

Agenda Item #2b

Permit Revocation Appeal from TDS and Broadband Infrastructure (BBI)

Background

As of August 9th, 2022, due to continued violations of City and self-imposed rules for safe work in the right-of-way, all TDS, and their sub-contractors Broadband Infrastructure (BBI), and SourceOne(consultant) right-of-way permits within the City of Kaukauna were revoked per Municipal Code 8.06(20)(a).

Per 8.06(20)(c) Appeals: Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue or refusing to extend a permit may, within ten (10) days of the Department's decision being issued, file a written request with the Department seeking a review of the decision by the Board of Public Works. Following a hearing, the Board of Public Works may affirm, reverse, or modify the decision of the Department. The decision of the Board of Public Works is final.

Both TDS and BBI have requested reviews of the decision of the Department and have provided background attached. I have also included a history of some of the violations for main-line fiber installation and service drop (to private property) issues. Each company plans to have a representative present to speak/appeal to the Board.

Recommended Action

Board will discuss and give direction to staff and contractors on how to proceed from this review.

Possible motions to consider:

- Motion to affirm current revocation of TDS/BBI/SourceOne permits (with or without opportunity to re-apply in the future)
- Motion to modify the decision of staff (direct staff to work with the applicants for a path to reinstate current permits – with or without Board approval)
- Motion to reverse the revocation of permits at this time (with or without additional requirements/provisions)

8.06 Right-Of-Way Management

Findings and purpose. In the exercise of its police powers, the City has priority over all other uses of the public rights-of-way. The City desires to anticipate and minimize the number of obstructions and excavations taking place in the public rights-of-way to ensure that the rights-of-way remain available for public services and safe for public use. The taxpayers of the City bear the financial burden for the upkeep of the rights-of-way and a primary cause for the early and excess deterioration of the public rights-of-way is the frequent excavation by Person(s) who place facilities therein. The City finds that there has been an increase in the use of the public rights-of-way and, as a result, increased costs to the taxpayers of the City and that these costs are likely to continue into the foreseeable future. The City finds that excavation and occupancy of the public rights-of-way causes direct and indirect costs to be borne by the City and its taxpayers, including but not limited to: (1) Administrative costs associated with public rights-of-way projects, such as registration, permitting, inspection and supervision, supplies and materials. (2) Management costs associated with ongoing management activities necessitated by public right-of-way users. (3) Repair costs to the roadway associated with the actual excavation into the public right-of-way. In response to the foregoing facts, the City hereby enacts this ordinance relating to the administration and permitting of excavation, obstruction, and/or occupancy of the public rights-of-way. This ordinance imposes reasonable regulations on the placement and maintenance of facilities currently within rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies and not conflict with regulations of those agencies. The purpose of this ordinance is to provide the City a legal framework within which to regulate and manage the public rights-of-way, and to provide for recovery of costs. This ordinance provides for the health, safety, and welfare of the residents of the City as they use the rights-of-way of the City, as well as to ensure the structural integrity of the public rights-of-way. Under this chapter, all Persons who excavate, obstruct and/or occupy the public rights-of-way will reimburse the City's administrative costs. Right-of-way users will bear a fair share of the financial responsibility for the integrity of the public rights-of-way.

1. *Definitions.* The following definitions apply in this ordinance. References hereafter to "sections" are, unless otherwise specified, references to sections in this ordinance. Defined terms remain defined terms whether or not capitalized.
 - a. Applicant means any person requesting permission to excavate, obstruct and/or occupy a right-of-way.
 - b. City means the City of Kaukauna.
 - c. Department means the City's Director of Public Works or their designee.
 - d. Department inspector means any person authorized by the Department to carry out inspections relating to the provisions of this chapter.
 - e. Emergency means a condition that
 - (1) poses a clear and immediate danger to life or health, or of a significant loss of property or
 - (2) requires immediate repair or replacement in order to restore service to a customer.
 - f. Excavate means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.
 - g. Facilities means all equipment owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include but is not limited to poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables,

lines and other structures and appurtenances. In, when used in conjunction with “right-of-way”, means over, above, in, within, on or under a right-of-way.

- h. Local representative means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.
- i. Obstruct means to place any object in a right-of-way as to hinder free and open passage over/under on or in that or any part of the right-of-way.
- j. Occupy means to dwell or reside above, on, in, or below the boundaries of the public rights-of-way.
- k. Permittee means any person to whom a permit to excavate or occupy a right-of-way has been granted by the City under this chapter.
- l. Person means, municipality, corporation, company, including a “Company” defined as Wis. Stat. § 182.017(1g)(b), association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.
- m. PSCW means the Public Service Commission of Wisconsin.
- n. Public Utility has the meaning provided in Wis. Stat. § 196.01(5).
- o. Registrant means any person who has registered with the City
 - (1) to have its facilities located in any right-of-way or
 - (2) to use or seek to occupy or use the right-of-way or any facilities in the right-of-way.
- p. Repair means to perform construction work necessary to make the right-of-way useable for travel, according to department specifications, or to return facilities to an operable condition that is in as good or a better condition as the facilities were before the work commenced.
- q. Repair Bond means a license or permit bond, a letter of credit, or cash deposit posted to ensure the ability of sufficient funds to assure that right-of-way excavation repair work is completed in both a timely and quality manner, per Department specifications.
- r. Right-of-way means the surface and space above and below a public roadway, highway, street, bicycle lane, landscape terrace, shoulders, side slopes, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes.
- s. Rights-of-way User means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way.
- t. Service or utility service includes services such as municipal sewer and water services and services provided by a Public Utility or a Company subject to Wis. Stat. § 182.017 and other similar services.
- u. Supplementary application means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that has already been issued.
- v. Unusable facilities means facilities in the right-of-way which have remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using them within the next twenty-four (24) months or a potential purchaser or user of the facilities.

2. *Administration.* The Department is responsible for the administration of the rights-of-way, and the permits and ordinances related thereto.

3. *Registration for right-of-way occupancy.*

- a. *Registration.* Each service, utility service or right-of-way user who occupies, uses, or seeks to occupy or use, the right-of-way or any facilities in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, facilities located in any right-of-way shall register with the Department. Registration will consist of providing application information and paying a registration fee. This section shall not apply to those persons exclusively utilizing facilities provided by another right-of-way user.
- b. *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the Department.
- c. *Exceptions.* Nothing herein shall be construed to repeal or amend the provisions of a City ordinance requiring persons to plant or maintain the terrace area of the right-of-way between their property and the street curb, construct sidewalks, install street signs or perform other similar activities. Persons performing such activities shall not be required to obtain any permits under this chapter.

4. *Registration information.*

- a. *Information required.* The information provided to the Department at the time of registration shall include, but not be limited to:
 - (1) Each registrant's name, Diggers Hotline registration certificate number, address and mail address, if applicable, and telephone and facsimile numbers.
 - (2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
 - (3) All right-of-way users shall demonstrate to the satisfaction of the City the financial capability to cover any liability that might arise out of their presence in the right-of-way. If the person is a corporation, a LLC or LLP, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified to the Secretary of State and shall be included with the registration.
 - (4) A copy of the person's certificate of authority from PSCW or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
 - (5) Execution of an indemnification agreement in a form prescribed by the Department, which is consistent with, and shall not exceed the obligations provided in, 8.06(21) herein.
- b. *Notice of changes.* The registrant shall keep all of the information listed above current at all times by providing to the Department information as to changes within fifteen (15) working days following the date on which the registrant has knowledge of any change.

5. *Registration fee.*

- a. *Annual registration fee.* Each registrant shall annually renew its registration or discontinue and properly abandon its facilities. The Department shall establish the registration fee in an amount sufficient to recover the costs incurred by the City for processing registrants. This fee shall be computed as the average of labor costs, indirect costs, and other costs associated with registration.
- b. *Fee computation.* The Department may recalculate and establish a new registration fee

each year and said fee shall be on file with the Department.

6. (Reserved)

7. (Reserved)

8. (Reserved)

9. (Reserved)

10. *Excavation permit requirement.*

- a. *Excavation permit required.* Except as otherwise provide in this chapter or other chapters of the Municipal Code, no person shall excavate any right-of-way or place facilities in a right-of-way without first having obtained an excavation permit from the department. No person shall excavate right-of-way or maintain an excavation in the right-of-way beyond the date or are specified in the permit unless such person makes a supplementary application for another excavation permit before the expiration of the initial permit, pursuant to 8.06(23), and a new permit or permit extension is granted.
- b. *Permit display.* A copy of any permit issued under this chapter shall be made available at all times by the Permittee at the indicated work site and shall be available for inspection by the department upon request.

11. *Excavation permit application.*

- a. Application for a permit shall be made to the Department. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
 - (1) Registration with the Department as required by 8.06(3).
 - (2) Submission of a completed permit application form, including the following:
 - (A) If the proposed project involves the installation of a pole or tower in the right-of-way, the applicant must submit scaled drawings of the proposed pole or tower and all proposed attachments.
 - (B) the applicant shall identify in detail the location of the proposed project and any affected right-of-way, public utility easements, and the location of all existing and proposed facilities within the project area in addition to installation details, traffic control plans and other details requested by the Department
 - (C) If the proposed project involves the installation of a pole or tower in the right-of-way, the applicant may be required to submit evidence sufficient to demonstrate that the applicant is prohibited from using an existing pole or tower (either owned by the applicant or a third party) because such use is technically infeasible, economically prohibitive, or prohibited by law.
 - (D) If the proposed project involves the installation of a pole or tower in the right-of-way that is greater than 10 feet taller than existing poles or towers in nearby right-of-way, the applicant may be required to submit evidence sufficient to demonstrate that:
 - (a) the greater height is required to accomplish the applicant's purposes
 - (b) the applicant is prohibited from using existing poles or towers (either owned by applicant or a third party) to accomplish its

purposes because such use is technically infeasible, economically prohibitive, or prohibited by law; and

- (c) the pole or tower, due to its height and size, poses no greater danger to the health, safety, and welfare of the public than existing poles in nearby right-of-way.

(3) Payment of all money due to the City for:

- (A) applicable permit fees and costs as set forth below;
- (B) unpaid fees or costs due for prior excavations; or
- (C) any loss, damage, or expense suffered by the City because of applicant's prior excavations of the rights-of-way or any emergency actions taken by the City.

(4) A statement on forms provided by the Department that the registrant will comply with all local, state, and federal codes including, but not limited to, safety, building, traffic control codes, and the Manual of Uniform Traffic Control Devices (MUTCD).

(5) Furnish a certificate of liability insurance compliant with requirements of the Department.

(6) Post a permit bond unless waived by the Department. When an excavation permit is requested for purposes of installing additional facilities, and the posting of a repair bond for the additional facilities is insufficient, the posting of an additional or larger repair bond for the additional facilities may be required.

(7) The Department shall not deny a registrant an excavation permit because of a dispute between the City and the registrant, related to 8.06(7)(a)(iii)(B) and/or 8.06(7)(a)(iii)(C) if:

- (A) the dispute has been adjudicated in favor of the registrant;
- (B) the dispute is the subject of an appeal filed by the registrant and no decision in the matter has yet been rendered.

12. *Excavation permit fee.*

a. *Fee calculation.* The excavation permit fee shall be established by the Department annually in an amount sufficient to recover the costs incurred by the City. This fee may recover costs incurred by the City for each of the following categories as provided herein:

- (1) *Administrative:* The general formula for computing the administrative fee shall be the average per-permit costs for labor plus indirect and other costs.
- (2) *Repair:* No repair fee shall be collected by the City. However, the permittee shall be required to repair the public right-of-way to Department specifications, subject to inspection and acceptance by the Department, as per 8.06(9).

b. *City exemption.* The City shall not pay administrative fees nor shall any person performing work in the right of way pursuant to a contract with the City.

c. *Payment of permit fees.* No excavation permit shall be issued without payment of applicable fees, unless the applicant makes approved arrangements with the City and agrees to pay such fees within thirty (30) days of billing therefor.

- d. *Fee computation.* The Department may recalculate and establish a new fee structure each year.
- e. *Non-refundable.* Permit fees paid for a permit that the Department has revoked for a breach as stated in 8.06(20) are not refundable.

13. *Right-of-way repair.*

- a. The work to be done under the excavation permit, and the repair of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the Permittee or when work was prohibited as unseasonable or unreasonable under 8.06(19).
- b. A Permittee may request to have the City repair the right-of-way.
 - (1) *City repair.* If the Permittee requests to have the City repair the right-of-way, the City may accept or reject the request at its sole option. If the City accepts, the Permittee shall be billed for the City's costs, and shall pay the amount thereof within thirty (30) days of billing.
 - (2) *Permittee repair.* If the Permittee repairs the right-of-way, it shall, unless waived by the Department, at the time of application for an excavation permit, post a repair bond in an amount determined by the Department to be sufficient to cover the cost of repairing the right-of-way to Department specifications. If, twenty-four (24) months after completion of the repair of the right-of-way, the Department determines that the right-of-way has been properly repaired, the surety on the repair bond shall be released.
- c. *Standards.* The Permittee shall perform repairs according to the specifications of the Department and/or in accordance with the conditions specified in the permit. The Department shall have the authority to prescribe the manner and extent of the repair and may do so in written procedures of general application or on a case-by-case basis.
- d. *Guarantees.* The Permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion, except for organic material, which shall be maintained for twelve (12) months. During either period, the Permittee shall, upon notification from the Department, correct all repair work to the extent necessary, using the method required by the Department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Department, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under 8.06(14).
- e. *Failure to repair.* If the Permittee fails to repair the right-of-way in the manner and to the condition required by the Department, or fails to satisfactorily and timely complete all repair required by the Department, the Department at its option may do such work. In that event the Permittee shall pay to the City, within thirty (30) days of billing, the cost of repairing the right-of-way. If the Permittee fails to pay as required, the City may exercise its rights under the repair bond.

14. (Reserved)

15. *Inspection.*

- a. *Notice of completion.* When the work under any permit issued hereunder is completed, the Permittee shall notify the Department.
- b. *Site inspection.* The Permittee shall make the work site available to the Department and

to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

- c. *Authority of department.* At the time of inspection, the City may order the immediate cessation of any work that poses a threat to the life, health, safety, or well-being of the public. The City may issue an order to the registrant for any work that does not conform to the applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant shall present proof to the Department that the violation has been corrected. If such proof has not been presented within the required time, the Department may revoke the permit pursuant to 8.06(15).

16. *Fall radius/breakaway requirements.*

- a. Poles and other utility structures over 60 feet in height shall be located so that all residential, commercial, retail or other occupied buildings are outside the fall radius of the structure.
- b. Rigid non-breakaway poles shall be located a minimum of 4' from roadway curbs or shoulders or behind existing or future sidewalks.

17. *Joint applications.*

- a. *Joint application.* Registrants may jointly apply for permits to excavate the right-of-way at the same place and time.
- b. *Shared fees.* Registrants who apply for permits for the same excavation, which the Department does not perform, may share in the payment of the excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

18. *Supplementary applications.*

- a. *Limitations on area.* An excavation permit is valid only for the area of the right-of-way specified in the permit. Facilities must be installed within eighteen inches (18") of the area shown on the approved permit. No Permittee may perform any work or excavate outside the area specified in the permit, except as provided herein. Any Permittee which determines that an area greater than that specified in the permit must be excavated shall, before working in that greater area:
 - (1) make application for a permit extension and pay any additional fees required thereby
 - (2) obtain a new permit or permit extension.
- b. *Limitation on dates.* An excavation permit is valid only for the dates specified in the permit. No Permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a Permittee does not finish the work by the permit end date, it must apply for and obtain a new permit or an extension of the old permit for the additional time, before working after the end date of the previous permit.
- c. *Fees for supplementary applications.* A Permittee shall pay administration costs for any additional permits.

19. *Other obligations.*

- a. *Compliance with other laws.* Obtaining a permit to excavate and/or occupy the right-of-

way does not relieve a Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other City, County, State, or Federal rules, laws or regulations. A Permittee shall comply with all requirements of local, state, and federal laws. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

- b. *Prohibited work.* Except in an emergency, or with the approval of the Department, no right-of-way excavation may be done when seasonally prohibited or when conditions are unreasonable for such work, as determined by the Department.

20. *Revocations, suspensions, refusals to issue or extend permits.*

- a. *Grounds.* The Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

- (1) The applicant or Permittee is required by 8.06(3) to be registered and has not done so or the permit application is otherwise incomplete;
- (2) The applicant or Permittee is seeking to perform work not included in its construction and major maintenance plan; which work was reasonably foreseeable by the applicant or Permittee at the time said plan was filed;
- (3) Issuance of a permit for the requested date would or interfere with an exhibition, celebration, festival, or other event;
- (4) Misrepresentation of any fact by the applicant or Permittee;
- (5) Failure of the applicant or Permittee to maintain required bonds and/or insurance;
- (6) Failure of the applicant or Permittee to complete work in a timely manner;
- (7) The proposed activity is contrary to the public health, safety or welfare;
- (8) The extent to which space is available in the right-of-way for which the permit is sought;
- (9) The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the Permittee or applicant;
- (10) If the Permittee or applicant proposes to install a new pole or tower in the right-of-way, the availability of other existing poles or towers owned by the Permittee or applicant or by a third party;
- (11) The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
- (12) The condition and age of the right-of-way or whether and when it is scheduled for total or partial reconstruction;
- (13) The applicant or Permittee is otherwise not in full compliance with the requirements of this chapter or state or federal law.

- b. *Discretionary issuance.* Notwithstanding 8.06(15)(a)(2), the Department may issue a permit where issuance is necessary to:

- (1) Prevent substantial economic hardship to a customer of the Permittee or applicant, or
- (2) Allow such customer to materially improve its Public Utility service, or
- (3) Allow the Permittee or applicant to comply with state or federal law or City

ordinance or an order of a court or administrative agency.

c. *Appeals.* Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue or refusing to extend a permit may, within ten (10) days of the Department's decision being issued, file a written request with the Department seeking a review of the decision by the Board of Public Works. Following a hearing, the Board of Public Works may affirm, reverse or modify the decision of the Department. The decision of the Board of Public Works is final.

d. *Time limit to act and written denial.* The City shall approve or deny a permit application no later than twenty (20) days after receipt of the application. If the City fails to act on the application within that twenty (20) day period, the application shall be deemed granted and the City shall issue the permit to Applicant. If the City denies a permit application, the City shall provide Applicant with a written explanation of the reason for the denial at the time the City denies the application. See Wis. Stat. § 182.017(9).

21. *Work done without a permit.*

a. *Emergency situations.* Each registrant shall immediately notify the City, by verbal notice, of any event regarding its facilities that it considers an emergency. The registrant may take whatever actions are necessary to respond to the emergency. Within two business days after the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and otherwise fully comply with the requirements of this Chapter. If the City becomes aware of an emergency regarding a registrant's facilities, the Department may attempt to contact the local representative of each registrant affected. The City may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

b. *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, excavates a right-of-way must subsequently register and apply for an excavation permit, and shall in addition to any penalties prescribed by ordinance, pay double the normal fee for said permit and pay double all other fees required by this chapter or other chapters of the City Code, deposit with the Department the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter. If a subsequent permit is denied or is not approved, the registrant shall discontinue and abandon its facilities and the Department may cause any offending conditions to be removed or corrected and the expense thereof charged to the person responsible.

22. *Supplementary notification.* If the excavation of the right-of-way begins later or ends sooner than the date given on the permit, the Permittee shall notify the Department of the accurate information as soon as this information is known.

23. *Location of facilities.*

a. *Corridors.* The Department may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue consistent with the Department's assignment. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the City for good cause shown, upon consideration

of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

- b. *Limitation of space.* To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the Department may prohibit or limit the placement of new, replacement or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of Persons to occupy and use the right-of-way. In making such decisions, the Department/City shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

- 24. *Relocation of facilities.* Except as prohibited by State or Federal law, a registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently relocate its facilities in the right-of-way whenever the Department requests such relocation, and shall restore the right-of-way to the same condition it was in prior to said relocation.

- a. The Department may make such request to prevent interference by the Company's facilities

- (1) with a present or future City use of the right-of-way,
 - (2) with a public improvement undertaken by the City,
 - (3) when the public health, safety and welfare require it, or
 - (4) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

- b. Notwithstanding the foregoing, a person shall not be required to relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

- 25. *Interference with other facilities during municipal construction.* When the City performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a registrant's facilities, the City shall notify the local representative. The registrant shall meet with the City's representative within 24-hours and coordinate the protection, maintenance, supporting, and/or shoring of the registrant's facilities. The registrant shall accomplish the needed work within 72 hours, unless the City agrees to a longer period. In the event that the registrant does not proceed to maintain, support, shore, or move its facilities, the City may arrange to do the work and bill the registrant for costs it incurs as well as damages of \$100 per day beyond the registrant's 72-hour deadline to accomplish the needed work, said bill to be paid within thirty (30) days.

- 26. *Indemnification.* By registering with the City, or by accepting a permit under this chapter, a registrant or Permittee, as the case may be, agrees to indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents (collective, "Indemnified Parties"), from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon an Indemnified Party for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the permittee's acts or omissions in the exercise of its rights under this permit, whether caused by or contributed to by the City or its agents or employees except in such cases where caused by the sole negligence or willful misconduct of the City.

27. *Abandoned facilities.*

a. *Discontinued operations.* A registrant who discontinues its operations in the City must either:

- (1) Provide information satisfactory to the Department that the registrant's obligations for its facilities under this chapter have been lawfully assumed by another registrant; or
- (2) Submit to the Department a proposal and instruments for dedication of its facilities to the City. If a registrant proceeds under this clause, the City may, at its option:
 - (A) accept the dedication for all or a portion of the facilities; or
 - (B) require the registrant, at its own expense, to remove the facilities in the right-of-way at ground or aboveground; or
 - (C) require the registrant to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities. However, any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from the right-of-way within two years, unless the Department waives this requirement.

b. *Abandoned facilities.* Facilities of a registrant who fails to comply with 8.06(22)(a), and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned facilities may be deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option

- (1) abate the nuisance
- (2) take possession of the facilities and/or
- (3) require removal of the facilities by the registrant, or the registrant's successor in interest.

c. *Public utilities.* This section shall not apply to a Public Utility that is required to follow the provisions of Wis. Stat. § 196.81.

28. *Reservation of regulatory and police powers.* The City, by granting of a permit to excavate, obstruct and/or occupy the right-of-way, or by registering a person under this chapter does not surrender or to any extent lose, waive, impair, or the lawful powers and rights, which it has now or maybe hereafter granted to the City under the Constitution and statutes of the State of Wisconsin to regulate the use of the right-of-way by the Permittee; and the Permittee by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way or of registration under this chapter agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law, and ordinances enacted by the City pursuant to such powers.

29. *Severability.* If any section, subsection, sentence, clause, phrase, or portion of this article is for any reason held invalid or constitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

John Neumeier

From: John Neumeier
Sent: Thursday, June 23, 2022 8:12 AM
To: Buchkowski, Heather; Jason Holmes
Cc: Keister, Brian; Erickson, Lindsey
Subject: RE: Permits Needed for DFN 0873IE_04

Good Morning Heather,

Please note that all TDS permits are on hold at this time due to restoration issues. It is my understanding that some of the previously pulled permits are being restored by TDS contractors, so the moratorium may end soon.

Please also note we are getting complaints regarding the service drop installs; 1) not contacting homeowners ahead of work(TDS choice not regulated by City for work on private property) 2) restoration is poor(TDS choice not regulated by City for work on private property) 3) TDS contractors cutting across private property with service drops, this means a neighbors service line is on someone else's private property – This issue will be a civil matter also, but you should remind your contractors of proper installation per plans/proposals as to not cause any issues for TDS moving forward.

I will let you know when we are able to issue permits again, hopefully early next week. Thank you,

John W. Neumeier

Director of Public Works / City Engineer

CITY OF KAUKAUNA

920.766.6305

neumeier@kaukauna-wi.org

www.cityofkaukauna-wi.org

From: Buchkowski, Heather <Heather.Buchkowski@tdstelecom.com>
Sent: Thursday, June 23, 2022 8:01 AM
To: John Neumeier <neumeier@kaukauna-wi.org>; Jason Holmes <holmesjp@kaukauna-wi.org>
Cc: Keister, Brian <Brian.Keister@tdstelecom.com>; Erickson, Lindsey <Lindsey.Erickson@tdstelecom.com>
Subject: FW: Permits Needed for DFN 0873IE_04

Good morning,

Just following up on where we would be at for the permits that were requested below?

Thank you

Heather Buchkowski

Coordinator – Centralized New Market Implementation

TDS Telecommunications LLC

Heather.Buchkowski@tdstelecom.com

Office – 719-377-3310

John Neumeier

From: Jason Holmes
Sent: Thursday, July 7, 2022 10:47 AM
To: Keister, Brian; John Neumeier; Buchkowski, Heather; Zachary LePoidevin; Dan Clinkscale
Cc: Erickson, Lindsey; Tony Penterman
Subject: 1012 Draper Street City of Kaukauna
Attachments: 1012 Draper Street.pdf

Dan Diedrich owns the property at 1012 Draper Street in Kaukauna.

A service drop was bored under his driveway to his neighbors home at 1014 Draper Street for the TDS internet service.

Dan is concerned the service may have hit his storm lateral. I have attached a drawing of the location of the storm lateral and the service which crossed Dan's property to get to his neighbors home.

Dan would like his storm sewer televised ensuring this was not hit as he did not give permission to have this work on his property.

Please contact Mr. Diedrich at 920-284-4033.

Jason Holmes

Planning/Engineering Technician

CITY OF KAUKAUNA
920.766.6305
holmesjp@kaukauna-wi.org
www.cityofkaukauna.com

From: Keister, Brian [mailto:Brian.Keister@tdstelecom.com]
Sent: Monday, June 27, 2022 11:00 AM
To: John Neumeier <neumeier@kaukauna-wi.org>; Buchkowski, Heather <Heather.Buchkowski@tdstelecom.com>; Jason Holmes <holmesjp@kaukauna-wi.org>; Zachary LePoidevin <zlepoidevin@takwestshore.com>; Dan Clinkscale <dclinkscale@broadbandinfrastructure.com>
Cc: Erickson, Lindsey <Lindsey.Erickson@tdstelecom.com>
Subject: Re: Permits Needed for DFN 0873IE_04

John - I just wanted to let you know that Zach and company stopped out at the Sarah and Grignon addresses and found that we placed 8 drops in that area and a lot of the restoration has been cared for but there are a few that they are still working on. Please see the attached documents.

From: John Neumeier <neumeier@kaukauna-wi.org>
Sent: Thursday, June 23, 2022 9:00 AM
To: Keister, Brian <Brian.Keister@tdstelecom.com>; Buchkowski, Heather <Heather.Buchkowski@tdstelecom.com>; Jason Holmes <holmesjp@kaukauna-wi.org>; Zachary LePoidevin <zlepoidevin@takwestshore.com>; Dan Clinkscale <dclinkscale@broadbandinfrastructure.com>; Murray, Sean <Sean.Murray@tdstelecom.com>
Cc: Erickson, Lindsey <Lindsey.Erickson@tdstelecom.com>
Subject: RE: Permits Needed for DFN 0873IE_04



John Neumeier

From: Hocks, Adam J <adam.hocks@we-energies.com>
Sent: Friday, August 27, 2021 2:56 PM
To: John Neumeier; Deuth, Heather; Fredrickson, Douglas D
Subject: RE: TDS work in Kaukauna

We have had two damages on gas facilities as of right now. The first damage they never exposed the crossings. The second damage was yesterday. They were hand digging to expose service and a tree was there and hit service with shovel.

From: John Neumeier [mailto:neumeier@kaukauna-wi.org]
Sent: Friday, August 27, 2021 10:57 AM
To: Deuth, Heather; Fredrickson, Douglas D; Hocks, Adam J
Subject: FW: TDS work in Kaukauna

*** Exercise caution: This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or in unexpected emails. ***

Good Morning,

The City of Kaukauna has been notified about some possible hits/disturbance to existing utilities coming from the TDS work in the City. If you have experienced issues known to be from this work, would you please contact us to discuss. We want to know if there is an issue with the work before granting additional permits.

Thank you for your time and any thoughts,

John W. Neumeier
Senior Project Engineer

CITY OF KAUKAUNA
920.766.6305
neumeier@kaukauna-wi.org
www.cityofkaukauna.com

John Neumeier

Subject: TDS Onsite Discussion
Location: STH 55 at Badger Road
Start: Mon 8/30/2021 3:00 PM
End: Mon 8/30/2021 3:30 PM
Recurrence: (none)
Meeting Status: Meeting organizer
Organizer: John Neumeier
Required Attendees: Smith, Tim (Appleton-College); Brandon Cesafsky

3pm at Delanglade(STH 55) and Badger Road would be great.

Thank You!

John W. Neumeier
Senior Project Engineer

CITY OF KAUKAUNA
920.766.6305
neumeier@kaukauna-wi.org
www.cityofkaukauna.com

John Neumeier

From: John Neumeier
Sent: Tuesday, September 14, 2021 3:42 PM
To: Murray, Sean; Phil Gaston; Dan Clinkscale; Tim.smith@tdstelecom.com
Cc: John Sundelius; Tony Penterman; Adam Feigl
Subject: TDS - BBI Gas hit - Kaukauna

Good Afternoon Gentlemen,

I was just notified of another "blind bore" that resulted in another gas hit, this time on a service line on Benedict Street in Kaukauna. The leak was not discovered until the next day by a resident who smelled gas. This is a dangerous and preventable situation. Brandon and I met with Mr. Clinkscale and Mr. Smith on Monday August 30th and it was agreed that blind bores were not permitted and are dangerous. If the message has not been made clear from the City or other utilities that this is not allowed, the City will stop issuing permits to TDS. Please confirm receipt of this email and final notice that you must pothole all utilities prior to/during bore operations. If there is another hit on existing utilities due to carelessness or negligence, the City may stop active permits and deny future permits until further notice. These actions are for the safety and wellbeing of our residents.

I was also informed that the representative from the gas company may have used some strong and possibly inappropriate language when addressing this matter with your crews. I apologize for this and they were informed that even when dealing with a frustrating or dangerous situation, we should be civil.

Thank you for your prompt response to this matter,

John W. Neumeier
Senior Project Engineer

CITY OF KAUKAUNA
920.766.6305
neumeier@kaukauna-wi.org
www.cityofkaukauna.com

John Neumeier

From: John Neumeier
Sent: Friday, November 12, 2021 12:05 PM
To: Phil Gaston; Murray, Sean; Dan Clinkscale; Tim.smith@tdstelecom.com
Cc: John Sundelius; Tony Penterman; Adam Feigl; Cody Polyak; Andy Vanden Heuvel
Subject: RE: TDS - BBI Gas hit - Kaukauna

Good Morning Gentlemen,

BBI, working for TDS, have hit and broken a watermain on Division Street this morning, performing another blind bore. I have spoken with Dan and shutdown all crews for this week. As warned previously, all SourceOne/TDS permits are hereby suspended until further notice. The City will require TDS to develop a written procedure for all crews to follow during boring operations to ensure safe and successful bores. If this procedure is submitted to the City and approved on Monday, November 15th, work may be eligible to restart as early as Tuesday morning.

Please confirm receipt of this email and notice that you must pothole all utilities prior to/during bore operations. If there is another hit on existing utilities due to carelessness or negligence, the City may stop active permits and deny future permits until further notice. These actions are for the safety and wellbeing of our residents.

Thank you for your prompt response to this matter,

John W. Neumeier
Senior Project Engineer

CITY OF KAUKAUNA
920.766.6305
neumeier@kaukauna-wi.org
www.cityofkaukauna.com

From: Phil Gaston <pgaston@broadbandinfrastructure.com>
Sent: Tuesday, September 14, 2021 3:45 PM
To: John Neumeier <neumeier@kaukauna-wi.org>; Murray, Sean <Sean.Murray@tdstelecom.com>; Dan Clinkscale <dclinkscale@broadbandinfrastructure.com>; Tim.smith@tdstelecom.com
Cc: John Sundelius <sundelius@kaukauna-wi.org>; Tony Penterman <mayor@kaukauna-wi.org>; Adam Feigl <afeigl@sourceonecorp.com>
Subject: Re: TDS - BBI Gas hit - Kaukauna

Received sir. Dan and I have discussed and very much understand.

Regards,

Phil Gaston
Manager – Strategic Accounts
Broadband Infrastructure Inc.
Veteran Owned Small Business
24 Concourse Way. Greer, SC 29650
(m): 803-493-5693
(o): 864-874-1195 x 1195

John Neumeier

From: John Neumeier
Sent: Tuesday, November 16, 2021 10:28 AM
To: Smith, Tim (Appleton-College); Murray, Sean; Deegan, John W.; Yates, Patrick; Jakubiec, Steve
Cc: John Sundelius; Tony Penterman; Adam Feigl; Cody Polyak; Andy Vanden Heuvel; Dan Clinkscale; Phil Gaston
Subject: RE: TDS - BBI Water hit - Kaukauna
Attachments: EXCAVATION, TRENCHING, DIRECTIONAL BORING BEST PRACTICES For Operators.docx

Good Morning Gentlemen

I have received acceptable practices which BBI will implement in order to continue work in the City of Kaukauna. TDS/BBI/SourceOne may continue work in the City at this time.

Please note that blind bores are not permitted and are dangerous. The City may at any time, stop issuing permits to TDS/BBI/SourceOne. Please confirm receipt of this email and final notice that you must pothole all utilities prior to/during bore operations. Safe procedures should be used during all construction and all operators should be aware of, and follow, the best management practices and any other safe construction practices necessary. If there is another hit on existing utilities due to carelessness or negligence, the City may stop active permits and deny future permits until further notice. These actions are for the safety and wellbeing of our residents.

Thank you all for your follow-up on this incident.

John W. Neumeier
Senior Project Engineer

CITY OF KAUKAUNA
920.766.6305
neumeier@kaukauna-wi.org
www.cityofkaukauna.com

From: Smith, Tim (Appleton-College) <Tim.Smith@tdstelecom.com>
Sent: Friday, November 12, 2021 2:45 PM
To: John Neumeier <neumeier@kaukauna-wi.org>; Murray, Sean <Sean.Murray@tdstelecom.com>; Deegan, John W. <john.deegan@tdstelecom.com>; Yates, Patrick <Patrick.Yates@tdstelecom.com>; Jakubiec, Steve <steve.jakubiec@tdstelecom.com>
Cc: John Sundelius <sundelius@kaukauna-wi.org>; Tony Penterman <mayor@kaukauna-wi.org>; Adam Feigl <afeigl@sourceonecorp.com>; Cody Polyak <cpolyak@broadbandinfrastructure.com>; Andy Vanden Heuvel <avandenheuvel@ku-wi.org>; Dan Clinkscale <dclinkscale@broadbandinfrastructure.com>; Phil Gaston <pgaston@broadbandinfrastructure.com>
Subject: RE: TDS - BBI Water hit - Kaukauna

John, TDS just finish our first initial meeting in regard to BBI and BBI subcontractor B&M Construction. BBI has agree that B&M Construction are being remove from this Project and will no longer be allowed to work on TDS projects in the future. BBI will be reaching out to you with the required information that you have requested in order to start construction again.

EXCAVATION/TRENCHING/DIRECTIONAL BORING

BEST PRACTICES For Operators

PRE-EXCAVATION

- Obtain alignment sheets and/or proper drawings to adequately locate excavation location.
- Verify that the one call (811) has been made and that utilities are marked and depth verified before the commencement of digging activities.
 - Potholing must be completed every 50' to ensure the depth of said utility is consistent throughout the digging process.
 - Potholing must be completed with hand tools or the use of the hydro-vac method before excavation begins and throughout the excavation.
 - The use of an excavator is prohibited to pothole.
- Verify the installation of high visibility markings of all underground crossings and structures.
- Conduct a walk around inspection of equipment checking all fluids and noting any items needing maintenance and repair. Ensure all critical repairs are performed before operation.
- Wear appropriate personal protective equipment (PPE) as required by the task being performed and as required per OSHA regulations.
- Ensure a spotter is used if there are overhead power lines, underground utilities or tight working conditions in the work area.
- Verify the competent person is on site.
- Ensure that the public will be protected from all open excavations.

EXCAVATION

- Follow the policies and procedures of the governing agency when crossing foreign utilities.
- Ensure a spotter is used if there are overhead power lines, underground utilities, or tight working conditions in the work area.
- Maintain a 2-foot lateral open area from excavation for all material, equipment, and spoil.
- Assure that proper sloping, benching, or shoring techniques are utilized in excavations of five feet or greater in depth.

- Check for and remove any accumulation of water in the excavation.
- If the excavation is 4 feet or greater in depth, ensure means of proper egress within a maximum lateral travel distance of 25 feet.
- Ensure adequate ground cover of other utilities and crossings.
- Protective systems for excavations of 20 feet or greater in depth must be designed by a registered professional engineer.
- Ensure that the competent person inspects and documents the excavation checklist at the beginning of each day, each shift change, and after every change of weather (rain storm).
- Ensure the following Best Practices are being followed if the excavation is occupied:
 - No employee shall enter any excavation until it has been determined by a competent person that the excavation has been dug in accordance with OSHA, State, and Local Standards.
 - Employees who work in and around excavations and trenches have been made aware of the hazards and correct work procedures associated with this type of work.

I have read and been informed about the content, requirements, and expectations of the best practices for excavation, trenching, and directional boring policy for employees at Broadband infrastructure Inc. I understand that if I have questions, at any time, regarding the best practices, I will consult my immediate supervisor.

Operator Name

Operator Signature

Date

Construction Manager

Construction Manager Signature

Date

John Neumeier

From: John Neumeier
Sent: Tuesday, July 19, 2022 1:47 PM
To: Dan Clinkscale; Smith, Tim (Appleton-College); Adam Feigl
Cc: Michael Avanzi; Andy Vanden Heuvel; Cody Polyak; Murray, Sean; Zellmer, Joseph J.; Michael.Joosten@outagamie.org; Morman, Michael R.; Tony Penterman; John Borges
Subject: RE: Blind boring (TDS) - All Permits Suspended

Afternoon Dan and team,

Please see email below from the KU Water Superintendent. Please have all TDS contractors in Kaukauna halt work by end of business today.(4:30pm)

A subcontractor, working for TDS, is again performing blind cross bores. As warned previously, all SourceOne/TDS permits in the City of Kaukauna are hereby suspended until further notice.

Please confirm receipt of this email and notice of work stoppage.

Thank you for your prompt response to this matter,

John W. Neumeier

Director of Public Works / City Engineer

CITY OF KAUKAUNA

920.766.6305

neumeier@kaukauna-wi.org

www.cityofkaukauna-wi.org

From: Andy Vanden Heuvel <avandenheuvel@ku-wi.org>

Sent: Tuesday, July 19, 2022 1:28 PM

To: John Neumeier <neumeier@kaukauna-wi.org>

Cc: Michael Avanzi <mavanzi@ku-wi.org>

Subject: Blind boring (TDS)

This message was sent securely using Zix®

Hi John,

I was leaving Kaukauna Utilities shop a little before 12:00 and noticed a company boring across Island and Dodge Street. All markings for utilities were painted, but I didn't see any pot holing to visually see our watermain. I spoke with Omar from Unified Utility and he stated he popped the valve cover to see how deep our main was. That 16 inch watermain that he gambled on being 5' deep, when they were at 2.5' deep with their bore would have flooded our parking garage, drained our towers and put us into a boil water advisory. I would like to put practice/policy into place such that all companies doing work within 2 ft of any mains over 8" in diameter must notify Kaukauna Utilities 24 hours prior to doing the work. This has to stop before someone gets hurt or killed.

Thank You,

Andy Vanden Heuvel

Water Superintendent

Kaukauna Utilities

John Neumeier

From: John Neumeier
Sent: Monday, August 1, 2022 9:46 AM
To: Worrell, Josh; Tony Penterman
Cc: Soczka, Wade; Deegan, John W.; Yates, Patrick; Mand, Jeffrey; Murray, Sean; Smith, Tim (Appleton-College); Andy Vanden Heuvel; emiller@ku-wi.org
Subject: RE: TDS/Kaukauna Follow Up
Attachments: B&M Underground.pdf

Good Morning Josh and TDS Team

Per our meeting 7/22/22, boring, drilling, trenching, or alike, without potholing or exposing all utilities (also referred to as blind boring) is an unacceptable construction practice. This is the second permit suspension for TDS/BBI for the same violations. TDS, BBI, and all subcontractors to TDSS or BBI, will pothole or expose all public utilities and private services prior to crossing or when working within two feet of any and all utilities. In addition, all TDS/BBI contractors and subcontractors must contact Kaukauna Utilities water department 24 hours prior to working within three(3) feet(measured horizontally) of any watermain 10" or larger, and give 24 hours' notice to Kaukauna Utilities water department prior to any cross bores of any watermain 10" or larger. As TDS is the holder of the Public Right-of-Way Registration for the City of Kaukauna, failure to comply with the above terms will result a revocation of not just BBI permits, but all TDS authorization to work within the municipal limits of Kaukauna.

Also, prior to the re-start of the TDS/BBI permits, Kaukauna Utilities must receive, or have an agreement in-place for, payment for the two outstanding invoices from the watermain hit last fall(attached). After acknowledgement of payment or agreement is made by KU, all suspended TDS/BBI permits will be activated and construction may resume.

Please contact me with any questions or concerns. Thank you for your attention and commitment to keeping the City of Kaukauna safe.

John W. Neumeier

Director of Public Works / City Engineer

CITY OF KAUKAUNA

920.766.6305

neumeier@kaukauna-wi.org

www.cityofkaukauna.com

From: Worrell, Josh <Josh.Worrell@tdstelecom.com>

Sent: Thursday, July 28, 2022 3:41 PM

To: John Neumeier <neumeier@kaukauna-wi.org>; Tony Penterman <mayor@kaukauna-wi.org>

Cc: Soczka, Wade <wade.soczka@tdstelecom.com>; Deegan, John W. <john.deegan@tdstelecom.com>; Yates, Patrick <Patrick.Yates@tdstelecom.com>; Mand, Jeffrey <jeffrey.mand@tdstelecom.com>; Murray, Sean <Sean.Murray@tdstelecom.com>; Smith, Tim (Appleton-College) <Tim.Smith@tdstelecom.com>

Subject: TDS/Kaukauna Follow Up

Mayor Penterman & John:

I am writing to determine next steps for TDS to resume construction in the City of Kaukauna.

608-225-1463 cell

From: Cody Polyak <cpolyak@broadbandinfrastructure.com>

Sent: Tuesday, August 02, 2022 11:13 AM

To: Deegan, John W. <john.deegan@tdstelecom.com>; John Neumeier <neumeier@kaukauna-wi.org>; Yates, Patrick <Patrick.Yates@tdstelecom.com>; Smith, Tim (Appleton-College) <Tim.Smith@tdstelecom.com>

Cc: James Jenkins <jjenkins@broadbandinfrastructure.com>; Braddock Cunningham

<bcunningham@broadbandinfrastructure.com>; Dan Clinkscale <dclinkscale@broadbandinfrastructure.com>

Subject: Work Release

External Email: For information security purposes, this email came from an external source and any attachments or links should be treated with caution.

Good afternoon.

I was checking on the status of getting released to go back to work. Per the emails yesterday there was a hold on the release until payment of 2 invoice was resolved for KU. Per my conversation with John Deegan yesterday, TDS was going to make that payment and a chargeback would be assessed to BBI on the back end. This is a critical situation that we are faced with today, as my contractors who are currently in market will be leaving tomorrow if we will not be released back to work today. Once they leave I am uncertain if they will return at all. Knowing that TDS will make the payment for the 2 invoices, can the work stoppage be lifted?

Thanks

Cody

Cody Polyak, PMP
OSP Construction Manager
175 Brookshire Road
Greer, SC 29651
Fax 864-877-4001
Cell 803-722-0720
cpolyak@broadbandinfrastructure.com
A Veteran Owned Small Business

John Neumeier

From: John Neumeier
Sent: Tuesday, August 2, 2022 2:20 PM
To: Deegan, John W.; Cody Polyak; Yates, Patrick; Smith, Tim (Appleton-College); Worrell, Josh; Soczka, Wade
Cc: James Jenkins; Braddock Cunningham; Dan Clinkscale
Subject: RE: Work Release
Attachments: RE: TDS/Kaukauna Follow Up

Good Afternoon,

KU has agreed that this request and TDS support is sufficient to allow for permits to be re-opened. All currently issued TDS/BBi permits may resume construction today with stipulations per email attached from 8/1.

Thank you,

John W. Neumeier

Director of Public Works / City Engineer

CITY OF KAUKAUNA

920.766.6305

neumeier@kaukauna-wi.org

www.cityofkaukauna.com

From: Deegan, John W. <john.deegan@tdstelecom.com>
Sent: Tuesday, August 2, 2022 12:36 PM
To: Cody Polyak <cpolyak@broadbandinfrastructure.com>; John Neumeier <neumeier@kaukauna-wi.org>; Yates, Patrick <Patrick.Yates@tdstelecom.com>; Smith, Tim (Appleton-College) <Tim.Smith@tdstelecom.com>; Worrell, Josh <Josh.Worrell@tdstelecom.com>; Soczka, Wade <wade.soczka@tdstelecom.com>
Cc: James Jenkins <jjenkins@broadbandinfrastructure.com>; Braddock Cunningham <bcunningham@broadbandinfrastructure.com>; Dan Clinkscale <dclinkscale@broadbandinfrastructure.com>; Deegan, John W. <john.deegan@tdstelecom.com>
Subject: RE: Work Release

John –

Sean Murray did submit a TDS Check Request yesterday to cover invoices 5108 & 5109 for a total of \$10,470.92. As expected this may take a few days for Sean to get it back. I am attaching that request as a pdf to show our intentions on covering those charges, hopefully that will suffice to get the project back moving again.

I would agree with Cody, we are at a critical point with subcontractors in market needing direction on when they can start work again.

Thank you for your attention.

John Deegan

Senior Manager – OOT OSP Construction

608-664-4464 office

John Neumeier

From: John Neumeier
Sent: Tuesday, August 9, 2022 2:58 PM
To: Cody Polyak; john.deegan; Yates, Patrick; Smith, Tim (Appleton-College); Worrell, Josh; Soczka, Wade; Murray, Sean
Cc: James Jenkins; Braddock Cunningham; Dan Clinkscale; Jake Van Gompel; Andy Vanden heuvel; Jason Wegand; Jason Holmes; Jeffrey Bodoh; Tony Penterman; City Attorney; Christina Heindl; William J. VanRossum; Pennie Thiele
Subject: Kaukauna - TDS Permit Revocation
Importance: High

Mr. Polyak and Mr. Murray,

The City of Kaukauna has received notice and confirmation of another cross-bore of existing utility facilities without pothole/utility locates by a TDS sub-contractor on the evening of August 8th. I regret to inform you that as of 5:00pm today, August 9th, 2022 all TDS, BBI, and SourceOne right-of-way permits within the City of Kaukauna are hereby revoked, per Municipal Code 8.06(20)(a). All construction work within City right-of-way shall cease. All hard and soft restoration shall be completed for any and all disturbances currently existing under said permits in a timely manner. In no case shall an open excavation or other hazardous condition be left unrepaired.

Per 8.06(20)(c) Appeals. Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue or refusing to extend a permit may, within ten (10) days of the Department's decision being issued, file a written request with the Department seeking a review of the decision by the Board of Public Works. Following a hearing, the Board of Public Works may affirm, reverse, or modify the decision of the Department. The decision of the Board of Public Works is final.

Per our phone conversation, the next Board of Public Works(BPW) meeting is Monday August 15th at 6pm in the Municipal Services Building, 144 W 2nd Street, Kaukauna WI 54130. Please let me know in writing(email) before noon tomorrow if you would like to file an appeal at the August 15th meeting; please provide any background information you would like included in Board packets by Thursday August 11th at 11am. If your appeal will not be ready for the meeting on Monday August 15, please contact me with a written request within ten(10) days of this notice to file an appeal at a future meeting.

Please contact me at your earliest convenience to confirm receipt and understanding of this email.

Sincerely,

John W. Neumeier

Director of Public Works / City Engineer

CITY OF KAUKAUNA

920.766.6305

neumeier@kaukauna-wi.org

www.cityofkaukauna.com



August 10, 2022

City of Kaukauna
144 W 2nd Street
Kaukauna, WI 54130
Attention: Public Works Director John Neumeier

Dear Board of Public Works:

Thank you for your time and willingness to consider TDS' appeal. TDS remains committed to our fiber expansion project in Kaukauna, and we are excited to bring world class fiber technology to your City.

I am writing to formally appeal the revocation of TDS' drop permits. We share the City's concern for safety, and we are working diligently to devise a plan to commence main line construction. We look forward to coordinating additional time to share that plan with you in the near future.

In the interim, TDS respectfully requests that the Board consider allowing drop work to continue. As you may know, a drop is the fiber line that connects a resident's home to the access point in the right-of-way or public utility easement. Almost all of this work takes place on private property; rarely crosses gas or water mains; and only occurs when we receive an order from a customer prior to installation. For these reasons, drop work poses significantly fewer safety concerns than mainline construction.

Demand for fiber service in Kaukauna is among the highest of the Fox Valley communities. To date, TDS has received 1,591 pre-launch registrations for service, comprising over 22% market penetration. Currently, 513 residents are pending drops in serviceable areas of the community. If TDS is prohibited from commencing drop work, we must promptly notify residents their service installation has been delayed.

Thank you for thoughtfully considering this request. We look forward to continued collaboration as TDS works to become a trusted local service provider in Kaukauna.

Sincerely,

Joshua Worrell

August 11, 2022

RE: Kaukauna – TDS-BBI Permit Revocation - Appeal

Dear Mr. Neumeier and the Members of the Board of Public Works,

Broadband Infrastructure, Inc. (BBI), respectfully enters an appeal to reinstate construction permits related to the TDS Fiber network project. I fully understand the city's concerns and appreciate especially the Water Departments frustration due to required protocols not being followed by one of our contractors in market – this will NOT happen again. I also recognize and accept that the actions of our contractors reflect directly on BBI. Safety is top priority.

BBI is committed to doing whatever it takes to satisfy this Board and the City of Kaukauna that has become a second home in many ways for BBI, as we have been in market for over a year and a half. BBI has invested over \$6M in building out the fiber network on behalf of TDS, providing access to high-speed fiber for thousands of Kaukauna residents. I humbly apologize for the actions our contractor performed and am thankful that no damage or injuries occurred. BBI is going to ensure the required protocols will be followed every time. BBI also welcomes any additional requests or requirements from this Board or the City in addition to our Plan of Action as part of reinstatement.

If this Board would allow my company the opportunity to complete this project, we will immediately implement our action plan outlined below taking all precautions and enforcing new stringent procedures to ensure these issues do not happen again. Please allow my company to complete this project for TDS. I cannot stress the importance of this project to all of BBI; therefore, the severity of the situation is fully felt by me and my team – we will not allow this to happen again. Please allow us the chance to complete this project for TDS and the City of Kaukauna.

Humbly Requested.



Braddock Cunningham, CEO/President
Semper Fidelis

8/11/2022

Proactive Action Plan Follows:

BBI Plan of Action to be Implemented Immediately if This Board Grants our Request for Appeal

- 1) BBI is committed to providing the safest construction possible and will be proactively implementing the following proactive plan of action to prevent further issues, ensure compliance with the requirements of 8.06 Right-Of-Way Management and to ensure that safety is the top priority.
 - a. BBI will be increasing our internal field supervisors in market, so all contractors in market can be supervised at all times, there will no less than 2 field supervisors in market at all times while they are on rotation and 3 supervisors in market otherwise.
 - b. BBI will be sending our official Safety Manager (OSHA 510 Certified) in market a minimum of 2 weeks per month till project completion. BBI's Safety Manager will be in the field while in market at all times verifying that all contractors are following all City/State regulations and protocols as well as adhering to BBI's Safety Manual. BBI's Safety Manager will be conducting routine safety training with each contractor and providing a weekly report on each contractor's safety performance. BBI will have a zero tolerance policy going forward.
 - c. From this point till project completion, BBI guarantees that the Water System will be called a min of 24 hours in advance & this will be documented and performed by our Supervisors or PMs prior to allowing a contractor to start.
 - d. Specific New Requirements to be enforced on all contractors:
 - i. Every Thursday, all contractors will be required to submit a "Work Area" (street locations) that crews will be working for the following week for approval by BBI management PRIOR to contractor starting construction.
 - ii. BBI Field Supervisors or PM will call water department for the contractors to ensure that this is getting done according to the expectations of the water department. Further, there will be proactive open communication with the water department so that they are aware of all construction in process.
 - iii. Field Supervisors will also now receive the locates for those work areas to ensure that locates are cleared at the time of digging. There will be NO construction without paint on the ground verified by BBI in-market management – this will also be documented with timestamped pictures.
 - iv. When crossing any utility, the pit to expose the utility will remain open until the conduit is completely pulled back. This will also be documented.
 - e. BBI will be requiring the Field Supervisor for Unified that was over all instances resulting in this situation to be replaced immediately in order for them to continue working in market.

- 2) Providing a Safe working environment, performing construction in the safest way possible are core values of BBI. Since incorporation BBI has only had two incidents as reported on the required OSHA 300 logs, both accident related instead of violating Safety Protocols.
- 3) BBI recognizes that restoration is a very important component of the construction process. As a company, we got behind on restoration from construction. BBI has committed a lot of resources to bring our restoration efforts up to Kaukauna's , TDS' as well as BBI's standards. As of today, all soft area restoration will be completed by 8/14. The hardscape restoration should be fully completed within the next week, depending on the concrete timeline.
- 4) Lastly – Please allow me to address past incidents in 2022. All incidents in 2022 were from one contractor, who was removed from Market in 2021.

2022

- 4/8/22 exposing a gas line accidental hit – Locate was incorrect.
 - **BBI Not at Fault**
- 5/4/22 missile turned under ground due to rock accidental.
 - **Unified Not at Fault**
- 6/24/22 Locate was mismarked by USIC
 - **906 Communications Not at Fault**
- 7/19/22 Blind Bore –
 - **Unified At Fault**
 - Shut down for 2 weeks, BBI Implemented met with all contractors regarding following proper protocols and had each contractor agree in writing.
- 8/9/2022 Blind Bore, failure to call Water Dept –
 - **Unified at Fault**
 - Permits Revoked.

Only two incidents, the blind bores were caused by our contractor not following the protocols or proper drilling procedures. By implementing the our Plan of Action outlined above, BBI will ensure that all protocols and requirements are followed to the letter thru the completion of this project by ALL contractors.