Douglas R. Bomberg, CPCU December 10, 2019

Milwaukee's Lakefront Soon Be Littered With Cellphone Towers and Electric Meters; Growth Could Put Them Every Two Hundred Feet.

Action Must Be Completed by December 15, 2019

This is submitted to the Milwaukee County Board of Supervisors Parks, Education, and Environment Committee for its Tuesday December 10, 2019 meeting, regarding Agenda Item 19-895 "Small Cell Wireless Facilities impacts to Milwaukee County Parks".

The content of this meeting is critical not only to resident and non-resident users of County Lakefront Parks, but in fact _*all*_ State and Municipal Parks as well as throughout all municipalities statewide; in fact, the matter as national and even international implications (as explored later in this document). Due to new "shotclock" requirements, certain pending Verizon Wireless applications must be decided upon and communicated to Verizon by December 15; otherwise, by rule or by law, they will *automatically* be deemed Approved.

The current proposals contain significant flaws, threaten Safety and General Welfare of Park Patrons in Veterans Park, adversely impact the scenic beauty of Lake Park's Bradford Beach (a National Register of Historic Places site) and other sites, conflict with other State Law, and violate State and Federal Constitutional provisions. The proposals must be denied or modified.

The matter, while billed as an information item regarding new laws, has immediate practical impact. The Parks Department has received, and in fact has partially (and possibly mistakenly) approved, applications from agents of Verizon Wireless to install "Small Wireless Facilities" (< 50 ft high cell towers) and associated Fiber-Optic (FO) backhaul cable all along Lincoln Memorial Drive from Discovery World nearly to the "Picnic Point-North Point" at the north end of Bradford Beach, and in Veterans' Park along Lagoon Drive. Each of these towers will be accompanied, ten feet away, by a five foot high WE Energies pedestal ("Ped") with one to six (if WEPCo anticipates other cell-carriers will subsequently install their own cell towers in the immediate vicinity) electric meters

This installation is only the beginning of what could quickly become a deluge of fiber-optic borings and bristling towers and nearby electric "peds" throughout the Lakefront made by all five cellular carriers. Though "only" starting with five towers, the fiber runs are prepared to pepper towers every 1000 ft. Verizon's sub-millimeter wave 5G endeavor requires towers every 500 to 1000 feet ; they're not done. And, once the precedent of a celltower installation has been set, other carriers will have easy access under new laws. The County Parks Department has already attempted to ask Verizon to modify elements of their applications, using "Safety And General Welfare" and "Historic District" provisions still available under new restrictions, but has nevertheless been _*refused*_ accommodation by Verizon. Essentially, recent Federal Communications Commission (FCC) rules (which are being challenged as

unconstitutional under the 5th, 10th, and 14th Amendments), and State of Wisconsin 2019 Act 14 (defectively ramrodded through the Legislature in near-record time this past summer, and now appearing as Wisconsin Statutes 66.0404 and 66.0414 , have virtually given cellphone carriers the absolute power of _*Eminent Domain*_, even trumping local government or the Will Of The People. While FCC rules have slightly more flexibility, the State Law takes away Zoning power; as well; moreover, it says that cell sites cannot be denied solely on aesthetic grounds, and requires that Government have pre-existing, extremely limited criteria in place to evaluate tower installations. These criteria are not necessarily fully in place, yet Applications have already been made, and "shot clocks" are expiring December 15, deeming the proposals automatically approved.

Given the need for "5G" towers to be interspersed every 1000 feet, and given competition, it is easy to project this will develop to "Small Wireless Facilities" (SWFs) popping up _*every two hundred feet*_ along the Lakefront. Moreover, these same rules are being used in communities throughout the State, and can soon appear in State Parks and other municipal parks, and along Rights of Way (expanded by the State to include _*all*_ Utility Easements!) throughout Wisconsin.

Alarmingly, the new rules and laws cap the cost-recovery that local government can obtain to miniscule amounts often less than 5% of the rates government _had_ been collecting for Small Towers. Government Revenues will be decreased, while costs will go up - - unless, ahead of time, local government has developed and published its costs. The County Parks Department has yet to do so. Under new laws, the County Parks Department must also publish, ahead of time, objective standards with which to attempt to alter Small Wireless facility undertakings based upon aesthetic, historic, and other impacts

Finally, the rules and Law say that local government cannot act with the effect of prohibiting service.

Parks Department Executive Director Guy Smith, in his 19-895 "Reports" document (a November 12 2019 memo proposing the upcoming Agenda Item for the Committee's consideration), noted a number of impacts of the new impositions upon the County.

However, Guy did not highlight a number of other County Impacts arising from the new rulings upon Parks in general; upon Riparian Rights, Made Lands, and responsibilities under the Public Trust Doctrine; upon historic Property Restrictions and Covenants, or upon areas not zoned Single Family Residential.

I believe that applications for Cell Towers Installations or their associated backhaul cabling, especially in the Made Lands (landfill) parks along Milwaukee's Lakefront, should, and can, be modified, or even thwarted (if Local Governments are willing to join others already fighting the laws), based upon other State Law such as Statutes 27 (establishing Parks), State Constitution (Article IX and XIII) , Federal Law (NorthWest Ordinance of 1790), , US Constitution (Due Process of Law), International Treaty (Boundary Waters Act), procedural errors and omissions in carrier applications, process; misinterpretation, Lack of contact with the City as owner of proposed cell cite and other factors. Verizon _must_ acknowledge and accommodate threats to Safety and general welfare, as well as to National Register of Historic places sites. To date they have said "NO".

The provisions of FCC Rule and of Wisconsin 2019 Act 14 are onerous and hard to avoid along most public lands in the state. However, the Milwaukee County Parks in general, and the parks along the lakefront in particular, have specific State and Federal laws which may give the County increased power to control the existence, siting, timing, or revenue associated with placement of Small Wireless Facilities.

Aspects which should be used to modify Small Wireless Facility proposals include:
-non-comprehensive, Incomplete or misleading applications by Verizon's Agents;
-placement in areas which threaten Safety and General Welfare of Kite Flyers;
-placement within or adjacent to Historic Sites, incompatible with the character of the sites;
-placement in State Designated Wetlands;
-incompatibility with published Plans for Lakefront Development;
-incompatibility with purposes of the Parks as embodied in State Law and Contracts;
-rights of all Parks Systems statewide under Statutes 27 to have exclusive, non-zoning jurisdiction over parks;
-existence in "Made Lands" in violation of Public Trust Doctrine as promoted by Wisconsin Constitution Article IX, and Federal Northwest Ordinance of 1790, et al;
-violation of State Statutes 13.097 in creating the law;
-violation of State Constitution Article XIII rights including determination of usefulness and aesthetics;
-multiple violations of Due Process rights under State and Federal Constitution

Especially given the complexity of the matter, the probable errors in the applications and possibly in their response, and the lack of public discourse, the Application for installation of Small Wireless Facilities in Milwaukee County Parks by Verizon should be postponed by mutual agreement, or denied. Because laws do not allow a Moratorium, the County must quickly develop clear, consistent rates, rules and procedures for _all_ Applicants. It should also consider Intergovernmental Cooperation to further discern the depth and breadth of troubles municipalities are having with the new laws, seek Judicial Relief, and Petition the Government for a Redress of Grievances.

A separate detailed study will be emailed, with a hardcopy submitted as Committee Record, further discussing the matter.

2019-12-10
Douglas R Bomberg, CPCU
Milwaukee


APPROXIMATE LOCATION OF PROPOSED SMALL CELL (LAKEFRONT SCS3)
PROPOSED 20' WIDE UTILITY EASEMENT
PROPOSED MEET POINT
PROPOSED 20' WIDE UTILITY EASEMENT
APPROXIMATE PROPERTY LINE LOCATION, TYP.
APPROXIMATE LOCATION OF PROPOSED SMALL CELL (LAKEFRONT SCS4)
PROPOSED 20' WIDE UTILITY EASEMENT
APPROXIMATE LOCATION OF PROPOSED SMALL CELL (LAKEFRONT SCS5)
APPROXIMATE LOCATION OF X729 PROPOSED FIBER ROUTE TO WAR MEMORIAL MACRO SITE
PROPOSED 20' WIDE UTILITY EASEMENT
APPROXIMATE LOCATION OF PROPOSED SMALL CELL (LAKEFRONT SCS6)
SCALE:


Grade Line
NORTH

NORTH
Grade Line

Small Cell Towers in Milwaukee Parks Study

Douglas R. Bomberg, CPCU December 10, 2019 v.1

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I) Introduction

The matter, while billed as an information item regarding new laws, has immediate practical impact. The Parks Department has received, and in fact has partially (and possibly mistakenly) approved, applications from agents of Verizon Wireless to install "Small Wireless Facilities" (< 50 ft high cell towers) and associated Fiber-Optic (FO) backhaul cable all along Lincoln Memorial Drive from Discovery World nearly to the "Picnic Point-North Point" at the north end of Bradford Beach, and in Veterans' Park along Lagoon Drive. Each of these towers will be accompanied, ten feet away, by a five foot high WE Energies pedestal ("Ped") with one to six (if WEPCo anticipates other cell-carriers will subsequently install their own cell towers in the immediate vicinity) electric meters.

This installation is only the beginning of what could quickly become a deluge of fiber-optic borings and bristling towers and nearby electric "peds" throughout the Lakefront made by all five cellular carriers. Though "only" starting with five towers, the fiber runs are prepared to pepper towers every 1000 ft. Verizon's sub-millimeter wave 5G endeavor requires towers every 500 to 1000 feet ; they're not done. And, once the precedent of a celltower installation has been set, other carriers will have easy access

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Given the need for "5G" towers to be interspersed every 1000 feet, and competition, it is easy to project this will develop to "Small Wireless Facilities" (SWFs) popping up _*every two hundred feet*_ along the Lakefront. Moreover, these same rules are being used in communities throughout the State, and can soon appear in State Parks and other municipal parks, and along Rights of Way (expanded by the State to include _*all*_ Utility Easements!) throughout Wisconsin.

Alarmingly, the new rules and laws cap the cost-recovery that local government can obtain to miniscule amounts often less than 5% of the rates government _had_ been collecting for Small Towers. Government Revenues will be decreased, while costs will go up - - unless, ahead of time, local government has developed and published its costs. The County Parks Department has yet to do so.

Finally, the rules and Law say that local government cannot act with the effect of prohibiting service.

Parks Department Executive Director Guy Smith, in his 19-895 "Reports" document (a November 12 2019 memo proposing the upcoming Agenda Item for PEE's consideration), noted a number of impacts of the new impositions upon the County. Director Smith noted:

> *"Act 14 impacts Milwaukee County and Milwaukee County Parks in the following respects:*
>
> *-Expands the definition of public "right of way," as applied to SWFs, to include highways, sidewalks and utility easements, with the definition of "highway" also including parkways that previously were not considered right of way for other purposes.*
>
> *-Restricts the use fees for SWFs located in the right of way to no more than $20 per SWF per year.*
>
> *-Restricts the fees for permit applications to no more than $500 for up to five SWFs (plus $100 for each additional SWF).*

-Limits the amount the county can charge for collocation on county-owned poles to no more than $250 per SWF per year.

-Institutes shot-clock provisions that severely limit the time for the county to respond to an application for placement or collocation of SWFs, with approval being automatic if there is no response within the time limit.

-Allows for very limited regulation related to health/safety/welfare considerations, aesthetic concerns, and placement in historic or underground districts.

-Establishes that wireless providers have the RIGHT to collocate SWFs in the right of way and/or on county owned poles."

However, Guy did not highlight a number of other County Impacts arising from the new rulings upon Parks in general; upon Riparian Rights, Made Lands, and responsibilities under the Public Trust Doctrine; upon historic Property Restrictions and Covenants, or upon areas not zoned Single Family Residential.

I believe that applications for Cell Towers Installations or their associated backhaul cabling, especially in the Made Lands (landfill) parks along Milwaukee's Lakefront, should, and can, be modified, or even thwarted (if Local Governments are willing to join others already fighting the laws), based upon other State Law such as Statutes 27 (establishing Parks), State Constitution (Article IX and XIII) , Federal Law (NorthWest Ordinance of 1790), , US Constitution (Due Process of Law), International Treaty (Boundary Waters Act), procedural errors and omissions in carrier applications, process; misinterpretation, Lack of contact with the City as owner of proposed cell cite and other factors. Verizon _must_ acknowledge and accommodate threats to Safety and general welfare, as well as to National Register of Historic places sites. To date they have said "NO".

II) Background Application Details

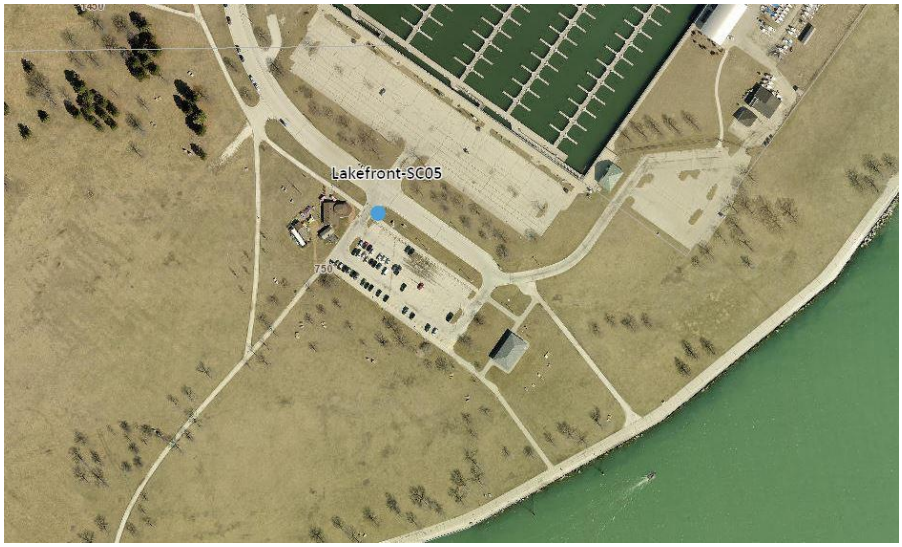
Verizon's applications, being Open Records, were graciously and appropriately shared by the Parks Department upon request. [Unfortunately, under the guise of "client confidential information", the County would not share Corporation Council's "Frequently Asked Questions" (FAQ) regarding Small Wireless Facilities, in my attempt to understand whether particular aspects of the issue, especially issues revolving around the Parks, had been fully considered. Though I am disappointed, feeling that the citizenry _is_ the ultimate client of government, I am hopeful that at least the County Supervisors can be made privy to those details.]

1) The County Parks Department's files show overviews of fiber runs or towers which were not supported by more detailed drawings. Overviews contained in the shared documents show that Verizon's Applications starts with installation of SWF Towers at City of Milwaukee "Lakefront Gateway Plaza" at Cybourn and Harbor Dr (near Discovery World), smack dab in front of the proposed Couture high-rise, and quite close to the iconic Calatrava , with Verizon-Exclusive Fiber-Optic Cable running north through War Memorial Art Center/O'Donnell Park "Lakefront Pavilion Condominium" along Lincoln Memorial Drive (LMD) to Lagoon Drive.

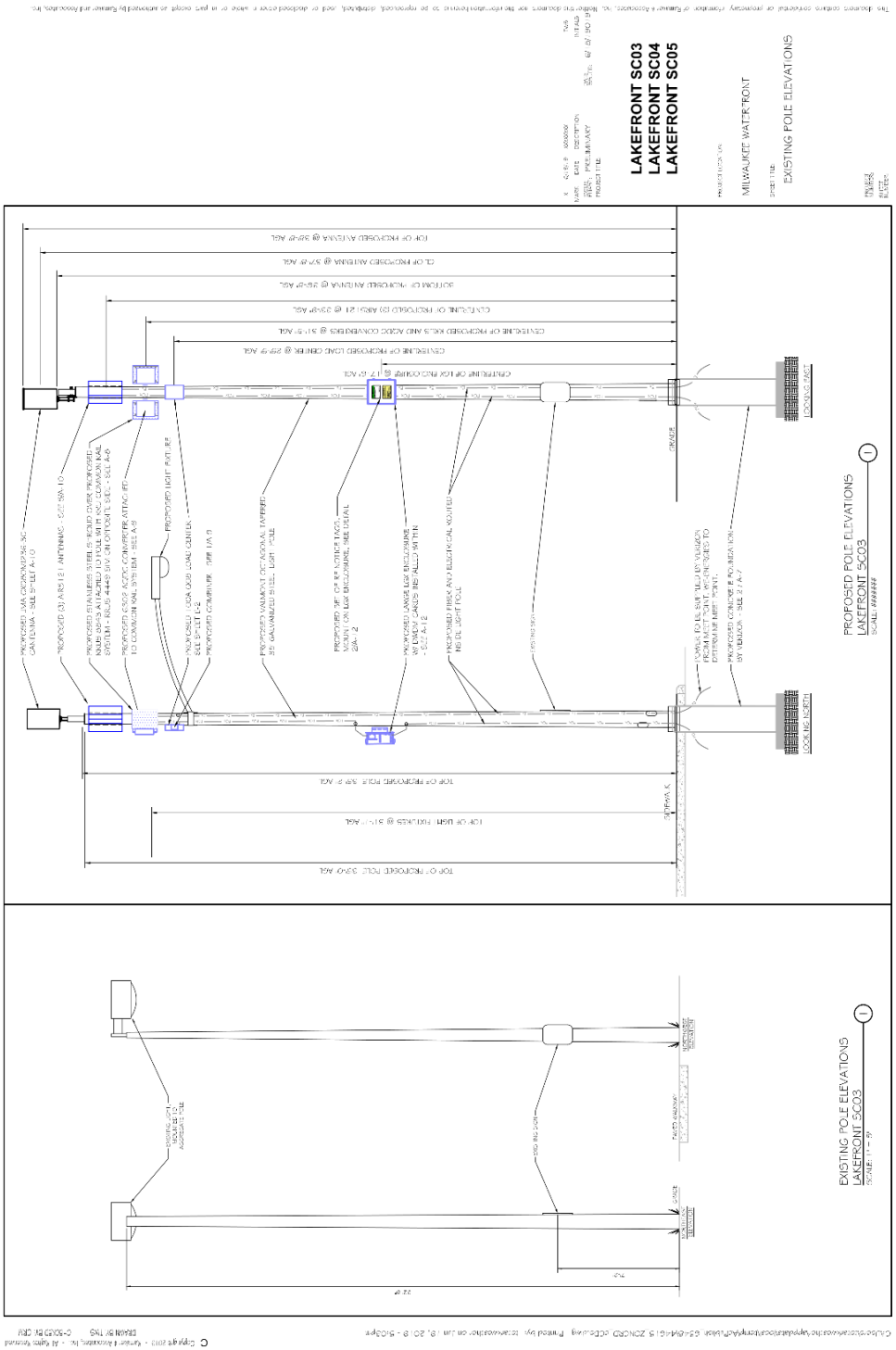
Ramaker "VZW Small Cell_Zoning CDs_Prelim_2019-06-19.pdf" p.2 (sheet C-1)

2) At Lincoln Memorial Bridge, a fiber-optic branch circuit will be installed, running to the "Macro Tower" flagpole which already exists next to Abe's statue at the War Memorial Art Center. No further information has been received by the author, nor, multiple offices report, by the County. Especially as this structure is all concrete and steel, one wonders about many implementation details upon Public Property.

3) At Lagoon Dr.and LMD, another fiber-optic cable run will run east along Lagoon Drive in Veterans' Park, currently proposed to end at the Parking Lot immediately east of the Kite Shed. At the Parking Lot, Verizon will replace a parking lot lightpole with a _*visually inconsistent*_ taller pole with both light and antenna, and add an electric meter. This new, taller and much wider pole and antenna will be merely yards away from the Kite Shed, where kiters (especially novice aeronauts) too-frequently initiate their flying activities and will undoubtedly entangle their aircraft in _live_ electric and Radio Frequency equipment. Who needs Ben Franklin's key in a lightning storm when you've got Verizon zapping kids in your front yard? Who will retrieve the entangled craft? Though frequently a solitary pastime, Veterans Park has seen events with _*hundreds*_ of kites simultaneously flying. Why must the Public, having long-established the recreational usage precedent of the area, now be exposed to increased risk of liability for damaging CellPhone Tower Equipment which might occur while trying to yank entangled (1000 Pound Test) Line or Craft from out of the tower protrusions?



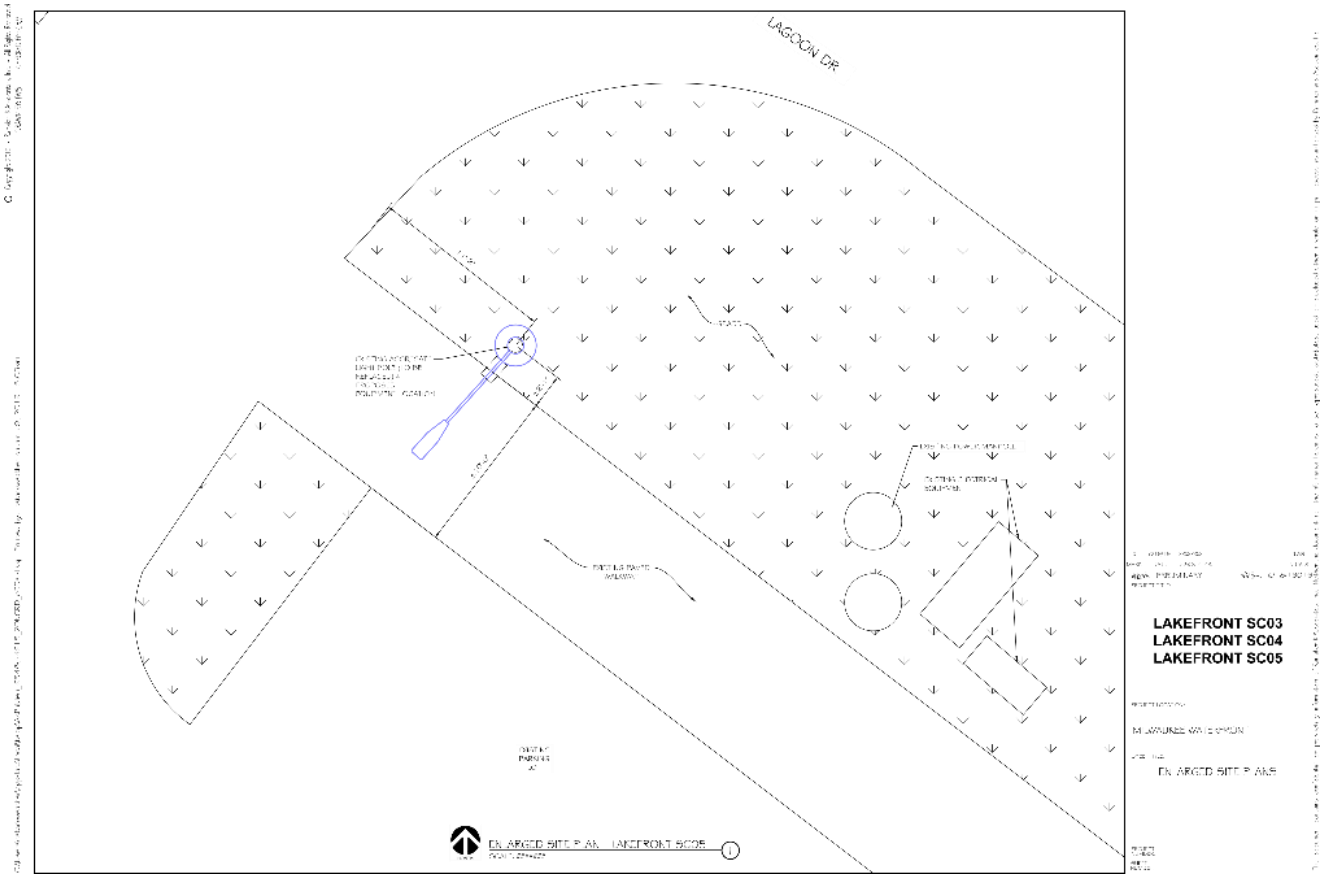
Ramaker Application File "VZW Small Cell_Lakefront-SC05.jpg



Ramaker "VZW Small Cell_Zoning CDs_Prelim_2019-06-19.pdf" p.11 (A-9)

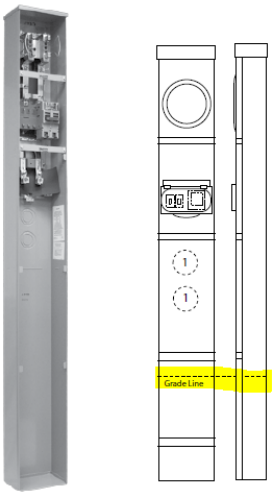
Showing proposed tower in Veterans' Park

Note "before" and "after" are different scales; celltower is taller, wider, and a completely different design, offering significant snag hazards to kite flyers. Drawings omit additional electric meter.



Ramaker "VZW Small Cell_Zoning CDs_Prelim_2019-06-19.pdf" p.10 (A-8)

Note the missing electric meter, and the wider, snagging footprint of the light arm.



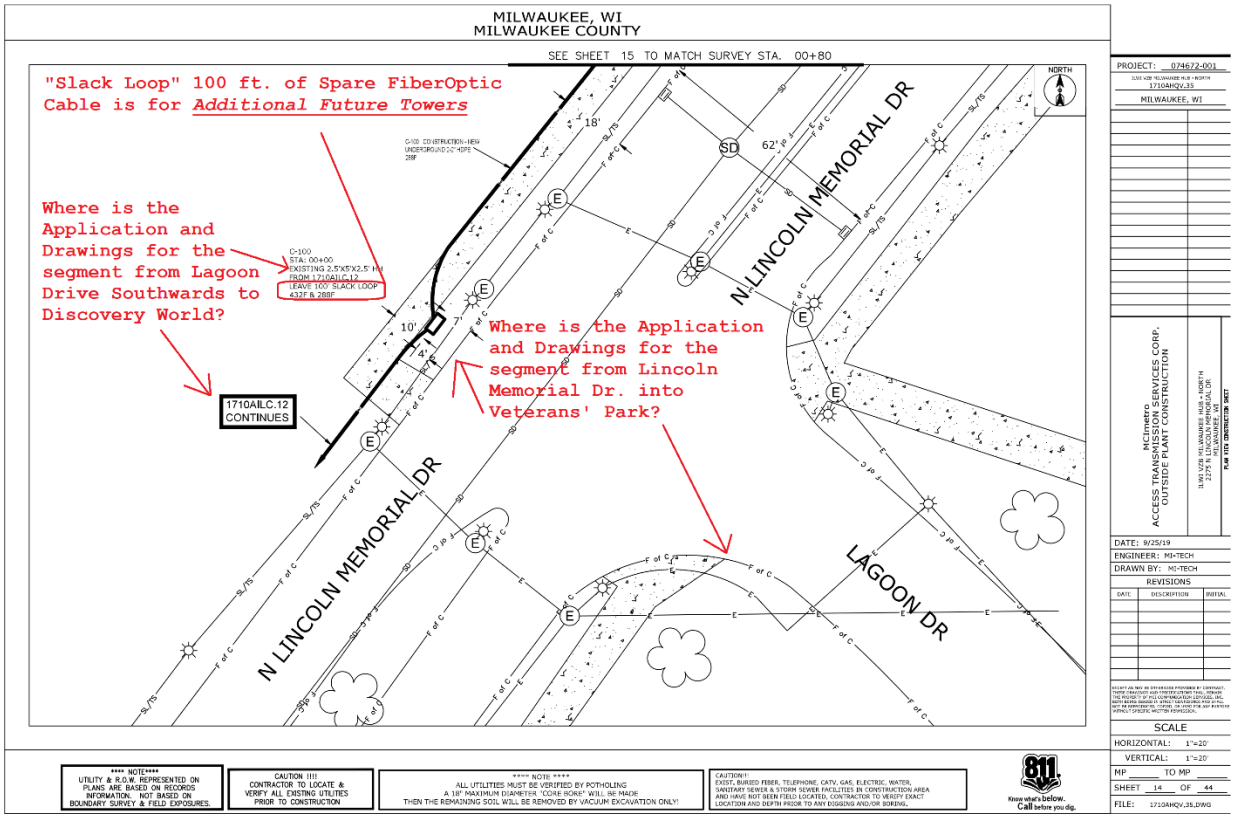
Single-Electric Meter pedestals such as this one will be required, ten feet away from each pole, unless WEC Energy feels there will be other cell-carriers' poles nearby, when WE will install multi-meter poles. These pedestals, too, will each require new access holes and new electric cabling throughout the parks.


CAUTION
Stunt Kites

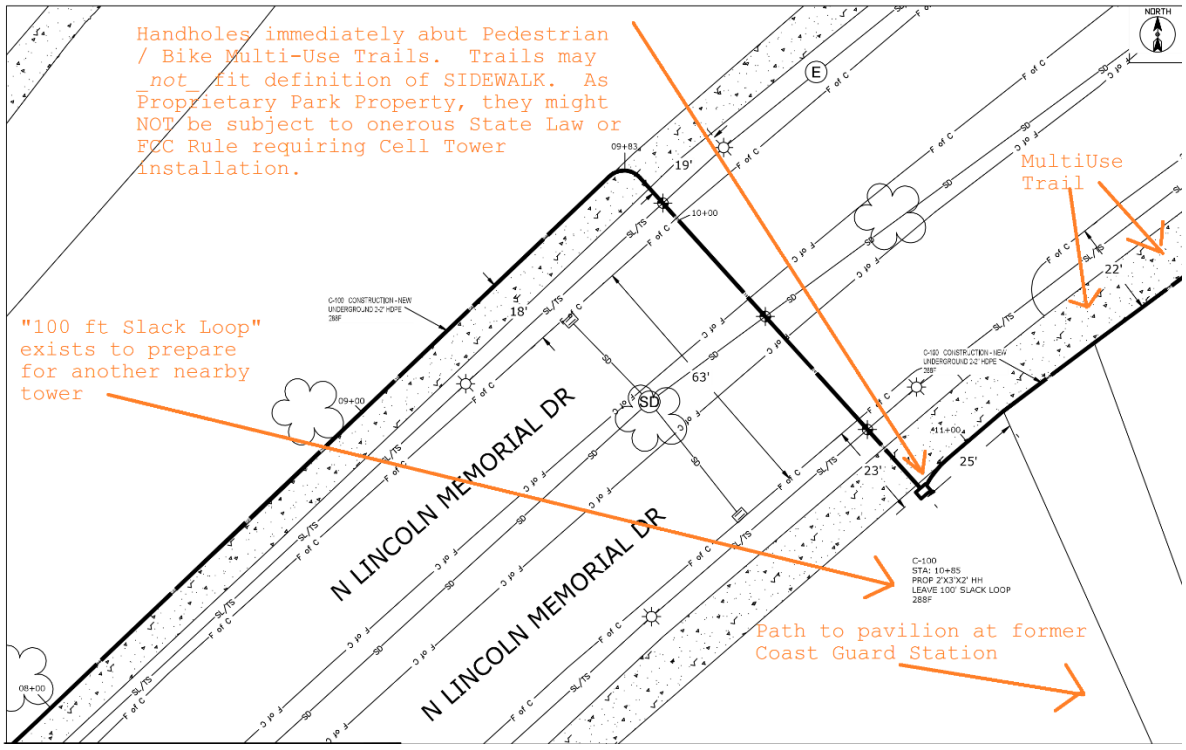
The “Kids Mad Dash” has over one hundred simultaneous fliers. Note, however, the *_majority_* of kites at the festivals are in the unorganized recreational “free flying” area to the east, immediately south of the Veterans Park Parking Lot.

This drone photo of a Kite Festival was taken at 10 a.m., some two hours before the "Grand Launch" (and when the wind has yet to pick up to generally flyable levels). Milwaukee County Sheriff's Dept. frequently has estimated attendance at festivals at over 10,000 people. Most often, though, kiting is a completely unorganized recreational activity.

4) Returning to the Lincoln Memorial Drive/Lagoon Drive intersection, The LMD cable will continue running northeast to near the MMSD / Collectivo Coffee structure, at the pathway to the shelter where the old Coast Guard Station stood. At this point, the cable crosses under LMD to the east side of The Drive. It continues northeast, and runs a second branch into the new McKinley Park/Marina North Parking Lot, which includes the Milwaukee Yacht Club. Note that Verizon's plans do not in any way reflect the new design being constructed now; their installation will be tearing up weeks-old pavement.

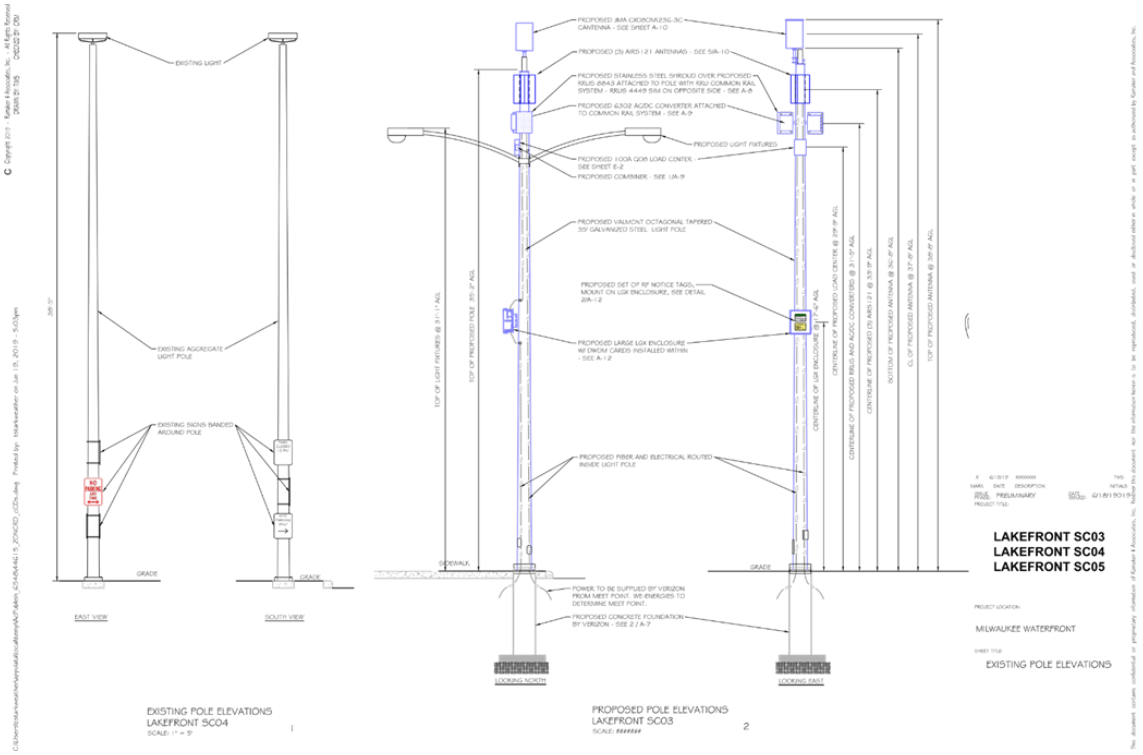


"Tesinc, LLC 1710AHQV.35 CONSTRUCTION PRINTS 9-25-19 Lincoln Memorial Dr.pdf", Sheet 14

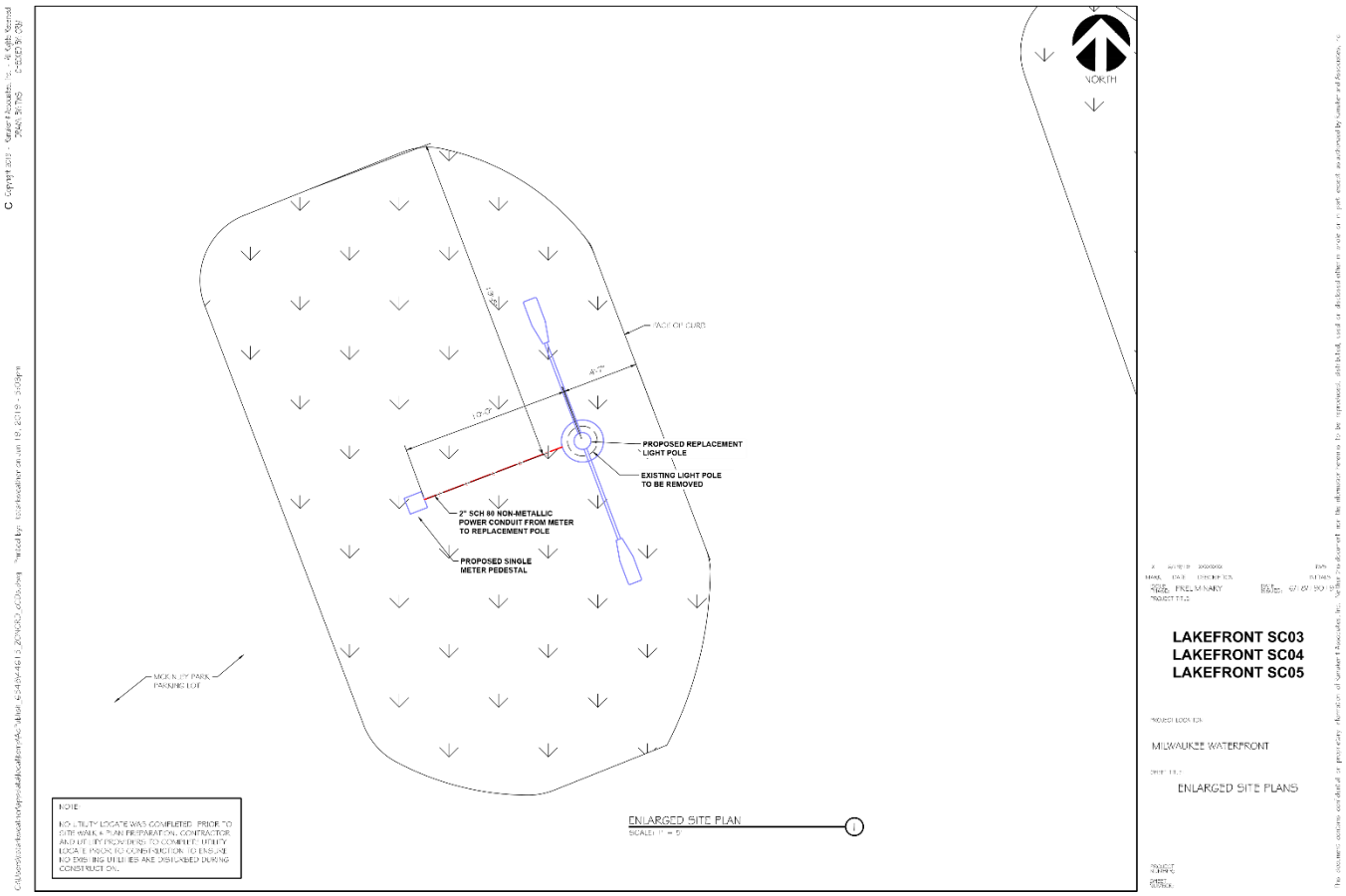


"Tesinc, LLC 1710AHQV.35 CONSTRUCTION PRINTS 9-25-19 Lincoln Memorial Dr.pdf", Sheet 18

Ramaker Application File "VZW Small Cell_Lakefront-SC04.jpg" *Note that the lot is now completely different that this.*

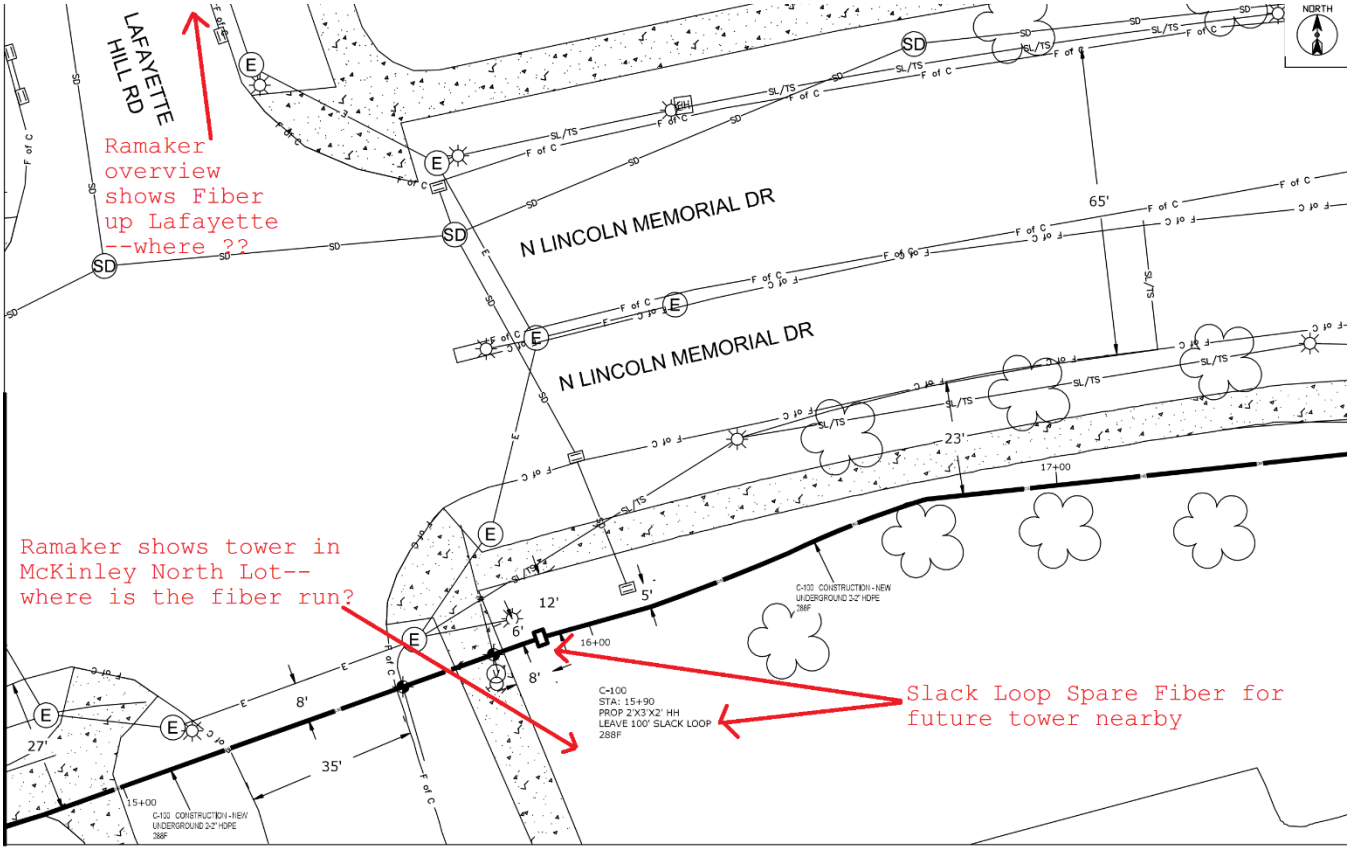


Ramaker "VZW Small Cell_Zoning CDs_Prelim_2019-06-19.pdf" p. 8 (sheet A-6) *NOTE the 'before' and 'after' are not at the same scale*! Heights are different. This is the proposed tower in McKinley Marina North /Yacht Club lot.



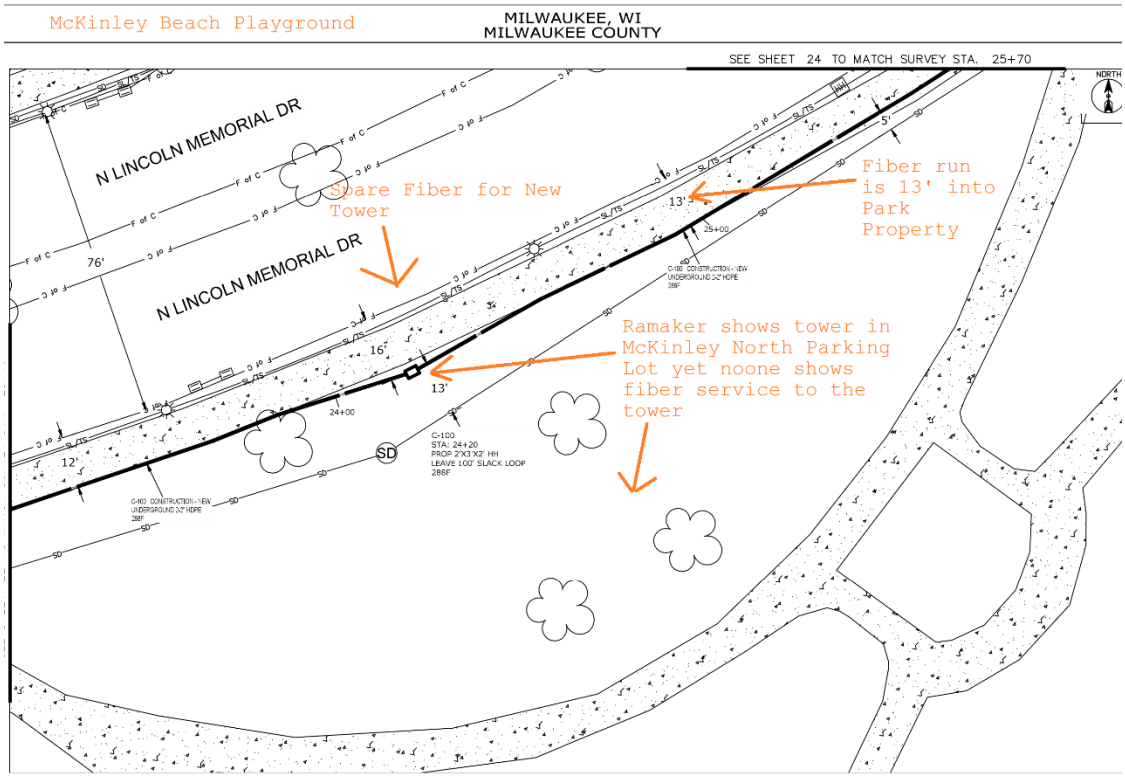
Ramaker "VZW Small Cell_Zoning CDs_Prelim_2019-06-19.pdf" p.7 (A-5)

Note the Electric Meter Pedestal nearby; all towers will need. Planform of light is taller, wider, and completely different than surrounding parking lot lights. The grass island depicted no longer exists given the new McKinley North Lot construction.

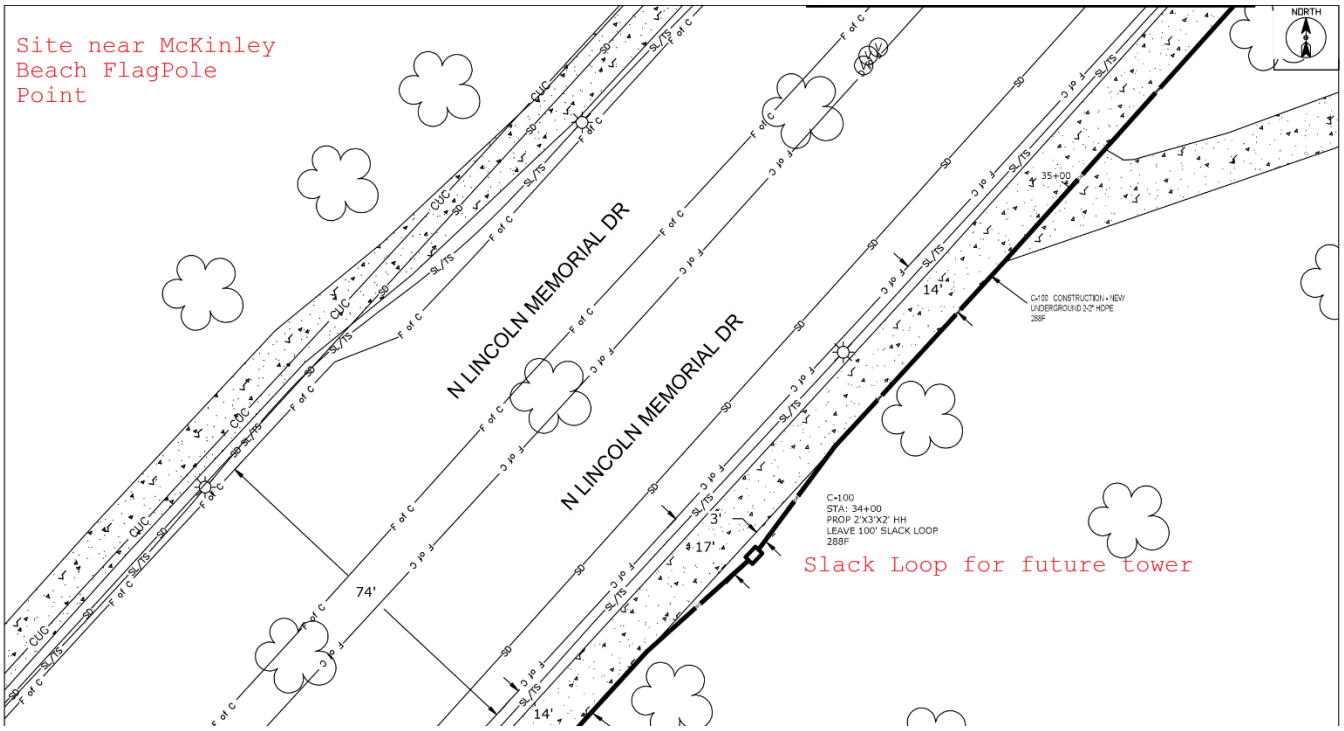


"Tesinc, LLC 1710AHQV.35 CONSTRUCTION PRINTS 9-25-19 Lincoln Memorial Dr.pdf", Sheet 20

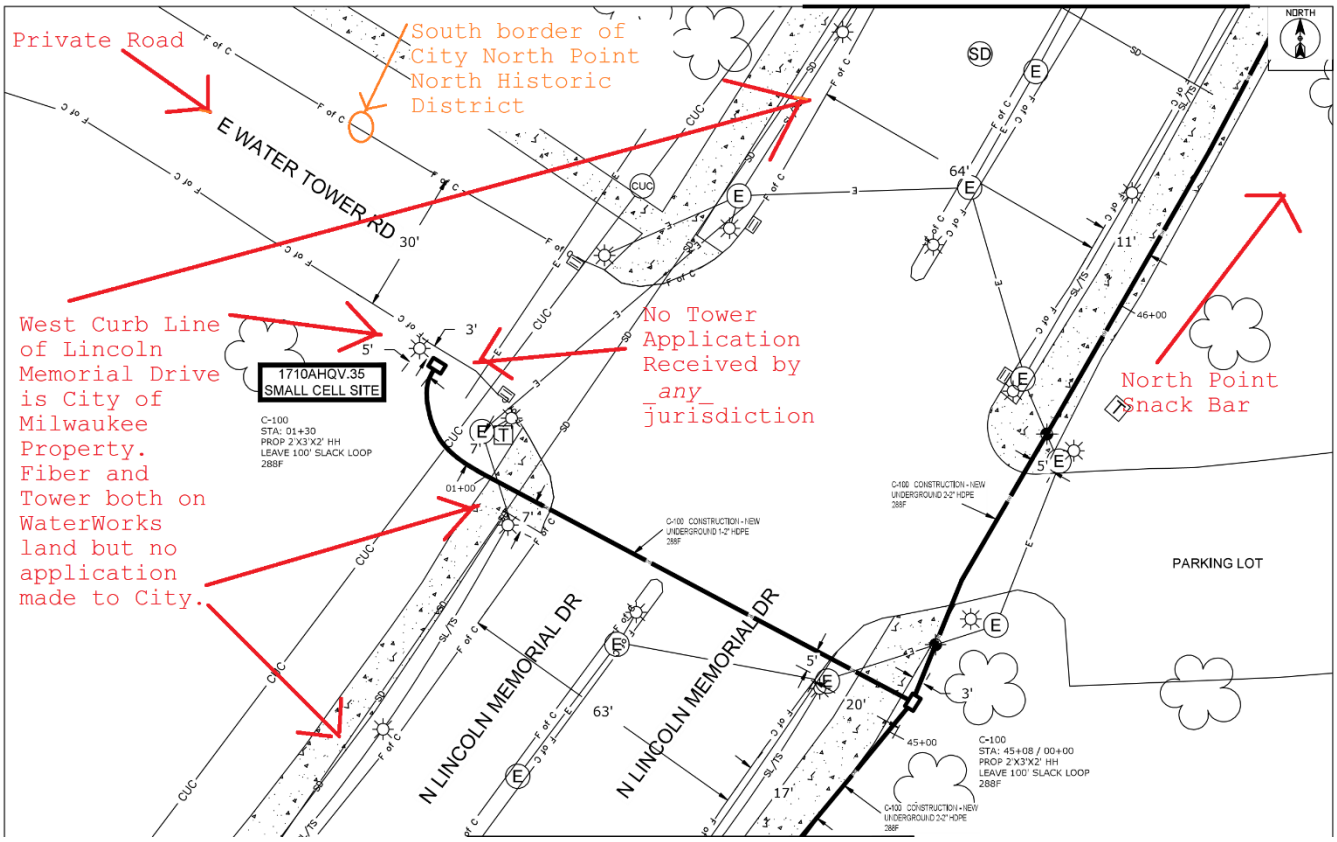
5) Back on Lincoln Memorial Drive, the main run continues from Lafayette Hill Rd northwards to near the North Point Parking Lot, where another branch line is proposed to run back west under LMD to the southeast corner of Water Tower Rd and Lincoln Memorial Drive (kitty-corner from Moosa's NorthPoint Snack Bar). At that southeast corner, another tower is currently proposed to be built. Note that this site is actually City of Milwaukee Water Works' property. Verizon had been unaware of this fact, yet to apply to proper property owner. Note too that Water Tower Rd. is clearly delineated by the City (by brown street-sign up at Terrace Ave, and by maps) as Private Road, not Public Right of Way. R.o.W. importance will be described later. Note as well that this site is immediately south of the southern border (which is the north curb of Water Tower Rd.) of the City of Milwaukee's "North Point North Historic District". Ramaker did not supply the County with imagery regarding this tower, despite its existence on TESInc's fiberoptic drawings.



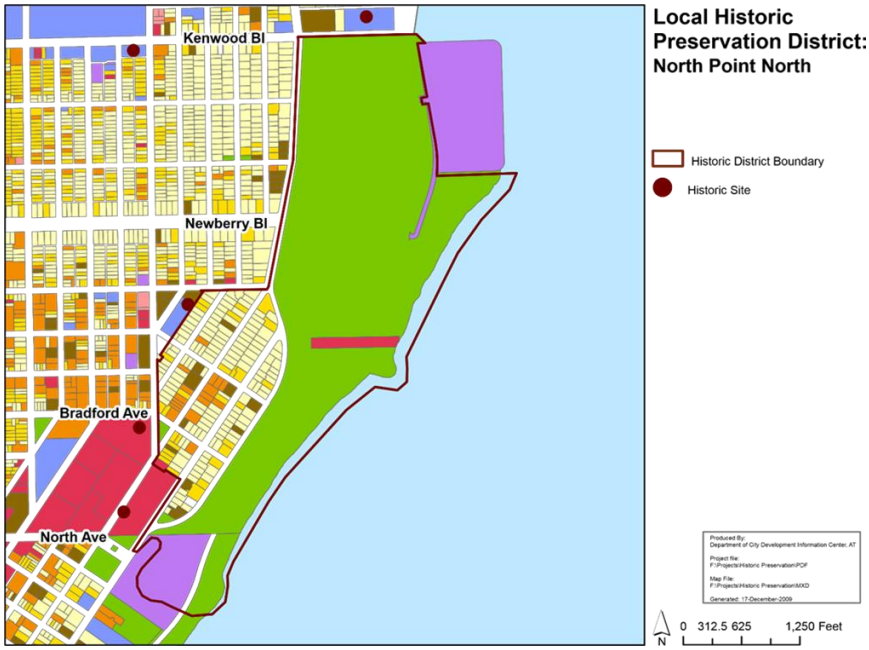
"Tesinc, LLC 1710AHQV.35 CONSTRUCTION PRINTS 9-25-19 Lincoln Memorial Dr.pdf", Sheet 23



"Tesinc, LLC 1710AHQV.35 CONSTRUCTION PRINTS 9-25-19 Lincoln Memorial Dr.pdf", Sheet27

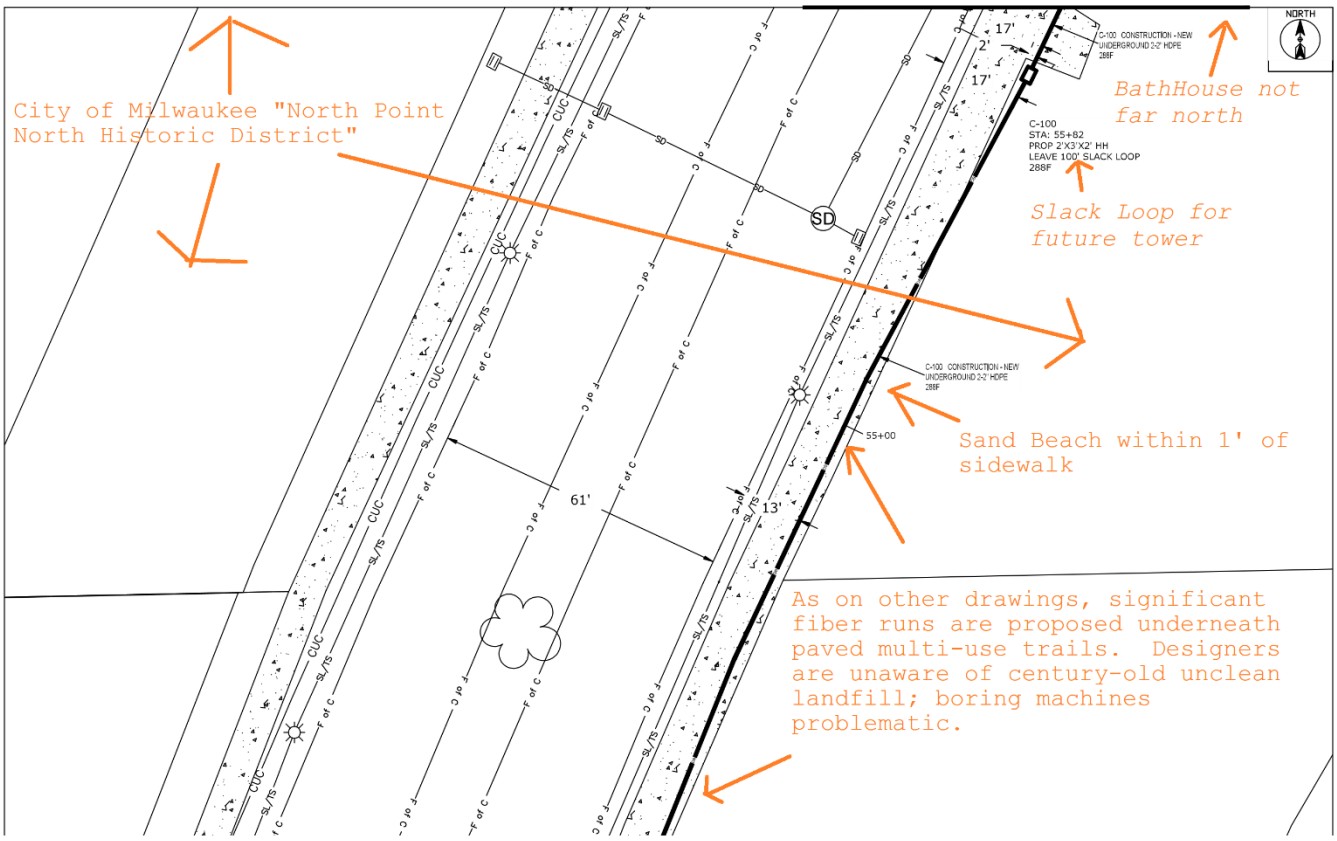


"Tesinc, LLC 1710AHQV.35 CONSTRUCTION PRINTS 9-25-19 Lincoln Memorial Dr.pdf", Sheet 32



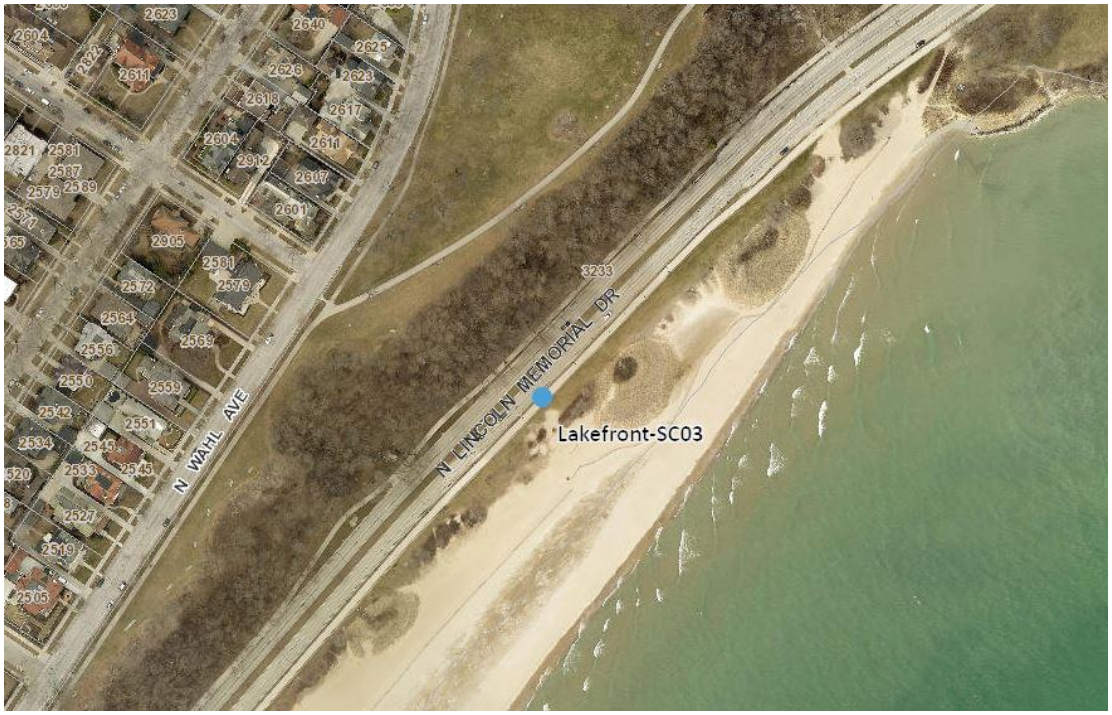
https://city.milwaukee.gov/ImageLibrary/Groups/cityHPC/maps/vticnf/mapNorthPointNorth.pdf

6) The main Lincoln Memorial Drive cable run continues north-northeast from the Snack Bar Parking lot, along Bradford Beach, frequently under the pavement itself since the beach sand, or building, come nearly to the road. This land was filled in during the 1920s, using unknown fill materials; boring Fiber-Optic Cable may prove well neigh impossible.

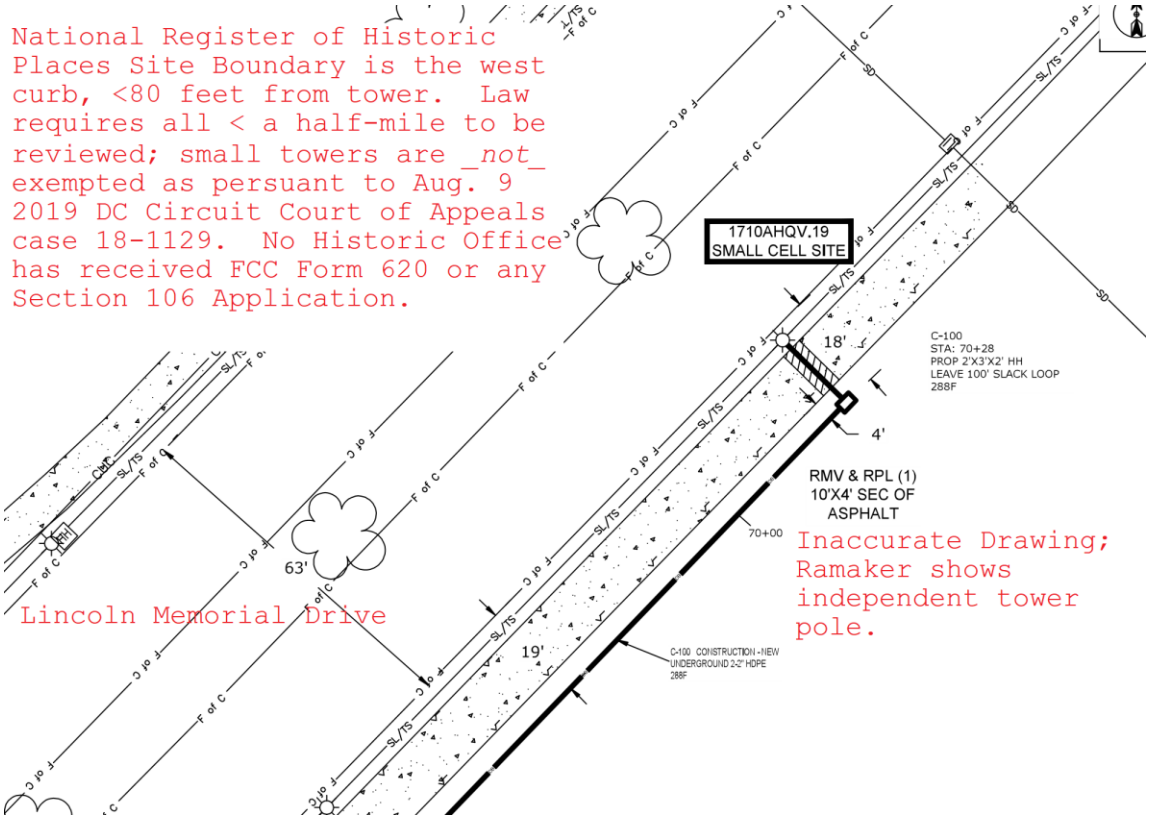


"Tesinc, LLC 1710AHQV.35 CONSTRUCTION PRINTS 9-25-19 Lincoln Memorial Dr.pdf", Sheet 37

7) The Fiber-Optic Cable continues northeastwards to a spot approximately 1200 feet north of the brick boat-looking bathhouse structure. This spot, "Lakefront SC-03" near the imaginary intersection of Belleview Place (extended) and Lincoln Memorial Drive, is smack dab in the middle of otherwise pristine grass approaching the sand beach. Verizon's "artist renderings" photos of the proposed cell tower, which _excludes_ visualization of the accompanying electric meter pedestal, fails to show the view from Lincoln Memorial Drive _eastwards_ towards the serene scenery of Lake Michigan and shoreline itself. This tower-and-pedestal endpoint is not only still within the City of Milwaukee North Point North Historic District, but also less than eighty feet east of the southeastern corner of the Lake Park National Register of Historic Places site 93000339. Glaringly omitted in Verizon's agent "Ramaker" photo simulations was the critical view from Lincoln Memorial Drive looking eastwards at the lake. TesInc LLC drawings show a totally different layout than Ramaker's Tower submission.



Ramaker Application File "VZW Small Cell_Lakefront-SC03.jpg"



"Tesinc, LLC 1710AHQV.35 CONSTRUCTION PRINTS 9-25-19 Lincoln Memorial Dr.pdf", Sheet 44

Ramaker “44615_Lakefront - SC03_4G-5G_PhotoSim_2019-09-17.pdf” p. 9

Ramaker "44615_Lakefront - SC03_4G-5G_PhotoSim_2019-09-17.pdf" p.7

Ramaker "44615_Lakefront - SC03_4G-5G_PhotoSim_2019-09-17.pdf" p.3

8) It is important to note that the submissions on behalf of Verizon were quite incomplete, inconsistent, and uncoordinated. In fact, a Milwaukee Water Works permitting staffer, upon seeing the shared documents, indicated that the City would have immediately rejected the applications as defective; among other reasons, because they failed to show the entire scope of the project and because they failed to show property lines. Nevertheless, by combining multiple views, public cadastral data, personal experience, and knowledge of the terrain, critical details emerged.

9) Ramaker's Application contains incomplete answers, gross errors or misleading statements in response to County Parks' standardized "Community Project Request: Land Utilization" Form. Their document "VZW Small Cell_Application_2019-06-19.pdf" raises multiple concerns:

   a) It is unclear whether Ramaker is applying just for the towers, or for the towers and the fiber backhaul. Their response to "PROPOSED FINAL EASEMENT ACREAGE" (which was not delineated in acres) stated "Approximate 2 miles of access/utility easements". In the same Application, under "PURPOSE OF THIS LAND UTILIZATION", they later note "Verizon Wireless to remove and replace (3) existing light poles with poles designed to handle small cell equipment. New pole will be bolted to new concrete caisson foundation and a free standing single meter pedestal to be placed in close proximity with a conduit between the two. *New fiber will also be run to each location under separate application/permit*." Strictly construing the sentence, then, Verizon is applying for TWO MILES of easements JUST FOR TOWERS; as well, they will be applying for over three miles of easements for the fiber-optic runs. And, Parks Dept. has received modifications that a number of towers will instead be free-standing, separate towers from nearby lamp posts.

      It should be noted that two miles of twenty-foot wide easements is approximately five acres of land.

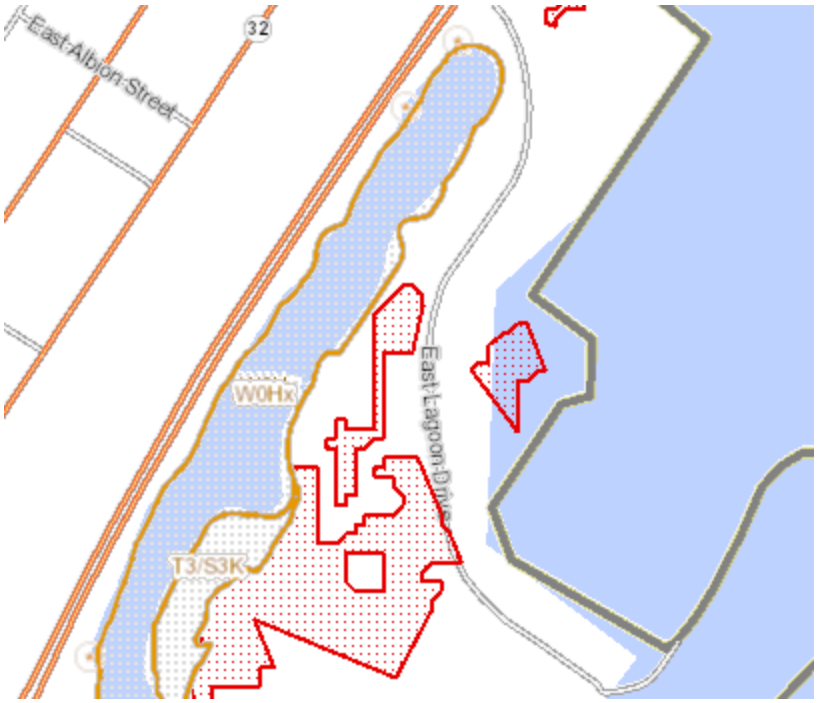
   b) "ESTIMATED AREA OF DISTURBANCE DURING CONSTRUCTION" answers "(3) areas that total 10 sq ft". Most importantly, this answer completely fails to address _*cubic*_ feet; the vertical disturbance, both during construction but especially afterwards, is of critical importance to kite fliers (due to the hazard to their navigation of their aircraft) as well as to all recreationalists enjoying their Riparian Rights to just *look* at Lake, Park, Shoreline, Beach, and Skyline. Moreover, there is no way, unless the installers all ride Unicycles and Pogo Sticks, that a couple of construction trucks and bucket lifts and backhoes to dig the HandHoles, for _each_ of Verizon and Wisconsin Electric installations, will take up only a five by two foot space. A coffin is bigger than ten square feet! Maybe Verizon has found a way to have many angels dance on top of a pin, and transferred this skill to their installers.

c) “DESCRIBE ACCESS/MAINTENANCE ACTIVITIES AND SCHEDULE” fails to address the probable need to unsnarl kites and kite line from the protuberances emanating from the installations. Also, given the miniscule set-backs of the towers, there will undoubtedly be occasional need for tower/pedestal repair or replacement due to vehicular or other crashes, as evidenced by Parks Dept need for repair of street lamps, fences, and other objects.

d) Ramaker accurately answers the interrogatory “WOULD THIS PROJECT DISTURB DESIGNATED RECREATION AREAS” by saying “Yes”. The import of this, given the legal basis for Parks and for Made Lands, will be discussed later.

e) Especially if the application acknowledges the Fiber-Optic runs required for Veterans Park and for Bradford Beach, Ramaker _*incorrectly*_ responds to the interrogatory “WOULD THIS PROJECT DISTURB DESIGNATED NATURAL AREAS (E.G. WOODLAND, PRAIRIE, ETC.)?” by answering “No”. At a detailed level, the project goes through, or immediately abuts, Wisconsin DNR Wetlands in Veterans Park at the Lagoon and in certain areas of the Park itself. In fact, Lagoon Drive goes through “Potentially Designated Wetlands”. In addition, many areas of the Lakefront, including, if I recall correctly, the stretch from McKinley Marina North to the Linwood Water Filtration Plant, were subject to State Statue 285 or other Great Lakes Protection Fund or other grants which may qualify the Lake, the Beach, or other areas as Designated Natural Areas. The entire project exists _EAST_ of the Wisconsin 2014 Act 140 definition of Shoreline – and therefore _must_ be treated as if it is actually _part of Lake Michigan Itself_. There is no more Designated Natural Area than the Federal 1790 NorthWest Ordinance / Wisconsin State Constitution Article

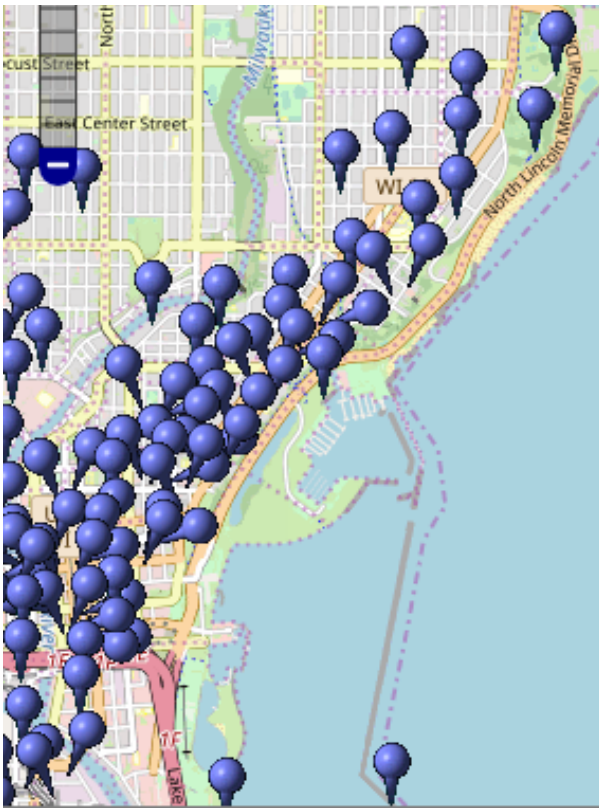
Wetlands Imagery is found at the State of Wisconsin Department of Natural Resources Surface Water Data Viewer at
`https://dnrmaps.wi.gov/H5/?Viewer=SWDV&runWorkflow=Wetland`



f) Also glaringly omitted was _*any*_ mention of Environmental Assessments required by FCC Law. The need to execute "Evaluations of Areas of Potential Effect" (APE) and other tasks, even for Small Towers, was further reiterated on August 9, 2019by D.C. Court of Appeals Case No. 18-1129 "United Keetoowah Band of Cherokee Indians in Oklahoma vs. Federal Communications Commission". FCC requires, under National Historic Preservation Act (HNPA) that Section 106 be complied with and Form 620 or 621 be filed, with specific notifications, for Tower Undertakings within a half mile of Historic Sites. Every one of the proposed towers has Historic Sites within the mandated half-mile radius; two of the Tower Undertakings are contained within, or immediately abut, such sites. See the following maps, and draw a 2540 foot radius.

Moreover, in 1975, Milwaukee named "Harp Luminaire" lamps as Milwaukee Historic Landmarks. Therefore, the entire stretch of Lincoln Memorial Drive, which solely has Harp Luminaires, becomes Areas of Potential Effect under FCC law, requiring further evaluation.

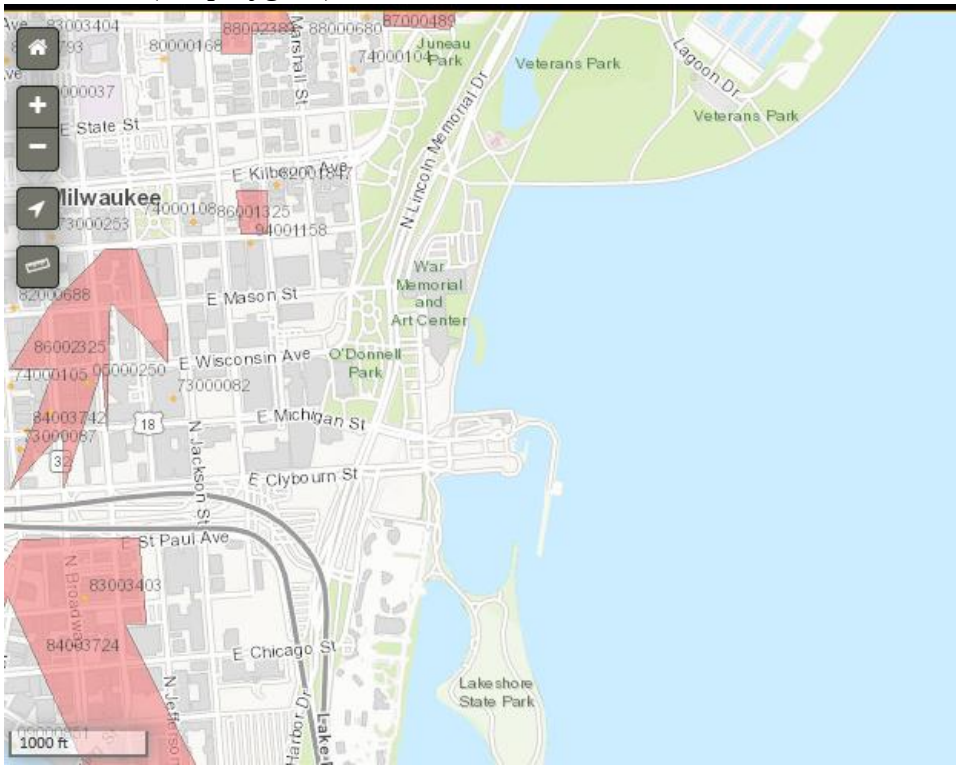
Furthermore, the FCC continues to require under National Environmental Policy Act NEPA that evaluations be performed involving wetlands, threatened/endangered species, etc. While Peregrine Falcons are no longer on the _*Federal*_list of endangered species, the raptors _*are*_ still listed as "Endangered" by the State of Wisconsin Dept. of Natural Resources. Perigrine Falcons have been spotted in the parks proposed for towers; the author is personally aware of "filming" of these birds by local news media.



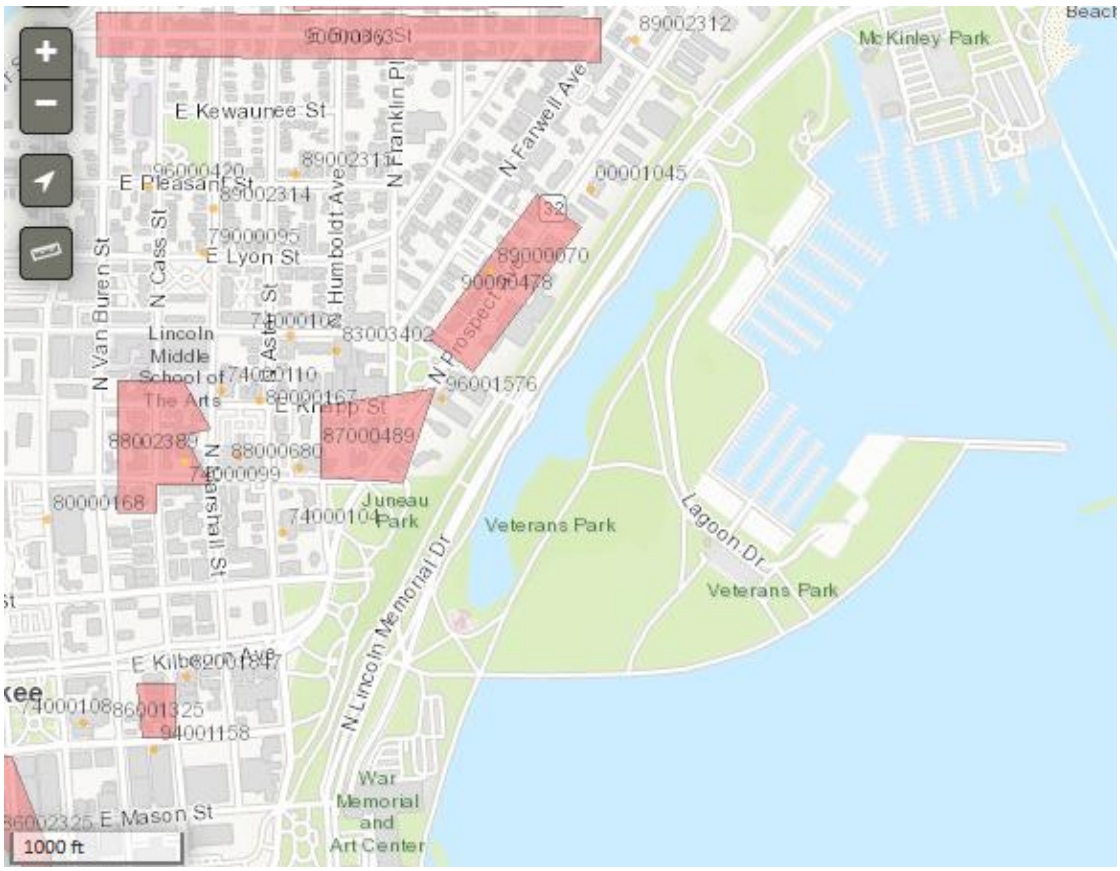
Wikipedia-linked map from entry "https://en.wikipedia.org/wiki/National_Register_of_Historic_Places_listings_in_Milwaukee"

Choose link "Map All Coordinates Using: OpenStreetMap" at URL https://tools.wmflabs.org/osm4wiki/cgi-bin/wiki/wiki-osm.pl?project=en&article=National_Register_of_Historic_Places_listings_in_Milwaukee

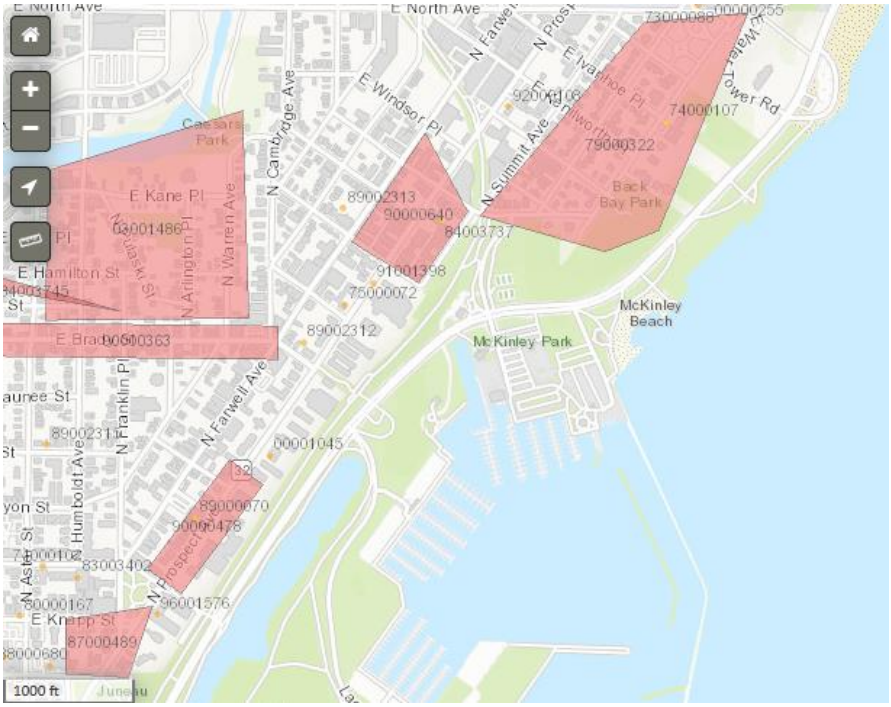
Additional on-demand maps of specific Historic Sites (yellow dots) and Historic Districts (red polygons) were found at the National Park Service website



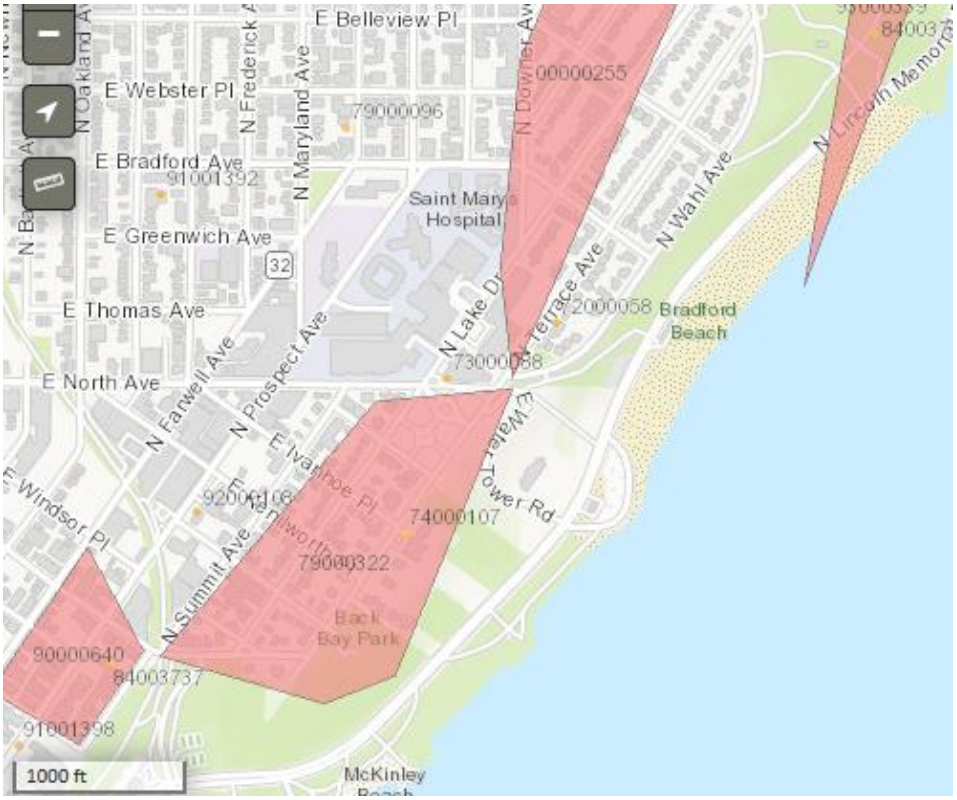
Historic Places near Discovery World Tower Site



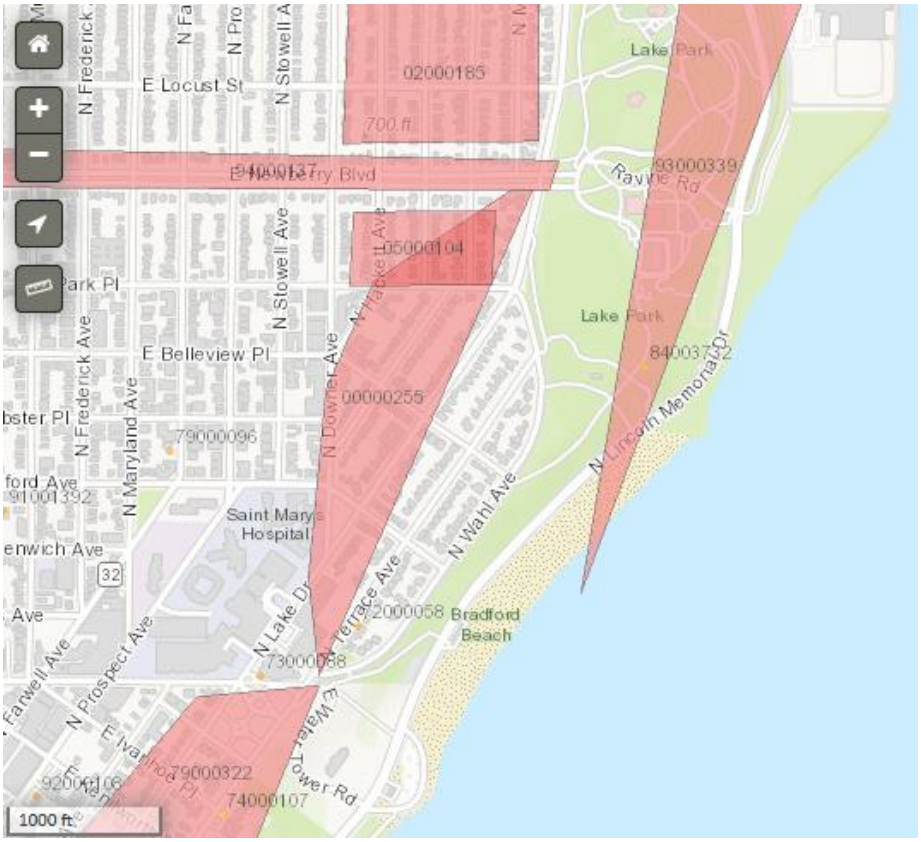
Historic Places near Veterans Park Tower Site



Historic Places near McKinley Marina North Tower Site



Historic Places near Water Tower Rd. Tower Site



Historic Places near Bradford Beach Tower Site

10) TesInc's application for the Verizon "MCI Metro" Fiber-Optic Backhaul installation was also flawed.

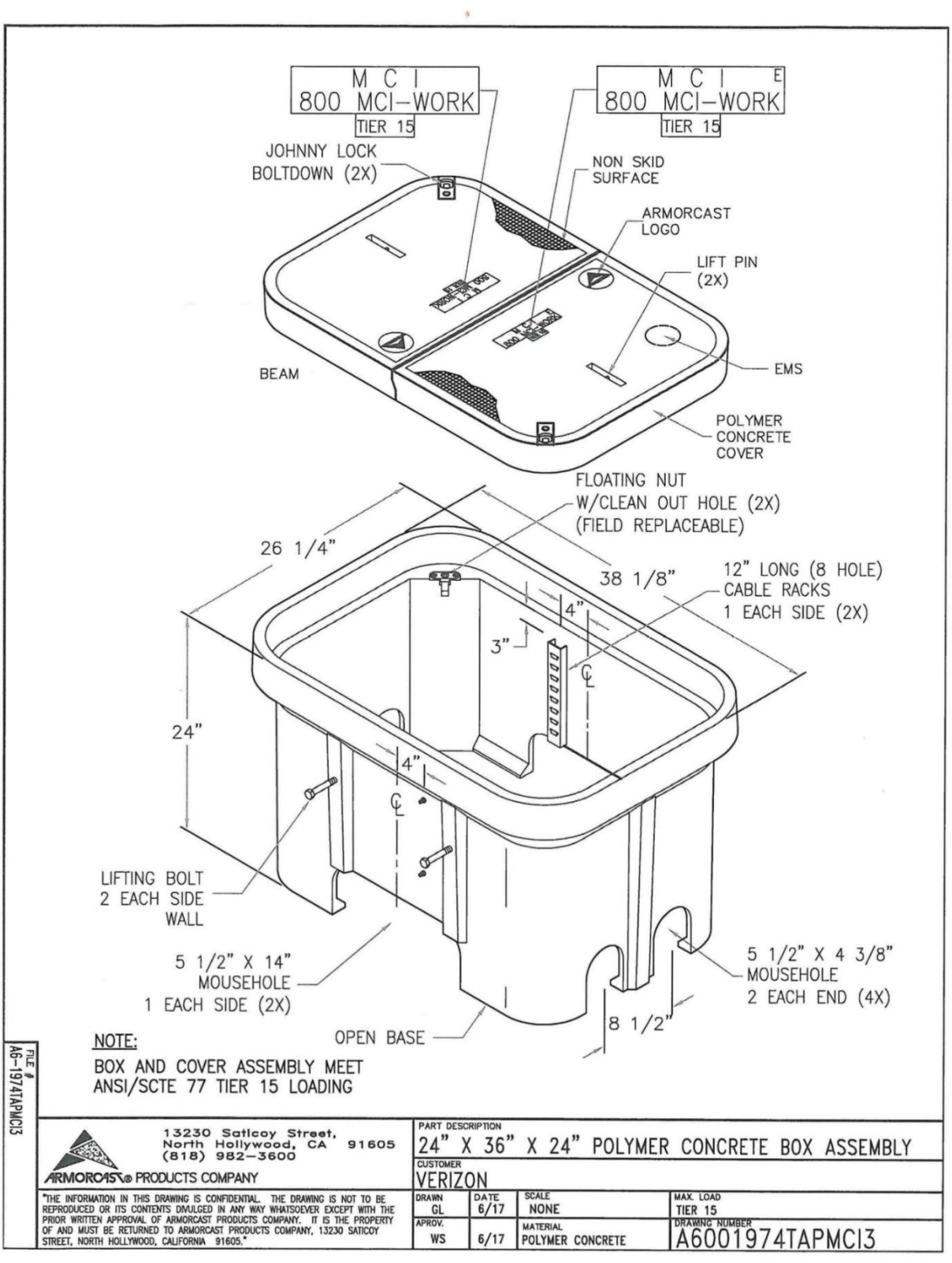
   a) A number of the interrogatories were filled in by reference to drawings, rather than answering the questions as required.

   b) WOULD THIS PROJECT DISTURB DESIGNATED RECREATION AREAS" was answered "NO"; tell that to a biker who wipes out on what _used_ to be grass and is now a 2x3 foot concrete HandHole, or a barefoot beachcomber who, instead of walking in sand or grass, stubs their toe on it!

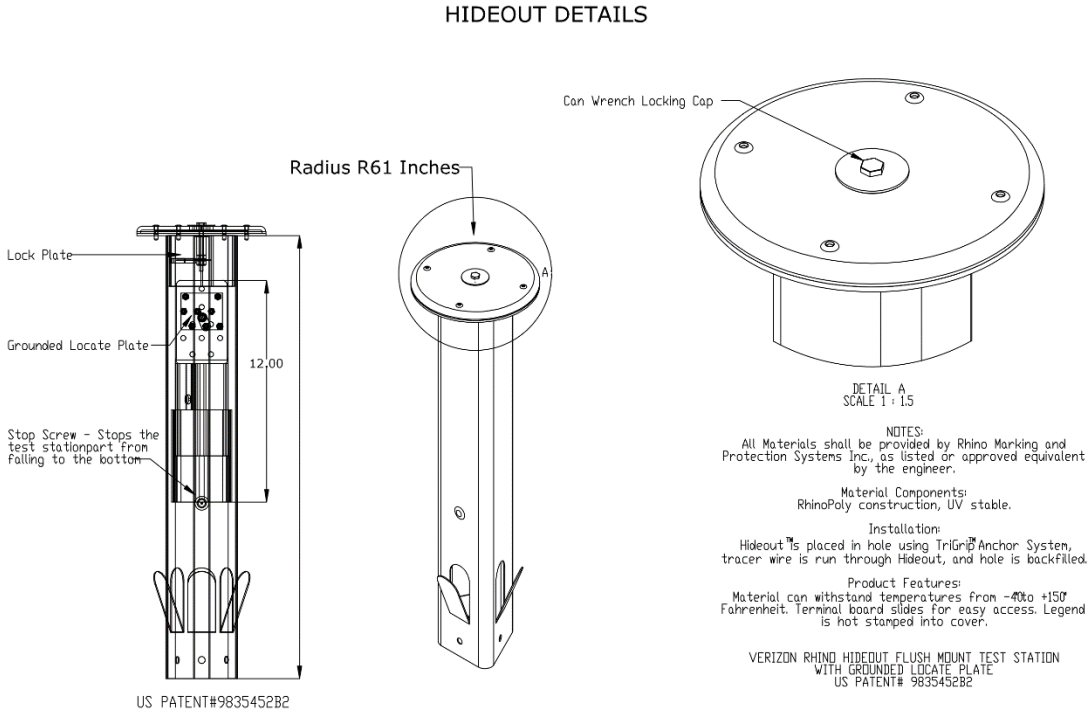
   c) WOULD THIS PROJECT DISTURB DESIGNATED NATURAL AREAS (E.G. WOODLAND, PRAIRIE, ETC.)?" was also answered "NO". However, as previously mentioned, the project exists in Made Lands, in Wetlands, etc.

   d) Most laughingly, the question "PROPOSED CONSTRUCTION TIMETABLE" forecasts a three day completion. Having personally witnessed multiple construction projects in the Lakefront Parks, I know from conversations with the construction crews that they _all_ have been blindsided by the difficulties encountered due to the unclean landfill used throughout the parks. I can take people out into Veterans Park today and within five minutes stand upon emerged chunks of sidewalk, torn down from the aborted 1960's Lake Park Freeway project. Past crews have ended up taking four weeks to complete jobs that they'd anticipated taking four hours. One case in point was the 1986 installation of the "obstacle course" exercise stations. The water table begins a mere four feet under the surface; diggings at six feet or greater will undoubtedly require heavy pumping. I am sure that WEC Energies, AT&T, or other underground installers could be resurrected to re-share their war stories.

11) Of special importance on the TesInc LLC drawings are the "HH" HandHoles (also called "Hideouts"). These HH holes act as splice points for the fiber-optic cable, and are spaced about one thousand feet apart. They are name "Stations", with a moniker such as "STA: 45 +08" etc., meaning "a STAtion which is 4,508 (45 hundred plus 8) line-feet away from the starting point", and visualized on the drawings by a heavy black rectangle. It seems that these STAtions will consist of a 3 by 2 foot concrete box, containing a telescoping "hideout" allowing the fiber strand splice points to be pulled up for service.



"Tesinc, LLC 1710AHQV.35 CONSTRUCTION PRINTS 9-25-19 Lincoln Memorial Dr.pdf", Sheet 8



Tesinc, LLC 1710AHQV.35 CONSTRUCTION PRINTS 9-25-19 Lincoln Memorial Dr.pdf", Sheet 9

12) Note that the _only_ detailed fiber-optic backhaul drawing which the Parks Department has received (from "TESInc, LLC" for sites entitled "1710AHQV.19, 1710AHQV.20, and 1710AHQV.35) _*starts*_ with STAtion 00+00 at Lincoln Memorial Drive and Lagoon Drive, with merely a pointer to a continuation run southwards towards Discovery World, calling out "1710AILC.12". Ramaker's submissions only show the remaining fiber runs in broad overview. Moreover, that detailed fiber run drawing fails to show any existence of a run out to Veterans Park, even though Ramaker has submitted overview drawings showing different runs, and showing the detailed tower proposals in the Veterans Park parking lot.

13) Only some cell tower applications explicitly showed the Electric Meter; however, both Verizon and WEC Energy confirm that _*each*_ tower must have its own meter; the meter must be place ten feet away from the tower "for safety reasons". As previously noted, these pedestals, too, will require new, probably larger Service Holes as splice points, and probably new cabling.

14) Returning to the importance of the STAtion HandHoles, it is important to realize that while the current Verizon submissions display towers interspersed some 2700 feet from each other, _each_ STAtion includes the footnote "leave 100 foot slack loop". From direct conversation

with the draftsman submitting the application, ***these spare fiber cables are installed in anticipation of future tower installations!*** Because cellular antennae and associated equipment cannot be installed atop Harp Luminare lamps nor atop the "artsy modern" lamps in the Veterans Park Parking Lot, this means that the lakefront will soon be bristling every 1000' with a new separate cellphone poles, and within ten feet, electric meter pedestals. Verizon's drawings end at Station 70+28, implying seven towers from Lagoon Drive nearly to Bradford Beach's "Picnic Point". Every thousand feed past the Lagoon to Discovery World, and every thousand feet out to Veterans Park, could soon be inundated.

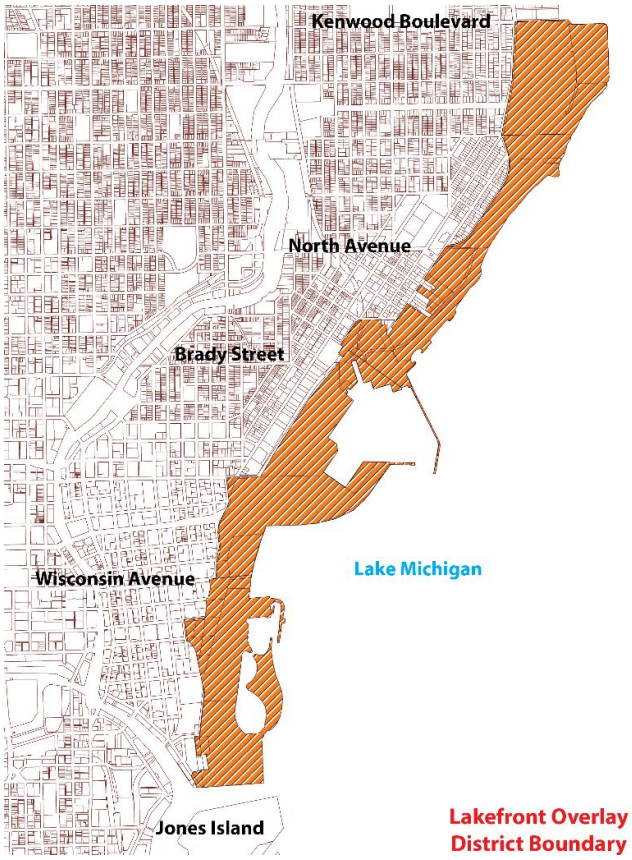
15) As an aside, this one-thousand-foot spacing is a by-product of Verizon (and some other carriers') embrace of new "millimeter wave" 24 GigaHertz (GHz) or 28 GHz frequencies, more than ten times higher than current cellular frequencies, in order to have Fifth Generation ("5G") service. In radio, the higher the frequency, the smaller the coverage footprint for a given amount of transmitter output power (wattage). Small Cell Towers are *not* necessarily 5G, and 5G does not *have* to use small cell towers. Especially at the outset, it may be incorrect to call the current proposals "5G Towers"; they should be solely thought of as "Small Towers" or their legal term "Small Wireless Facilities". Nevertheless, the Industry Trend, especially for Verizon, is gravitating towards the combination of SWF and 5G – partially because of the technical requirements, but also probably because of the easy Financial Benefits accruing under the new lackadaisical SWF rules and laws, reducing permitting, camouflaging, and site acquisition costs tremendously. Just last month the County renewed a $60,000 traditional site on the County Grounds; the City of Wauwatosa had been collecting $600 to $1000 per cellsite on top of its streetlamps (they had been preparing to raise the rate to $2000 per pole per year to cover their costs); now the County will get $20 per stand-alone pole and 'Tosa is getting only $270 for co-locating.

16) It is critically important to remember that the fiber-optic run, and the cell towers, are proprietary to _only_ Verizon. In the future, _each_ cellphone company will again have to bore their fiber through the unclean landfill, closing down one lane of traffic and tearing up the park land, installing their own towers and electric pedestals (unless WEPCO thinks that competitor towers will be located close to each other, in which case WEPCO will install a large four- or –six meter tall freezer-sized pedestal). Verizon has explicitly indicated that they will _*not*_ co-locate other antennae upon their towers. This means, given five facilities-based cellular telephone providers, each needing a tower every 1000 feet, and adequately spaced from the other carriers) that there could be towers and pedestals every 200 feet throughout the park.

17) Note, too, that this same bristling can be experienced in every State Park, every local park, and in every municipality. Moreover, the new State law expands the definition of "Right of Way" to include all utility easements as well as additional Public but Proprietary (that is, non-roadway) Properties than had traditionally thought of as Right of Way.

18) While the focus of this write-up is largely on the Lakefront proposal, the County Parks Department has already received applications in other parklands, including along the Milwaukee River Parkway from Bender Rd. to Lincoln Park (frequently through what otherwise would be Single Family Residential area); undoubtedly more will follow. Moreover, other County Departments have received applications for, or even installed, SWFs on other County Properties or Rights of Way; the County's handling of these applications may be somewhat disjoint. By way of example immediately germane to the Lakefront Project, Verizon's Agents believe that the FiberOptic Backhaul along the O'Donnell Park segment is the purview of County Parks Dept.; however, County Parks says the area is handled by the War Memorial Art Museum or by the Economic Development office. With one party believing they have the approval they need, and the other party not even aware of the project, it slips through a crack.

19) Rather than being contained within County-controlled lands, two of the four proposed cell sites that the Parks Department received sit squarely upon City of Milwaukee Property. All four towers of the project lies within the City's "Lakefront Zoning District LF/C/60" or "Lakefront Overlay Zone". However, as of late, neither the City Public Works, the Water Works, nor the city's Historic Preservation Office (or the State's Historic Preservation Office) had heard a thing about any of .the projects, as required by law. Again, Verizon's agents have been operating under the mis-impression that County Parks o.k. is all they need, and in some cases are proceeding thinking they have the authority.



III) Telecomm Regulatory Framework

The issues revolving around the proposed Lakefront Small Cell Towers arise out of FCC and Cellular Industry push for Small Cell Towers and 5G. The FCC had issued Rules on the matter, including Docket and the State passed even more onerous laws as Wisconsin 2019 Act 14. NOTE The Federal Rules are being appealed as unconstitutional, and parts of the rulings have been "vacated" by the District of Columbia Court of Appeals.

1) The FCC has a whole web site dedicated to pushing 5G. See https://www.fcc.gov/5G The matter of the new rules is further highlighted at https://www.fcc.gov/document/fcc-acts-speed-deployment-next-gen-wireless-infrastructure ;
"Small Wireless Facilities" were addressed in the Federal Communications Commission Docket, known as "DA/FCC #: FCC18-133 Docket/RM: 17-79, 17-84 FCC Record Citation: 33 FCC Rcd 9088" ; the full 116 page text of the FCC Order regarding State and Local rules (" Speeding Up State and Local Review of Small Cells") can be found at https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf This ruling, though dense, contains important discussion and rules about Historical Sites, Local Control, Maximum Allowable Costs Unless Prior Published, etc.

   The 120 page Order RE deployment on Utility Poles ("FCC Speeds Access to Utility Poles to Promote Broadband, 5G Deployment") is at
   https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf

   NOTE that the FCC rules are LESS restrictive than the State Law I'll cover later, because the Federal rules are less generous to the cell operators ("applicants") in their definition of Right of Way, Utility Pole, and other factors.

   The FCC has other information links regarding Antenna Siting at
   https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting

   It is important to recall that the FCC has issued RULES, not LAW. There are significant legal and legislative efforts highlighting that the FCC has misinterpreted existing Communications Law. It looks like US Senate Bill S.3157 was introduce last summer to codify their current rules as LAW but it has not moved out of committee. As a highlight to the controversial nature of their capricious rule, an alternate bill (HR 530) has been introduced in the House of Representatives, aiming to _reverse_ and _prevent most of the FCC rules; it, too, has not moved out of committee.

2) Both the NOAA ("Weather Bureau" in the Department of Commerce) and NASA are opposed to the deployment of the 5G frequencies that are being used by Verizon and other current 5G implementations, because the frequencies interfere with water vapor imagery and other remote

sensing used in three to five day weather forecasting and other remote sensing. Commerce Secretary Wilber Ross and the NASA Director both testified against the frequencies, and during the last Republican-led Congress, the House Science and Technology Committee also asked the FCC to not utilize the frequencies. According to a Wikipedia article on "5G" and Verizon's own web site, Verizon is gravitating towards these new sub-millimeter bands, which are in the neighborhood of 24 and 28 GHz (1000 times higher than CB and 10 times higher than common WiFi)
https://weather.com/news/news/2019-04-30-5g-networks-interfere-with-weather-forecasts

https://www.washingtonpost.com/weather/2019/03/08/critical-weather-data-threatened-by-fcc-spectrum-proposal-say-department-commerce-nasa (ps a scientist from UW Madison was quoted about the interference; he might be of some future local assistance).
https://www.washingtonpost.com/weather/2019/03/13/fcc-auction-off-wireless-spectrum-that-could-interfere-with-vital-weather-data-rejecting-requests-us-house-science-agencies

3) Recent Court decisions by the DC Circuit Court have vacated as Arbitrary and Capricious some of the FCC rules taking away local government power to regulate based on aesthetics, Historical Status, and other factors.; see https://www.cnn.com/2019/08/09/tech/5g-fcc-regulations-ruling/index.html . In addition, a large and growing number of communities (including New York, Los Angeles, San Jose, and scores of others, especially along the West Coast) are fighting the rules as unconstitutional under the 5th, 14th, and 10th Amendments; Appeals from multiple Federal Circuits have been consolidated into an action in the 9th Circuit. The 5th and 14th Amendment arguments are that the new laws deprive property and other rights without Due Process Of Law; the 10th Amendment argument is that the FCC has exceeded its authority, wherein the Constitution says Rights not enumerated in the Constitution to the Federal Government are reserved to the States, or to the People.

The summary of all this seems to be that the FCC is ramrodding 5G, despite other Executive Branch and Congressional concerns.

4) Back to the actual results of FCC laws, note that their definitions in 47 USC 224 which provides the "a street lamp is not a utility pole", which on a FEDERAL level would make Verizon's installations of antennae upon pre-existing poles in parks and along parkways much more difficult. See
https://codes.findlaw.com/us/title-47-telecommunications/47-usc-sect-224.html

Definition #1 in this law does NOT cover street lamps or traffic signs, they do not fit the definition of UTILITY POLE under FCC's view. Unfortunately, the State of Wisconsin 2019 Act 14 uses a much broader definition of right-of-way and of POLE. At the Federal 47 USC 224

level, there is plenty of room for maneuver . It seems intended to allow telecomm to bury cable under streets, access to the private property contracts it has, etc. However, when the property in question is NOT Public Right of Way, but is instead just publicly owned property, such as a building or a park, then there CAN be rules - especially as long as they are consistently applied. Questions revolve around 1) is Lagoon Drive, or Milwaukee River Parkway, or Root River Parkway, etc. a public right of way? 2) since light poles are not utility poles under 47 USC Sec 224, local government CAN regulate location, pricing, timing, and other matters.

5) 47 USC Section 253 of the law revolves around non-federal government and again looks like it could be used to show that the law does not apply. See see https://www.cnn.com/2019/08/09/tech/5g-fcc-regulations-ruling/index.html

6) A law firm's web site at https://www.bbklaw.com/news-events/insights/2019/legal-alerts/01/new-fcc-shot-clocks-and-other-rules-preempting-loc

   has some excellent review of the law and guidance on elements that LOCAL GOVERNMENT SHOULD MAKE SURE TO INCLUDE IN CONTRACT LANGUAGE TO ALLOW FLEXIBILITY. Unfortunately, it seem that the State failed to think about protecting itself or its citizens when it passed 2019 Act 14. The County should ensure that it maintains flexibility in its telecomm-related ordinances and contracts, as suggested at the above site, so that if/when the FCC regulations or State Laws are vacated, the County is not hamstrung by its _*own*_ language.

7) The big applicable problem is that the State of Wisconsin passed a new law in July with little intervening time between Introduction and Passage: 2019 Act 14 (was Senate Bill 239) is used to address "Small Wireless Facilities", which is what is being used for new towers and especially for 5G.
   https://dailyreporter.com/2019/07/10/evers-signs-new-5g-wireless-infrastructure-rules-into-law

   https://docs.legis.wisconsin.gov/2019/related/acts/14

   The STATE definition of Utility Pole includes street lights and traffic lights; Designated Utility Pole does NOT. (see definitions in Statutes 66.0414 x and y.)

   Per Section 2a, the law may only apply to facilities IN THE RIGHT OF WAY; the park might NOT be R.o.W. ESPECIALLY if a lamp pole is in the PARKING LOT rather than along Lagoon Drive. Lagoon Drive might NOT be a "highway", while the “RoW” definition says "highway". Right of Way is expanded to include all utility easements.

8) The BIG loophole which is simultaneously a problem, but also an opportunity to allow some local control, is in this Act 14 provision:

"(e) Right of access. 1. Except as otherwise provided in this subsection and subs. (3) (c) 4. and 5. and (4), and notwithstanding ss. 182.017 and 196.58 and any zoning ordinance enacted by a political subdivision under s. 59.69, 60.61, 60.62, or 62.23, a wireless provider shall have the right to collocate small wireless facilities and construct, modify, maintain, and replace its own utility poles, or, with the permission of the owner, a 3rd party's utility pole, that supports small wireless facilities along, across, upon, and under a right-of-way. Such small wireless facilities and utility poles, and activities related to the installation and maintenance of the small wireless facilities and utility poles, may not obstruct or hinder travel, drainage, maintenance, *or the public health, safety, and general welfare on or around the right-of-way*, or obstruct the legal use of the right-of-way for other communications providers, public utilities, cooperative associations....."

The undertaking of Small Wireless Facilities in the Veterans Park Parking Lot at 43.044624 -87.889326 provides a clear danger to public safety and general welfare of long-standing three-dimensional recreational use of the immediate area by kite fliers. The hazard is especially keen due to the presence of unsupervised children and otherwise neophyte kite flyers and their demonstrated capacity to entangle kite lines, kites, and other paraphernalia in _any_ vertical protuberance, such as antennae or radio boxes. I am especially alarmed by placement of 28 GHz millimeter-wave towers (which the Internet indicates is Verizon's 5G band), whose quarter-wave length (0.10 inch) is close to the same as wet kite line, in the parking lot only 75 feet away from the kite shed. I have witnessed excited families walk out the door and begin flying, despite the obvious sub-optimal starting point; (and despite suggestions to move to safer areas); a nearby sharp-edged, energized tower will only compound the danger. A wet kite line at the harmonic of the radio signal could replicate a “Ben Franklin In A Thunderstorm” experience! And, who will pay for, and execute, the clean-out of snagged kites?

9) The law _*does*_ allow the County to propose alternate sites, so I think that moving the Veterans Park site only a hundred yards or so north or northeast from kiting area should be insisted upon. Act 14 allows for this, stating

"5. With regard to the rights of a wireless provider to construct or modify a utility pole as described in subd. 1, a political subdivision may propose an alternate location for collocation, which the wireless provider shall use if it has the right to use the alternate structure on reasonable terms and conditions and the alternate location is technically feasible and does not impose material additional costs."

Alternative, less intolerable nearby alternate sites might include the Milwaukee Community Sailing Center or McKinley Marina South boaters’ showers & bathroom, in the Southeast corner of the Marina.
The "McKinley Marina South Docks" are at 43.0448545 -87.8877392,

https://www.google.com/maps/place/43%C2%B002'41.2%22N+87%C2%B053'16.4%22W/@43.044764,-87.8879928,25m/

The Milwaukee Community Sailing Center is at 43.0452171 -87.8866597

https://www.google.com/maps/place/43%C2%B002'43.5%22N+87%C2%B053'11.6%22W/@43.0454479,-87.8866469,25m/

Note that both of these proposed sites already have large high-voltage electric transformers, conduit, easy paved service access, pre-existing poles, etc. and are far out of the way of kiting hazards. Frankly, even moving the proposed tower only 130 feet northeast, to a point at the south curb of the McKinley Marina South Docks, would be safer and less intolerable.

10) **<u>However, despite requests and legal basis within the new laws, Verizon has summarily rejected County Parks Department's proposed alternative locations for both the Veterans Park site and the Bradford Beach (National Register of Historic Places) site!</u>**

11) Section 2(c) Rates and fees caps the upper limits of fees which can be set when the tower is in the (expanded definition of) Right Of Way, unless the municipality has calculated and published its costs prior to the application being received, and as long as the fees are equally applied to all firms. The FCC and the State expected that municipalities would have immediately developed such rates, as well as evaluation criteria. It seems that this is not the reality. It is important to discern whether Lagoon Drive, and especially the Veterans Park, McKinley Park, NorthPoint, and other Parking Lots or Dead-End Pleasure Drives, or other Park Ways, are "Rights of Way". Also, all Utility Conduits now fall under the definition of Right Of Way. If lands are not Right of Way, but instead are "proprietary holdings", then the Law may allow for not applying the "cost recovery caps absent prior publication" and other rules.

12) The new State Law removes the capability to use Zoning Ordinance to influence towers:

"3 (b) Zoning. Notwithstanding an ordinance enacted under s. 59.69, 60.61, 60.62, or 62.23, and except as provided in par. (c) 4. and 5., small wireless facilities shall be classified as permitted uses and are not subject to a political subdivision's zoning ordinances if they are collocated in a right-of-way or outside a right-of-way if the property is not zoned exclusively for single-family residential use. For purposes of this paragraph and notwithstanding sub. (1) (u) 3., the volume of a small wireless facility does not include preexisting associated wireless equipment on a structure outside the right-of-way."

State Law Chapters 59, 60, and 62 are the ones which give Counties, Towns, and Cities the authority to have Zoning Laws. Note, however, that the clause above does _*not* provide an override for Wisconsin Statues Chapter 27 (especially 27.05 and 27.14) which establishes Parks and gives Parks the _sole right_ to determine the usage of its domain, subject to the constraint of being for recreational purposes, etc. This will be further addressed.

13) The law provides for "shot clocks" - - this is where timelines fit in: The County (Parks, Administration, and Board) is going to have to act quickly!!

"3 (c) 1. d. Except as provided in subd. 1. g., if a permit application involves a new or replacement utility pole, and the state or a political subdivision fails to approve or deny the permit application under this section not later than 90 days after its receipt, the applicant may consider its permit application approved.
e. Except as provided in subd. 1. g., if a permit application proposes to collocate small wireless facilities on an existing structure and the state or a political subdivision fails to approve or deny the permit application under this section not later than 60 days after its receipt, the applicant may consider its permit application approved."

14) The Law requires uniform, published-in-advance, objective criterion for evaluation of proposals for aesthetic purposes. Many of these criterion may in fact exist, but are not readily and concisely available to assist Cellular Operators in developing their applications before actually submitting them. It is an urgent priority for local government to develop such criteria. The law states:

"4. A political subdivision may adopt aesthetics requirements governing the deployment of small wireless facilities and associated antenna equipment and utility poles in the right-of-way, subject to the following conditions:

a. The aesthetics requirements must be 1) reasonable in that they are technically feasible and reasonably directed to avoiding or remedying unsightly or out-of-character deployments; 2) no more burdensome than those applied to other types of infrastructure deployments; and 3) objective and published in advance."

15) The County may be scrambling now to comply with other shotclock provisions:

"4 (2) (g) With regard to a governmental pole that does not support aerial cables used for video, communications, or electric service, the state or political subdivision shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including pole replacement if necessary, not later than 60 days beginning after receipt of a complete application, except that the governmental unit may provide the applicant with access to the governmental pole that is necessary for the applicant to make that estimate. Make-ready work, including any pole replacement, must be completed within 60 days after the

applicant's written acceptance of a good faith estimate provided by the governmental unit or within 60 days after the applicant makes the estimate."

IV) Basis to Modify Tower Proposals

Small Wireless Facilities in Parks, especially in the Lakefront Parks, must be subject to strong overview by the County as trustees for the Public's Interests. Basis for asserting the County's desires exist at multiple levels: by using the new laws and rules themselves; by highlighting errors by parties involved in the process; by invoking other conflicting or overriding laws and treaties; and by invoking Constitutional issues.

1) As discussed previously, the Law allows for modification based upon safety and general welfare concerns. At Veterans Park, the three-dimensional nature of recreational usage of the park by kite fliers, and their immediate proximity, present a clear concern. While by no means an exclusive use, Kiting has been explicitly identified in multiple Parks Department Planning Documents going back to 1984 and more as a prime example of unorganized recreational activity for Veterans Park. In addition, the high level of bicycle, tricycle, roller-skate, and pedestrian activity concentrated precisely at the location of the proposed tower make for increased hazard.

2) Veterans Park especially has Designated Wetlands in the form of the Juneau Park Lagoon, and Potentially Designable Wetlands in Veterans Park itself (State Maps show these even encroaching upon Lagoon Drive, where FiberOptic runs will bore). Peregrine Falcons have been observed in the park. Under National Environmental Policy Act (NEPA), further action is required. As per 2014 Act 140, the entire project is deemed by law as "In Lake Michigan", subjecting it to DNR analysis for use as if it were lakebed. Physically, stretches of the fiber run are quite close to the actual waterline, further calling for DNR involvement.

3) The law explicitly allows for factoring in Historic Sites and acting within the National Historic Preservation Act (NHPA); State laws may apply as well.. All of the proposed towers exist within a half-mile of Historic Sites, the radius applicable to towers under 200 ft. tall. The Water Tower Rd and Bradford Beach sites exist within the North Point North Historic District; garish modern Small Wireless Facilities in no way "meld" with the character of the district. Both those tower sites are close to Lake Park National Register of Historic Places site; in fact, the Bradford Beach site exists a mere 80 feet from the border.

4) In registering the Lake Park site, explicit mention was made about Frederick Olmsted's philosophy of parks as an alternative to the hub-bub of the workaday world, of sight-lines to natural beauty, of recreational pursuits, etc. As well, the Registry highlighted the facility as Milwaukee's first park, embodying the very purpose of parks throughout the County. Select parts of that Registration are provided to convey the sense of the philosophy. Towers, especially if they multiply to existing every 200 feet when all the rest of the cellphone carriers arrive, will take away the natural sightlines, the serene beauty, and the escape from the workaday world that Olmsted promulgated in his endeavors. They wrote:

> *"Lake Park in Milwaukee, Wisconsin, is being nominated to the National Register of Historic Places under Criterion C for its local significance as a designed historic*

landscape. The park embodies the distinctive characteristics of the work of master landscape architect, Frederick Law Olmsted, and his firm, known as F. L. Olmsted & Co. of Brookline, Massachusetts. It is also locally significant under Criterion D for the archeological potential of its prehistoric burial mound, the last remaining mound in the city of Milwaukee.

...

The plan for Lake Park makes dramatic use of its choice lakefront location from which many views of the lake are possible, whether from the glassed-in pavilion close to the bluff, from the attractive bridges over the ravines which meander up from the lakeshore, or from the walkways closed to the bluff. Paths curving through the park offer opportunities for strolling through the park itself, or, if one wishes to participate in more active recreation, there are separate facilities for golf, soccer, tennis, and bowling on the green. Areas are also set aside for picnics. Play equipment for children may be found on the playground.

...

The preliminary plan submitted by the firm demonstrated some of the basic concepts of Olmsted's landscape philosophy. He was interested in undulating meadows fringed with grass, tranquil scenery, and groves which preserved the underbrush and the rough surface of the natural forest.

...

Parks designed by the Olmsted firm all embody elements which reflect their beginning in the naturalistic movement admired by Olmsted. One of the noticeable features is "a continuing sequence of spaces ranged on a structure of serially connected sight-lines." Olmsted designed his landscapes to be planned sequential experiences. Following a curving drive through Lake Park leads one to view a scene of Lake Michigan at the foot of a bluff, rugged sloping sides of a ravine, or the ordered plantings in a formal garden. The curving carriage drives in the park as designed by Olmsted provide a strong contrast to the grid pattern of surrounding city streets. Views of the sweep of Lake Michigan or broad lawns created vistas which were usually ended by a building or plantings creating the illusion of limitless vision. The first concern of Frederick Law Olmsted was to achieve visual unity. He thought in terms of the organization of space, perspective, and vistas. He placed darker forms of foliage in the foreground and lighter, simpler forms farther away and generally planted densely, but was careful to maintain open views.

...

Lake Park contains a high degree of integrity in spatial relationships, topography, design intent, and circulation system. Only the property boundary on the east has changed, and that is due to landfill added for Lincoln Memorial Drive during the park's period of significance. That the major landscape components have not changed may be ascertained from plans for Lake Park drawn by F. L. Olmsted & Co., later known as Olmsted, Olmsted & Eliot.

...

The third phase of development began about the turn of the century. This marked the end of the time when parks were regarded only as pleasure grounds where the masses might come to recover from the effects of their hard labor amid a crowded and bustling city. Then the parks were expected to resemble a small piece of the country with fresh air,

meadows, and sunshine right in the midst of the city. But after the turn of the century, the public began to look to the park for more vigorous activity and organized recreation. They expected their visit to the park to contrast with dull and routine factory or office work.

...

The 1960s emphasized more open space due to the expansion of the cities of the United States. In the 1970s, emphasis began to be placed on bicycling, walking, or jogging, and provision for automobile drives through the park were curtailed.

...

A modern bicycle trails extends through the park. On October 9, 1967, The Milwaukee County Park Commission celebrated the opening of the first of its bicycle trails (Map Code 24) through the Milwaukee County Park System. The 3.1 mile trail consisted of an 8 foot wide blacktop9 and parallels Lake Drive. It has a minimal effect on the landscape design.

...

Olmsted's park designs reflected his conviction that a park should supply three things not to be found in the city anywhere else:
First, air purified by abundant foliage.
Second, means of tranquilizing and invigorating exercise as in good quiet roads and walks.
Third, extended landscapes to refresh and delight the eye and, therefore, as free as possible from the rigidity and confinement of the city and from the incessant emphasis of artificial objects which inevitably belong to its ordinary conditions.

...

Eliot also proposed the creation of parkways or boulevards as connections between units of a park system. They would provide carryover of the restful influence of one large area to its echo with little interruption along the way.

...

Another characteristic of Olmsted parks is the plantings along the edges of parks to hide the distracting sights of the city from park visitors. Olmsted's designs provide vistas which urge park visitors along to a particular goal. Vistas may be seen in Lake Park from the paths which wind through the park. They are also noticeable in the ravines.

...

Frederick Law Olmsted said, "The common man should be able to find in the city a rural landscape where he could go quickly to put the city behind him out his sight and go where he will be under the undisturbed influences of pleasing natural scenery." It is this naturalistic view of nature that Olmsted promoted in all his parks. This attitude toward park design may be said to have survived through the years since Lake Park was created. The only difference is that people today want opportunities for active as well as passive recreation.

...

Landscape Architecture Significance:
The significance of Lake Park as a designed historic landscape is based on the fact that the plan of the park is essentially that which was supplied by Frederick Law Olmsted and his firm of Olmsted, Olmsted, & Eliot. What remains are (1) the provision of views and vistas, most notably of Lake Michigan, (2) spatial relationships and orientations

such as the contrast between the expanses of meadow and the rugged scenery in the natural ravines, (3) features such as filling, grading and other construction within the park such as buildings, structures, the circulation system of paths and drives, and (4) the "structure" of the landscape evidenced by vegetation, landscape dividers, and other plantings. Lake Park is also significant because it is one of the original park locations selected by the first park commissioners when the city became aware of the need to establish city-owned public parks.

…

The Period of Significance of Lake Park is 1893 to 1936. Work began on construction of the park in 1893. In 1936, workers for the Works Project Administration constructed eight wooden footbridges and twenty-five checkdams in the ravines. In November, 1936, parks owned by the City of Milwaukee were consolidated with those already owned by Milwaukee County.

Cell Phone Towers are in no way fitting with the National Register site.

5) There is very real question whether the Parks' ways are indeed Right-Of-Ways open to the broad attempted reach of the new regulations. Water Tower Rd. is assuredly marked as "Private Road" by City Street Sign and by City Plat Maps. Lincoln Memorial Drive, Lagoon Drive, and the multi-use trails may not be "highways" and may not be "sidewalks". Moreover, unlike most non-park roads, where Right-Of-Way extends to the inner edge of the sidewalk, in the Parks, all public maps and documents at both the County and the City level show that Right-Of-Way ends precisely at the curb. Unlike other properties, everything from the curb-line in is "private" (or "proprietary") property to the Parks. The multi-use trails are _not_ sidewalks.

   This non-Right-Of-Way status changes the nature of the applicability of the Law.

6) The actual applications by the multiple agents of Verizon show severe errors and should not have been accepted. They do not show the scope of the full project. They omit property lines. They show overviews but fail to supply details. They are not in synchronization. For instance, a tower and backhaul fiber line is shown from near Discovery World up to Lagoon Drive, yet there is no documentation for this "run". In another case, Overviews show a "run" down Lafayette Hill Rd, but there is no supporting documentation. McKinley Marina North gets a tower, but has no fiber to service it.

7) County Parks based its approval of FiberOptic runs on faulty logic. It felt it could not disapprove, because it had allowed FiberOptic in the past. However, that FiberOptic run was solely along the old Chicago NorthWestern Railroad Tracks, on the west side of Lincoln Memorial Drive, in territory adjudicated by 2014 Act 140 as "west of the shoreline". The projects that have been received for the Lakefront Parks all lie completely within the Made Lands (landfill) created since the 1870's, and should have been treated as new, unique cases with non-permissive parameters. Moreover, and Fiber-Optic Run from the Lincoln Memorial Bridge northwards to Lagoon Drive which is not under the bike path itself (the old railroad bed) is quite possibly NOT "land" but rather is east of the "Chicago NorthWestern line" quoted in Act 140 and should likewise be subject to separate, non-precedent analysis. As discussed further below, proprietary FiberOptic runs on Public Trust Doctrine lands may be a problem.

(A copy of the actual Property Recording is available from the County Register of Deeds, this author has long posted a copy on Google Drive in the "Parks" share. The document "ChicagoNorthwesternDeedToMilwaukee-VOLUME 662 PAGES 326-330 DOCUMENT NO. 762955.pdf" is specifically available at link https://drive.google.com/file/d/1MTwp9KrFm2iLKPweguyfeYb1gtrYmTtY/view?usp=sharing
Further insight into this property line can be gleaned at the City and the County Land Information Office GIS web sites as well. The City of Milwaukee Infrastructure Services' Plat Maps, including Plats 393, 394, and 359, show detailed property lines and historical original shoreline .)

8) It is unclear whether the Tower proposals have been evaluated in view of the County's "Coordinated Plan for McKinley Marina Landfill", June 1984 by Bob Mikula of the Parks, Recreation, and Culture Dept., by evaluation criteria promulgated by the Lakefront Development Advisory Council (LDAC), or other pre-existing measures. LDAC, whose charter does not seem to be extinguished, does not appear to have met for quite some time and does not appear to have weighed in on the Small Tower proposal.

9) Milwaukee's Lakefront areas have a unique City/County/State jurisdiction, even within County Parks. In addition, at least two segments of the project exist in City-owned land. However, nobody at the City has been contacted. Given that the Michigan St Tower seen on Ramaker's Plan Overview is proposed to exist in the middle of the "Milwaukee Lakefront Gateway Project", which includes a "Michigan St. Rebuild", it sees that the City of Milwaukee would need to be involved. Water Works, likewise, has had no knowledge of any projects, even though it is slated on their land.

10) The Tower Applications do not appear to be evaluated against the "Plan for Milwaukee's Lakefront" Recommended Policies, as adopted in the mid 1990's, enacted by Milwaukee County Board as File No. 93-222 (a)(a) and Milwaukee City Council File 921491. This adopted plan contains a number of observations and especially POLICIES which must be used to evaluate the tower proposals. Select observations and policies are listed below:

"The task force found open space to be an essential ingredient in a desirable future lakefront. 'Open' does not mean 'unused'. Rather the task force intends such space to be well used for both organized and unorganized recreational activities. Open space should invite use and present potential users with a variety of options for passive and active recreation.

'Open' means that the space and any improvements on it, whether a structure or a playing field, allow multipurpose use and not permanently foreclose alternative future uses. The task force particularly endorsed Milwaukee County's approach to improvements on the Veterans Park site. There, the County is providing water and electricity needed for special events in an unobtrusive manner which does not hinder the

site's use as a large, flexible, open space for activities such as kite flying, sun bathing, in-line skating, and jogging, but also allows more formally programmed activity.

'Open' as identified by the task force, also means 'open to the water'..."

In its section "Policies", the study enumerated multiple ideas germane to cell towers:

<u>Accessibility</u>

1.0 Maximize public access to and through the lakefront parklands, including the North Harbor Tract

1.7 Ensure that any physical changes in the lakefront parklands enhance appreciation of, and access to, the water's edge.

1.8 Preserve and enhance view corridors to and from the lakefront.

...

<u>Recreation and Open Space</u>

2.0 Preserve and enhance the lakefront parklands, including the North Harbor Tract, as a unique recreational resource.

2.2 Provide a variety of options for passive and active recreation in the lakefront parklands.

2.3 Encourage outdoor recreational use within 300 feet of the lakeshore and reduce potential conflicts among activities by giving water related recreation priority to the water's edge I the lakefront parklands.

2.4 Restrict new development and new structures to those needed for maintenance, service, and limited food service for persons using the park and recreational facilities. Discourage new structures within 150 feet of the waters edge. For those new structures which are built, encourage locations near existing structures, parking, and roads. Maintain the area within the first 60 feet of the shoreline as a continuous pedestrian pathway.

2.5 Encourage park facilities and improvements which by their design allow mixed use/multiple use programming.

...

2.9 Design any commercial use or development on the lakefront parklands to enhance public recreational use of the lakefront lands and water.

<u>Development and Land Use</u>

3,0 Encourage a land use pattern which enhances the economic well being of the Milwaukee community.

3.5 Require all new development within the study area to be designed to the highest aesthetic and environmental standards so that the overall beauty of the area is preserved and enhanced for future generations.

11) While the new State Law from 2019 Act 14 does not allow ZONING laws to be used to influence tower installations, Parks do not exist because of zoning statutes. Rather, Parks are allowed to exist and be managed under State Statutes Chapter 27. Wisc Statutes 27.04, 27.14 et al give the COUNTY the right to control the use of the parks as parks and to approve and control private utility usage in the manner in which THE COUNTY deems appropriate. In fact, this "Statutes 27 Carve Out" applies to all municipalities and to State Parks. The "notwithstanding chapters 59 61 or 62 (which are County, Town, and City Zoning Laws) usurpation MAY NOT apply!!! See https://docs.legis.wisconsin.gov/statutes/statutes/27 .) Provisions include the following:

"27.05 Powers of commission or general manager. The county park commission, or the general manager in counties with a county executive or county administrator, shall have charge and supervision of all county parks and all lands acquired by the county for park or reservation purposes. The county park commission or general manager, subject to the general supervision of the county board and regulations prescribed by the county board, except as provided under s. 27.03 (2), may do any of the following:
(1) Lay out, improve, maintain and govern all county parks and open spaces.
...
(1s) Make rules for the regulation of the use and enjoyment of the county parks and open spaces by the public.
....
(6) Let, lease or grant the use of such part or portion of the park lands now owned or hereafter acquired as to it shall seem reasonably necessary, convenient or proper to agricultural and other societies of similar nature for agricultural and industrial fairs and exhibitions and such other purposes as tend to promote the public welfare. All fences and buildings constructed and other improvements made on such lands by societies using the same shall be constructed and made according to plans submitted to, and approved by the county park commission or county park manager, and shall be the property of the county.
...
(8) Have complete and exclusive jurisdiction and control over the improvement and maintenance of that portion of any public alley, street or highway which has heretofore been, or hereafter may be, by consent of the governing body of the town, city or village wherein such alley, street or highway is located, made a part of the county park or parkway system. The installation of privately owned utilities in such portion of said public alley, street or highway shall be made subject to the approval of said county park commission or county park manager; sewers, water mains or other municipally owned utilities or facilities may be installed and maintained by the

governing body of the municipality in which such portion of said alley, street or highway is located, upon 5 days' notice in writing to said county park commission or county park manager, which notice shall specify the type of utility to be installed and have plans thereof attached, and provided that the town, city or village shall restore as nearly as practicable to its prior condition any surface, subsurface or structures located above or below the ground that may be disturbed by said installation or maintenance."

Going back one step in the law, the PURPOSE of Parks is alluded to; the right to keep the aesthetic NATURAL Beauty, to maintain health comfort enjoyment and general welfare, etc. may be critical to saying "COUNTY GETS TO SAY WHERE THE TOWERS WILL GO IN ORDER TO BALANCE UNSIGHTLINESS WITH RIGHT OF ACCESS". The new State Law regarding cell towers may be over-ruled by Statute 27.

27.04(1)
(1) (Parks Department) "shall give consideration, among other matters, to the health, comfort, enjoyment and general welfare of the people of the county, to the protection of streams, lakes and pools from pollution, to the use by the public of lakes, pools and the banks thereof, to the reforestation for public use and enjoyment of tracts of land, to the conservation of flooded areas, and to the preservation of places of natural beauty and of historic or scientific interest."

12) Although similar to the "Statutes 27" point, which applies to all parks throughout the State, the historical unique relationship between Milwaukee's Parks and the State have great bearing as well. Milwaukee's Parks were created by Wis Statutes 1889 Ch 488 Ch 10 and 1891 Acts 179 and were specifically targeted to grant Milwaukee the right to acquire and manage Parks Land. Although these laws, and the specific laws for the Made Lands along the lakefront are old, their provisions were repeated within the Land Conveyances between the City and County in the 1930s and MUST STILL BE ADHERED TO TODAY FOR ALL MILWAUKEE COUNTY PARKS _AND_ FOR PROPERTIES IMMEDIATELY ADJACENT TO PARKS, even if they might not be considered LAW, they are in CONTRACTUAL AGREEMENTS.

Provisions of these older laws, which run with the land, include:

"1891 LAWS OF WISCONSIN CHAPTER 179.
AN ACT to define the powers and duties of the park commissioners...
SECTION 1. All lands acquired by the city of Milwaukee, under the provisions of chapter 488, of the laws of 1889, and all lands that shall here-after be acquired by said city for the purpose of public parks and boulevards, shall be named and controlled by said board of park commissioners as public parks and boulevards, for the recreation, health and benefit of the public, and shall be free to all persons subject to such necessary rules and regulations as shall be from time to time adopted by said board of park commissioners for the well-ordering and government thereof.

SECTION 2. The said board shall have the full and exclusive power to govern, manage, control and improve said parks and boulevards, and to lay out and make

rules for the regulation and government thereof; to restrict traffic and prohibit heavy teaming thereon; to appoint such engineers, surveyors, clerks and such other officers as may be necessary for the proper care and management thereof and the proper preservation of order therein, including special police, who are hereby granted the powers now granted to the police of the city of Milwaukee; and to define and prescribe their respective duties and authority; to fix the amount of the compensation of all such officers and employees; and generally in regard to said parks and boulevards, the said board of park commissioners shall have and possess all powers and authority now by law conferred upon or possessed by the common council and board of public works of the city of Milwaukee, in respect to the public squares and places in said city.

....

SECTION 4. The said board shall have power to establish building lines for the purpose of regulating the erection of buildings upon property fronting upon any of said parks or boulevards.

Seems to me that "full and exclusive right" is unambiguous - - and these rights are NOT taken away by 2019 Act 14.

13) Specific Laws were passed in the late 1800's to Milwaukee's taking of Lake Michigan lake bed and creation of Made Lands as Parks. These Made Lands entirely contain the proposed cell tower projects.

Enshrined as Article IX of the Wisconsin State Constitution is the "Public Trust Doctrine", codifying provisions of the US Northwest Ordinances of 1787 and 1789. This Article requires that the Great Lakes and its shoreline be forever free and for public use. Further legal action, such as in "Illinois Central Railroad vs. Illinois", 146 U.S. 387 (1892) the US Supreme Court in 1892 ruled that "Made Lands" (landfill) created from the Navigable Waters indicated in the NorthWest Ordinance always retained the condition that they be held, in Public Trust, subject to the aforementioned conditions of the NorthWest Ordinance et al. and that the purpose and conditions of any conveyance must always ride with the made land. Public Trust Doctrine is the principle that certain natural and cultural resources are preserved for public use, and that the government owns and must protect and maintain these resources for the public's use. For example, under this doctrine, the government holds title to all submerged land under navigable waters. Thus, any use or sale of such land must be in the public interest, and the responsibility to ensure that these Public Rights are upheld are not extinguished by the sale of the land.

(see
https://supreme.justia.com/cases/federal/us/146/387 for decision, or
http://www.casebriefsummary.com/illinois-central-railroad-co-v-illinois
for synopsis).

The Public Trust Doctrine has been reinforced by other decisions and Federal Laws, including, for instance, 33 USC 1344 involving dredging (which was performed for Veterans, McKinley,

and other parks). US Code 33 Section 1344 includes not provisions not only to force withdrawal of permissions regarding Made Lands, but also to correct violations.
(see https://www.law.cornell.edu/uscode/text/33/1344 et al).

The Wisconsin DNR's web page has very germane information as well as links regarding the Public Trust Doctrine. (see http://dnr.wi.gov/topic/Waterways/about_us/doctrine.htm)

Because of the Public Trust Doctrine, the State of Wisconsin had to grant specific right for Milwaukee to fill in the land and make SOLELY park or Public Trust lands from the mouth of the Milwaukee River all the way up to, and including, what is now the Linwood Water Filtration Plant. These laws included Wisconsin Acts 1893 Ch 197, 1897 Ch 200, 1907 Ch 608, 1909 Ch 359, and 1911 Ch 198, forming the lands of Summerfest, Discovery World, Harbor House, the Municipal Pier, the War Memorial Art Center, Juneau Park, McKinley Park, and Bradford Beach, and extending Lake Park. Subsequent laws formed what is now McKinley Marina and Veterans Park. These laws codified Public Trust Doctrine. The laws explicitly provided that if land use failed to be maintained solely as Park, the ownership would revert to the PRIOR SHORELINE LANDHOLDERS (e.g. the landholders along Prospect Ave, Terrace Ave, and Wahl Ave). They contain important restrictions that give the County sway in the use of the lands:

Wisconsin Acts 1897 Chapter 200 provides:

> *"The right, title and interest of the state of Wisconsin in and to a strip of submerged land...along and adjacent to the shore of lake Michigan, constituting the bed of said lake, being on the eastern frontage of the city of Milwaukee....are hereby granted and ceded to the said city of Milwaukee, to be held and used by said city forever as a part of its system of public parks and boulevards, and to be. managed, controlled and improved by the board of park commissioners as provided in chapter 488, of the laws of 1889, and chapter 179, of the laws of 1891, of Wisconsin; provided, that said land hereby ceded and granted shall not be leased or sold by said city of Milwaukee, nor used by it for any other purpose than a public park and boulevard.*
>
> ....
>
> *Nothing in this act contained shall be construed to divest or otherwise affect the riparian rights and privileges of the several owners of the lots abutting on Lake Michigan, but all such riparian rights and privileges shall remain vested in such abutting or upland owners, subject only to the use of the land hereby granted to said city of Milwaukee for the purpose of its system of public parks and boulevards, and if any part of said land shall be diverted from use by said city for the sole purpose of a public park or boulevard, as here-inbefore provided in section 1, and the right of said city therein so cease and determine, the title to said land shall be thereupon vested in and apportioned among such abutting or up-land owners or their assigns, to the same extent as if such land were a natural accretion outward from the shore of said lake..."*

Therefore, to retain ownership, the County (as successor owner) must ensure the Parks are SOLELY used as parks. THIS WAS REAFFIRMED BY WISCONSIN 2013 ACT 140 which explicitly defined shoreline. Arguments that Small Wireless Facilities are not consistent with the

definition of "What Is A Park", and assertions of additional power in controlling tower placement, can have merit because of the pre-existing Federal Law (NorthWest Ordinance) and State Law, as well as contractual obligations. The Conflict between NorthWest Ordinance LAW and FCC RULE exists and is not pre-empted, as might State issues vs. Federal.

14) The previous section's focus was on State Statutes that reinforce the State Constitution as well as the Federal Northwest Ordinance. Focus now, however, upon the State _*Constitutional*_ basis to utilize in influencing Small Cell Tower installations. Again, Article IX reiterates the "Navigation Free and Open To All" provisions. This protection extends to all the US. The PEOPLE have the shared Right of Sovereignty over lakes (and therefore over Made Lands, as well); the State is merely trustee, ensuring the common sovereign, Riparian right to enjoy the waters is upheld. Subsequent State Supreme Court and other judicial rulings, including Milwaukee vs. State of Wisconsin, solidified these precedents.

> *Milwaukee v. State of Wisconsin*
> *193 Wis. 423 (Wis. 1927)*
>
> *It will be noted from the foregoing quotation that these submerged lands may not be granted by the United States to a private person for purely private purposes. This is so because, as is said in Illinois Steel Co. v. Bilot, 109 Wis. 418, 426, 84 N.W. 855, 85 N.W. 402:401*
>
> *"The United States never had title, in the Northwest Territory out of which this state was carved, to the beds of lakes, ponds, and navigable rivers, except in trust for public purposes; and its trust in that regard was transferred to the state, and must there continue forever, so far as necessary to the enjoyment thereof by the people of this commonwealth.*
>
> *The trust reposed in the State is not a passive trust; it is governmental, active, and administrative. Representing the State in its legislative capacity, the legislature is fully vested with the power of control and regulation. The equitable title to these submerged lands vests in the public at large, while the legal title vests in the State, restricted only by the trust, and the trust, being both active and administrative, requires the law-making body to act in all cases where action is necessary, not only to preserve the trust but to promote it. As has heretofore been shown, the condition confronting the legislature was not a theory but a fact. This condition required positive action, and the legislature wisely and well discharged its duties when it enacted the statutes involved. Is it possible that the legislature, confronted with the impending danger of the destruction of a large part of the commerce of Lake Michigan (which is tributary to Milwaukee and other Wisconsin ports on the Great Lakes), could be said to perform its duty in the administration of the trust without taking appropriate action to relieve the situation as it did in the instant case? The occasion presented one of dire necessity, and, like this court in the adoption of the legal principles referred to in the Wisconsin cases, the legislature afforded the needed relief by enacting the statutes involved. A failure so to act, in our opinion,*

would have amounted to gross negligence and a misconception of its proper duties and obligations in the premises.

Further Court decisions, (e.g. Town of Linn vs. Wisc.) reflected in later law, DNR, and other regulations, points out that "free navigation" includes recreation, Riparian Rights including pleasant views, and other factors. Given the Public Trust Doctrine and other provisos saying that the Made Lands must be "Free and Open To All", one must fundamentally question whether a fiber-optic backhaul and multiple cellular towers, built solely for the proprietary, for-profit interests of Verizon, fits as proper usage. This question is compounded by the idea that four _other_ cellular carriers will _also_ undoubtedly want to execute similar activity, all burying cable and putting up towers throughout the Made Lands. Past precedents allowing Utilities installations were made in a different era, one with "Natural Monopolies" who were closely monitored and regulated by Public Service Commissions to ensure focus on the Public Weal. There was only one player, (e.g. Wisconsin Bell, Wisconsin Electric, MMSD, Water Works) so it was easier to argue a project benefited the General Public - - and the PSC would double-check. Those precedents no longer apply.

Rights to allege injury under the Public Trust Doctrine are not just to persons from Milwaukee County, or even the State. Any US person has standing to enforce Public Trust Doctrine rights.

15) The Boundary Waters Treaty of 1909 gives Canada and the US both rights of Navigation to the Great Lakes, holding them as Common Interest. Towers on Made Lands constitute a threat to continued "Navigation" in the long-established usage of Veterans Park as a Kite Flying field. Kite Festivals regularly include fliers from Canada, Illinois, Michigan, and other states. All deserve their rights to free navigation to be defended by the County as delegated trustee of the Made Lands.

16) Wisconsin Constitution Article XIII may be used to challenge 2019 Act 14's arbitrary and capricious provision against using "aesthetics" as a reason to deny Small Wireless Facility applications. The Article implies that part of the fundamental purposes of government is to "… protect such public works and improvements, and their environs, and to preserve the view, appearance, light, air, and usefulness of such public works." As a Public Work, Parks certainly must be protected from mis-placed cell towers which impede the recreational usefulness as well as the mentioned aesthetic and environmental elements. The Article reads:

Article XIII Acquisition of lands by state and subdivisions; sale of excess. SECTION 3a. [As created Nov. 1912 and amended April 1956]

The state or any of its counties, cities, towns or villages may acquire by gift, dedication, purchase, or condemnation lands for establishing, laying out, widening, enlarging, extending, and maintaining memorial grounds, streets, highways, squares, parkways, boulevards, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same; and after the establishment, layout, and completion of such improvements, may convey any such real estate thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such real estate, so as to protect such

public works and improvements, and their environs, and to preserve the view, appearance, light, air, and usefulness of such public works. If the governing body of a county, city, town or village elects to accept a gift or dedication of land made on condition that the land be devoted to a special purpose and the condition subsequently becomes impossible or impracticable, such governing body may by resolution or ordinance enacted by a two-thirds vote of its members elect either to grant the land back to the donor or dedicator or his heirs or accept from the donor or dedicator or his heirs a grant relieving the county, city, town or village of the condition; however, if the donor or dedicator or his heirs are unknown or cannot be found, such resolution or ordinance may provide for the commencement of proceedings in the manner and in the courts as the legislature shall designate for the purpose of relieving the county, city, town or village from the condition of the gift or dedication.

17) Finally, the new 2019 Act 14 can be challenged on Constitutional Grounds similar to many of the arguments used on a Federal Level, specifically revolving around "Taking of Liberty and Property Without Due Process." Municipalities are constrained in recovering their costs given arbitrary caps if they haven't been fully able to develop cost estimates ahead of applications. The process of responding to and managing the new laws and the onslaught of applications imposes high additional burdens upon already strapped municipalities, all without just compensation. Moreover, taking away government and constituent rights to use Zoning and other laws to influence Small Tower installations means that persons may be unable to defend the monetary or non-monetary value of properties, and their intangible liberties, without Due Process of Law to evaluate a matter on its merits. Finally, because the Law allows zoning in Single Family Residential areas to influence Tower Location, but disallows persons who live in OTHER Zones from taking the same actions, Due Process is denied to the non-Single Family Residential Zone dwellers.

The provisions of FCC Rule and of Wisconsin 2019 Act 14 are onerous and hard to avoid along most public lands in the state. However, the Milwaukee County Parks in general, and the parks along the lakefront in particular, have specific State and Federal laws which may give the County increased power to control the existence, siting, timing, or revenue associated with placement of Small Wireless Facilities.

Aspects which should be used to modify Small Wireless Facility proposals include:
-non-comprehensive, Incomplete or misleading applications by Verizon's Agents;
-placement in areas which threaten Safety and General Welfare of Kite Flyers;
-placement within or adjacent to Historic Sites, incompatible with the character of the sites;
-placement in State Designated Wetlands;
-incompatibility with published Plans for Lakefront Development;
-incompatibility with purposes of the Parks as embodied in State Law and Contracts;
-rights of all Parks Systems statewide under Statutes 27 to have exclusive, non-zoning jurisdiction over parks;
-existence in "Made Lands" in violation of Public Trust Doctrine as promoted by Wisconsin Constitution Article IX, and Federal Northwest Ordinance of 1790, et al;
-violation of State Statutes 13.097 in creating the law;
-violation of State Constitution Article XIII rights including determination of usefulness and aesthetics;

-multiple violations of Due Process rights under State and Federal Constitution

Especially given the complexity of the matter, the probable errors in the applications and possibly in their response, and the lack of public discourse, the Application for installation of Small Wireless Facilities in Milwaukee County Parks by Verizon should be postponed by mutual agreement, or denied. Because laws do not allow a Moratorium, the County must quickly develop clear, consistent rates, rules and procedures for _all_ Applicants. It should also consider Intergovernmental Cooperation to further discern the depth and breadth of troubles municipalities are having with the new laws, seek Judicial Relief, and Petition the Government for a Redress of Grievances.

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