

COUNTY OF MILWAUKEE
Inter-Office Communication

Date: August 16, 2024

To: Marcelia Nicholson, Chairwoman, Milwaukee County Board of Supervisors

From: Guy Smith, Executive Parks Director for Milwaukee County Parks

Subject: Research into Park Utility Easement Fees and Best Practices

File Type: Informational Report

REQUEST

This report is for informational purposes, there is no request at this time.

POLICY

Wisconsin State Statutes:	
Milwaukee County Code of General Ordinances:	
Specific Adopted Budget:	
Specific Adopted Budget Amendment:	
Specific Adopted Capital Project:	

BACKGROUND

In its 2025 requested budget the Parks Department included new fees in the Fee Schedule which pertain to minimum utility easement rates. This includes the following -

- Power Utilities - \$1.65/square foot
- Telecommunications - \$5/lineal foot (minimum \$1,000)
- Municipal public works projects resulting in land sales - \$5/square foot

Similar information was provided to the Committee on Parks and Culture at its March 2024 meeting (File #24-312). At the time, the feedback from Supervisors included a request for more information into best practices and how similar easement rates are determined at other public agencies. This report is responsive to that request.

Easements for utilities are heavily negotiated and each one is unique to the circumstances of that specific project and location. Fees or rates that are charged for easements are only one aspect of an easement that is negotiated. From the perspective of the landowner, there is a key point of consideration once a utility provider approaches the landowner with a request for an easement – whether the “project

influence”¹ can be negotiated to be beneficial to the landowner rather than burdensome. This could include many factors, for example if an easement request is for a power utility perhaps the landowner has power access needs that can be negotiated and included in the project. If the easement is for access (pathway or driveway construction), perhaps the landowner has access issues of their own that could be addressed in the construction of the project. As these aspects may have significant long-term, year over year value to the landowner, they could inherently have more economic value than an upfront payment in the first year of the project. In many cases, the fee may be negotiated down as more benefits to the landowner are included in the project.

In past practice Parks has negotiated the swap of new land to be dedicated as parkland in exchange for the transfer or encumbrance of existing parkland. Parks has established a 2 for 1 standard where the County expects to receive twice as much land as is given to the project. In these limited cases the primary concern for Parks is the value of the land that is swapped in both recreational and ecological value. The market value of land is challenging to determine for a few reasons and the recreational and ecological value has greater long-term value to the Parks system.

The challenge in determining “fair market value” of parkland extends to both the example of transferring title to parkland and negotiating easement rates for the encumbrance of parkland. Fair market value is determined by appraisal which is determined by a certified appraiser and is based on comparable sales on other similar projects. There are no comparable sales of parkland, so there is no basis for determining market value. Another appraisal principle is determining the highest and best use of land, but in the case of parkland the zoning as “parks”, “parkland” or similar is a legal limitation to profitable real estate development. In the case of easements, one alternative methodology for determining value is “Easement transaction comparables”, essentially similar to the process of analyzing comparable purchase prices for real estate sales. Here, the complexities of what is included in an easement negotiation makes the clear determination of “fair value” of easement fees very challenging –

“Easement transactions are complex and obtaining all of the information necessary to make a direct comparison to the subject easement is extremely difficult. Confirmation by the appraiser of the amounts paid for each easement along a right of way project is very difficult. Even if the sales prices are available, identifying and abstracting the various components of each transaction such as land value, damages to the remainder, business decisions, etc. are hard to obtain.” (*The Appraisal of Easements*, Allen)²

¹ *The Case for Smart Easements*, Geoffrey Fay, Fairfield County Business Journal, June 2014

² *The Appraisal of Easements*, Albert Allen, Right of Way Magazine, Nov-Dec 2001

Other Public Entities

In researching a response to this request, Milwaukee County Parks staff reached out to Wisconsin DNR, the largest landowner of public parkland in the state, for an analysis of their approach to utility easements and municipal takings of parkland. DNR parkland is largely governed by funding requirements from the Federal government. In many cases these requirements preclude the placement of private easements. In other cases, the land that DNR manages already has existing county highways through their properties which are usable for utilities and requests are directed towards these existing rights of way.

In speaking with other governments, the orientation is to strongly avoid encumbering land with utility easements that would be burdensome to the landowner. Other governments do not have the same circumstance as Milwaukee County when addressing this question. Milwaukee County Parks represents over 15,500 acres of land in Milwaukee County – roughly 10% of the total land area within the County. Milwaukee County is also a highly developed and still developing County with both large land developments in south suburban communities and redevelopments in urban areas. There is a high exposure to public works projects within County parkland given these circumstances. In addition, there is overlap between where parkways have been developed and municipal sewer lines and trails have been built in pre-existing rail or utility corridors. When an easement is presented to the County Board for approval, it has been negotiated with the goal of producing “beneficial easements” that aid our parks and going forward using the posted easement fees as mentioned above as a starting point for negotiation.

Related File No's:	24-312
Associated File No's (Including Transfer Packets):	
Previous Action Date(s):	

ALIGNMENT TO STRATEGIC PLAN

Describe how the item aligns to the objectives in the [strategic plan](#):

- 1A: Reflect the full diversity of the County at every level of County government
- 1B: Create and nurture an inclusive culture across County government
- 1C: Increase the number of County contracts awarded to minority and women-owned businesses
- 2A: Determine what, where, and how we deliver services to advance health equity
- 2B: Break down silos across County government to maximize access to and quality of services offered
- 2C: Apply a racial equity lens to all decisions
- 3A: Invest “upstream” to address root causes of health disparities
- 3B: Enhance the County’s fiscal health and sustainability – Parks methodology for determining easement rates is based on maximizing the fiscal health of the Parks in each transaction in both direct and indirect impacts
- 3C: Dismantle barriers to diverse and inclusive communities

FISCAL EFFECT

None

TERMS

None

VIRTUAL MEETING INVITES

None

PREPARED BY:

Jim Tarantino, Deputy Director, Milwaukee County Parks

APPROVED BY:

Guy Smith, Executive Director Milwaukee County Parks *Guy D. Smith*

ATTACHMENTS:

None

CC:

David Crowley, County Executive
Mary Jo Meyers, Chief of Staff, County Executive's Office
Sheldon Wasserman, Committee on Parks & Culture Chairperson
Steve Taylor, Committee on Parks & Culture Vice Chairperson
Felesia Martin, Committee on Parks & Culture Member
Juan Miguel Martinez, Committee on Parks & Culture Member
Jack Eckblad, Committee on Parks & Culture Member
Kelly Bablitch, Chief of Staff, Milwaukee County Board of Supervisors
Janelle M. Jensen, Legislative Services Division Mgr, Office of the County Clerk
Aaron Hertzberg, Director, Department of Administrative Services
Joseph Lamers, Fiscal & Budget Director, DAS
Vince Masterson, Fiscal & Strategic Asset Coordinator, DAS
Pamela Bryant, Capital Finance Manager, Comptroller's Office
Justin Rodriguez, Capital Finance Analyst, Comptroller's Office
Allyson R. Smith, Committee Coordinator, Office of the County Clerk
Anthony Rux, Budget & Management Analyst, DAS-PSB