd in the SE ¼ of the NW ¼ of Section 3, T11N, R6E, located at 1420 South Blvd and formerly occupied by the Honey Boy Mobile Home Park, from MH-P, Mobile Home Park to a B-3, Highway Oriented Business zoning classification by Bruce Braithwaite.
 - c. Discussion and possible recommendation of Wisconsin Act 67 and its effect on local zoning authority.

4. **Adjournment**

Phil Wedekind, Mayor Designee
Agenda prepared by Kris Jackson, 355-2730, Ext. 309
Agenda Posted by Kris Jackson on July 27, 2018

PLEASE TAKE NOTICE, that any person who has a qualifying 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, 101 south Blvd., 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 A NOTICE TO PUBLISH.

Minutes of Plan Commission Meeting July 17, 2018

Call to Order – Phil Wedekind called the meeting of the Commission to order at 5:15 PM.

Roll Call – Present were Phil Wedekind, Dennis Thurow, Roy Franzen, Pat Liston, Jim O’Neill, Tom Kolb, and Kate Fitzwilliams.

Also in attendance were Mayor Palm, Administrator Geick, Tom Pinion, Anita LaCoursiere, Ruanne Schoonover, Jane and Greg Hammel, Carol Bassett, Tim Cummings, William McDonough, Greg Held, and Al Mueller.

Call to Order

- a. Note compliance with the Open Meeting Law. Wedekind noted compliance with the Open Meeting Law.
- b. Agenda Approval: It was moved by Kolb, seconded by Franzen to approve the agenda as posted. Motion carried unanimously.
- c. Minutes Approval: It was moved by O’Neill, seconded by Liston to approve the minutes of the June 19, 2018 meeting. Motion carried unanimously.

Public Invited to Speak (*Any citizen has the right to speak on any item of business that is on the agenda for Commission action if recognized by the presiding officer.*) – There were no speakers.

Public Hearing

- a. Public Hearing to consider the request of Wisconsin Power & Light (Owner) and American Transmission Company (Applicant) for a Conditional Use Permit to allow the expansion of the existing substation and the construction of a new self-contained control house in a B-1 Central Business zoning district, located at their Lynn Street substation on the south side of the Baraboo River between Vine and Walnut Streets, 125 Vine Street, City of Baraboo – There being no speakers, the hearing was declared closed.
- b. Public Hearing to Consider the request of Linda Porter and Ruanne Schoonover for a Conditional Use Permit to convert the existing two-unit condominium to two Side-by-Side single-family residential dwellings in a R-1A Single-Family Residential zoning district, located at 421/423 10th Avenue, City of Baraboo – There be no speakers, the hearing was declared closed.
- c. Public Hearing to Consider the request of Greg Hammel for a Conditional Use Permit to convert the existing two-unit residential dwelling on Lot 1 of Springbrook Hills to two side-by-side single-family residential dwellings in a R-1A Single-Family Residential zoning district, located at 1410/1412 Lake Street, City of Baraboo - There being no speakers, the hearing was declared closed.

New Business

- a. Consideration of Wisconsin Power & Light’s (Owner) and American Transmission Company’s (Applicant) request for a Conditional Use Permit to allow the expansion of the existing substation and the construction of a new self-contained control house in a B-1 Central Business zoning district, located at their Lynn Street substation on the south side of the Baraboo River between Vine and Walnut Streets, 125 Vine Street, City of Baraboo – Anita LaCoursiere, ATC addressed the Commission as the applicant for Wisconsin Power & Light’s request. She said the substation is at the end of its lifecycle and needs be upgraded. Pinion asked if the footprint of the substation will be expanded, LaCoursiere answered in the affirmative. LaCoursiere presented the plans for the expansion, security, and fence plans. Kolb questioned the clearance needed for landscaping. LaCoursiere stated that normally they do not put landscaping at substations for security. Kolb said that his issue is that the City spent hundreds of thousands dollars to reclaim the land along the riverfront and has done a Riverfront Design Guidelines, which includes that area of the substation, and this plan is ugly. He was hoping that eventually that this entire substation could be moved to some other location. She said that she has worked with Pinion regarding the layout that was planned for the substation. Franzen said that there is a Riverwalk down to Vine Street, and the plan was to have that riverwalk go all the way to Walnut Street, and he doesn’t see any plans that Power and Light is going to put in that riverwalk. LaCoursiere said that she does not believe that

the topography at the river's edge would allow that. Franzen said that there is some room, but not much. LaCoursiere said that she would leave this to Pinion because she has been working with him. She thought if a walkway and bike trail would be installed it would be on the sub property and then there would have to be retaining wall installed, if that were even possible. Franzen said that the City would have to get an easement, which they do not have now, but it was in the plan. LaCoursiere asked if this was on the north side or south, and it was stated that it was the plan to have on both sides. She said that she does not remember that being discussed, but that would be an issue. Kolb asked if surrounding property owners were contacted and LaCoursiere answered no because they are expanding on their property; however, Pinion stated that surrounding properties within 200 feet were notified regarding the public hearing. Mayor Palm stated that the substation along the beltline coming into Madison has a fence, but it is fielded and has mesh going through it to diminish the view to the inside. Liston said that he feels that there are things that can be done to the substation to make it fit better into the community. It was stated that the City has been interested in moving this substation since 2006-2007. LaCoursiere said that the work being done on the substation is on WP&L land, ATC are the people that are upgrading and replacing their facilities, and that is because there are two or three separate lines that come in and they have to service those, and with sensitive customers, they can't have outages. The Commission feels that there is some way to dress it up. LaCoursiere said that they are not the owners, they are just replacing a fence, and ATC standards state that when a fence is replaced, it has to be with a no cut, no climb fence. O'Neill asked if the no cut, no climb fence could be made to be less conspicuous. LaCoursiere said that there is a vinyl that be woven in, which could be considered as an option. It was asked if the fence that is existing could be dressed up also, and it was stated that the fence belongs to WP&L, and they would have to agree to it, and there would be a cost. Kolb asked if it would unreasonable to postpone this request until next month to allow the City to investigate some of the issues. Pinion said that he believed under City Ordinances, the Commission has 30 days to decide on Conditional Use permits, and the next meeting would be more than 30 days. Kolb then asked if the Commission could hold a special meeting because he feels that these are significant issues. Pinion answered in the affirmative and stated that it the nature of the conditional use, what triggers the need for that is the addition to the building. He said that the existing substation is a permitted, conforming use, and anytime that changes, or there is a new use, it is the subject of the conditional use. He said if the City wanted to negotiate with the property owner to improve the appearance, he is not sure that is part of this conditional use permit proceeding, and he would have to defer to the City Attorney's advice on that. Geick said that he did speak with Attorney Truman, and the City can place conditions on landscaping and other things around this facility within the new State law requirements, especially because the City did go through the process of creating the plans that we have right now. He said that those plans were given to ATC and to Alliant. He feels that the Commission can have a meeting within the next 30 days and have some time to work out the details. Kolb moved to postpone the request and the Plan Commission meet within the next 30 days so that the Commission can look at some of the other issues. O'Neill seconded the motion. On roll call vote for the motion, Ayes – Thurow, Franzen, Liston, O'Neill, Kolb, Fitzwilliams, and Wedekind. Nay – 0, motion carried 7-0.

- b. Consideration of Linda Porter and Ruannae Schoonover for a Conditional Use Permit to convert the existing two-unit condominium to two Side-by-Side single-family residential dwellings in an R-1A Single-Family Residential zoning district, located at 421/423 10th Avenue, City of Baraboo – Pinion said that this request is something that the Commission routinely considered in the past. He said that this particular Condominium was considered in 2007 for the same reason, the Commission recommended approval; however, when it came time to file the appropriate documents, because it is a Condominium Association, there has to be a document dissolving the Condo Association. He said that when it was submitted to the County Property Lister it was rejected because the Condo Association was still intact. Therefore, since the Conditional Use Permit was not fulfilled within 12 months it becomes void. Pinion said that Schoonover and her neighbor have requested to repeat history and dissolve the condominium association, create the two side-by-side attached dwellings per the CUP; the CSM is included in the packet as well as the covenants that were prepared by the attorney at that time. Pinion said that those two components comply with the City's CUP requirements. He said that the City would have to see documentation of the Condominium dissolution before any of the documents could be recorded. It was stated that Schoonover found the document entitled Declaration of Removal from Condominium Ownership by 10th Avenue. Pinion said that the document has not been recorded, but all the pieces are in place. It was moved by Liston to approve the Conditional Use Permit as requested, conditioned upon the Declaration of Condominium dissolution be recorded. Fitzwilliams seconded the motion. On roll call

vote for the motion, Ayes – Thurow, Franzen, Liston, O’Neill, Kolb, Fitzwilliams, and Wedekind. Nay – 0, motion carried 7-0.

- c. Review and approve a two-lot Certified Survey Map to convert the two-unit 10th Avenue Condominium No. 1 to side-by-side single-family residential attached dwellings at 421/423 10th Avenue – It was moved Liston, seconded by Kolb to approve the CSM as presented. On roll call vote for the motion, Ayes – Franzen, Liston, O’Neill, Kolb, Fitzwilliams, Wedekind, and Thurow. Nay-0, motion carried 7-0.
- d. Consideration of Greg Hammel’s request for a Conditional Use Permit to convert the existing two-unit residential dwelling on Lot 1 of Springbrook Hills to two side-by-side single-family residential dwellings in an R-1A Single-Family Residential zoning district, located at 1410/1412 Lake Street, City of Baraboo – Greg Hammel addressed the Commission. Pinion said that this is a traditional two-unit duplex and not a Condo Associations. He said that Hammel has an attorney working on the covenants; therefore, there is no draft included, but the City typically will not sign the CSM in the absence of those documents. It was moved by Liston, seconded by O’Neill to approve the CUP as requested. On roll call vote for the motion, Ayes – Liston, O’Neill, Kolb, Fitzwilliams, Wedekind, Thurow, and Franzen. Nay – 0, motion carried 7-0.
- e. Review and approve a two-lot Certified Survey Map to convert the existing two-unit residential dwelling on Lot 10 in Springbrook Hill Subdivision to side-by-side single-family residential attached dwellings at 1410/1412 Lake Street – It was moved by O’Neill, seconded by Franzen to approve the CSM as presented. On roll call vote for the motion, Ayes – O’Neill, Kolb, Fitzwilliams, Wedekind, Thurow, Franzen, and Liston. Nay – 0, motion carried 7-0.
- f. Consideration of Request to vacate Outlot 4 of the First Addition to Pleasant View Subdivision – a 20-foot side unimproved pedestrian path right-of-way on the east side of Manassas Drive between Lots 25 and 26 of the First Addition to Pleasant View Subdivision – Carol Bassett introduced herself to the Commission. Pinion said that Bassett contacted him, she is the owner closest to the north side of the outlot. He said that she has an existing deck that is only a few steps off the ground going into a side entrance. He said that she would like to expand that to make it easier going in and out; however, the City’s rules are that it cannot be closer than 6-feet from the lot line. Therefore, to Bassett’s amazement, there is 32 feet between her deck and her neighbor’s to the south deck and neither were aware that there was 20-foot reserved right-of-way for a pedestrian path. Bassett and her neighbor have submitted a petition asking for this to be vacated. Pinion gave the background of the entire Pleasant view Subdivision, from preliminary to existing. Liston asked if the City owned the property. Pinion stated that it is Outlot 4, which was dedicated as part of the Final Plat to the City. Pinion then gave the background of ownership of parcels. Pinion said that if the Commission favorably reviews this petition, there will be a public hearing, notice published, and then the Council will consider a resolution to formally vacate that right-of-way. It was moved by Liston to move this to Council with a positive recommendation. Kolb seconded. Franzen questioned ownership after vacation. Pinion said that anytime a right-of-way is vacated, it is split down the middle and half goes to each property owner at no cost. On roll call vote for the motion, Ayes – Kolb, Fitzwilliams, Wedekind, Thurow, Franzen, Liston, and O’Neill. Nay – 0, motion carried 7-0,
- g. Consideration of a Request from Bruce Braithwaite to rezone the 5.3-acre parcel on the north side of South Blvd. in the SE¼ of the NW¼ of Section 3, T11N, R6E, located at 1420 South Blvd. and formerly occupied by the Honey Boy Mobile Home Park, from MH-P, Mobile Home Park to a B-3, Highway Oriented Business zoning classification by Bruce Braithwaite – Pinion said that Bruce Braithwaite told him that something came up and he would be unable to attend the meeting. He said that the property is listed with a realtor and has been discussed at the staff level. He said that if the owner had not initiated this, rezoning could only happen under two instances, the property owner petitions, or the City undertakes the action. Pinion said that everything to and south and east is zoned B-3, and I-4 to the west; therefore, Braithwaite showed some interest in zoning it to a Highway Oriented Business, which is a little less permissive, it’s more commercial than I-4 allows industrial uses as well. Pinion feels that this is consistent with the City’s Comprehensive Plan and a very appropriate request given the fact that the park is closed and listed for sale. Liston feels that there are more issues other than rezoning, because it is such a mess. He said that he would like to hear something from Braithwaite such as when the rest of the trailers will be out of there, and what he is going to do to clean up the property. It was the consensus of the Commission to take no action due to the absence of the representative, and will be placed on the next meeting agenda.
- h. Consideration of a Request by Capitol Housing III, LLC to review the SIP in accordance with Step 4 of the Planned Development process to construct a 70-unit multi-family residential complex, located at 325 Lynn Street, in a B-1 Central Business zoning district – Greg Held, Knothe Bruce Architects introduced himself to the Commission. Pinion gave the background for this project. Pinion said that final step in the planning

development process is the specific implementation plan, which the Commission deferred action on that for additional detail. He said that the Developer's design team is here to provide additional detail of the building materials, color renderings, final site plan, and landscaping plan, which is what the Commission asked for. Kolb questioned the lighting. Pinion said that the site lighting was not included due to being technical pieces, and the stormwater management plan is being prepared, as well as the site lighting plan. He said that in the past the Commission has allowed those to be administratively reviewed and approved. Held gave the Commission a detailed presentation of the revised site plan. He said that they have gotten some better grades. He said that there was talk about cleaning up some of vegetation along the river; however, it sounds like this is going to be a separate permit obtained from the DNR, so it is not really addressed in the presentation. Pinion said that site has a surface feature for stormwater management, called a vial filtration facility. Although, that may lend itself to this site, due to the topography, it is his understanding that the developers are looking more into an underground system so that the green space is available to the tenants. Held then presented the color renderings, and materials being used on the building. Pinion stated that the name of the development will be River Ridge and feels that it is a very fitting name. It was moved by Liston, seconded by Franzen to approve the SIP as presented. On roll call vote for the motion, Ayes – Fitzwilliams, Wedekind, Thurow, Franzen, Liston, O'Neill, and Kolb. Nay – 0, motion carried 7-0.

- i. Discussion of Wisconsin Act 67 and its effect on local zoning authority – It was the wish of Liston that Attorney Truman was available for discussion. It was stated that she was at a Library Board meeting. Pinion stated that it describes that the City is pretty much handcuffed, so he is not sure how much flexibility the City has; however, Attorney Truman thinks that there is some. He said that the burden is on the City to defend the conditions that they might want to impose. Franzen asked if the City could pass new laws to make it easier to impose conditions. Pinion said that if the worst-case scenario was taken, it eliminates the City's ability to really regulate conditional uses. Pinion said something that was discussed conceptually it was allow the City to create a new special zoning district that has very specific uses and eliminates the ones that are not wanted, so the City is not obligated to approve them, but that would be a public hearing for changing the rezoning ordinance. He also said that there would probably be a lot of input from the public. He said that Mayor talked ab out starting an ADHOC committee to start reviewing some of those things. Alderman Kolb suggested that the City revisit design guidelines for that corridor, so it is not a 30-second solution, or a 30-day solution. Mayor Palm said that he has been thinking a lot about an ADHOC Committee and Chapter 17 has not been looked at for 12 years. He said what the legislation has done; it may provide an opportunity to look at the zoning ordinance to see if there are things that can be done to help ourselves.

Adjournment - It was moved by Liston, seconded by Kolb to adjourn at 6:28 p.m. The motion carried unanimously.

Phil Wedekind, Mayor Designee

**PLAN COMMISSION ITEM SUMMARY
JULY 31, 2018**

SUBJECT: CONSIDERATION OF WISCONSIN POWER & LIGHT'S (OWNER) AND AMERICAN TRANSMISSION COMPANY'S (APPLICANT) REQUEST FOR A CONDITIONAL USE PERMIT TO ALLOW THE EXPANSION OF THE EXISTING SUBSTATION AND THE CONSTRUCTION A NEW SELF-CONTAINED CONTROL HOUSE IN A B-1 CENTRAL BUSINESS ZONING DISTRICT, LOCATED AT THEIR LYNN STREET SUBSTATION ON THE SOUTH SIDE OF THE BARABOO RIVER BETWEEN VINE AND WALNUT STREETS, 125 VINE STREET, CITY OF BARABOO.

SUMMARY OF ITEM A: This item was postponed at the meeting two weeks ago. Ed and I have since had correspondence with American Transmission Company (applicant) to request they improve the curb appeal of their substation. Included in the packet are the drawings of ATC's proposed project as well as a couple of photos of their building as originally proposed. We have another conference call on Monday morning with ATC to discuss options of improving the aesthetics of their project. To avoid an automatic approval of the CUP when our review period lapses, you may want to consider approving the CUP with a provision for them to resubmit the fence plan and building plan with certain improvements.

COMPLIANCE/NONCOMPLIANCE:

Pursuant to Section 17.37 – *Conditional Use Review and Approval*, I have found the application to be complete and have reviewed it for compliance with the ordinance.

ACTION: Approve / Deny Conditional Use Permit (with certain conditions?)

SUBJECT: CONSIDERATION OF A REQUEST FROM BRUCE BRAITHWAITE TO REZONE THE 5.3-ACRE PARCEL ON THE NORTH SIDE OF SOUTH BLVD IN THE SE ¼ OF THE NW ¼ OF SECTION 3, T11N, R6E, LOCATED AT 1420 SOUTH BLVD AND FORMERLY OCCUPIED BY THE HONEY BOY MOBILE HOME PARK, FROM MH-P, MOBILE HOME PARK TO A B-3, HIGHWAY ORIENTED BUSINESS ZONING CLASSIFICATION BY BRUCE BRAITHWAITE.

SUMMARY OF ITEM B: The item was on July 17th agenda but since there was no representative from Honey Boy, the item was not considered. The owners of the former Honey Boy Mobile Home Park at 1420 South Blvd have closed the park and have listed the property for sale. They are requesting the underlying property be rezoned to a B-3 Highway Oriented Business district, which is the same zoning classification as the surrounding property.

ACTION: Forward to Common Council for a Public Hearing on the Re-Zoning with a recommendation to Approve/Conditionally Approve/or Deny the Proposed Re-Zoning to a B-3 Highway-Oriented Business zoning classification.

SUBJECT: DISCUSSION OF WISCONSIN ACT 67 AND ITS EFFECT ON LOCAL ZONING AUTHORITY.

SUMMARY OF ITEM C: The City Attorney will be at the meeting to review this item in further detail. Historically, the City has had a broad latitude in the use of CUPs. However, in 2017, Wisconsin Act 67 changed the way a municipality can regulate private property, including the use of CUP regulations.¹ State statute now requires that a municipality issue a CUP whenever an applicant “meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board.”²

The law also requires:

- That any requirements or conditions imposed “be related to the purpose of the ordinance and be based on substantial evidence,” where “substantial evidence” means “facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion,” and
- That any requirements or conditions be “reasonable and, to the extent practicable, measurable.”³

For example, the City’s stated purpose of the B-3 Zoning District, where the Property is located, is “to provide for sewer commercial activities oriented toward regional markets requiring highway exposure to the highway user or intended to service vehicles.”⁴ The Property is also located in the City’s Conditional Use Overlay district, meaning any and all uses of the Property requires a CUP. The intent is to ensure the City has control over any “undesirable impacts on nearby properties, the environment, [or] the community as a whole” and “to promote the public health, safety, and general welfare of the community.”^{5,6} The City’s Code does not specify any requirements or conditions that must be met or agreed to by the applicant for the Property prior to the issuance of the amended CUP. Therefore, any requirements or conditions mandated by the City prior to the issuance of the amended CUP must be independently analyzed within the context of the updated state statute, and must be: related to the purpose of the ordinance, based on substantial evidence, reasonable and, if possible, measurable. One condition that would meet the new standard would be to require there are no code or statute violations occurring on or at the Property relating to the sale of used vehicles for the duration of the CUP.

¹ For a discussion of the changes to the law, see the LWM article included in the packet.

² §62.23(7)(de)2.a, Wis. Stat. 28

³ Id.

⁴ §17.29, City Code.

⁵ §17.37(1)(c), City Code.

⁶ §17.37(5)(a), City Code

For Office Use:	Date		Date
<input type="checkbox"/> Application given by _____	_____	<input type="checkbox"/> Referred to Council	_____
<input type="checkbox"/> Received by Bldg. Inspector	_____	<input type="checkbox"/> Public Hearing Set	_____
<input type="checkbox"/> Fee received by Treasurer	_____	<input type="checkbox"/> Date Notices Mailed	_____
<input type="checkbox"/> Building Insp. Certified	_____	<input type="checkbox"/> Public Hearing Published	_____
<input type="checkbox"/> Filed with City Clerk	_____	<input type="checkbox"/> Public Hearing Held	_____
<input type="checkbox"/> Referred for Staff Review	_____	<input type="checkbox"/> Plan Meeting Action	_____

City of Baraboo
 135 4th Street
 Baraboo, WI 53913
 (608) 355-2730 phone
 608 355-2719 fax

APPLICATION FOR CONDITIONAL USE PERMIT

(A non-refundable \$250 fee must accompany this application upon filing.)

FOR TREASURER USE ONLY
Receipt # _____
Account # 100-22-4440

Date of Petition: _____

The undersigned, being all the owners of the real property covered by this conditional use request hereby petition the City of Baraboo Plan Commission as follows:

- Name and address of each owner: (Please attach additional pages as necessary.)
 Attn: Craig Hendricks (608) 458-8184

 Wisconsin Power & Light Company

 4902 N Biltmore

 Madison, WI 53718-2418

- Name and address of applicant if not an owner. Describe interest in site (if tenancy, attach copy of current lease):
 American Transmission Company, LLC 5303 Fen Oak Drive, Madison, WI 53718

 Anita LaCoursiere (608) 877-3539

- Address of site: 125 Vine Street, Baraboo, WI 53913

- Tax parcel number of site: 206-0936-00000

- Accurate legal description of site (state lot, block and recorded subdivision or metes and bounds description) (Attach copy of owner's deed):
SEE ATTACHED LEGAL DESCRIPTION.

- Present zoning classification: B-1

- Requested conditional use: Install a no cut, no climb 10 ft fence (ATC standards) on a 50 ft section of fencing for expansion at the existing substation. Add a new pre-fabricated, self-contained control house to the existing substation.

- Brief description of each structure presently existing on site:
Various transformers, breakers,

- Brief description of present use of site and each structure on site:

W

Has always been used as a substation.

10. Brief description of any proposed change in use of structures if request for conditional use is granted: (include change in number of employees on site)

A prefabricated, self-contained control house will be placed on the site. The house contains relay panels with breakers and other associated items needed to operate the substation.

11. The following arrangements have been made for serving the site with municipal sewer and water:

No sewer or water will be on-site.

12. Name, address, and tax parcel number of the owners of each parcel immediately adjacent to the boundaries of the site and each parcel within 200 feet including street and alley right-of-way of each exterior boundary of the site (see section 17.37(3)(a) of City Code.)

Brooke A. Hill, Walnut St., Tax # 206-0937-00000 City of Baraboo, Vine St., Tax # 206-0938-00000, 206-1769-10000 and 206-0934-00000 Allan O & Mary A Mueller, 105 Vine St., Tax # 206-0935-00000

13. A scale map or survey map must be attached showing the following: (Note: This section is not required for home occupation requests; skip to 14.) (see section 17.37(2)(a) of City Code.)

- Location, boundaries, dimensions, uses, and size of the site and structures and its relationship to adjoining lands.
- The approximate location of existing structures on the site, easements, streets, alleys, off street parking, loading areas and driveways, highway access and access restrictions, existing street, side and rear yards, proposed surface drainage, grade elevations.

14. State in detail, the evidence indicating proof that the proposed conditional use shall conform to each of the standards for conditional uses set forth in section 17.37(2)(b) of the City Zoning Code.

Site is presently a substation and is zoned B-1. This is considered an accessory use according to zoning.

The conditional use permit is needed because the site is located in a revitalization area. The site will continue to be used as a substation with the addition of the smaller sized control building.

WHEREFORE, the undersigned property owners hereby state that the foregoing information and all attachments to this Petition are true and correct to the best of our knowledge.

Notice to Property Owner: Conditional use permits, if granted, are subject to a 10 day appeal waiting time.

Dated this ____ day of _____, 20__.

American Transmission Company, LLC as agent for
Wisconsin Power and Light Company

Property owner AGENT

Property owner

I certify that that I have reviewed this application for completeness.

Date: _____ Zoning Administrator: _____

EXHIBIT A

SUBSTATION LEGAL DESCRIPTION

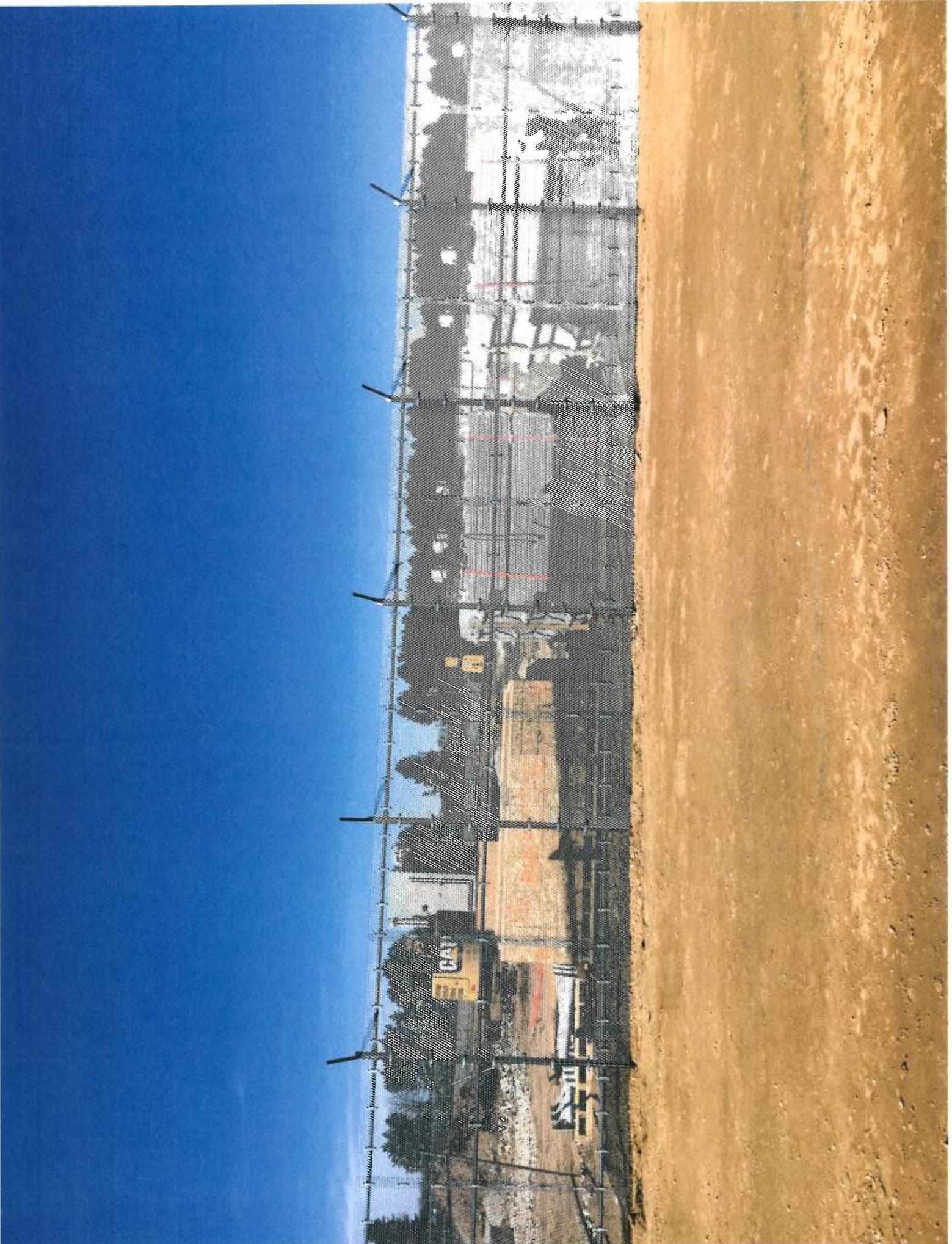
Grantor's Property Description and Easement Area are described as follows:

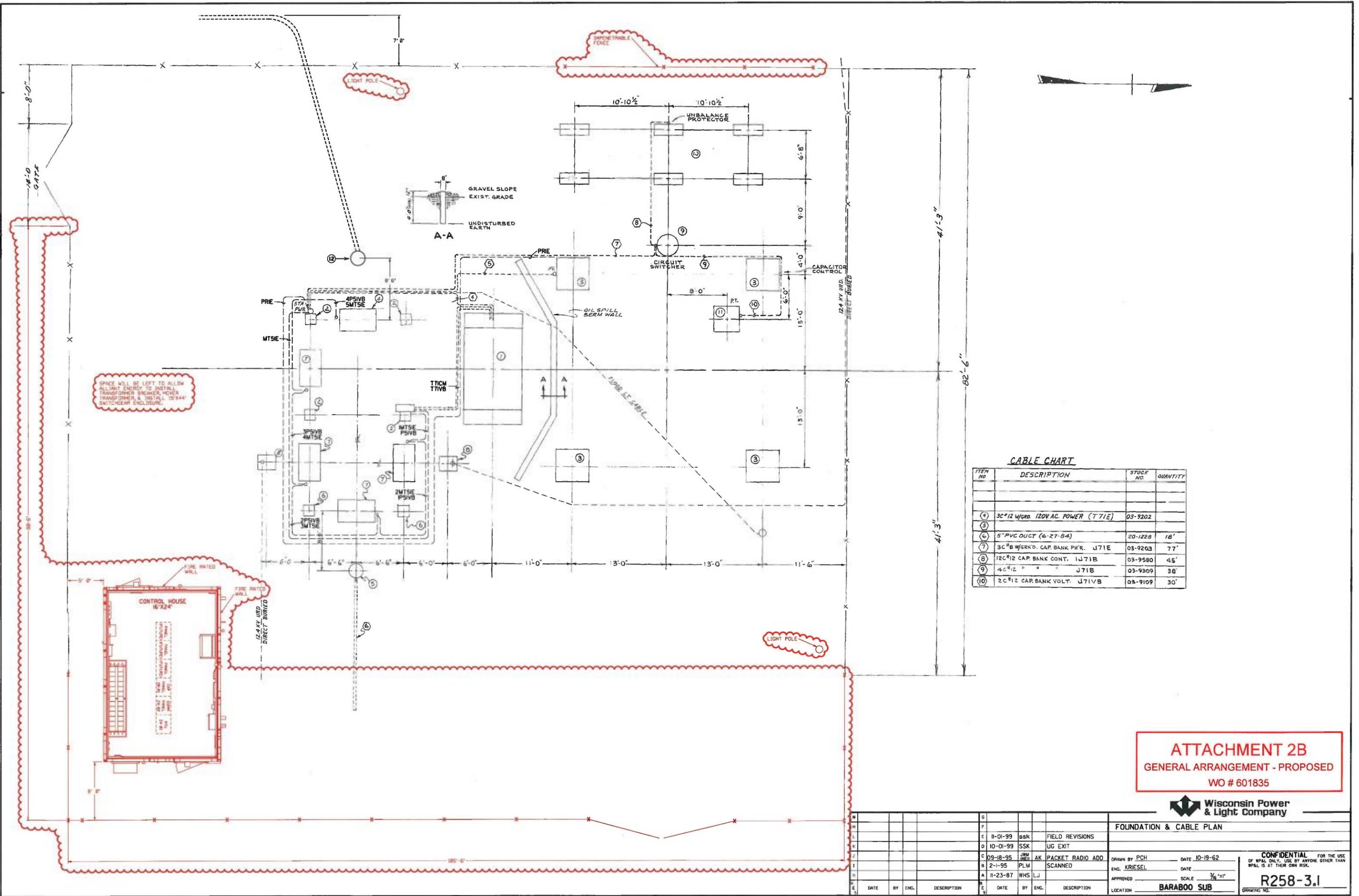
Parcel 6: All that part of the Mill Reserve of the Plat of the Village of Baraboo, now City of Baraboo, Sauk County, Wisconsin, as recorded in Volume 1 of Plats on Page 2, described as follows:

Commencing at the point of intersection of the east line of Vine Street and the north line of the alley connecting Vine Street and Walnut Street; thence East along the north line of the alley, 104.6 feet to an iron pipe, which shall be the place of beginning of this description; thence continuing East along the north line of said alley, 92.5 feet to an iron pipe; thence North at right angles to the north line of said alley, 148 feet, more or less, to the south edge of the Baraboo River; thence Westerly along the south edge of the Baraboo River to a point due North of the place of beginning; thence South 150 feet, more or less to the place of beginning, being part of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 2, T11N – R6E, in Sauk County, Wisconsin.

Parcel 8: All that part of the Mill Reserve of the Plat of the Village of Baraboo, now City of Baraboo, Sauk County, Wisconsin, as recorded in Volume 1 of Plats on Page 2, described as follows:

Commencing at the point of intersection of the east line of Vine Street and the north line of the alley connecting Vine Street and Walnut Street; thence East along the north line of the alley, 197.1 to an iron pipe, which shall be the point of beginning for this description; thence continuing East along the north line of said alley approximately 86.5 feet or to the east property line of Grantor; thence North along the east property line of Grantor to the Baraboo River; thence West along the Baraboo River to a point North of the point of beginning; thence South to the point of beginning.





SPACE WILL BE LEFT TO ALLOW ALL PART ENERGY TO INSTALL TRANSFORMER BREAKER, HOVER TRANSFORMER & INSTALL 120X44" SWITCHGEAR ENCLOSURE.

CABLE CHART

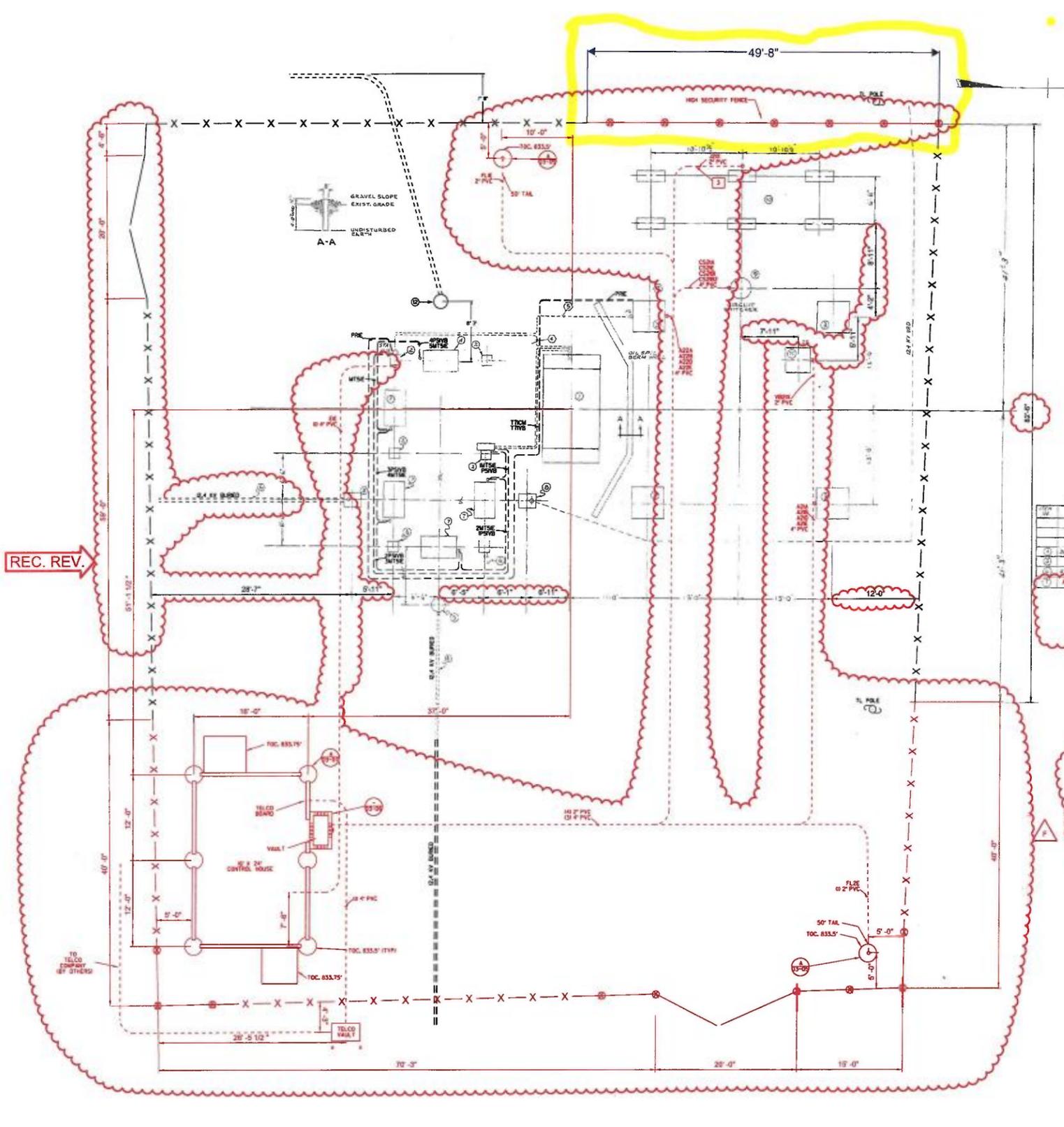
ITEM NO.	DESCRIPTION	STOCK NO.	QUANTITY
4	3C #12 W/GND. 120V AC. POWER (T71E)	03-9202	
5			
6	5" PVC DUCT (6-27-84)	20-1228	18'
7	3C #8 W/GND. CAP. BANK PW'R. U71E	03-9203	77'
8	12C #12 CAP. BANK CONT. U71B	03-9580	45'
9	4C #12 " " " U71B	03-9309	38'
10	2C #12 CAP. BANK VOLT. U71VB	03-9109	30'

ATTACHMENT 2B
GENERAL ARRANGEMENT - PROPOSED
 WO # 601835



FOUNDATION & CABLE PLAN		DRAWN BY PCH DATE 10-19-62	
E 11-01-99 SSK FIELD REVISIONS		ENG. KRIESEL DATE	
D 10-01-99 SSK UG EXIT		APPROVED SCALE 3/8"=1'	
C 09-18-95 JWM AK PACKET RADIO ADD		LOCATION BARABOO SUB	
B 2-1-95 PLM SCANNED		CONFIDENTIAL FOR THE USE OF WPL ONLY. USE BY ANYONE OTHER THAN WPL IS AT THEIR OWN RISK.	
A 11-23-87 WHS LJ		R258-3.1	
E DATE BY ENG. DESCRIPTION		DRAWING NO.	

REC. REV.



LEGEND

- INDICATES DETAIL NO. INDICATES DRAWING ON WHICH DETAIL APPEARS
- ⑬ CONDUIT NUMBER (NOTE 1)
- ⑬ FOUNDATION DETAIL (NOTE 2)
- ⑬ 5" PVC DUCT
- ⑬ 2 OR 4" PVC CONDUIT - AS INDICATED
- X X EXISTING FENCE
- X X PROPOSED FENCE (NOTE 3)
- PROPOSED FENCE FOUNDATIONS (NOTE 3)
- FOUNDATION ORIENTATION MARK

- NOTES
- SEE DWG 03-06 FOR CONDUIT VAULT DETAILS AND CONDUIT ENTRANCE ASSIGNMENTS.
 - SEE DWGS 3.3 AND 3.4 FOR FOUNDATION DETAILS.
 - SEE DWGS 02-04 AND 02-05 FOR STANDARD AND HIGH SECURITY FENCE DETAILS.
 - SEE EXTERIOR CABLE CHART DWG 4.1 FOR CABLE LENGTHS.

- CONSTRUCTION NOTES
- ALL CABLE TAIL LENGTHS SHALL BE 25' AT THE CONDUIT VAULT AND EQUIPMENT UNLESS OTHERWISE NOTED.
 - RASTER DIMENSION UPDATES REPRESENT RECORD REVISIONS. DIMENSIONS ARE NOT TO SCALE. SEE 02-01A FOR SURVEYED LOCATIONS.

CABLE CHART

NO.	DESCRIPTION	LENGTH	AMOUNT
1	2" PVC CONDUIT		
2	4" PVC CONDUIT		
3	5" PVC DUCT		
4	ABANDONED IN PLACE		

ITEM	DESCRIPTION OF MATERIAL	MANUFACTURER	CATALOG #	ATO STOCK #	QUANTITY
K219	CONDUIT, 2" SCHEDULE 40 PVC, W/BELL, 10' LENGTH (ORDER BY FEET)	CHARLTON	UNV000-01C	025388	8
K220	ELBOW, CONDUIT, 2" SCHEDULE 40 PVC, 90 DEG., 24" RADIUS, ONE BELLED END	CHARLTON	UNV000-01C	025388	8
K223	END, CAP, 2" PVC	CHARLTON	UNV000-01C	025388	8
K420	CONDUIT, 4" SCHEDULE 40 PVC, W/BELL, 10' LENGTH (ORDER BY FEET)	CHARLTON	UNV000-01C	025388	8
K421	ELBOW, CONDUIT, 4" SCHEDULE 40 PVC, 90 DEG., 24" RADIUS, BELLED END	CHARLTON	UNV000-01C	025388	8
K424	END, CAP, 4" PVC	CHARLTON	UNV000-01C	025388	8

Q REQUIRED W/ 60835

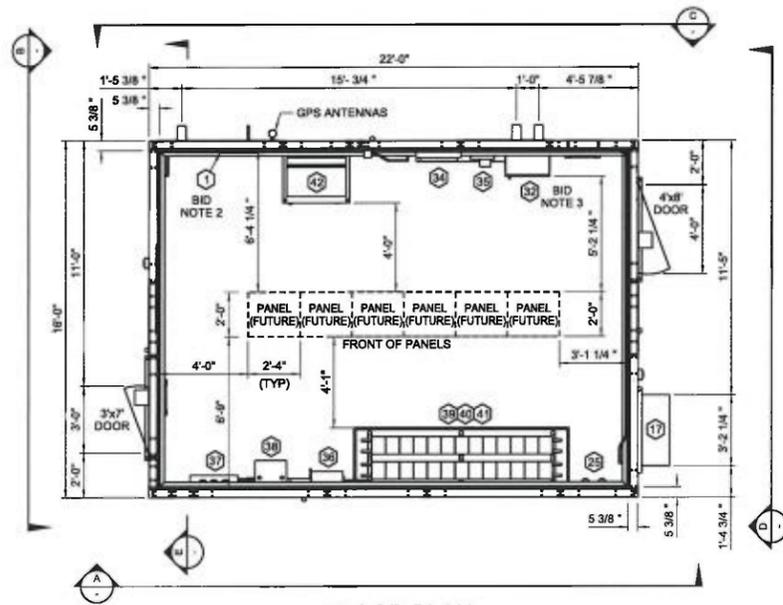
DRAWING APPROVAL
PLEASE CIRCULATE DRAWING(S)
IN ORDER SHOWN BELOW:
Comments are needed by : 01-26-18

Name	Initial	Code
PLN		
OPS		
PROT		
SCADA		
MAINT		
DE		
PM		
OTHER		

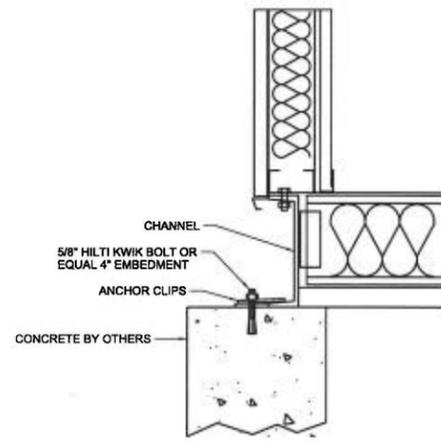
Codes: A = Approved for final
B = Approved with comments
C = Revise and resubmit



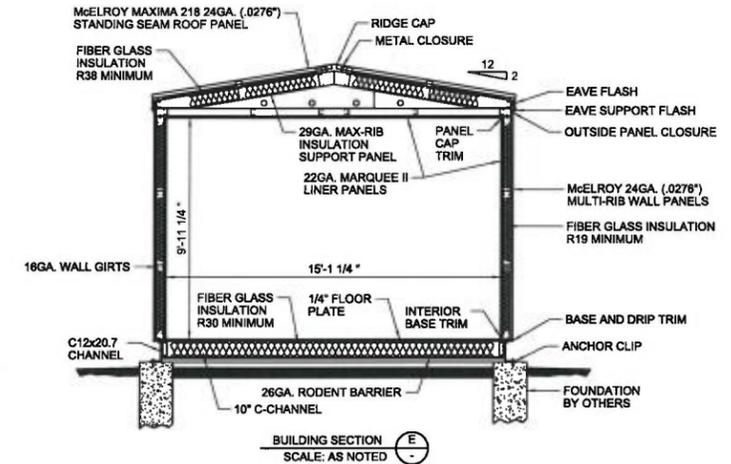
G F 01-05-18 ECI LSJ IFR WO# 601835 FOUNDATION & CABLE PLAN E 11-01-99 ssk FIELD REVISIONS D 10-01-99 SSK IIG EXIT C 09-18-95 JHM AK PACKET RADIO ADD B 2-1-95 PLM SCANNED A 11-23-07 WH3 LJ	DRAWN BY PCH DATE 10-19-02 ENG. KRIESEL DATE APPROVED SCALE 1/8"=1'-0" LOCATION BARABOO SUB DRAWING NO. R258-3.1	CONFIDENTIAL FOR THE USE OF WPL ONLY. USE BY ANYONE OTHER THAN WPL IS AT THEIR OWN RISK. R258-3.1 DRAWING NO.
--	---	--



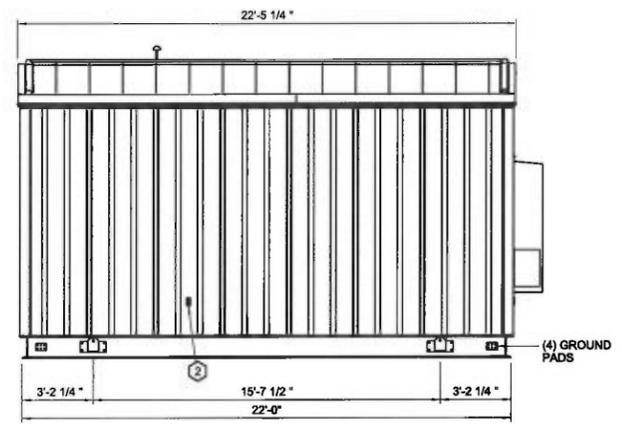
FLOOR PLAN



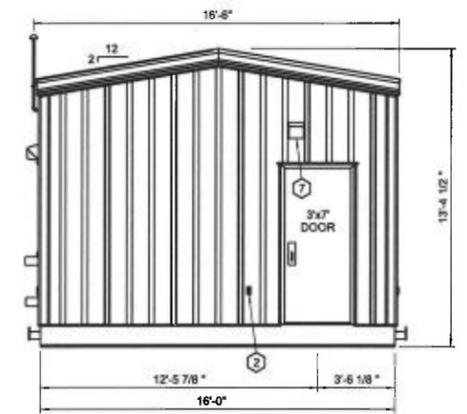
ANCHOR DETAIL
SCALE: 1 1/2"=1'-0"



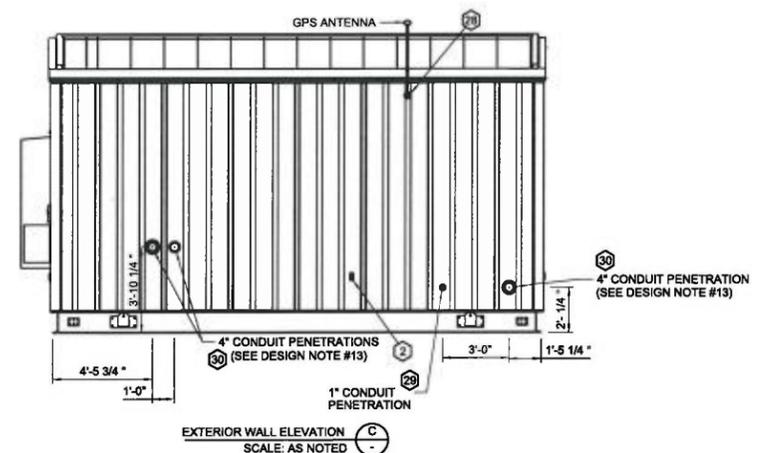
BUILDING SECTION E
SCALE: AS NOTED



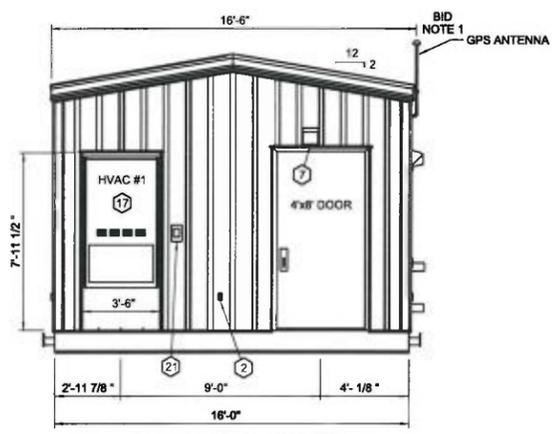
EXTERIOR WALL ELEVATION A
SCALE: AS NOTED



EXTERIOR WALL ELEVATION B
SCALE: AS NOTED



EXTERIOR WALL ELEVATION C
SCALE: AS NOTED



EXTERIOR WALL ELEVATION D
SCALE: AS NOTED

EQUIPMENT SCHEDULE

ITEM	DESCRIPTION	QTY
1	4' x 10' TELECOMMUNICATIONS BOARD	1
2	GFCI DUPLEX RECEPTACLE, 125V, 20A, WEATHER RESISTANT	4
3	FLOURESCENT LIGHT FIXTURE, 4 LAMP, LITHONIA, 32W	8
4	SWITCH, 3-WAY, HEAVY DUTY, 120/277V, 20A	4
5	SQUARE BOX, 4"x 4"x 2 1/8" DEEP, W/(11) 1/2" K.O.'s	4
6	EMERGENCY/EEXIT LIGHT - WALL MOUNTED, LITHONIA	2
7	ENTRY LIGHT, RAB HPS, 120V, 70W, W/PHOTOCELL	2
8	LIGHT SWITCH, HEAVY DUTY, 120/277V, 20A	2
9	RECEPTACLE, 3-WIRE, 125V, 20A	6
10	RECEPTACLE, DUPLEX, 120V, 20A, ISOLATED GROUND, ORANGE	2
11	HIGH TEMP CONTROL, HONEYWELL - T631C1020, 70° - 140° F RANGE	1
12	LOW TEMP CONTROL, HONEYWELL - T631C1103, 30° - 100° F RANGE	1
13	SMOKE DETECTOR, KIDDE - I12060, BATTERY BACKUP	2
14	HEAT DETECTOR, FYRNETICS - HD135F, BATTERY BACKUP	2
15	RELAY, KIDDE - SM-120X	1
16	FUNCTIONAL DEVICES RELAY, 20A, CONTINUOUS DUTY COIL	2
17	HVAC UNITS, BARD	1
18	SQUARE BOX, 4"x 4"x 2 1/8" DEEP, W/(8) 1/2" K.O.'s AND (4) 3/4" K.O.'s	4
19	HANDY BOX, 4"x 2 1/8"x 2 1/8", 3/4" K.O.'s	2
20	LEAD LAG CONTROLLER, BARD - MC4000B	1
21	HVAC DISC, SQ. D - Q0200TR	1
22	J-BOX, 8"x 8"x 4" DEEP, W/O KNOCKOUTS, GALVANIZED COVER	6
23	WIREWAY, TYPE 1, 4"x 4"x 80", W/O KNOCKOUTS	1
24	WIREWAY, TYPE 1, 6"x 6"x 96", W/O KNOCKOUTS	2
25	EYE WASH SALINE STATION, DBL 32 OZ	1
26	TELEPHONE JACK, ACCEPTS RJ-11 MODULE PLUG	1
27	"NO SMOKING" SIGN, 10"x 14", ALUMINUM	1
28	PIPE FLASHING, MINI DEKTITE, 1/4" - 1 1/8"	1
29	PIPE FLASHING, MINI DEKTITE, 1/4" - 2"	1
30	PIPE FLASHING, MINI DEKTITE, 1/4" - 5"	3
31	J-BOX, 18"x 18"x 6" DEEP, W/O KNOCKOUTS, NEMA 1	1
32	AUTOMATIC TRANSFER SWITCH, ASCO W/ 18B & 18G	1
33	J-BOX, 24"x 24"x 12", W/O KNOCKOUTS, NEMA 1	1
34	AC PANEL BOARD, SQ. D, NQ MB, 20" WIDE	1
35	METER BASE, MILBANK, SINGLE PHASE, 320A	1
36	DC DISCONNECT SWITCH, SQ. D, 240 VAC, 250 VDC, 200A	1
37	PANEL BOARD, MAIN LUG, SQ. D, I-LINE MLO, 83"x 28"x 6 1/2" DEEP	1
38	BATTERY CHARGER, HINDLE (OR EQUAL)	1
39	STATION BATTERY, ENERSYS (OR EQUAL)	1
40	BATTERY RACK, TWO STEP, 9 FT LONG	1
41	SPILL CONTAINMENT KIT, 32"x 116"	1
42	CABLE TERMINATION CABINET, 36"x 28"x 90"	1

BID NOTES

- PROVIDE PENETRATION ON WALL FOR GPS ANTENNA.
- ONE (1) 4" CONDUIT AND ONE (1) 1" CONDUIT SHALL BE PROVIDED THROUGH THE WALL TO THE TELCO BOARD. CONDUITS SHALL BE APPROXIMATELY 12" ABOVE THE FLOOR AND EXTEND A MINIMUM OF 8" BEYOND EXTERIOR WALL.
- ONE (1) 4" CONDUIT INTO EACH AC DISCONNECT SWITCH SHALL BE PROVIDED THROUGH THE WALL AND SHALL EXTEND A MINIMUM OF 8" BEYOND EXTERIOR WALL.

GENERAL NOTES

- THIS DRAWING CREATED FROM ATC STANDARD DRAWING SSST-05-63A REV. 2.
- FOR DESIGN NOTES SEE DRAWING BAR-05-01B.

FOR BID ONLY

				<p>16' X 22' CONTROL HOUSE FLOOR PLAN, EXTERIOR ELEVATION, SECTION BARBOO SUBSTATION</p>			
0	MM-DD-YY	601835	RECONDUCTOR BUS - W/O# 601835 - FOR BID ONLY	ALG	LSJ	MEE	ECI
REV	DATE	W.O.#	DESCRIPTION	DRAWN	CHKD	APPD	COMPY
				<p>SCALE: 1/4"=1'-0"</p>		<p>DRAWING NO. BAR - 05 - 01</p>	





Pinion, Tom

From: Bruce Braithwaite <bruce@drbuz.com>
Sent: Tuesday, July 10, 2018 8:35 PM
To: Pinion, Tom
Cc: Dale Vicky Harding; 'Gary Wegner'; Bryan Braithwaite
Subject: Honey Boy mobile home park

Tom,

Thanks for the suggestion.

Yes we would like to rezone the property to a B-3, Highway Oriented Business classification. Let this please be my official request to do so.

I will have Dale or Vicky Harding, the park managers drop off a check to you this week.

Thanks again for your kind assistance.

Bruce Braithwaite, owner

From: Gary Wegner <WegnerG@firstweber.com>
Sent: Tuesday, July 10, 2018 4:00 PM
To: Bruce Braithwaite
Subject: Re: Honey Boy mobile home park

I would suggest that you seek the rezoning to B-3, Highway Oriented Business. You would never get your manufactured housing zoning back however I do not feel that is the highest and best use of your property. So unless you are hesitant to give that up, I would proceed with the more standard and practical B-3 zoning.

Gary Wegner
First Weber - Wisconsin Dells
A Berkshire Hathaway affiliate
608-963-9915
<http://www.garywegner.firstweber.com/>



From: Bruce Braithwaite <bruce@drbuz.com>
Sent: Tuesday, July 10, 2018 2:05 PM
To: Gary Wegner
Subject: Re: Honey Boy mobile home park



Legislature Curtails Municipal Conditional Use Permit Authority

Daniel M. Olson, Assistant Legal Counsel, League of Wisconsin Municipalities

The Wisconsin legislature enacted major changes to local zoning authority laws in 2017 that were urged and promoted by developers but described by its legislative supporters as a “homeowners” bill of rights. Nonetheless, the laws passed and the governor signed them. Significantly, the most important change to municipal land use powers included in the legislation, 2017 Wisconsin Act 67, impacts the conditional use permit (“CUP”) authority of all local governments, including cities and villages.

Conditional Use Background

Zoning is a regulatory system designed to proactively improve the quality of land use patterns in communities and supplant the inefficient, expensive, and reactive nuisance litigation morass of the 19th century. These goals are typically accomplished by grouping compatible land use activities into zoning districts, which diminishes the negative impacts from incompatible uses.

Within the districts, certain land uses are deemed unlikely to adversely affect other uses in the district and are permitted without review. Other land use activities are only allowed as conditional uses in zoning districts even though they may be beneficial because they carry a high risk of negative external impacts on adjoining properties, neighborhoods or the whole community. These less compatible and less desirable land uses are commonly allowed only after individualized review by a zoning authority and subject to conditions designed to decrease the potential adverse impacts.

The traditional CUP system of the last 75-plus years provided cities and villages

with critical flexibility to accommodate risky land uses but protect the property values and investments of adjoining property owners, neighborhoods, and the whole community. The legislative changes to city and village CUP authority attacks that balance of interests by making the CUP decision process rigid and less able to protect other property owners and communities from the negative impacts of land uses traditionally categorized as conditional uses. A CUP system is now a much less desirable land use planning and regulation tool that cities and villages might reasonably abandon altogether.

CUP Authority Changes

The Municipality published an article exploring the scope of CUP authority in 2008. See *Zoning 495*. Much of that article is still relevant and important to a full understanding of CUP authority in Wisconsin. However, the 2017 CUP law changes, a reaction to the Wisconsin Supreme Court’s 2017 decision in *AllEnergy v. Trempealeau County*, 2017 WI 52, 375 Wis. 2d 329, 895 N.W.2d 368, substantially altered CUP authority in several critical areas.

First, the law amends the zoning enabling statute to specify that any CUP “condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.” Wis. Stat. §62.23(7)(de)2.a. It also mandates that CUP requirements and conditions “must be reasonable and, to the extent practicable, measurable” Wis. Stat. §62.23(7)(de)2.b. These new obligations are problematic.

Prior to the change, general non-specific CUP requirements in zoning ordinances were reasonable and, thus legally permissible. Now, they must be based on substantial evidence and, where practicable, they must be measurable to be reasonable.

One challenge will be creating reasonable CUP requirements that are meaningful. Drafting an ordinance with reasonable requirements to govern the likely as well as all possible contingencies relating to a conditional use will be a very difficult task. A meaningful requirement that is legally reasonable in one circumstance may likely be unreasonable in another. That is due to the nature of conditional uses; their impacts vary based on location, which is why they were not classified as permitted uses in the first instance.

And, what should zoning officials make of the “substantial evidence” and “measurable” requirements? Must adoption or amendment of CUP ordinances be accompanied by a record that satisfies the substantial evidence threshold? Assuming we can figure out what “to the extent practicable” also means, how measurable does a CUP requirement have to be to comply with the new law? There are no answers to these questions in the statute and, the courts, through costly litigation, will likely be the only authority that might satisfy a disgruntled developer.

Second, what qualifies as substantial evidence – the information an administrative body is allowed to rely on in reaching its decision – is now defined by statute instead of case law. “Substantial evidence means facts and information,

other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.” Wis. Stat. §62.23(7)(de)1.b.

While similar to what the substantial evidence test was, *see AllEnergy, 2017 WI 52 at ¶ 76*, it is clear that the change was enacted to try and limit the type of information a zoning authority can rely on in deciding whether to grant a CUP. It must not only be facts and information instead of personal preferences or speculation, but those facts and information must “directly pertain” to the requirements and conditions in the zoning ordinance or established by the zoning board.

It will be impossible to confine public hearing testimony from citizens to

only facts and information that directly pertains to CUP requirements and conditions. Most people do not have the kind of legal training or experience to provide wholly objective testimony at an informal zoning hearing. When this happens, are members of the zoning board legally permitted to redirect the testimony of the citizen without being challenged by the applicant as impermissibly biased? That is just one impact of the substantial evidence requirement.

The language prohibiting reliance on speculation for substantial evidence is another problem area. CUPs are inherently uses with higher risks of negative impacts on other uses. But, the negative impact varies from location to location. Therefore, is evidence about decreased property values or other negative impacts associated with a similar use at a different location speculation or

non-speculation about probable impacts at the proposed location?

Third, the city and village zoning enabling statute was amended to specify that “if an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city *shall* grant the conditional use permit.” Wis. Stat. §62.23(7)(de)2.a. (emphasis added). This language embraces a minority zoning legal theory the Wisconsin Supreme Court rejected in *AllEnergy* that “where a [CUP] applicant has shown that all conditions and standards, both by ordinance and as devised by the zoning committee, have been or will be met, the applicant is entitled to the issuance of a permit.” *AllEnergy, 2017 WI 52 at ¶119*.

Adding this legal principle to Wisconsin zoning law shifts the legal burden from

► p.23

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a CUP applicant to the municipal governmental body responsible for making the CUP decision. The municipality must establish a permit requirement or condition by ordinance or develop conditions that are based on substantial evidence provided at the hearing. The burden shifting limits the effectiveness of the entire CUP review process and moves CUPs much closer to permitted use status than might be desirable in most circumstances.

As already noted, the pre-hearing ordinance requirements are likely to be watered down and less meaningful in order to survive a reasonableness challenge since they will apply to all proposed CUPs that have highly variable impacts based on location. This will make CUP applications much harder to deny.

Public officials do not welcome zoning litigation. It is inefficient and costly. So, even assuming that they will have a solid understanding of substantial evidence, zoning board members will be very cautious with their authority to impose CUP conditions based on substantial evidence introduced at the zoning hearing. Again, the burden shifting will make CUP applications much more difficult to deny.

Could a CUP applicant preempt the entire CUP process by simply promising full compliance when he files the CUP application? Probably not because a public hearing is mandated and the zoning board is vested with some authority to impose conditions that are based on substantial evidence after the public hearing and before granting a permit. However, as long as the CUP applicant agrees to abide by all the requirements and conditions, zoning board discretion is nullified and it must grant the CUP.

Responding to the Changes

The legislative changes did not reduce the adverse impact risks associated with conditional uses for adjoining properties, neighborhoods, or communities. The risks are still present and, absent a

municipal response, are now even greater given the reduced ability to address those negative externalities. So, cities and villages should consider their options given the new legislative restrictions on their CUP authority.

► p.24

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Cities and villages can start with the knowledge that they are not legally required to have conditional uses in their zoning codes. Moreover, in most cases, the legislative decision by a city council or village board to include or not include a particular land use in a zoning district is essentially immune from legal challenge. The legislature may have severely curtailed city and village authority to deny a CUP request but it did not have any impact on city council or village board legislative discretion to classify land uses as conditional or permitted or determine how many, if any, conditional uses a city or village should have in a particular zoning district. So, one legally permissible response to the new laws might be elimination of all existing conditional uses in zoning districts or limiting them to a very select group of low-risk uses.

With the new laws, the legislature eliminated much of the prior legal authority cities and villages used to accommodate conditional uses while protecting property interests of adjoining landowners, the stability of neighborhoods, and the well-being of the whole community. Unless a city or village is willing to accept a conditional use in a zoning district – with much less ability to guide when and where it exists – then

eliminating them altogether or greatly reducing their availability is a reasonable and legally permissible response.

In addition, cities and villages will need to closely examine their existing conditional use permit requirements set by ordinance. As noted above, they must be reasonable, related to the purpose of the ordinance and, to the extent practicable, measurable. Thus, general requirements for CUPs commonly found in existing zoning ordinances are now suspect and subject to legal challenge. Instead, revised requirements should be information-based. In addition, a city or village will need to show that revised requirements are measurable, unless impracticable. And, if impracticable, they will need to be able demonstrate why.

Conclusion

Conditional use zoning permits have been commonly used by cities and villages to allow riskier land use activities in zoning districts subject to review and conditions. 2017 Wisconsin Act 67 substantially altered the CUP review and condition authority cities and villages have used for the last 75 years. The status quo for conditional uses in Wisconsin has changed dramatically. Cities and villages must now decide how they will respond to these changes. Revisions to CUP requirements in zoning ordinances

will be necessary. A thorough review of conditional use designation and inclusion in zoning districts is also warranted.

Zoning 523

About the author:

Daniel Olson is the Assistant Legal Counsel for the League. He provides legal assistance to municipal attorneys and officials through telephone inquiries, written opinions and briefs, workshop presentations, and published articles. He also assists in writing League handbooks and planning the Municipal Attorney's Institute. Daniel joined the League staff in 2001. Contact Daniel at danolson@lwm-info.org



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