Impacts and Solutions Regarding Parks Committee Item 20-84

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Item 20-84 seems simple enough - - an electric easement due to encroachment upon County Park land along the Milwaukee River. However, especially given new State Laws passed as 2019 Act 14, a number of concerns arise, warranting modification of the proposed agreement.

1) First, as a side note, I must mention "if WE Energies has to come to the County Board for a 0.0847 acre easement of wooded, unused land, then where is the Board's involvement in Verizon's TESInc LLC proposal to install some 4.6 acres' easement (10,000 ft x 20 ft wide) for Fiber Optic cables for cell towers along Lincoln Memorial Drive?"

2) Moreover, if WEPCo is willing to pay $1,000 for .0847 acres of scrubland, then even _before_ factoring in a premium for Prime Lakefront Property, the value of a fiberoptic easement along the lakefront must be least (4.6 divided by .0847) $54,300 - - assuming the County even want to stoop so low as to sell its mother-lode, as argued last month in matter 19-895 "Small Wireless Facilities"

3) To the matter at hand, the County Board should note that easements such as this one to WEPCo inadvertently creates an easy target for Cellular Operators to install cell towers on County Lands, where no opportunity existed previously.

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 20-84 Easement Agreement that the property may _not_ be used for any other purpose than electric

power transmission, notwithstanding 66.0414 or other similar attempts at misuse of Park Property.

4) The Parks Department proposed contract, "20-84 WE Energies Electric Easement--Milwaukee River Parkway north of Wright St (WR4325390).pdf" states:

"1. Purpose
(a) The purpose of this easement is to install, operate, maintain, repair, replace, and extend underground utility facilities, conduit and cables, electric pad-mounted transformers, manhole, electric pad-mounted switch-fuse units, electric pad-mounted vacuum fault interrupter, concrete slabs, power pedestals, riser equipment, terminals and markers, together with all appurtenant equipment under and above ground as deemed necessary by the Grantee, all to transmit electric energy, signals, ***television and telecommunications services***, including customary growth and replacement thereof."

PROPOSED ACTION: To further prevent attempts at "shirt-tailing" installations of Small Wireless Facilities, the "Television and Telecommunications Services" clause should be removed from the enumeration of Purposes in the contract.

(Though traditional Cellular Operators are the primary threat to Parks Land Usage, Electric Utilities have made efforts to provide Telecommunications as well. While WEPCo may indeed assert its own desire to provide said services, as an Amateur Radio licensee I must testify that Electric Utilities' attempts at BPL - "Broadband Over Power Line" - have been proven to introduce significant Electro-Magnetic Interference "noise" to other radio and television users; experiments in other markets are failing, and the FCC is getting an earful about it. In any case, the County should retain the right to separately review proposed usages beyond the traditional conveyance of "mains" A/C power; removing the TV and Telecomm clause helps retain this right.)

5) 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 for Parks; "they are, after all, Parks". State Constitution and Law, and other contracts and legislation, seemed to make it clear that Parks Commissions had sole authority over use of parkland, and it was to solely be used for recreation, conservation, etc. In attempting to allow Cell Towers in parks, 2019 Act 14 turned what once was an "Emerald Necklace" into an "Emerald Noose", potentially polluting pristine parkland with cell towers every 1000 feet. While continuing to fight the new Laws and Regulations on multiple grounds, as I detailed in my 19-895 submissions in December, the County can take immediate action using the new laws themselves by explicitly declaring this easement, as it should nearly all other parks and many other holdings, as "Underground Districts".

PROPOSED ACTION: Declare the Milwaukee River Parkway lands associated with 20-84 as "Underground District" so as to preserve County rights to determine and review non-conforming usage.

6) Finally, one must question why this matter exists in the first place. Somehow a private property owner erroneously encroached not only over WEPCo Power Lines, but also onto County Property. What action is the County taking to compensate for the injury to its property rights? Generally, utility easements run on Private Land, rather than on public property; had the garage builder not violated the County's property line, there would not have been a creation of a Tower-Containing Public Right of Way in the first place!

7) The whole matter of "Utility Right-Of-Way on Public Land Creates Cell Tower Site Threat" can be entirely avoided. Instead of creating an easement and allowing WEPCo to divert its power lines onto County Lands, ***SELL*** a small strip of land to the private landowner, so that the matter of line relocation due to erroneous encroachment becomes solely the Landowner's and WEPCo's private affair.

PROPOSED ACTION: Sell a strip of land to the non-conforming landowner, to cure the conformance and avoid creation of Right-of-Way.

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 20-84 provides an early opportunity to assert their desires. Please incorporate the Proposed Actions highlighted above into your Resolution.