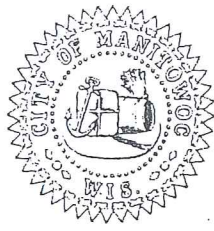


CITY OF MANITOWOC

WISCONSIN, USA
www.manitowoc.org



16-1754

marked:
7/29/16
File copy

July 29, 2016

Mobilitie
120 S. Riverside Plaza, Ste. 1800
Chicago, IL 60606

Attn: Ms. Yemi Giwa

RE: Wisconsin Technology Networking, LLC-Request for Poles in ROW on Fairmont St. & Magnolia Ave.

Dear Ms. Giwa:

We held an internal meeting last week with the Director of Public Infrastructure, City Attorney and the Community Development Director to discuss your request.

We are writing this letter to you in order to respond, within the 60 day time limit, to your permit requests from June 10, 2016 and June 27, 2016 for the placement of a 78 foot pole and a 120 foot pole within the Right-of-Way (ROW) in the 2400 block of Fairmont Street and at the intersection of Magnolia Avenue and North 7th Street, respectively.

The City of Manitowoc is unable to approve your request as submitted.

However, we are willing to look at the possibility of entering into a License Agreement for those locations where our zoning codes allow them to be installed.

We are also requiring you to provide documentation that your proposed facilities cannot be co-located on other existing towers or structures within the City.

The City of Manitowoc Public Infrastructure (PI) Committee's next scheduled meeting is on Monday, August 8th at 5:30 P.M. in the Council Chambers at City Hall. Perhaps, a short (5-10 min.) presentation to this Committee would be appropriate at this time.

If you have any questions, please feel free to call our office at 920-686-6910.

Sincerely,

Gregory J. Minikel, P.E.

Gregory J Minikel, P.E.
Engineering Division Manager

Cc: Dan Koski, Dir. Public Infrastructure
Kathleen McDaniel, City Attorney
Nic Sparacio, Dir. Community Development
Paul Braun, Planning Dept.

Y:\Letters\Letter to Yemi Giwa of WTN - Denial of Request for Poles in the ROW on Fairmont St. & Magnolia Ave.



Greg Minikel

From: Greg Minikel
Sent: Monday, August 01, 2016 11:29 AM
To: 'Yemi Giwa'
Cc: Dan Koski; Paul Braun; Sonja Birr
Subject: RE: 106802: Application/Change has been submitted for Excavation Permit by Wisconsin Technology Networking, LLC : Yemi Giwa

Yemi,

I sent you a letter on Friday. So, hopefully you will get that today or tomorrow.

Our Public Infrastructure (PI) Committee is supposed to meet next Monday, August 8th at 5:30 pm in the City Hall Council Chambers. It might make sense to give them a quick presentation and information on your request.

From: Yemi Giwa [mailto:yemi.giwa@mobilitie.com]
Sent: Friday, July 29, 2016 3:00 PM
To: Greg Minikel
Subject: RE: 106802: Application/Change has been submitted for Excavation Permit by Wisconsin Technology Networking, LLC : Yemi Giwa

Good afternoon, Greg.

I am following up on the below email. Have you received any feedback on whether the City would like a conference call or in person meeting to discuss the project?

I submitted our third proposed site today. As of right now, I have no other pending sites in the City.

Feel free to email or call with any questions.

Thanks,

Yemi Giwa | Sr. NRE Specialist
yemi.giwa@mobilitie.com

mobilitie
intelligent infrastructure

120 S. Riverside Plaza Ste. 1800 | Chicago, IL 60606
(312) 638-5359 office | (312) 772-8074 mobile |
www.mobilitie.com

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From: Yemi Giwa
Sent: Wednesday, July 20, 2016 11:26 AM
To: 'Greg Minikel' <gminikel@manitowoc.org>
Cc: Paul Braun <PBraun@manitowoc.org>; Dan Koski <dkoski@manitowoc.org>; Kathleen McDaniel <kmcdaniel@manitowoc.org>; Sonja Birr <sbirr@manitowoc.org>; Liza Rezach <lrezach@manitowoc.org>
Subject: RE: 106802: Application/Change has been submitted for Excavation Permit by Wisconsin Technology Networking, LLC : Yemi Giwa

Good afternoon, Greg.

Per our telephone conversation, attached please find the memo from the League of Wisconsin Municipalities.

Wisconsin Technology Networking, LLC ("WITN") is the state specific subsidiary of Interstate Transport and Broadband, LLC ("ITB"). ITB is a national utility company that is building a hybrid transport network that will provide high-speed, high capacity bandwidth in order to facilitate the next generation of devices and data-driven services and meet the ever-growing demand for connectivity. Connectivity is a vital component of daily life and ITB works with the nation's leading companies to ensure connectivity for their customers and constituents. Our network combines fiber, repeaters and microwave technologies to ensure that the network is cost-efficient, low-impact to communities, and can be effectively upgraded and augmented in the future. Just as telephone or cable lines transmit data, so does our transport network. The network can support a variety of technologies and services that require connectivity to the internet, including, but not limited to, driverless and connected vehicles (commercial, personal and agricultural), remote weather stations and mobile service providers. We are no different from a telephone or electric grid network, except that we utilize wireless solutions to expand the reach of our network without the need for costly and burdensome excavations.

Given the novelty of our project, I would be happy to set up a telephone conference or in person meeting (whichever would be most convenient) to discuss our project and answer any outstanding questions. Please consult your schedule and let me know what time/day works best for you.

Thank you again for your time and attention to this matter.

Regards,

Yemi Giwa | Sr. NRE Specialist
yemi.giwa@mobilitie.com

mobilitie
intelligent infrastructure

120 S. Riverside Plaza Ste. 1800 | Chicago, IL 60606
(312) 638-5359 office | (312) 772-8074 mobile |
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From: Greg Minikel [<mailto:gminikel@manitowoc.org>]

Sent: Friday, July 01, 2016 4:33 PM

To: Yemi Giwa <yemi.giwa@mobilitie.com>

Cc: Paul Braun <PBraun@manitowoc.org>; Dan Koski <dkoski@manitowoc.org>; Kathleen McDaniel <kmcdaniel@manitowoc.org>; Sonja Birr <sbirr@manitowoc.org>; Liza Rezach <lrezach@manitowoc.org>

Subject: FW: 106802: Application/Change has been submitted for Excavation Permit by Wisconsin Technology Networking, LLC : Yemi Giwa

Hi Yemi,

I left you a voicemail earlier this week and did not have a chance to try again. I will be out of the office all week next week.

You should contact Paul Braun in our Planning Dept. regarding your requests for these towers within the Right of Way (ROW). His phone number is (920) 686-6932.

My understanding is that a Conditional Use Permit (CUP) is required for this. This may also require approval by our Plan Commission, PI Committee and Council.

I also believe that FAA approval may be needed for these towers as they will be within 3 miles of the County's airport.

Either Paul or our City Attorney may need to be involved. I do not plan on approving any ROW Excavation Permits until I get approval from someone above me.

I do not remember the City ever approving any towers to be located within the public ROW. They have always been on easements on private property.

Greg Minikel, P.E.
Engineering Division Manager
Dept. of Public Infrastructure
City of Manitowoc
900 Quay Street
Manitowoc, WI 54220
Ph. (920) 686-6910
e-mail: gminikel@manitowoc.org

From: ROWay [<mailto:system@roway.net>]
Sent: Monday, June 27, 2016 5:15 PM
To: Greg Minikel; Sonja Birr; Liza Rezach
Subject: 106802: Application/Change has been submitted for Excavation Permit by Wisconsin Technology Networking, LLC : Yemi Giwa

When ready to take action, please log into ROWay.

The following is the permit detail information:

Company: Wisconsin Technology Networking, LLC
Name: Yemi Giwa
Phone: 312-638-5359
Fax: 312-775-9103
Email: yemi.giwa@itbutility.com
Address 1: 869 E Schaumburg Rd, #324
Address 2:
City: Schaumburg
State: IL
Zip: 60194-3653
Project ID: 9WIX000429
Location: Proposed site is in ROW near 700-798 Magnolia Ave, east of the intersection of Magnolia Ave and N 8th Street. Lat/Long: 44.117217. -87.656762
Start Date: 10/3/2016
End Date: 10/31/2016

Payment Type: City to Invoice
Type of Work: Other (C)
Purpose of Excavation: Install transport metal transport utility pole within right-of-way, install proposed backhaul transport equipment on proposed pole and run power to pole. Pole is part of nationwide hybrid transport network.
Primary Utility Location: Spot Locations
Trench Location (if multiple): Dig 4.2' x 4.2' x 19' hole to place proposed new metal utility pole within right-of-way.
Trench Location: Terrace
Surface Type: Other
Surface Type (if multiple or other): Proposed site is in the grass terrace area. Entire facility will be confined to the grass - no additional ground space will be required.

<http://www.manitowoc.wi.roway.net/>

MEMORANDUM

TO: Claire Silverman, Legal Counsel
League of Wisconsin Municipalities

FROM: Anita Gallucci

DATE: April 12, 2016

RE: Regulation of WITN's Poles in Local Right-of-Way

The League has been contacted by several members regarding requests they have received from Wisconsin Technology Networking, LLC ("WITN") to place utility poles in local rights-of-way ("ROW"). In response, I have been asked for a memorandum addressing the following questions:

1. What right does WITN have to place poles in local ROW?
2. What right does a municipality have to regulate WITN's proposed use of local ROW?
3. What sort of regulations may a municipality apply to WITN?
4. What may a municipality do if it has not adopted regulations that would apply to utility poles placed in local ROW?

BACKGROUND

WITN has submitted permit applications to various municipalities in southeast Wisconsin, seeking to install one or two 120' "transport utility poles and facilities" in local ROW. WITN's cover letter, submitted with its applications, states that:

WITN is an alternative telecommunications utility ["ATU"] regulated by the Wisconsin Public Service Commission ["PSCW"] to provide intrastate telecommunications service, whether switched or dedicated, including all telecommunications service available, such as intraLATA and interLATA toll telecommunications, access service to telecommunications providers and private-line service.

The letter also states that it is "deploying a hybrid transport network" that can be used to "support a variety of technologies and services that required connectivity to the internet,"

including “mobile service providers.” According to the letter, the “transport utility poles and facilities are not dedicated to any particular customer, and, to the extent capacity on the structures is available, are available to be used by other entities, including the [municipality].” In addition, plans submitted by WITN show that the company intends to install two microwave dishes on the poles and install fiber up to the poles.

According to records maintained on the PSCW’s website, WITN is listed as an active competitive local exchange carrier (a “CLEC”) and, therefore, has ATU status under Wisconsin law. The original certification was granted on June 20, 2007 to a company called Mobilitie, LLC, in PSCW Docket No. 3778-NC-100 (PSC REF#: 77803), and was subsequently transferred to WITN. On April 5, 2016, a company called Mobilitie Management, LLC, applied to the PSCW for authorization to provide competitive local telecommunications services throughout Wisconsin. It is not clear what, if any, connection Mobilitie Management has to WITN and its current build out efforts.

DISCUSSION

A. WHAT RIGHT DOES WITN HAVE TO PLACE POLES IN LOCAL ROW?

Under Wis. Stat. § 182.017(1r), certain “companies” have the right to place their facilities in local ROW subject “to reasonable regulations made by any municipality through which [their] transmission lines or systems may pass.” A “company,” as defined in the statute, may include a limited liability company organized to furnish telecommunications service¹ to the public or for public purposes. Wis. Stat. § 182.017(1g)(b)1.

An ATU, such as WITN, is a company within the meaning of the statute. Accordingly, WITN has the right to place its utility poles in local ROW. However, that right is a qualified one. WITN must comply with all “reasonable” regulations imposed by the municipality with jurisdiction over the affected ROW.

As an ATU, WITN also has the right to challenge any municipal regulations that it believes are “unreasonable.” Those challenges are heard by the PSCW. Wis. Stat. § 182.017(8).

B. WHAT RIGHT DOES A MUNICIPALITY HAVE TO REGULATE WITN’S UTILITY POLES?

Municipalities have police power authority to regulate local ROW. With respect to a company’s use of local ROW, such regulations must be reasonable. League members have several questions regarding what is “reasonable regulation” with regard to WITN’s utility poles. These questions are addressed as follows:

¹ “Telecommunications service” is very broadly defined as “the offering for sale of the conveyance of voice, data, or other information, including the sale of service for collection, storage, forwarding, switching, and delivery incidental to such communication regardless of the technology or mode used to make such offering.” Wis. Stat. § 182.017(1g)(cq).

1. *May a municipality adopt a moratorium on the placement of 120' poles in the ROW in order to have time to put regulations in place that would apply to such structures?*

No. According to Wis. Stat. § 182.017(8)(am), a municipal regulation is unreasonable if it “has the effect of creating a moratorium on the placement of company lines or systems” in local ROW.

2. *How much time can a municipality take in acting on WITN's permit application?*

60 days. According to Wis. Stat. § 182.017(9), a “municipality shall approve or deny a permit application no later than 60 days after receipt of the application.” If it fails to act within that time period, then the application is deemed granted. In addition, if the application is denied, the “municipality shall provide the applicant a written explanation of the reasons for the denial” at the time of the denial.

3. *May a municipality charge WITN rent for use of its ROW?*

No. According to Wis. Stat. § 182.017(8)(b), a municipality may not charge rent to an ATU for use of the ROW. It may only charge fees that compensate the municipality for certain “management functions,” such as

- Registering companies, including the gathering and recording of information necessary to conduct business with a company.
- [I]ssuing, processing, and verifying excavation or other company permit applications, including supplemental applications.
- Inspecting company job sites and restoration projects.
- Maintaining, supporting, protecting, or moving company equipment during work in municipal ROWs.
- Undertaking restoration work inadequately performed by a company after providing notice and the opportunity to correct the work.
- Revoking company permits.
- Maintenance of databases.
- Scheduling and coordinating highway, street, and ROW work relevant to a company permit.

4. *May WITN's poles be regulated on the basis of aesthetics?*

No. Municipal regulations are reasonable if they regulate on the basis of an adequate health, safety, or welfare concern. According to the PSCW's ROW rules, a project's

negative aesthetic impact is not an adequate justification for the regulation of utility poles in local ROW. *See* Wis. Admin. Code Ch. PSC 130 (Municipal Regulation of Municipal Rights-of-way).

C. WHAT SORT OF REGULATIONS MAY A MUNICIPALITY APPLY TO WITN?

A municipality may regulate the placement of WITN's poles as it does any other utility structures in the ROW (e.g., telephone or electric utility poles). The following requirements, among others, could be applied to WITN:

- Permit and registrations fees.
- Bonding and insurance requirements during construction in ROW.
- Fall zone and set back restrictions.
- Siting restrictions based on safety factors; for example:
 - Line of sight restrictions (i.e., prohibit the placement of poles in places where a driver's line of sight may be obstructed).
 - Siting restriction due to interference with the provision of municipal police or fire services (e.g., prohibit the placement of the poles within a certain distance of buildings so that the poles do not impede the work of firefighters should the building catch fire).
- Removal requirements for when a pole is no longer serving a permitted use.
- Requirements to comply with all applicable state and local building codes and electric codes.
- Proof of strength requirements (i.e., when equipment is placed on the poles, the company must ensure that the weight of the equipment will not compromise the structural integrity of the pole).

Care should be taken that any such regulations, as applied to WITN's use of local ROW, be competitively neutral and nondiscriminatory. *See* 47 U.S.C. 253(c).² Under state law, the municipality's regulations will be judged on the basis of reasonableness. The PSCW's ROW rules, cited above, and Wis. Stat. § 182.017(8) provide some guidance on what the PSCW will consider reasonable regulation.

² That federal statutory provisions provides:

(c) State and local government authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

D. MAY WITN'S POLES BE REGULATED AS CELL PHONE TOWERS?

League members have also asked whether their zoning ordinances applicable to cell phone towers can be applied to WITN. Such ordinances would apply if WITN's poles are considered "mobile service support structures" within the meaning of Wis. Stat. § 66.0404³. According to the plans it submitted to various municipalities, WITN intends to install two microwave dishes on its poles, and it apparently intends to offer backhaul and other support services to mobile service providers,⁴ among others. While WITN's poles and equipment may be used to support the provision of mobile services⁵ by others, it does not appear that such a facility was intended to be treated as a "mobile service facility"⁶ within the scope of Wis. Stat. § 66.0404. In other words, WITN is not initially, at least, planning to provide cell phone service using the equipment to be installed on the poles. It is likely that WITN will lease or license pole space and/or equipment to cell phone providers in the future. The future installation of cell phone antennas and other such equipment on WITN poles would be subject to municipal regulations either consistent with or adopted pursuant to Wis. Stat. § 66.0404.⁷

While the municipality's cell tower regulations would not apply at this time, a municipality's ROW regulations would, of course, apply. A municipality should review its ordinances to see if other regulations might apply. For example, some communities regulate the placement of microwave towers. Such regulations would likely apply here because the poles will be used to support microwave equipment for the provision of back haul and other support services.

E. WHAT MAY A MUNICIPALITY DO IF IT HAS NOT ADOPTED REGULATIONS THAT WOULD APPLY TO UTILITY POLES PLACED IN LOCAL ROW?

A municipality has broad police power authority to manage and control the public ROW under its jurisdiction and may exercise its regulatory powers by, among other things, license,

³ This statute was adopted as part of 2013 Wis. Act 20 and greatly restricts the ability of municipalities to regulate cell phone towers and related facilities.

⁴ In this context, backhaul service provides the link between a carrier's cell site (e.g., base station at the cell tower) and its mobile switching facility and then to the public switched telephone network.

⁵ Under 47 U.S.C. § 153(33), "mobile service" is defined as:

. . . a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.

⁶ A "mobile service facility" is defined as "the set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure." Wis. Stat. § 66.0404(1)(L).

⁷ The municipality should consult with its attorney regarding any such regulations and their applicability to facilities located in the ROW.

regulation, fine, and other necessary or convenient means. *See* Wis. Stat. § 62.11(5) (for cities) and § 61.34(1) (for villages). Accordingly, if a municipality currently has no ROW regulations to apply to the placement of utility poles in local ROW and if it does not have time to do adopt such regulations within the 60-day time period for acting on permit applications, then alternatively, the municipality could enter into a license agreement with WITN.⁸

The terms and conditions to be considered for such an agreement might include:

- A provision granting the company a license to use the ROW, subject to the terms and conditions of the license and setting out the scope of the license (i.e., permitted uses).
- A description of the licensed area (i.e., a legal description of the area of the ROW where the pole(s) will be installed).
- A provision for a license fee, which covers the cost of regulation as discussed above.
- A provision setting out the term of the license agreement and conditions for termination. The agreement should be in place for as long as the pole is being used for a permitted purpose in accordance with the agreement.
- A removal provision, setting out the time frame for removal of the company's equipment from the ROW and the conditions under which removal is required.
- A provision stating what the permitted uses are.
- A requirement to submit construction plans and schedule and list of contractors.
- A requirement that a traffic control plan be submitted in advance of construction if one is necessary.
- Requirements regarding set back and fall zone.
- A requirement that the company be responsible for any damage it does to private property.
- A requirement that the company be responsible for all locates under Wis. Stat. § 182.0175.
- Insurance, indemnification, and bonding requirements.
- A requirement that the company comply with all application laws, regulations, and codes (e.g., Wis. Stat. §§ 86.16(2) and 182.017 and the Wisconsin State Electrical Code).

⁸ The right to regulate ATU and public utility use of local ROW by contract is recognized in Wis. Stat. §§ 182.017(1g)(bm); 182.917(8); 196.58(1g); and 196.58(1r)(a).

- Company responsible for maintenance and improvements.
- Requirement that the licensed area be free from debris, etc.

CONCLUSION

A municipality has 60 days in which to act on WITN's permit application. It is important that, during this relatively short time period, the municipality work with the company to ensure that the public's interest in local ROW is protected. If the municipality's ROW regulations are inadequate or do not exist, the municipality should consider entering into a license agreement with WITN to address the terms and conditions under which the company will be permitted to use local ROW. Care should be taken not to impose any non-neutral, unduly discriminatory, or unreasonable requirements on WITN. Finally, now may be a good time for the municipality to consider adopting a generic ROW ordinance, as these same issues are likely to arise in the future.



WISCONSIN
TECHNOLOGY
NETWORKING, LLC

SITE ID-CANDIDATE LETTER: 9WIB001528-A
DRAWN BY: DI
CHECKED BY: RJJ

B	06/10/16	FOR REVIEW	AJK
A	05/10/16	FOR REVIEW	DI

PRELIMINARY
NOT FOR
CONSTRUCTION

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SITE INFORMATION

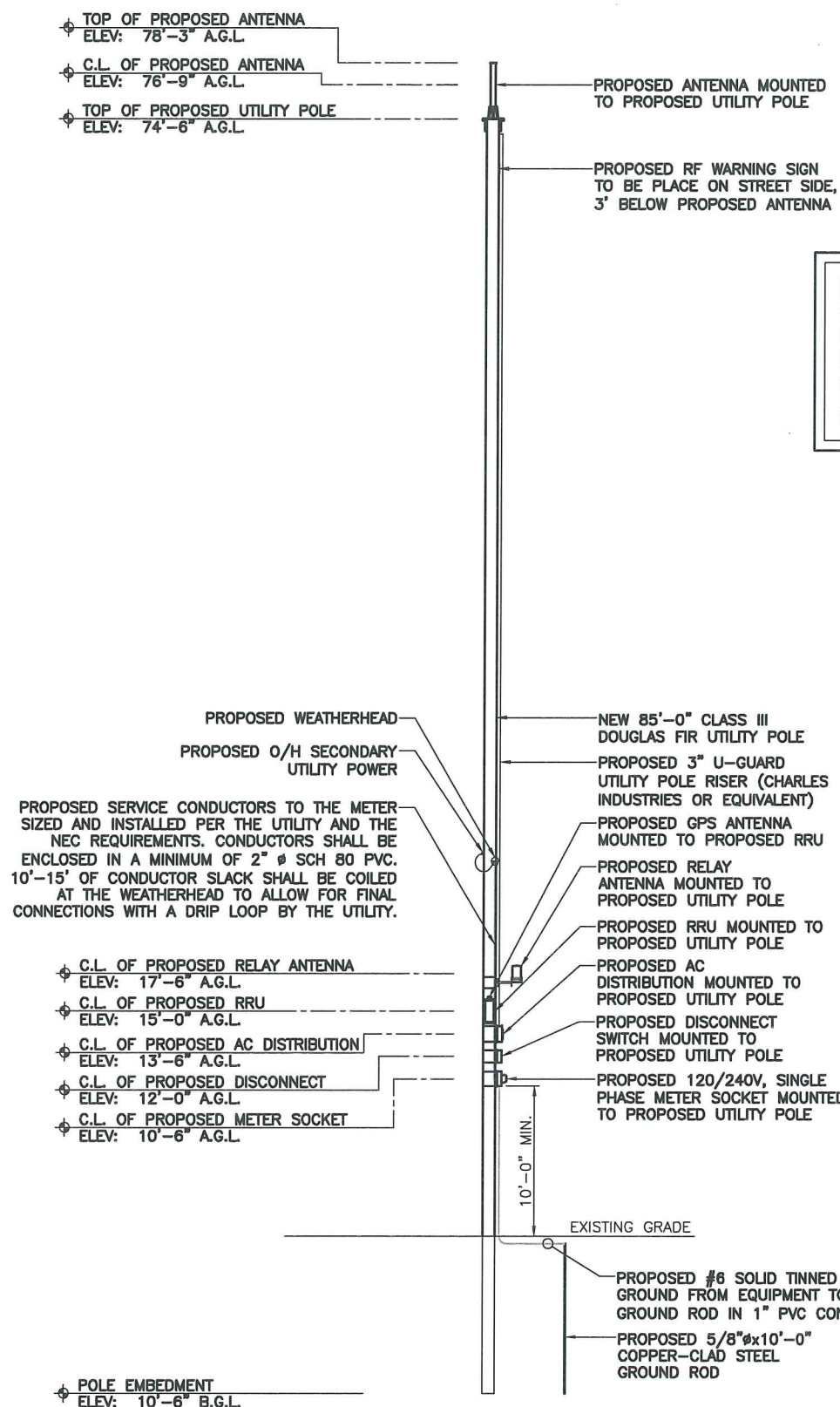
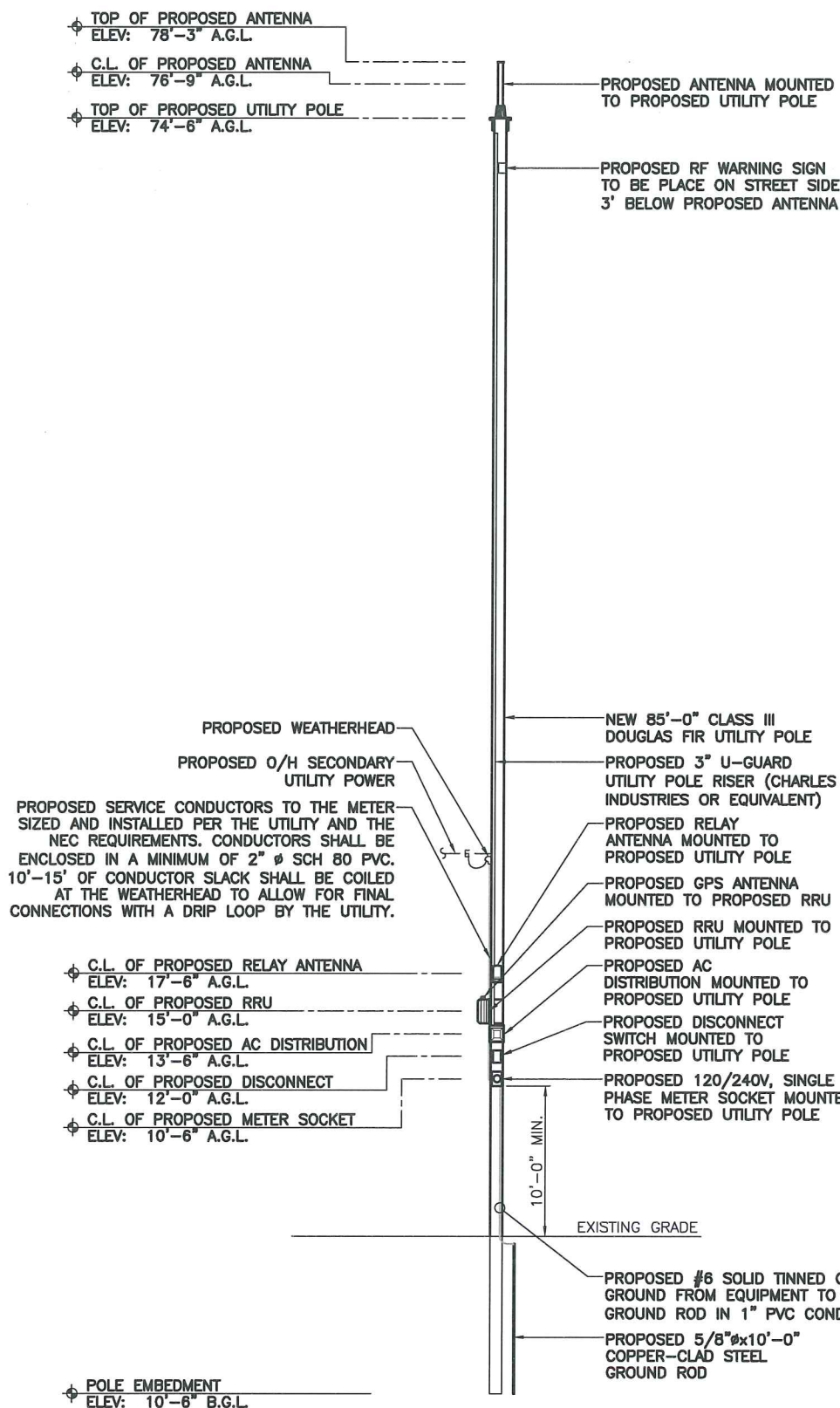
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MANITOWOC, WI 54220
UTILITY POLE

SHEET TITLE

POLE ELEVATIONS

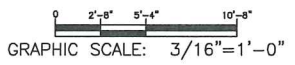
SHEET NUMBER

2.0



STRUCTURAL NOTE:
PROJECT SCOPE OF WORK DOES NOT INCLUDE A STRUCTURAL EVALUATION OF THIS POLE OR STRUCTURE. NEW EQUIPMENT SHOWN ON THIS PLAN HAVE NOT BEEN EVALUATED TO VERIFY THAT THE POLE OR STRUCTURE HAS THE CAPACITY TO ADEQUATELY SUPPORT THE EQUIPMENT. PRIOR TO ANY INSTALLATION, A STRUCTURAL EVALUATION OF THE POLE OR OF THE STRUCTURE SHOULD BE PERFORMED.

NOTE:
THE POLE EMBEDMENT IS BASED ON A RULE OF THUMB. HOWEVER, SOME SOIL CONDITIONS MAY REQUIRE LONGER DEPTHS OF EMBEDMENT.



QTY	DESCRIPTION	DIMENSIONS (HxWxD)	WEIGHT
1	ANTENNA	35.43"x4.72"Ø	11lbs.
1	UE RELAY ANTENNA	13.0"x7.0"Ø	8.8lbs
1	GPS	1.96"x2.62"Ø	0.33lbs.
1	RRU	20.1"x9.1"x8.9"	50.7lbs.
1	AC DISTRIBUTION	13.13"x11.38"x4.38"	8.0lbs. EST.
1	DISCONNECT SWITCH	9.78"x6.38"x3.31"	2.0lbs.
1	METER SOCKET	11.5"x8.0"x3.31"	2.0lbs.

1 PROPOSED POLE ELEVATION (SOUTH & WEST)
SCALE: 3/16" = 1'-0"

