



CITY HALL • 100 STATE STREET • BELOIT, WI 53511

MEETING NOTICE AND AGENDA
Community Development Authority
August 21, 2013 at 4:30 pm
The Forum
Beloit City Hall
100 State Street

1. Call to Order and Roll Call
2. Citizen Participation
3. Review and Consideration of Resolution 2013-21, Approving an Underground Broadband and Telecommunications Services Utility Easement Agreement in the Broad Street Parking Lot (Christensen)
4. Adjournment

*If you are unable to attend this meeting, notify Julie Christensen at 364-6703 **no later than 12:00 PM the day of the meeting.***

Notice Mailed: August 16, 2013

Approved: Julie Christensen, Ex. Director

** Please note that upon reasonable notice, at least 24 hours in advance, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, please contact the City Clerk's Office at 364-6680, 100 State Street, Beloit, WI 53511.

CITY OF BELOIT

REPORTS AND PRESENTATIONS TO COMMUNITY DEVELOPMENT AUTHORITY

Topic: Easement Agreement for the property located at 425 Broad Street

Date: August 21, 2013

Presenter(s): Julie Christensen

Overview/Background Information:

Charter Cable Partners, LLC, has submitted a request to acquire a Utility Easement that would allow a permanent easement and a temporary construction easement over a portion of the Broad Street parking lot property located at 425 Broad Street. A copy of the proposed Easement Exhibit submitted by Charter and a Utility Easement Agreement drafted by the City Attorney is attached to this report.

Key Issues:

- The proposed easements would allow Charter to construct, reconstruct, maintain, operate, supplement, and remove underground broadband and telecommunication services facilities and other related fixtures, equipment, and appurtenances.
 - The proposed permanent easement area is approximately six feet in width and is shown on the attached easement exhibit. The proposed temporary construction easement area would be twenty (20) feet in width on the east side of the permanent easement area.
 - As shown on the attached easement exhibit, the proposed permanent easement is parallel to State Street, except where it extends to the property located at 315 State Street. The north-south portion of the easement extends from Broad Street to the 12 foot public alley.
 - The Community Development Authority must review and approve the granting of this easement because the CDA owns this parking lot. When lease-revenue bonds were issued for the reconstruction of the parking lot, the property was transferred from the City of Beloit to the CDA.
-

Conformance to Strategic Plan (List key goals this action would support and briefly discuss its impact on the City's mission.):

- Consideration of this request supports Strategic Goal #5.
-

Sustainability (Briefly comment on the sustainable long term impact of this policy or program related to how it will impact both the built and natural environment utilizing the four following eco-municipality guidelines.):

- **Reduce dependence upon fossil fuels – N/A**
 - **Reduce dependence on chemicals and other manufacturing substances that accumulate in nature – N/A**
 - **Reduce dependence on activities that harm life sustaining eco-systems – N/A**
 - **Meet the hierarchy of present and future human needs fairly and efficiently – N/A**
-

Action required/Recommendation:

- Community Development Authority consideration and action on the proposed Resolution
-

Fiscal Note/Budget Impact: N/A

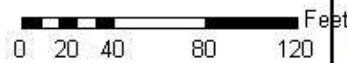
Attachments: Location and Zoning Map; Easement Agreement; Easement Exhibit and Resolution

Location & Zoning Map

425 Broad Street



1 inch = 74 feet



Legend

- COB Parcels
- Zoning District

Map prepared by: Julie Christensen
Date: August 2013
For: City of Beloit Planning & Building Services
Date of Aerial Photography: March 2011

COMMUNITY DEVELOPMENT DEPARTMENT

Document Number

Underground Broadband and
Telecommunications Services
Utility Easement Agreement
Title of Document

THIS UTILITY EASEMENT AGREEMENT (*Agreement*) is granted by the Community Development Authority of the City of Beloit, a body politic (the *Owner*), to Charter Cable Partners, LLC, d/b/a Charter Communications, a foreign corporation qualified to do business in Wisconsin (the *Utility*).

RECITALS:

A. The Owner is the fee holder of certain real property in the City of Beloit, Rock County, State of Wisconsin, as more particularly described on the attached and incorporated Exhibit A (the *Property*).

B. The Utility has requested that the Owner grant a permanent easement (the *Easement*) and temporary construction easement (the *Temporary Construction Easement*) over the Property (also referred to as the *Utility Easement Area*).

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Grant of Easement. The Owner grants to the Utility, and its licensees, a utility easement to construct, reconstruct, maintain, operate, supplement, and remove underground broadband and telecommunications services facilities, and other related fixtures, equipment, and appurtenances that may from time to time be required, with the right of ingress and egress for the purpose of this grant, within the Utility Easement Area. All improvements shall be located below grade, and the Utility shall not install anything above grade or in any fashion that would affect the appearance of the surface of the real property or limit access to the real property. The Utility acknowledges that the real property is used for parking purposes. The Utility agrees to construct all such improvements no later than September , 2013 (the *Final Completion Date*). The Utility also agrees to use the grant of easement only for the specific purposes described above and for no other purpose, and this grant is not assignable by the Utility to others for other uses. The grant of easement is exclusive for the purposes described.

2. Temporary Construction Easement. During the period of construction or installation of improvements within the Property, the Utility shall have a Temporary Construction Easement over those portions of the Property located within 20 feet easterly of the Utility Easement Area for the purpose of transporting equipment and materials in connection with the construction or installation of improvements within the Property. The Temporary Construction Easement shall expire on the earlier to occur of (a) completion of installation as contemplated in Section 1 above, or (b) the Final Completion Date as specified in Section 1 above.

Recording Area

Name and Return Address

City Attorney
100 State Street
Beloit, WI 53511

Parcel Identification Number (PIN)

This is not homestead property.

3. Indemnification. The Utility shall indemnify the Owner from and against all loss, costs (including reasonable attorney fees), injury, death, or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with the Utility's activities conducted on the Property, regardless of the cause of the injury, except to the extent caused by the gross negligence or misconduct of the Owner or its agents or employees.

4. Consistent Uses Allowed. The Owner reserves the right to use the Easement and the Temporary Construction Easement for purposes that will not interfere with the Utility's full enjoyment of the Easement rights granted in this Agreement. The Owner specifically reserves the right to alter and improve the surface area of the Easement for purposes consistent with use of the Property as a parking lot, and the Utility agrees that the elevation of the surface area may be increased, but not permanently decreased and landscaping consistent with parking lot purposes may occur.

5. General Compliance. The Utility, at its own expense, and with all due diligence, shall observe and comply with all laws, ordinances, rules, and regulations which are now in effect or may later be adopted by any governmental authority, and which may be applicable to the Utility Easement Area or any improvement on it or any use of it.

6. Environmental Laws. In furtherance and not in limitation of the foregoing paragraph, the Utility must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs caused by the Utility upon or from the Utility Easement Area the Utility shall immediately notify Owner and shall, at the Utility's own expense, clean and restore the Utility Easement Area to the satisfaction of the Owner and any governmental body or court having jurisdiction of the matter.

7. Disturbance of Surface and Restoration of Surface. The Utility shall restore the surface disturbed by any construction or maintenance of any equipment located within the Easement or the Temporary Construction Easement to its condition before the disturbance. The Owner intends to resurface the general area of the parking lot in which this Easement is located and the Utility shall coordinate with the City Engineer during the construction phase of this easement. The City Engineer may waive all or portions of the restoration obligations of the utility. In no case shall the Utility disturb any trees nor shall any underground boring activities be done in such a fashion as to damage the root systems of any trees or otherwise damage the viability of the trees.

8. Covenants Run with Land. All terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the Owner and the Utility and their respective successors and assigns. The party named as Owner in this Agreement and any successor or assign to the Owner as fee simple owner of the Property shall cease to have any liability under this Agreement with respect to facts or circumstances arising after the party has transferred its fee simple interest in the Property.

9. Non-Use. Non-use or limited use of the Easement or Temporary Construction Easement rights granted in this Agreement shall not prevent the benefiting party from later use of the Easement or Temporary Construction Easement rights to the fullest extent authorized in this Agreement.

10. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.

11. Entire Agreement. This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the office of the Register of Deeds of Rock County, Wisconsin.

12. Notices. All notices to either party to this Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. If the other party's address is not known to the party desiring to send a notice, the party sending the notice may use the address to which the other party's property tax bills are sent. Either party may change its address for notice by providing written notice to the other party.

13. Invalidity. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

14. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

15. Enforcement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the nonprevailing party.

16. No Public Dedication. Nothing in this Agreement shall be deemed a gift or dedication of any portion of the easements granted under this Agreement to the general public or for any public purpose whatsoever.

Dated: _____

OWNER:

COMMUNITY DEVELOPMENT
AUTHORITY

By: _____
Julie Christensen, Executive Director

UTILITY:

CHARTER CABLE PARTNERS, LLC, d/b/a
CHARTER COMMUNICATIONS

By: _____
(signature)

(print name)

Its _____
(print title)

ATTEST:

By: _____
(signature)

(print name)

Its _____
(print title)

STATE OF WISCONSIN)
)SS
COUNTY OF ROCK)

Personally appeared before me this _____ day of _____, 2013, the above-named Julie Christensen, Executive Director, to me known to be such Executive Director of the Community Development Authority of the City of Beloit, and to me known to be the person who executed the foregoing instrument as such officer of said Community Development Authority, by its authority.

Notary Public, Rock County, Wisconsin
My Commission is permanent
or expires:_____

STATE OF WISCONSIN)
)SS
COUNTY OF ROCK)

Personally appeared before me this _____ day of _____, 2013, the above-named _____ [name & title] and _____ [name & title], and to me known to be such _____ [title] and _____ [title] of Charter Cable Partners, LLC, d/b/a Charter Communications and to me known to be the persons who executed the foregoing instrument and acknowledged the same.

(Signature)

[SEAL]

(Printed Name)
Notary Public, Rock County, Wisconsin
My commission is permanent. If not, state
expiration date:_____

This document was drafted by:
Thomas R. Casper, City Attorney
100 State Street
Beloit, WI 53511
tdh/files/13-1158/Easement=130717 1139 (c1n)

Exhibit A

EASEMENT EXHIBIT

OF A UTILITY EASEMENT 6 FEET IN EQUAL WIDTH OVER PART OF
 LOTS 1 AND 2 OF BLOCK 48 OF HOPKIN'S ORIGINAL PLAT AND PART
 OF LOT 4 OF BLAZER & JANVRIN'S SUBDIVISION, BEING A PART OF
 THE SOUTHEAST QUARTER OF SECTION 35, T. 1 N., R. 12 E. OF THE
 4TH P.M., CITY OF BELoit, ROCK COUNTY, WISCONSIN

DESCRIBED AS FOLLOWS:

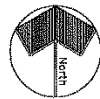
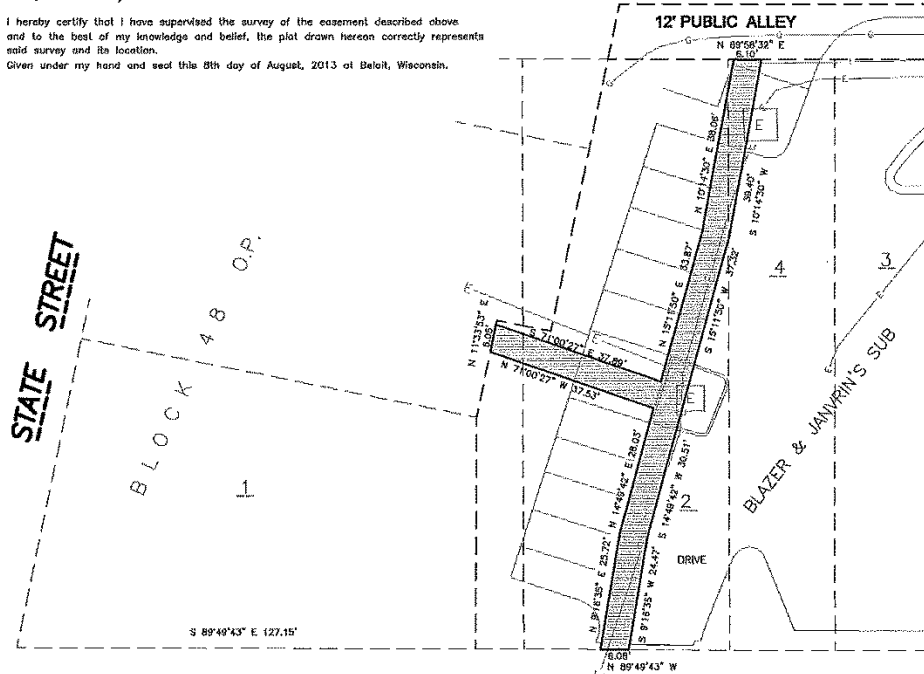
Commencing at the Southwest corner of Block 48 aforesaid; thence South 89°49'43" East 127.15 feet along the South line of said Block 48 to the place of beginning; thence North 9°16'35" East 25.72 feet; thence North 14°49'42" East 28.03 feet; thence North 71°00'27" West 37.53 feet more or less to the West line of lands owned by the Community Development Authority; thence North 11°33'53" East 6.05 feet along said West line; thence South 71°00'27" East 37.89 feet; thence North 19°11'50" East 33.87 feet; thence North 10°14'30" East 35.06 feet to the South line of a public alley; thence North 89°56'32" East 6.10 feet along the South line of said alley; thence South 10°14'30" West 39.40 feet; thence South 15°11'50" West 37.32 feet; thence South 14°49'42" West 30.51 feet; thence South 9°16'35" West 24.47 feet to the South line of said Block 48; thence North 89°49'43" West 6.06 feet to the place of beginning.

Robert H. Leuenberger, R.L.S.
 Wisconsin Land Surveyor 1244

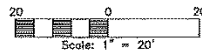
If the surveyor's signature is not red in color, the plan is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document shall not apply to any copies.

State of Wisconsin } ss
 County of Rock

I hereby certify that I have supervised the survey of the easement described above and to the best of my knowledge and belief, the plat drawn hereon correctly represents said survey and its location.
 Given under my hand and seal this 8th day of August, 2013 of Beloit, Wisconsin.



BROAD STREET



BEARINGS BASED ON THE WISCONSIN COUNTY COORDINATE SYSTEM; ROCK DATUM; THE SOUTH LINE OF BLOCK 48 HAVING A BEARING OF S 89°49'43" E.

LEGEND

- ELECTRICAL SWITCH GEAR
- BURIED ELECTRICAL
- GAS LINE

ORDER NO. 31662

FOR: CHARTER COMMUNICATIONS

File Name: J:\31651-31699\31662.CHARTER\31662.dwg

Batterman
 engineers surveyors planners



2867 Bernille Drive Beloit, Wisconsin 53511
 608.385.4464 www.batterman.com

RESOLUTION 2013-21

APPROVING AN UNDERGROUND BROADBAND AND TELECOMMUNICATIONS SERVICES UTILITY EASEMENT AGREEMENT IN THE BROAD STREET PARKING LOT

WHEREAS, it is necessary for Cable Partners, LLC, d/b/a Charter Communications, to locate their broadband and telecommunications services in the parking lot on Broad Street in order to serve the new Phoenix building as well as the other commercial building in the downtown area; and

WHEREAS, the attached easement agreement provides for the protection of the areas under which said broadband and telecommunications services are requested to be located.

NOW, THEREFORE BE IT RESOLVED, that the Community Development Authority (CDA) of the City of Beloit, Rock County, Wisconsin, hereby resolves that the attached Underground Broadband and Telecommunications Services Utility Easement Agreement from the Community Development Authority to Cable Partners, LLC, d/b/a Charter Communications, be, and it is hereby, approved.

BE IT FURTHER RESOLVED that the CDA Executive Director of the City of Beloit be, and he is hereby, authorized to execute this easement on behalf of the Community Development Authority.

Adopted this 21st day of August, 2013.

Community Development Authority

Thomas M. Johnson, Chairman

Attest:

Julie Christensen
Community Development Director