

Impacts and Solutions Regarding Parks Committee Item 20-83

Douglas R Bomberg, CPCU

2020-01-28

Item 20-83 seems simple enough - - declare County Lands (many of which are not formally held as or zoned as “park”) to be committed as “Conserved Lands” However, especially given new State Laws passed as 2019 Act 14, concerns arise, warranting modification of the proposed Restrictions.

1) The County Board should note that despite its laudable effort to restrict usage of the land, the properties nevertheless may be an easy target for Cellular Operators to install cell towers. These lands contain steam, water, electric, gas, telecommunications, sewer, and roadway Rights-Of-Way; as such, they all become targets for Cell Towers.

This arises because “Right of Way” is now expanded by State Law 66.0414 to include water, sewer, telephone, electric, and other lines; see Definitions 1. "(t) "Right-of-way" means the area on, below, or above a highway, as defined in s. 340.01 (22), other than a federal interstate highway; sidewalk; utility easement, other than a utility easement for cooperative association organized under ch. 185 for purposes of providing or furnishing heat, light, power, or water to its members only; or other similar property, including property owned or controlled by the department of transportation.”

The onerous law provides in Section 2 "(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"

PROPOSED ACTION: The County should make an explicit, unambiguous, clause in its 20-83 Conservation Restriction to explicitly declare that Cell Towers, including Small Wireless Facilities, are not conformal use of the property; furthermore, any attempt to install such structures within or immediately adjacent to the properties must be subject to County Board review and action.

2) New Federal rules and State Law do provide some capability to control Small Wireless Facility installation by declaration of “Underground Districts”:

“66.0414(3)(c)5. A political subdivision may enact an ordinance to prohibit, in a nondiscriminatory way, a communications service provider from installing structures in the

right-of-way of a historic district or an underground district, except that the ordinance may not prohibit collocations or the replacement of existing structures. In this subdivision, a historic district is an area designated as historic by the political subdivision, listed on the national register of historic places in Wisconsin, or listed on the state register of historic places. In this subdivision, an underground district is an area designated by the political subdivision in which all pipes, pipelines, ducts, wires, lines, conduits, or other equipment, which are used for the transmission, distribution, or delivery of electrical power, heat, water, gas, sewer, or telecommunications equipment, are located underground. A political subdivision may require any collocation on or replacement of an existing structure to reasonably conform to the design aesthetics of the original structure in a historic or underground district. Any design or concealment measures are not considered a part of the small wireless facility for purposes of the size restrictions in the definition of “small wireless facility” under sub. (1) (u). The requirements of an ordinance enacted under this subdivision must be objective, technically feasible, no more burdensome than requirements applied to other types of infrastructure deployment, and reasonably directed at avoiding or remedying the intangible public harm of unsightly or out-of-character deployments. A political subdivision may not apply any requirements under an ordinance enacted under this subdivision in a manner that results in an effective prohibition of wireless service.”

Traditionally, there had been no need to develop such designation. State Constitution and Law, and other contracts and legislation, seemed to make it clear that local government had authority over use of its land, especially land for recreation, conservation, etc. In attempting to allow Cell Towers Everywhere, 2019 Act 14 turned this philosophy on its head. While continuing to fight the new Laws and Regulations on multiple grounds, the County can take immediate action using the new laws themselves by explicitly declaring this property, as it should nearly all other parks and many other holdings, as “Underground Districts”.

PROPOSED ACTION: Declare the County Grounds lands associated with 20-83 as “Underground District” so as to preserve County rights to determine and review non-conforming usage.

At a higher level, Wisconsin 2019 Act 14 and FCC Regulations must be revisited and revised. In the meantime, the County must approach all land usage matters with a careful eye towards the implications on inadvertent creation of “easy opportunities” for Small Wireless Facility creation in areas where the Public and the County do not want them. Matter 20-83 provides an early opportunity to assert their desires. Please incorporate the Proposed Actions highlighted above into your Resolution.