



# BOARD OF SUPERVISORS MEETING

Wednesday, August 21, 2024 at 6:30 PM

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Town Hall Meeting Room, 8348 Hickory Ave, Larsen, WI 54947

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## AGENDA

### CALL TO ORDER

- A. Pledge of Allegiance
- B. Verification of Notice
- C. Meeting Roll

### APPROVAL OF MINUTES

- A. Approval of the Minutes of the Wednesday, August 7, 2024 Town Board Closed Session Meeting
- B. Approval of the Minutes of the Wednesday, August 7, 2024 Town Board Meeting

### OPEN FORUM – TOWN RELATED MATTERS NOT ON THE AGENDA

**Individuals properly signed in may speak directly to the Town Board on non-repetitive Town Matters whether on or not on the agenda.** Commentators must wait to be called, must speak from the podium, directing their comments to the Board. Comments must be orderly, and will be limited to a maximum of **2 minutes** per person. ***Public comment is not permitted outside of this public comment period.*** **Note:** The Board's ability to act on or respond to the public comments is limited by Chapter 19, Wis. Stats. Please complete the "Request to Speak at Meeting" form located on the agenda/sign-in table and submit the form to the Town Clerk for in-person attendance.

### CORRESPONDENCE

- A. Distribution of the July 2024 Winnebago County Tonnage Report
- B. Distribution of the July/August 2024 Municipal Law Newsletter from BoardmanClark.
- C. Distribution of the 2023 RUG Recycling Program Financial Report from Winnebago County Solid Waste Management Board with projected 2024 Recycling Revenues.

### DISCUSSION ITEMS (NO ACTION WILL BE TAKEN)

- A. Winnebago County Sheriff's Department – Public Concerns and Issues
- B. Larsen/Winchester Sanitary District Report
- C. Administrator's Report
- D. Chair & Supervisor Reports

### BUSINESS REFERRED BY THE PLAN COMMISSION

- A. Plan Commission Recommendation: Town Board review & consideration of a Certified Survey Map (CSM) Review Application submitted by Davel Engineering & Environmental Inc. on behalf of Galen Drews for a proposed land division reconfiguring Tax ID #006-0599 (3113 County Rd II), Tax ID #006-0600, and Tax ID #006-0602, into two lots.

- B. Plan Commission Recommendation: Town Board review & consideration of a Certified Survey Map (CSM) Review Application submitted by Troy Ribble for a proposed land division reconfiguring Tax ID #006-0006-09 (9618 Lind Ln), and Tax ID #006-0006-10-02 into four lots.
- C. Plan Commission Recommendation: Town Board review & consideration of a Site Plan Review Application submitted by Trident Holdings, LLC for a proposed addition to a commercial business development building located at 9057 Clayton Ave.
- D. Plan Commission Recommendation: Town Board review & discussion of revisions to Section 7.10.08 Dedications and Reservations within Town of Clayton Subdivision Ordinance.
- E. Plan Commission Recommendation: Town Board review & discussion of revisions to the Town of Clayton Zoning Ordinance Land Use Matrix specifically regarding Backyard Chickens and Short-Term Rental Units.

**BUSINESS**

- A. Discussion/Action: Town Board review & discussion of updates provided by ANR Pipeline Company regarding their multi-year pipeline replacement project.
- B. Review/Discussion: Town Board review & discussion of a resident request to consider the implementation of railroad quiet zones within the Town of Clayton.

**UPCOMING MEETING ATTENDANCE**

- A. Town Board (6:30 pm start unless otherwise noted) - Sept 4 & 18; Oct 2 & 16; Nov 6 & 20
- B. Plan Commission (6:30 pm start unless otherwise noted) - Sept 11; Oct 9; Nov 13

**BOARD MEMBER REQUESTS FOR FUTURE AGENDA ITEMS**

**ADJOURNMENT**

Respectfully submitted,

Russell D. Geise  
Town Chairperson

*Pursuant to Wisconsin Statute 19.84 (2) and (3) notice is hereby given to the public and the media that two or more members of any or all Boards, Commissions, and Committees of the Town of Clayton, may attend the meeting of the Town Board in order to gather information. For purposes of the Open Meetings Law only; attendance at a meeting by a quorum of members of the Town Boards, Commissions, and Committees constitutes a meeting of the Board, Commission, or Committee, pursuant to Badke Vs. Village Board of Village of Greendale, 173 Wis2d 553, 494 NW2d 408 (1993), and must be noticed as such, although it is not contemplated that any formal action by those bodies will be taken. The only business to be conducted is for Town Board action.*

*Upon reasonable notice, 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 call the Town Office at 920.836.2007.*

**This agenda has been posted at the following locations in the Town of Clayton:**

1. The Town Hall Posting Board – 8348 Hickory Ave, Larsen, WI 54947
2. The Town's Web Page: --



# BOARD OF SUPERVISORS SPECIAL MEETING

Wednesday, August 07, 2024 at 6:00 PM

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Town Hall Meeting Room, 8348 Hickory Ave, Larsen, WI 54947

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## MINUTES

**CALL TO ORDER** – Chair Geise called the meeting to order at 6:00 pm.

- A. Pledge of Allegiance
- B. Verification of Notice
- C. Meeting Roll

### PRESENT

Town Chair Geise  
 Supervisor Lettau  
 Supervisor Grundman  
 Supervisor Christianson

### EXCUSED

Supervisor Reif

### STAFF

Administrator Wisnefske  
 Clerk Faust-Kubale

## CLOSED SESSION OF THE TOWN BOARD

- A. Discussion/Action: Town Board review & consideration of a motion to move into a Closed Session pursuant to Wis. Stats. §19.85(1)(g):

**Wis. Stats. §19.85(1)(g)** - Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

The Town Board of Supervisors of the Town of Clayton will consider a motion and roll call to adjourn to a Closed Session to confer with legal counsel in response to a notice filed by a resident, which is likely to result in litigation.

### MOTION

**Motion made** by Supervisor Grundman, **Seconded** by Supervisor Christianson to move into a Closed Session pursuant to Wis. Stats. §19.85(1)(g) - conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

**Voting Yea:** Town Chair Geise, Supervisor Lettau, Supervisor Grundman, Supervisor Christianson

**Motion carried 4-0.**

- B. Discussion/Action: Pursuant to Wis. Stats. §19.85(2), the Town Board will reconvene into open session and may formally act on those matters discussed in closed session.

**Wis. Stats. §19.85(2)** - No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

**MOTION**

**Motion made** by Supervisor Christianson, **Seconded** by Supervisor Grundman to reconvene in open session pursuant to Wis. Stats. §19.85(2).

**Voting Yea**: Town Chair Geise, Supervisor Lettau, Supervisor Grundman, Supervisor Christianson

**Motion carried 4-0.**

**ADJOURNMENT**

**MOTION**

**Motion made** by unanimous consent to adjourn at 6:21 pm.

**Motion carried by unanimous voice vote.**

Respectfully submitted,

Kelsey Faust-Kubale  
Town Clerk



# BOARD OF SUPERVISORS MEETING

Wednesday, August 07, 2024  
Immediately following a Prior Scheduled Meeting

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Town Hall Meeting Room, 8348 Hickory Ave, Larsen, WI 54947

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## MINUTES

**THIS MEETING IS IMMEDIATELY FOLLOWING THE TOWN BOARD CLOSED SESSION MEETING.**

**CALL TO ORDER** – Chair Geise called the meeting to order at 6:22 pm.

- A. Pledge of Allegiance
- B. Verification of Notice
- C. Meeting Roll

### PRESENT

Town Chair Geise  
Supervisor Lettau  
Supervisor Grundman  
Supervisor Christianson

### EXCUSED

Supervisor Reif

### STAFF

Administrator Wisnefske  
Clerk Faust-Kubale  
Treasurer Fietzer

## APPROVAL OF MINUTES

- A. Approval of the Minutes of the Wednesday, July 17, 2024 Town Board Meeting

### MOTION

**Motion made** by unanimous consent to approve the Minutes of the Wednesday, July 17, 2024 Town Board Meeting.

**Motion carried by unanimous voice vote.**

## OPEN FORUM – TOWN RELATED MATTERS NOT ON THE AGENDA - NONE

## CORRESPONDENCE

- A. Distribution of the July 2024 Building Inspection Report
- B. Distribution of the meeting materials for the August 7, 2024, Fox West Regional Sewerage Commission Meeting.

## OPERATOR LICENSES ISSUED BY THE TOWN CLERK

- A. Temporary - Sarah Poublon, Central WI Auto Collectors Event
- B. Temporary - Brittany Wurn, Central WI Auto Collectors Event

**DISCUSSION ITEMS (NO ACTION WILL BE TAKEN)**

- A. County Board Supervisor Report
- B. Winnebago County Sheriff's Department – Public Concerns and Issues
- C. Department of Public Safety Report
- D. Larsen/Winchester Sanitary District Report
- E. Administrator's Report
- F. Chair & Supervisor Reports

**BUSINESS**

- A. Discussion/Action: Town Board review & consideration of an Application for a Temporary Class "B" license by Central Wisconsin Auto Collectors for an event to be held August 18, 2024.

**MOTION**

**Motion made** by unanimous consent to approve the application submitted by Central Wisconsin Auto Collectors and grant a Temporary Class "B" license for an event to be held August 18, 2024.

**Motion carried by unanimous voice vote.**

- B. Discussion/Action: Town Board review & consideration of replacement of a culvert located near 4096 Oakridge Rd due to failure at an estimated cost of \$15,000.00

**MOTION**

**Motion made** by unanimous consent to approve the replacement of the failed culvert located near 4096 Oakridge Rd, pending final cost determination to be reported by the Administrator.

**Motion carried by unanimous voice vote.**

- C. Discussion/Action: Town Board review & consideration of the Operators License application submitted by Stefan Martinez (Willie Beamons) for a new regular operator license.

**MOTION**

**Motion made** by unanimous consent to deny the application for an Operator's License submitted by Stefan Martinez.

**Motion carried by unanimous voice vote.**

- D. Review/Discussion: Town Board review & discussion of a request for action in stormwater management from the property owner located at W8136 Winnegamie Dr, Neenah, specifically an additional culvert.

**DISCUSSION ITEM ONLY - NO ACTION TAKEN****REVIEW OF DISBURSEMENTS**

- A. Check Summary Register

**UPCOMING MEETING ATTENDANCE**

- A. Town Board (6:30 pm start unless otherwise noted) - Aug 21; Sept 4 & 18; Oct 2 & 16
- B. Plan Commission (6:30 pm start unless otherwise noted) - Aug 14; Sept 11; Oct 9
- C. Clayton Fire Rescue Touch A Truck - August 17 starting at 10 am

**BOARD MEMBER REQUESTS FOR FUTURE AGENDA ITEMS**

**ADJOURNMENT**

**MOTION**

**Motion made** by unanimous consent to adjourn at 6:40 pm.

**Motion carried by unanimous voice vote.**

Respectfully submitted,

Kelsey Faust-Kubale  
Town Clerk

**WINNEBAGO COUNTY SOLID WASTE MANAGEMENT BOARD  
2024 RECYCLING TONNAGE REPORT**

	January	February	March	April	May	June	July	August	September	October	November	December	YTD	
	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	
T. Algoma	48.78	57.51	55.09	38.92	44.79	36.13	37.57						318.79	T. Algoma
T. Black Wolf	16.36	20.52	14.97	17.86	25.28	20.77	21.84						137.60	T. Black Wolf
T. Clayton	41.50	27.60	27.02	39.08	35.49	34.07	42.28						247.04	T. Clayton
V. Fox Crossing	118.23	100.41	96.94	101.86	124.54	85.16	102.46						729.60	V. Fox Crossing
T. Neenah	28.08	25.51	21.28	22.03	33.46	28.36	19.74						178.46	T. Neenah
T. Nekimi	9.23	6.70	6.89	8.52	11.21	8.04	11.24						61.83	T. Nekimi
T. Omro	12.75	7.45	7.95	11.16	9.44	9.60	10.80						69.15	T. Omro
T. Vinland	17.76	12.31	11.17	16.82	14.70	14.12	18.22						105.10	T. Vinland
T. Winchester	12.58	11.94	11.73	3.66	13.88	11.88	10.29						75.96	T. Winchester
T. Winneconne	17.27	21.21	20.41	15.06	10.94	15.36	12.25						112.50	T. Winneconne
T. Wolf River	9.05	6.95	6.25	5.86	7.21	7.76	9.41						52.49	T. Wolf River
V. Winneconne	13.28	13.59	14.89	11.72	17.61	16.22	15.39						102.70	V. Winneconne
C. Menasha	136.60	81.09	104.30	112.07	96.12	135.77	101.71						767.66	C. Menasha
C. Neenah	182.85	151.44	151.85	174.66	184.49	169.47	191.95						1206.71	C. Neenah
C. Omro	12.75	21.42	21.10	18.48	20.55	20.97	21.16						136.43	C. Omro
C. Oshkosh	337.77	294.93	284.63	320.91	332.79	318.26	347.11						2236.40	C. Oshkosh
Other SS	257.02	235.29	276.81	333.12	340.33	241.23	295.38						1979.18	Other SS
<b>TOTAL TONS</b>	<b>1271.86</b>	<b>1095.87</b>	<b>1133.28</b>	<b>1251.79</b>	<b>1322.83</b>	<b>1173.17</b>	<b>1268.80</b>						<b>8517.60</b>	<b>TOTAL TONS</b>

	Population	SS lbs./person		Population	SS lbs./person		Population	SS lbs./person
T. Algoma	6,939	<b>91.88</b>	T. Omro	2,375	<b>58.23</b>	C. Menasha	18,576	<b>82.65</b>
T. Black Wolf	2,422	<b>113.63</b>	T. Vinland	1,757	<b>119.64</b>	C. Neenah	27,560	<b>87.57</b>
T. Clayton	4,394	<b>112.44</b>	T. Winchester	1,784	<b>85.16</b>	C. Omro	3,629	<b>75.19</b>
V. Fox Crossing	19,113	<b>76.35</b>	T. Winneconne	2,637	<b>85.32</b>	C. Oshkosh	66,986	<b>66.77</b>
T. Neenah	3,669	<b>97.28</b>	T. Wolf River	1,210	<b>86.76</b>			
T. Nekimi	1,325	<b>93.33</b>	V. Winneconne	2,519	<b>81.54</b>	<b>Total</b>	166,895	<b>78.35</b>

# Municipal Law Newsletter

VOLUME 29, ISSUE 4 JULY/AUGUST 2024

## In this issue

- *Wisconsin Supreme Court Upholds Condemnation of Land for Sidewalks*
- *Restrictive Renewable Energy Ordinances May Be Vulnerable to Legal Challenge*
- *Court of Appeals Invalidates PSC Demand Response Order as Unpromulgated Rule*

## Wisconsin Supreme Court Upholds Condemnation of Land for Sidewalks

On June 19, 2024, the Wisconsin Supreme Court issued a decision in *Sojenhomer LLC v. Village of Egg Harbor*, 2024 WI 25, a case clarifying the scope of municipal condemnation authority. In its 4-3 decision, the Court held that a 2017 law that prohibits Wisconsin municipalities from condemning land to extend or establish “pedestrian ways” does not prevent municipalities from condemning land for road projects that include sidewalks.

The case arose from a highway improvement project in the Village of Egg Harbor. The Village had received complaints from residents about the busy intersection of County Highway G and State Highway 42, so the Village Board engaged an engineering firm to study issues with the intersection and develop a plan to address them. Along with the addition of street lighting, storm sewers, and buried utility lines, the resulting plan included limiting parking to the west side of Highway G and adding a new sidewalk on the east side. The Village followed the process under Wis. Stat. § 32.05 to condemn the land necessary to complete the project.

That land included 0.009 acres belonging to Sojenhomer LLC, which operates the Shipwrecked Brew Pub and Restaurant on the east side of the highway. The condemned land had been used by Sojenhomer for parking in connection with the restaurant, but the Village intended to build a new sidewalk there and restrict parking to the opposite side of the street.

Sojenhomer challenged the Village’s right to condemn the land on the basis of Wis. Stat. § 32.015, which provides that “Property may not be acquired by condemnation to establish or extend a recreational trail; a bicycle way, as defined in s. 340.01(5s); a bicycle lane, as defined in s. 340.01(5e); or a pedestrian way, as defined in s. 346.02(8)(a).” Sojenhomer argued that the proposed sidewalk was a “pedestrian way” and therefore, under Wis. Stat. § 32.015 and the related § 61.34(3)(b), the Village could not exercise its condemnation authority to acquire land from Sojenhomer to build the sidewalk.

The Wisconsin Court of Appeals agreed with Sojenhomer and held that the condemnation of Sojenhomer’s land violated state law. This Village of Egg Harbor appealed that decision to the Wisconsin Supreme Court and both the Wisconsin Department of Transportation and the League of Wisconsin Municipalities filed amicus briefs in support of the Village’s position. The Wisconsin Supreme Court reversed the Court of Appeals, holding that condemnation of Sojenhomer’s land to build a sidewalk did not violate Wis. Stat. §§ 32.015 or 61.34(3)(b).

The Supreme Court concluded that a sidewalk is not a “pedestrian way” under Wis. Stat. § 346.02(8)(a), and therefore the statutory prohibition on condemnation for pedestrian ways does not apply to sidewalks. The Court reached this conclusion after a close analysis of Wis. Stat. § 346.02(8), which defines pedestrian way as “a walk designated for the use of pedestrian travel” and provides that the rules of the road set out in Chapter 346 that apply to “highways, streets, alleys, roadways

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BOARDMANCLARK.COM/PUBLICATIONS

## ***Restrictive Renewable Energy Ordinances May Be Vulnerable to Legal Challenge***

With the continued push toward development of large-scale wind and solar projects, some municipalities have responded by passing restrictive ordinances protecting against perceived threats to local health and agriculture.

Restrictive local ordinances are the leading cause of wind project cancelation and second leading cause of solar project cancelation. (“Survey of Utility-Scale Wind and Solar Developers”, Berkely Lab, January, 2024). At least 19 Wisconsin towns have passed ordinances imposing restrictions on wind and solar development. This is according to the nonprofit organization “Farmland First”, which has promoted the use of such ordinances (See <https://www.farmlandfirst.com/new-page-2>).

A lawsuit filed by wind developer Marathon Wind Farm LLC on June 20th targets two of these ordinances. The outcome of the case will test the enforceability of ordinances that are more restrictive than state standards.

The project at issue is a 99 MW wind farm being built by a subsidiary of EDF Renewables. According to the complaint, plans for the facility began in 2017 after research identified the towns of Brighton and Eau Pleine as desirable locations for siting a wind generating system based on the availability of wind, proximity to transmission lines, and community support. The subsidiary executed dozens of leases with local landowners and initiated communications with both towns in 2019 to facilitate development of the project. The complaint alleges that the company has incurred over \$5 million dollars in predevelopment costs, all of which would be lost if development is not allowed to proceed under the two ordinances at issue.

In 2023, both towns enacted ordinances setting minimum requirements for the establishment, operation and permitting of wind energy systems proposed to be located in the town. The ordinances impose maximum noise limits enforceable by shut down orders; minimum setbacks; guarantees against property value diminution from the developer; annual compensation to nonparticipating property owners; and insurance requirements. All of these restrictions are alleged by the developer to exceed what is permissible under state law.

Under Wis. Stat. sec. 66.0401, political subdivisions are prohibited from placing restrictions on wind energy systems that are more restrictive than the rules promulgated by the Public Service Commission of Wisconsin (PSCW), unless they are justified by health and safety considerations. The complaint seeks a declaratory judgment from the Circuit Court of Marathon County that the Brighton and Eau Pleine ordinances violate sec. 66.0401 and asks the court to enjoin the towns from enforcing their ordinances.

The litigation is notable because recently there is an almost gold rush atmosphere where developers such as EDF seek siteable land in rural counties with solar or wind development potential and sign up landowners under leases that allow long development lead times. For projects under

100 MW, PSCW approval is not required, so only local approvals are needed. To avoid litigation, many developers negotiate directly with town boards and permitting authorities. The Marathon Wind Farm lawsuit will be closely watched by municipalities and renewable developers alike.

It is important that municipalities developing ordinances intended to protect the health and safety of their residents be cognizant of existing statutory and regulatory standards. With respect to wind systems, Wis. Admin. Code PSC 128 provides detailed rules governing the installation of wind systems and expressly states that political subdivisions “may not place any restriction, either directly or in effect” on such installations “except by adopting an ordinance that complies with this chapter.”

Section 66.0401(m) provides that political subdivisions may impose a restriction on the installation or use of a solar or wind energy system only if the restriction preserves or protects the public health and safety; does not significantly increase the cost of the system or decrease its efficiency; or allows for an alternative system of comparable cost and efficiency. While many such restrictions, including those of the towns of Brighton and Eau Pleine, are intended to address concerns for public health and safety, current research challenges many claims frequently made about renewable energy systems regarding the dangers they are alleged to pose to humans, as well as to animal and plant life. (See Columbia Law School Scholarship Archive, “Rebutting 33 False Claims About Solar, Wind and Electric Vehicles” (April, 2024)); see also, “Wind Turbine Siting-Health Review and Wind Siting Policy Update Pursuant to Wis. Stat. sec. 196.378(4g) (e)”, from the Wisconsin Wind Siting Council (May, 2024). Hence, local governments should proceed cautiously when developing restrictive renewable energy ordinances intended to “preserve or protect” public health and safety.

This is true for ordinances intended to limit the siting of renewable generating systems or the construction of transmission lines needed to interconnect with such generating facilities. Although municipalities do have authority to regulate their rights of way, including the use by public utilities, the reasonableness of such ordinances may be challenged and invalidated by the PSCW under Wis. Stat. sec. 196.58. (See also Wis. Stat. sec. 182.017 related to transmission utility use.) Local ordinances specifically designed to limit use of right of way expressly to restrict the ability of utilities to interconnect renewable generating resources are unlikely to meet such a reasonableness standard.

— *Richard Heinemann*

## **Court of Appeals Invalidates PSCW Demand Response Order as Unpromulgated Rule**

In a recent decision in *Midwest Renewable Energy Association v. Public Service Commission of Wisconsin* (2024 WI App 34), the Wisconsin Court of Appeals has invalidated a 2009 order by the Public Service Commission of Wisconsin (PSCW) as an unpromulgated rule. The decision reinforces a longstanding principle that agency decisions with the force of law and intended to be generally applicable must follow rulemaking procedures under chapter 227.

The PSCW order concerned the practice known as “demand response.” In the electric utility market, demand response essentially pays consumers for commitments to curtail their power usage during peak hours. This allows wholesale market operators to curb peak wholesale energy rates and reduce peak demand on the energy grid. Retail customers can participate in demand response through Aggregators of Retail Customers (ARCs).

In 2008, the Federal Energy Regulatory Commission (FERC) issued an order currently codified as 18 C.F.R. § 35.28(g)(1) (2024) intended to facilitate participation in demand response programs by retail customers. It provided that regional market operators such as MISO must accept demand response bids from large-utility ARCs unless the state regulatory authority prohibited the practice. In response, the PSCW issued its order in 2009 titled “Order Temporarily Prohibiting Operation of Aggregators of Retail Customers.” The PSCW indicated that it was concerned the use of ARCs may be discriminatory under the Wisconsin statutes and thus prohibited retail customers of Wisconsin’s four largest utilities and third-party ARCs from transmitting demand response bids directly to MISO markets while the PSCW investigated. Despite being titled as “temporary,” the order stood from 2009 until *Midwest Renewable Energy Association* filed a complaint in 2021 challenging the order as an unpromulgated rule and appealed the case to the court of appeals.

Administrative agencies such as the PSCW may issue rules so long as they follow the procedures set forth in Wis. Stat. ch. 227. Any rule issued without following these procedures is invalid and cannot be enforced. As there was no question that the PSCW did not follow the procedures set forth in Wis. Stat. ch. 227, the question the court of appeals addressed was whether the PSCW’s 2009 Order constituted a “rule” as defined by Wis. Stat. § 227.01(13) or qualified as some other type of Order such as a guidance document or a statement of policy.

After dispatching with various preliminary issues, the court of appeals applied the familiar five-element test articulated in *Citizens for Sensible Zoning Inc. v. DNR*, 90 Wis. 2d 804, 280 N.W.2d 702 (1979) to determine if the 2009 PSCW Order constituted a “rule.” The test asks whether the order (1) is a regulation, standard, statement of policy or general order, (2) of general application, (3) having the effect of law, (4) issued by an agency, (5) to implement, interpret or make specific legislation enforced or administered by such agency. The court of appeals held that all five elements were

met, making the order an unpromulgated rule, and therefore invalid.

The primary point of discussion by the court was whether the Order satisfied the second element of the test requiring it to be of “general application.” When considering whether an order is of general application, the court considers whether it applies to a class of people, even if the class is small, or whether it applies to only a specific, fixed set of individuals under specific factual circumstances. The court of appeals determined that the Order applied to regulate a class of people, namely ARCs and customers of large utilities, and did not merely regulate the four named large utilities in the state. As such, the Order was of general application.

The effect of the court of appeals decision is immediate—the order is invalidated and cannot be enforced until the PSCW properly follows the rulemaking procedures in Wis. Stat. ch. 227. This means that retail customers of the state’s four largest electric utilities may now participate in ARCs that may submit demand response bids to MISO.

— Liz Leonard

## **Wisconsin Supreme Court Upholds Condemnation of Land for Sidewalks**

*Continued from page 1*

sidewalks also apply to pedestrian ways.” The Court reasoned that, if sidewalk and pedestrian way meant the same thing, there would be no need for a statute to specify that the rules that apply to one also apply to the other. In addition, Wis. Stat. § 346.02(8) provides that assessments may be made for the installation of public utilities above or below a pedestrian way “as if” such pedestrian way were a sidewalk (or highway, street, alley, or roadway). This language suggests that sidewalk and pedestrian way have separate, non-overlapping meanings, because there would be no need for a statute allowing pedestrian ways to be treated “as if” they were sidewalks if the two were already one and the same thing. The Court also relied on an analysis of statutory history, other related statutes, and the text of Wis. Stat. § 32.015 in support of its conclusion that sidewalks are not pedestrian ways.

This decision is a significant one for Wisconsin municipalities. It prevents a single hold-out property owner from thwarting road projects that include sidewalks and makes clear that, in spite of Wis. Stat. § 32.015, municipalities may still condemn land for such purposes. However, when planning for projects involving condemnation, municipalities should be sure to keep in mind the distinction between sidewalks, for which condemnation is permitted, and recreational trails, bicycle ways, bicycle lanes, and pedestrian ways, for which condemnation remains prohibited under Wis. Stat. § 32.015 and related statutes.

— Julia K. P. 12

KATHRYN HUTTER  
Director

www.winnebago-county-solid-waste.com  
solidwaste@winnebago-county-wi.gov



LANDFILL/ADMINISTRATION Item C.  
100 W. COUNTY RD. Y  
OSHKOSH, WI 54901

PHONE (920) 232-1800  
FAX (920) 424-1189

## Winnebago County

### **Solid Waste Management Board**

*The Wave of the Future*

August 9, 2024

Winnebago County  
Signing Municipalities

RE: 2023 RUG Recycling Program Financial Report

Enclosed, you will find the Winnebago County Solid Waste Management Single-Stream Material Recovery Facility, Income Statement, December 31, 2023. We presented the enclosed Income Statement at the July 17, 2024 SWMB Meeting and the SWMB discussed/approved the following:

- Overall, recycling commodity revenues were much reduced through 2023. Commodity Pricing was on average, \$43/ton less than the previous year.
- Market demand and pricing for recovered cardboard and paper began to decline in late 2022 and continued to remain low through 2023. Industry insiders were unable to explain the reasons behind this, but it may have been due to warehouse overstock and a weaker economy.
- Recovered cardboard and paper materials are 60% of Tri-County Recycling Facility's commodity sales and index value has a significant impact on overall revenues. Net revenues were down \$4 Million from the previous year.
- The \$5/ton Signing Municipality recycling tipping fee (set in mid-2022 during the County/SWMB Budget Workshop) fell short of covering 2023 Signing Municipality program costs. The Signing Municipality deficit is \$54,512 (~\$4.80/ton).
- The County had a surplus in 2023, due primarily to Tri-County Recycling's commercial customer accounts with tonnages and revenues that are shared by BOW Counties and the County's ability to set market-based tipping fees for commercial and non-Signing Municipal tonnages. The County surplus is \$64,457.
- The SWMB has approved a motion to absorb the Signing Municipalities' 2023 deficit, with the understanding that a minimal Signing Municipal tipping fee increase will be considered in the 2025 Budget.

Due to staffing shortages we will not be hosting the Annual Winnebago County Responsible Unit of Government (RUG) Recycling Meeting this year. If you have questions about the enclosed materials please email me at [khutter@winnebago-county-wi.gov](mailto:khutter@winnebago-county-wi.gov) or call 920-232-1853.

Sincerely,

Director of Solid Waste

Encl.  
KJH/kjh

**Winnebago County Solid Waste Management  
Single-Stream Material Recovery Facility  
Income Statement December 31, 2023  
Presented to SWMB, July 17, 2024**

**Municipal Surplus/Deficit Summary**

**Estimated Tonnage Thru December 2023**

		Actual	Budgeted
\$ 24.43	Municipal Revenue per ton	11,351	13,000
\$ 29.23	Municipal Expense per ton	3,683	2,000
\$ (4.80)	Municipal Surplus/(Deficit) per ton	15,035	15,000

	<b>Budget Total</b>	<b>Actual Total</b>	<b>Signing Municipalities</b>	<b>County</b>
<b>Revenue</b>				
Commodity Revenue	\$ 600,000	\$ 158,366	\$ 120,656	\$ 37,710
Commodity Revenue (Shared BOW)	-	198,716	-	198,716
SSR Revenue (RU tip fees)	60,000	57,341	43,294	14,048
Cost Share (Outagamie County) SS Hauling	173,000	135,712	102,465	33,247
Cost Share (Outagamie County) Compactor	15,000	14,406	10,877	3,529
<b>Total Revenue</b>	<b>\$ 848,000</b>	<b>\$ 564,542</b>	<b>\$ 277,291</b>	<b>\$ 287,250</b>

	<b>Budget Total</b>	<b>Actual Total</b>	<b>Signing Municipalities</b>	<b>County</b>
<b>Expenses</b>				
Labor Costs	\$ 239,248	\$ 221,146	\$ 166,969	\$ 54,177
Travel	1,365	837	632	205
Office	4,550	2,521	1,903	618
Operating Expenses	5,625	4,526	3,417	1,109
Education/Advertising	15,400	13,870	1,412	12,458
Repairs	30,082	23,410	17,675	5,735
Utilities	7,600	7,547	5,698	1,849
Contracts	225,850	175,847	108,494	67,353
Miscellaneous	1,952	1,952	1,474	478
Debt Service	71,500	70,982	-	70,982
Depreciation	37,000	31,958	24,129	7,829
<b>Total Expenses</b>	<b>\$ 640,172</b>	<b>\$ 554,596</b>	<b>\$ 331,803</b>	<b>\$ 222,793</b>

<b>Net Surplus/(Deficit)</b>	<b>\$ 207,828</b>	<b>\$ 9,946</b>	<b>\$ (54,512)</b>	<b>\$ 64,457</b>
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## Tonnage Thru December 2023

	Actual	Budget
Tonnage Thru December 2023	11,351	13,000
County	3,683	2,000
Total	15,035	15,000

Winnebago County Solid Waste Management  
Material Recovery Facility

Year	Net Surplus/(Deficit)			
	Total	County	Signing Muni's	
1995	891,709	254,209	637,500	(1)
1996	(106,122)	(53,612)	(52,510)	(1)
Reduce Debt Funding	(584,990)	-	(584,990)	
1997	68,362	6,808	61,554	(2)
1998	47,847	(33,250)	81,097	(2)
1999	(114,586)	(44,747)	(69,839)	(2)
2000	234,571	30,246	204,325	(2)
2001	(93,822)	(26,249)	(67,574)	
2002	37,144	(31,004)	68,149	(2)
Reduce Debt Funding	(158,469)	-	(158,469)	(3)
2003	63,099	13,199	49,900	(2)
2004	471,432	85,786	385,646	(2)
2005	389,568	41,489	348,079	
2006	238,580	55,643	182,937	
Refund Portion of Surplus	(523,047)	-	(523,047)	(4)
2007	252,971	49,451	203,520	
Refund Surplus	(766,278)	-	(766,278)	(5)
2008	469,656	44,236	425,420	(6)
2009	(28,459)	(142,690)	114,231	
Refund Surplus	(539,651)	-	(539,651)	(6)
2010	109,394	(221,493)	330,887	
Refund Surplus	(330,887)	-	(330,887)	(7)
2011	780,911	(171,470)	952,381	
Refund Surplus	(780,911)	-	(780,911)	(8)
Signing Munis Vote to Offset County 2011 Deficit	-	171,470	(171,470)	(9)
2012	194,445	(160,614)	355,059	(10)
Signing Munis Vote to Offset County 2012 Deficit	-	160,614	(160,614)	(11)
2013	77,384	(112,265)	189,649	(12)
Signing Munis Vote to Offset County 2013 Deficit	-	112,265	(112,265)	(13)
2014	139,490	(3,956)	143,446	(14)
Refund Surplus	(139,490)	3,956	(143,446)	(15)
2015	(91,082)	(136,406)	45,324	(16)
Refund Surplus	91,082	136,406	(45,324)	(17)
2016	195,723	51,906	143,817	(18)
Refund Surplus*	(195,723)	(51,906)	(143,817)	(19)
2017	535,224	271,431	263,793	(20)
Refund Surplus	(535,224)	(271,431)	(263,793)	(21)
2018	36,093	(50,925)	87,018	(22)
Signing Munis Vote to Offset County 2018 Deficit	-	50,925	(50,925)	(23)
2019	(123,485)	(70,377)	(53,109)	(24)
2020	(5,899)	(4,378)	(1,521)	(25)
2021	892,636	538,736	353,900	(26)
Refund Surplus	(892,636)	(538,736)	(353,900)	(27)
2022	330,891	275,756	55,135	(28)
Refund Surplus	(330,891)	(275,756)	(55,135)	(29)
2023	9,946	64,457	(54,512)	(30)
County to Offset Signing Municipality 2023 Deficit	(9,946)	(54,512)	54,512	(30)
<b>Total Net Surplus/(Deficit)</b>	<b>206,560</b>	<b>(36,787)</b>	<b>253,293</b>	

- (1) Used to reduce debt funding for second expansion in 1996 as authorized.
- (2) Excess commodity revenue was reserved for tipping fee stabilization as authorized.
- (3) Used to pay off all remaining debt.
- (4) 2005 - 2006 Refunded surplus \$523,047.
- (5) 1997 - 2004 and 2007 Refunded surplus 766,278.
- (6) 2008 - 2009 Refunded surplus \$539,651.
- (7) 2010 - Refunded surplus \$330,887.
- (8) 2011 - Refunded surplus \$780,911.
- (9) 2011 - County maintain \$171,470 to cover deficit.
- (10) 2012 - Surplus revenues \$355,059.
- (11) 2012 - County maintain \$160,614 to cover deficit. Refunded \$194,445.
- (12) 2013 - Surplus revenues \$189,649.
- (13) 2013 - County to maintain \$112,265 to offset deficit. Refunded \$77,384.
- (14) 2014 - Surplus revenues \$143,446.
- (15) 2014 - Refunded surplus \$143,446.
- (16) 2015 - Surplus revenues \$45,324.
- (17) 2015 - Refunded surplus \$45,324.
- (18) 2016 - Surplus revenues \$143,817.
- (19) 2016 - Refunded surplus \$143,817.
- (20) 2017 - Surplus revenues \$263,793.
- (21) 2017 - Refunded surplus \$263,793.
- (22) 2018 - Surplus revenues \$87,018.
- (23) 2018 - County to maintain \$50,925 to offset deficit. Refund \$36,903.
- (24) 2019 - No surplus revenues available to distribute. SWMB will absorb the Signing Municipality deficit and the County deficit. 7/1/2020
- (25) 2020 - No surplus revenues available to distribute. SWMB will absorb the Signing Municipality deficit and County deficit. 6/16/2021
- (26) 2021 - Surplus revenues \$538,735.
- (27) 2021 - Refund surplus \$353,900.
- (28) 2022 - Surplus revenue \$892,636
- (29) 2022 - Refund Surplus \$353,900
- (30) 2023 - No surplus revenues available to distribute. SWMB will absorb the Signing Municipality deficit. 7/17/24

\*2016 County \$51,906 to be allocated to reserve fund per the SWMB 4/5/2017.

**WINNEBAGO COUNTY SOLID WASTE MANAGEMENT BOARD  
2023 RECYCLING TONNAGE REPORT**

	January	February	March	April	May	June	July	August	September	October	November	December	YTD	
	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	SS Tons	
T. Algoma	52.22	40.80	59.90	44.38	38.41	47.89	45.03	50.51	55.49	42.93	41.45	44.29	563.30	T. Algoma
T. Black Wolf	18.31	17.47	25.05	21.19	17.39	28.28	19.36	26.38	18.76	17.90	22.80	19.36	252.25	T. Black Wolf
T. Clayton	39.17	32.53	37.70	25.63	34.41	45.63	37.32	30.96	45.66	35.83	36.14	36.67	437.65	T. Clayton
V. Fox Crossing	117.11	91.65	109.11	102.55	97.92	111.13	91.40	113.97	102.62	103.52	111.60	100.81	1253.39	V. Fox Crossing
T. Neenah	22.30	22.00	31.36	23.72	25.23	30.97	24.37	31.17	25.58	25.54	32.13	26.56	320.93	T. Neenah
T. Nekimi	9.29	8.81	11.58	8.82	9.59	12.90	10.24	12.40	7.78	8.26	9.59	8.92	118.18	T. Nekimi
T. Omro	12.21	11.04	13.62	9.82	11.32	10.65	10.30	9.35	8.66	10.12	8.74	9.68	125.51	T. Omro
T. Vinland	17.67	11.85	12.19	13.25	15.46	16.37	16.11	15.03	11.77	15.07	11.76	13.19	169.72	T. Vinland
T. Winchester	15.16	12.90	10.58	16.67	11.40	13.29	10.72	11.25	11.62	11.41	14.60	10.58	150.18	T. Winchester
T. Winneconne	25.03	18.78	23.01	21.86	18.30	25.23	21.05	24.76	21.63	21.74	23.63	20.90	265.92	T. Winneconne
T. Wolf River	6.18	4.46	4.17	6.63	5.71	4.30	4.07	4.38	4.09	3.57	3.11		50.67	T. Wolf River
V. Winneconne	13.62	12.64	13.53	13.17	22.26	25.68	17.85	22.15	17.46	15.45	19.79	18.42	212.02	V. Winneconne
C. Menasha	122.60	110.42	92.37	112.10	119.36	132.70	91.40	128.01	83.28	119.81	111.83	100.94	1324.82	C. Menasha
C. Neenah	184.77	138.68	168.27	158.72	180.38	180.72	165.78	178.21	163.75	171.67	170.97	176.20	2038.12	C. Neenah
C. Omro	15.48	15.83	13.73	17.90	17.68	26.48	19.49	16.98	14.48	17.16	16.52	26.20	217.93	C. Omro
C. Oshkosh	347.56	277.07	325.52	303.96	333.94	348.48	311.33	344.15	300.04	318.59	315.87	324.33	3850.84	C. Oshkosh
Other SS	255.55	197.60	340.91	278.45	302.45	335.63	356.32	367.31	311.66	293.81	335.01	308.52	3683.22	Other SS
<b>TOTAL TONS</b>	<b>1274.23</b>	<b>1024.53</b>	<b>1292.60</b>	<b>1178.82</b>	<b>1261.21</b>	<b>1396.33</b>	<b>1252.14</b>	<b>1386.97</b>	<b>1204.33</b>	<b>1232.38</b>	<b>1285.54</b>	<b>1245.57</b>	<b>15034.65</b>	<b>TOTAL TONS</b>

	Population	SS lbs./person
T. Algoma	6,927	<b>162.64</b>
T. Black Wolf	2,431	<b>207.53</b>
T. Clayton	4,375	<b>200.07</b>
V. Fox Crossing	19,011	<b>131.86</b>
T. Neenah	3,701	<b>173.43</b>
T. Nekimi	1,334	<b>177.18</b>

	Population	SS lbs./person
T. Omro	2,356	<b>106.54</b>
T. Vinland	1,773	<b>191.45</b>
T. Winchester	1,796	<b>167.24</b>
T. Winneconne	2,627	<b>202.45</b>
T. Wolf River	1,212	<b>83.61</b>
V. Winneconne	2,542	<b>166.81</b>

	Population	SS lbs./person
C. Menasha	18,490	<b>143.30</b>
C. Neenah	27,726	<b>147.02</b>
C. Omro	3,644	<b>119.61</b>
C. Oshkosh	66,929	<b>115.07</b>
<b>Total</b>	<b>166874</b>	<b>136.05</b>

KATHRYN HUTTER  
Director

[www.winnebago-county-solid-waste.com](http://www.winnebago-county-solid-waste.com)  
[solidwaste@winnebago-county-wi.gov](mailto:solidwaste@winnebago-county-wi.gov)



LANDFILL/ADMINISTRATION Item C.  
100 W. COUNTY RD. Y  
OSHKOSH, WI 54901

PHONE (920) 232-1800  
FAX (920) 424-1189

## Winnebago County

### **Solid Waste Management Board**

*The Wave of the Future*

#### MEMORANDUM

**DATE:** August 9, 2024

**TO:** Winnebago County Signing Municipalities

**FROM:** Kathryn Hutter, Director of Solid Waste  
[khutter@winnebago-county-wi.gov](mailto:khutter@winnebago-county-wi.gov)

**RE:** 2024 Projected Recycling Revenues

The Winnebago County Solid Waste Department, in partnership with Outagamie County Recycling & Solid Waste and Brown County Port & Resource Recovery, reports the following 2024 Projected Recycling Revenues:

First quarter 2024 commodity prices are up approximately \$29 per ton from first quarter 2023. Expenses are trending slightly under budget. First quarter tonnages through the BOW System are down approximately 20%, primarily attributed to GFL moving materials to their new MRF located in Horicon.

While we are hopeful to gain value in plastics (as the market forecast predicts) the fiber/paper contracts we have with local buyers helps stabilize our material prices. We are also making gains on the value of glass through the use of a regional company that makes sand blast media. The addition of robotics also helps us reduce labor costs and produce an overall cleaner end product for plastic recyclers.

Winnebago County Signing Municipal tonnage through June 2024 is similar to the same timeframe in 2023. Commodity values can change dramatically with material supply and demand, but as it appears now, 2024 will likely be another year with minimal to no surplus for distribution.

The 2025 Recycling tipping fee will be under consideration as we develop our budget. We hope to have an official announcement in late-August 2024.

KH/kh



# PLAN COMMISSION

Wednesday, August 14, 2024 – 6:30 PM

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Town Hall Meeting Room, 8348 Hickory Ave, Larsen, WI 54947

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## MINUTES

**CALL TO ORDER** – Chair Knapinski called the meeting to order at 6:30 pm

- A. Pledge of Allegiance
- B. Verification of Notice
- C. Meeting Roll

### PRESENT

Chair Knapinski  
Commissioner Haskell  
Commissioner Nemecek  
Commissioner Ketter

### ABSENT

Commissioner Dorow

### EXCUSED

Commissioner Hopkins  
Town Board Rep. Christianson

### STAFF

Administrator Wisnefske  
Clerk Faust-Kubale  
Planner Jaworski  
Code Administrator Greenberg

## APPROVAL OF MINUTES

- A. Approval of the Minutes of the Wednesday, July 10, 2024 Plan Commission Meeting

### MOTION

**Motion made** by Commissioner Ketter, **Seconded** by Commissioner Nemecek to approve the Minutes of the Wednesday, July 10, 2024 Plan Commission Meeting as presented.

**Voting Yea:** Chair Knapinski, Commissioner Haskell, Commissioner Nemecek, Commissioner Ketter

**Motion carried 4-0.**

## OPEN FORUM – NONE

## CORRESPONDENCE

- A. Distribution of the July 2024 Building Inspection Report

**BUSINESS**

- A. Review/Recommendation: Plan Commission review & recommendation on a Certified Survey Map (CSM) Review Application submitted by Davel Engineering & Environmental Inc. on behalf of Galen Drews for a proposed land division reconfiguring Tax ID #006-0599 (3113 County Rd II), Tax ID #006-0600, and Tax ID #006-0602, into two lots.

**MOTION**

**Motion made** by Commissioner Nemecek, **Seconded** by Commissioner Haskell to recommend approval of the CSM submitted by Davel Engineering & Environmental Inc. on behalf of Galen Drews with the following Staff Recommendations & Conditions:

1. Subject to a determination by the Zoning Administrator that the current accessory buildings on Lot 2 meet the standards to be designated as Rural Accessory Buildings, pursuant to Article 7, Division 14 of the Zoning Ordinance.
2. The surveyor should provide a separate sheet or inset of Lot 2 on a larger scale.
3. Per Se.7.10.11(6)(a) the wetlands shown on the Winnebago County GIS, or field-delineated wetlands shall be identified on the CSM, including the source of the information.
4. All road dedications shall be identified as "dedicated to the public for roadway purposes".
5. Per Wis. Stat. §236.34(1m)(a) the surveyor's seal shall be signed, sealed, and dated on all pages.
6. The following note shall be placed on the CSM: "Any land below the Ordinary High-water Mark of a lake or navigable stream is subject to the public trust in navigable waters that is established under Article IX, Section 1, of the State Constitution."
7. Unless the Ordinary High-water Mark elevations of any navigable waterways are identified on the CSM, the following notes shall be added:
  - The Ordinary High-water Mark is not based on an official determination and prior to any building, an official determination of the Ordinary High-water Mark must be made by the Winnebago County Zoning Department or other authorized person. Also, all building setbacks and other land use requirements should be verified by the Town of Clayton and Winnebago County Zoning office prior to any construction or land-altering activities.
  - The location of the approximate Ordinary High-water Mark shall be the point on the bank of a navigable stream or the shore of a lake up to which the presence and action of surface water is so continuous as to leave a distinctive mark by erosion, destruction of terrestrial vegetation, or other easily recognizable characteristics.
8. The following well casing note shall be added: "Lot created in the document area located in the Special Well Casing Pipe Depth Area. This area has been established due to naturally occurring arsenic contamination problems in this area affecting many wells. Individuals who plan on drilling a well should consult with the Wisconsin Department of Natural Resources, or a drilling professional, to determine how to comply with the provisions of S. NR 812.12(3) of the Wisconsin Administrative Code."

**Voting Yea:** Chair Knapinski, Commissioner Haskell, Commissioner Nemecek, Commissioner Ketter

**Motion carried 4-0.**

- B. Review/Recommendation: Plan Commission review & recommendation on a Certified Survey Map (CSM) Review Application submitted by Troy Ribble for a proposed land division reconfiguring Tax ID #006-0006-09 (9618 Lind Ln), and Tax ID #006-0006-10-02 into four lots.

**MOTION**

**Motion made** by Commissioner Haskell, **Seconded** by Commissioner Nemecek to recommend approval of the CSM submitted by Troy Ribble with the following Staff Recommendations & Conditions:

1. Per Sec. 7.10.11(6)(b) any existing access, including farm access, shall be shown on the CSM.
2. Per WI Trans. 2., any WISDOT required access restrictions or setbacks shall be placed on the CSM.
3. All WISDOT comments shall be provided to the Town. Alternatively, documentation shall be provided which indicates the Department has waived review or has no jurisdiction to review the proposed land division.
4. Per Sec. 7.10.11(6)(a) the isolated wetland on proposed Lot 4 shall be identified on the CSM, including the source of the information.
5. Per Wis. Stat. §236.34(1m)(a) the surveyor's seal shall be signed, sealed, and dated on all pages.
6. Per Sec. 7.10.11(6)(d) of the Town Subdivision Ordinance, the name and address of the owner shall be placed on the CSM.

**Voting Yea:** Chair Knapinski, Commissioner Haskell, Commissioner Nemecek, Commissioner Ketter

**Motion carried 4-0.**

- C. Review/Recommendation: Plan Commission review & recommendation on a Site Plan Review Application submitted by Trident Holdings, LLC for a proposed addition to a commercial business development building located at 9057 Clayton Ave.

**MOTION**

**Motion made** by Commissioner Ketter, **Seconded** by Commissioner Nemecek to recommend approval of the Site Plan Review Application submitted by Trident Holdings, LLC with the following Staff Recommendations & Conditions:

1. A revised exterior lighting plan shall be submitted which is IDA compliant.
2. To address the impacts of the eight trees being removed without replacement and to meet the additional landscaping requirements, an updated landscape plan shall be submitted to the Town Staff for review and approval within 90 days of plan approval from the Town Board of Supervisors and, prior to the issuance of a building permit. The plan shall include, at minimum, an additional nine (9) trees and six (6) shrubs. The trees should include, at minimum, three (3) evergreens and not more than four (4) ornamental species. The plan shall provide effective

year-round screening of the buildings and parking/loading areas. The minimum planting sizes shall be as follows:

- Shade tree, 2 1/2 inch caliper
- Ornamental flowering tree, 1 1/2 inch caliper
- Evergreen tree, six-foot (6') height
- Upright evergreen shrub, four-foot (4') height
- Shrub, 18-to-24-inch height or spread

3. The project shall comply with all applicable local, state, and federal codes/ordinances.
4. Motor vehicles shall not be serviced or repaired outside.
5. All outside overnight storage of vehicles is prohibited, unless specifically authorized by the Plan Commission and Town Board of Supervisors. If authorized, overnight vehicle storage areas must be identified on the Site Plan noted below and should be screened from public view to the greatest extent practicable. Any vehicles stored outside must be licensed and operable.
6. All materials and activities, except loading and unloading, shall be conducted entirely within the confines of a building. Outdoor storage of equipment and materials is prohibited.
7. Dumpsters and recycling bins shall be kept within an enclosure and screened from public view at all times. The screening must be installed within one (1) year after completion of construction of the building.
8. No special events are permitted unless explicitly approved by the Town Plan Commission and Town Board of Supervisors, and in accordance with all zoning regulations.
9. An up-to-date Site Plan must be on file, at all times, with the Town of Clayton. The Site Plan shall include all information required for a Site Plan in Appendix A of the Zoning Ordinance. This includes, but is not limited to, buildings, parking areas, walkways, trails, stormwater management areas, vegetation, utilities, driveways, loading areas, trash/recycling enclosures, fencing, berms, signage, lighting, outdoor storage areas, as well as any additional information required by the Town Plan Commission or Town Board of Supervisors.
10. All activities on the subject property herein shall not in any way become a nuisance by reason of appearance, noise, dust, smoke, illumination, odor, or any other similar factor.
11. Subject to the applicant allowing the subject property to be available for inspection by the Town of Clayton officials at any reasonable time and upon reasonable notice.
12. Any required Winnebago County permits/approvals for stormwater management and erosion control shall be obtained and copies of such permits/approvals shall be submitted to the Town prior to commencing construction of the building addition.
13. Documentation that the Solar Reflective Index (SRI) of the proposed roofing materials meet the minimum required SRI of 29 shall be provided prior to commencing construction of the proposed building addition.
14. Documentation shall be provided to verify all exterior lighting is IDA (International Dark-Sky Assoc.) certified prior to commencing construction of the proposed building addition.

15. All future businesses/uses established on the property shall be permitted or conditional uses per the applicable zoning district (currently B-2) and shall comply with all applicable requirements of the Town Zoning Ordinance. A conditional use permit shall be obtained prior to establishing any uses not designated as permitted.

16. All future signage shall comply with all applicable requirements of the Town Zoning Ordinance.

17. Any substantial changes and/or additions to the site plan and/or building plans shall be reviewed and approved by the Plan Commission and Town Board of Supervisors in accordance with the requirements of Article 8, Division 8, Special Site Design Principles and Architectural Standards, of the Town of Clayton Zoning Ordinance. Determination of whether a change or addition is substantial shall be at the discretion of the Town Administrator.

**Voting Yea:** Chair Knapinski, Commissioner Haskell, Commissioner Nemecek, Commissioner Ketter

**Motion carried 4-0.**

- D. Review/Discussion: Plan Commission review & discussion of revisions to Section 7.10.08 Dedications and Reservations within Town of Clayton Subdivision Ordinance.

**DISCUSSION ITEM ONLY - NO ACTION TAKEN**

- E. Review/Discussion: Plan Commission review & discussion of revisions to the Town of Clayton Zoning Ordinance Land Use Matrix specifically regarding Backyard Chickens and Short-Term Rental Units.

**DISCUSSION ITEM ONLY - NO ACTION TAKEN**

**UPCOMING MEETING ATTENDANCE**

- A. Plan Commission (6:30 pm start unless otherwise noted) - Sept 11; Oct 9; Nov 13  
 B. Town Board (6:30 pm start unless otherwise noted) - Aug 21; Sept 4 & 18; Oct 2 & 16

**ADJOURNMENT**

**MOTION**

**Motion made** by Commissioner Haskell, **Seconded** by Commissioner Nemecek to adjourn at 7:53 pm.

**Voting Yea:** Chair Knapinski, Commissioner Haskell, Commissioner Nemecek, Commissioner Ketter

**Motion carried 4-0.**

Respectfully submitted,

Kelsey Faust-Kubale  
 Town Clerk

MEMORANDUM

**Business Item A**

From: Administrator/Staff

To: Town Board

Re: Town Board review & discussion of updates provided by ANR Pipeline Company regarding their multi-year pipeline replacement project.

Included in the packet are the updates ANR Pipeline has provided Staff regarding their multi-year replacement project. All the affected landowners have been contacted by ANR and Administrator Wisnepske will be available for further updates and/or questions from the Board.

**DISCUSSION ITEM ONLY – NO ACTION TO BE TAKEN**

If you have any questions about this information, please feel free to call or e-mail me.

Respectfully Submitted

Kelsey

ANR Pipeline Company  
700 Louisiana Street  
Houston, TX 77002

**Re: Intended Use of Town of Clayton Roads During the Wisconsin Reliability Project Construction**  
**FERC Docket Number: CP23-15-000**

Dear Town of Clayton,

ANR Pipeline Company (“ANR”), a TC Energy Company, is a natural gas company as defined under the Natural Gas Act engaged primarily in the business of transporting natural gas and operating underground storage fields in interstate commerce under authorizations granted by and subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”) in the states in which it is authorized to conduct business and operate facilities. ANR offers storage and transportation services under rate schedules and tariffs authorized by the FERC on an open access basis pursuant to applicable laws and regulations. The Wisconsin Reliability Project includes replacing approximately 48 miles of smaller-diameter pipeline with approximately 51 miles larger-diameter pipeline at three distinct locations in Illinois and Wisconsin:

- **Segment PL-3 (Winnebago, Outagamie, and Waupaca Counties, Wisconsin)** – replace 23.6 miles of 24-inch-diameter pipe with 24.0 miles of 30-inch-diameter pipe from MLV-7 to MLV-9 on ANR ML-226

ANR previously completed an initial haul route review meeting, where proposed routes for transportation of components and equipment for the Wisconsin Reliability Project were reviewed, with Town of Clayton on April 20<sup>th</sup>, 2023. Based on the feedback we received from Town of Clayton, the proposed haul routes were adjusted accordingly. ANR intends to transport vehicles that are in excess of County and State permissible size and weight limits during the 2025 construction season. ANR has also taken into consideration, where applicable, all “Spring Thaw Limitations” based on Town of Clayton feedback.

**What You Can Expect**

In Q1 of 2025, ANR will begin transporting pipeline materials and equipment from designated rail sites to ANR’s leased contractor yards. At the beginning of the construction period in 2025, there will be an influx of large truck-traffic on each of the previously agreed-upon haul routes within the jurisdiction of Town of Clayton. These trucks will be moving both pipe and equipment from ANR’s contractor yards to designated pipeline construction access points, based on ANR’s construction needs.

In densely residential areas where hauling will occur, ANR will deliver door hangers notifying residents of increased traffic in their area, as well as providing a phone number to contact ANR’s local field representative with any issues they may have. Additionally, ANR will provide a digital copy of the door hanger, allowing Town of Clayton to upload it to their website or social media page.

### **Road Surface, Culvert, and Bridge Structure Documentation and Repair**

ANR will, at their own expense, video, photograph and document the existing condition of the proposed haul routes, and deliver the video, photographs, and documentation to Town of Clayton prior to the commencement of construction. Preliminary examples were presented to Town of Clayton during the initial haul route meeting. ANR will be responsible for the cost of reasonable agreed upon maintenance, restoration, and repairs to reclaim the Town of Clayton road surfaces, bridges, culverts, signage, and other road fixtures or appurtenances within the Town of Clayton road right-of-way(s), to the condition that existed immediately prior to the commencement of construction. The maintenance, reclamation and repairs will only apply to the proposed haul routes within the “**Haul Route Information**” sheet and Image Maps attached. After completion of the project ANR will provide Town of Clayton an additional set of videos, photographs and documentation of road surfaces, bridges, culverts, drains and other appurtenances within the Town of Clayton road right-of-way(s). The videos, photographs and documentation will help determine ANR’s impacts to Town of Clayton roads during our pipeline construction project. Utilizing the provided documentation, ANR and Town of Clayton will prepare a list of damages that may have been caused by the project and would need repaired to achieve pre-construction condition. Upon completion of agreed upon repairs, ANR will provide a written notice of completion to Town of Clayton. Upon receipt of the completion notice, Town of Clayton will have thirty (30) days to accept or reject the work. If Town of Clayton returns a rejection notice on the work, ANR will make the necessary repairs identified in the rejection notice to the extent agreed upon. In the event that Town of Clayton does not provide a rejection notice within the thirty (30) day period, repairs will be deemed acceptable.

### **Our Commitment to Safety**

ANR is working with local and county law enforcement to ensure all its contractors and subcontractors and each of their respective agents, employees and representatives comply with all local, state, and federal speed limits as posted. ANR is additionally taking proactive precautions designed to protect the traveling public. These precautions include immediate removal of dirt, mud and debris carried onto the roads by trucks and trailers hauling materials to project sites. Implementing “limited hauling” with our contractor to prevent trucking during school bussing hours. In certain hauling situations, ANR must implement temporary road closures at intersections and designated access points to maneuver the oversized trucks. These temporary closures will seldom occur, but when they do, the contractor must not stop traffic for more 15 minutes to meet our traffic control plan requirements. Town of Clayton and its residents will notice the use of safety signage and flaggers, meeting the Wisconsin Manual of Traffic Control Devices standard, during the 2025 construction period.

**What ANR is asking of Town of Clayton**

This document is intended to provide a commitment to Town of Clayton to only utilize the proposed haul routes mentioned in this document. The attached “**Haul Route Information**” sheet and Image Maps designate the proposed haul routes that ANR will use for construction related hauling.

ANR is committed to working collaboratively with Jurisdiction for the and has made extensive efforts to do so throughout the process of developing these haul routes. ANR has obtained the express consent and permission from Town of Clayton, which has exclusive authority and control over the applicable roads, bridges, culverts, drains and other appurtenant property, to use the previously discussed roads, as stated above. Town of Clayton acknowledges and agrees that ANR may use the proposed haul routes at any time, for the duration of the project and that that such use may include the movement and transportation of overweight and oversized vehicles, equipment, water, loads and other necessary equipment and materials to and from the project.

Town of Clayton acknowledges that ANR may maintain the designated roads to a condition lower than the condition documented prior to construction while the project is in development and/or construction. Town of Clayton acknowledges that they remain responsible for usual, normal, typical, and preventative maintenance of the designated roads, and damages caused by normal road users, climatic conditions, or Acts of God.

**SEE NEXT PAGE FOR HAUL ROUTE DETAILS**

**Construction within Road Right of Way & Jurisdiction Haul Route Information****Winnegamie Drive****Pipeline Crossing Coordinates:** N/A**Temporary Construction Driveway Coordinates:** N/A**Mileage:** 1.18 Miles**Maximum Allowed Weight:** 140,000**Lind Lane****Pipeline Crossing Coordinates:** 44.239395°, -88.544859°**Temporary Construction Driveway Coordinates: #1** (44.239232°, -88.544900°), **#2** (44.239232°, -88.544792°)**Mileage:** 0.54 Miles**Maximum Allowed Weight:** LEGAL ONLY (80,000 lbs.)**N Clayton Avenue****Pipeline Crossing Coordinates:** 44.239444°, -88.524710°**Temporary Construction Driveway Coordinates: #1** (44.239292°, -88.524758°), **#2** (44.239280°, -88.524644°)**Mileage:** 0.34 Miles**Maximum Allowed Weight:** LEGAL ONLY (80,000 lbs.)

ANR kindly requests that Town of Clayton provide feedback on ANR's intended use of your roads for hauling during their 2024 & 2025 construction activities. Please take time to review the data above, as well as the attached detailed drawings. If there are any objections to our proposed use of your roads as detailed above and attached, Town of Clayton is asked to respond within 30 days of receipt of this letter. For any questions or additional information, you may contact ANR's land representative any time to further discuss.

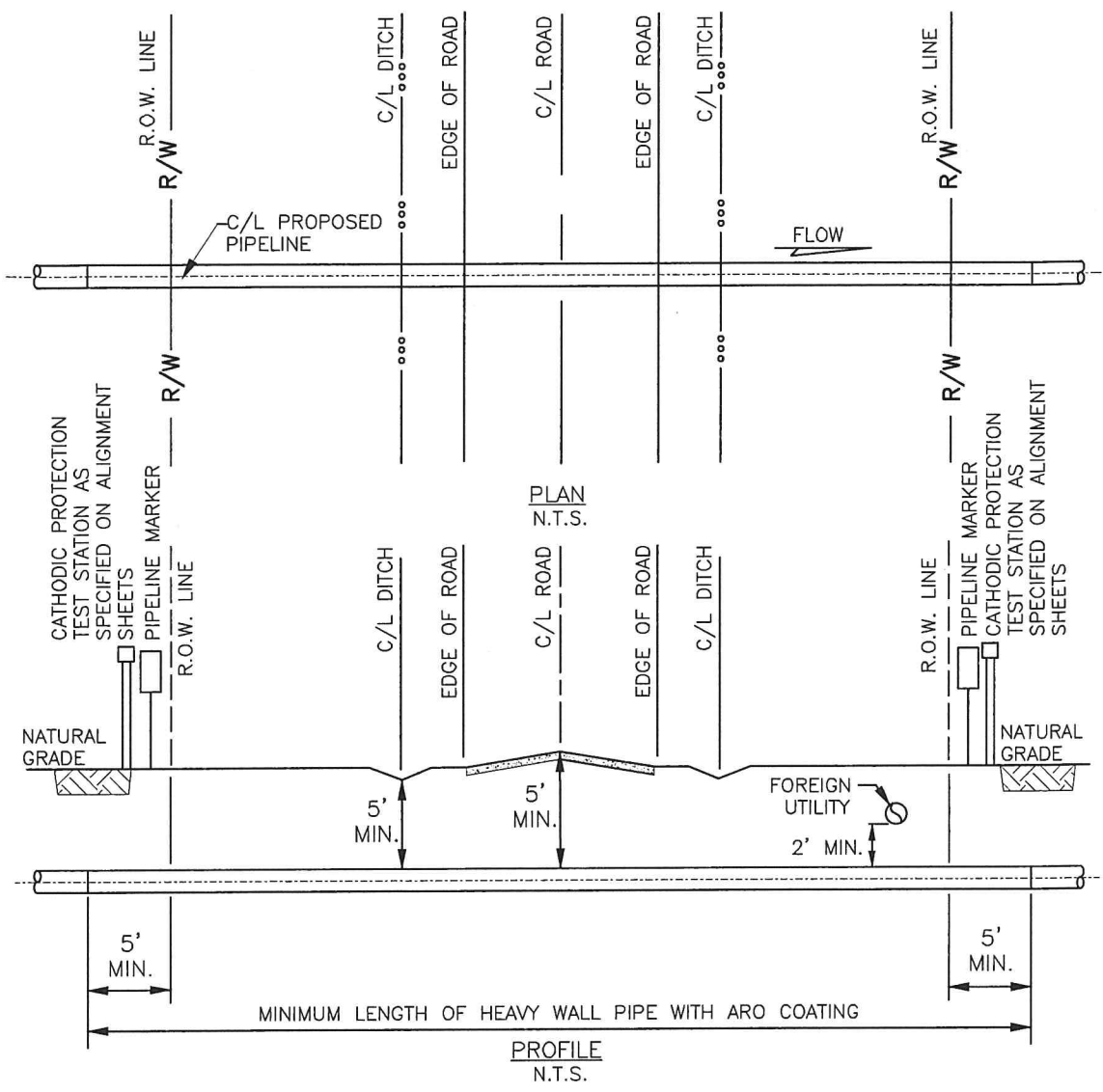
Tristan Brock - (412) 508-9034 - [tristan\\_brock@tcenergy.com](mailto:tristan_brock@tcenergy.com)

Town of Clayton

Administrator

Kelly Wisnefske





**NOTES:**

1. NO BENDS IN THE ROAD RIGHT-OF-WAY.
2. PIPELINE CROSSINGS SHALL BE AS NEAR TO PERPENDICULAR TO THE ROADWAY CENTERLINE AS PRACTICAL.
3. WELDED JOINTS INSIDE RIGHT-OF-WAY SHALL BE 100% X-RAYED FOR WELD QUALITY.
4. MARKERS SHALL BE PLACED AT OR NEAR THE RIGHT-OF-WAY LINE.
5. A COATING INSPECTION OF THE BORED PIPE POST BORE BEFORE TIE-IN SHALL BE COMPLETED PER SPECIFICATION TES-CO-EPU-GL.

NOT TO SCALE

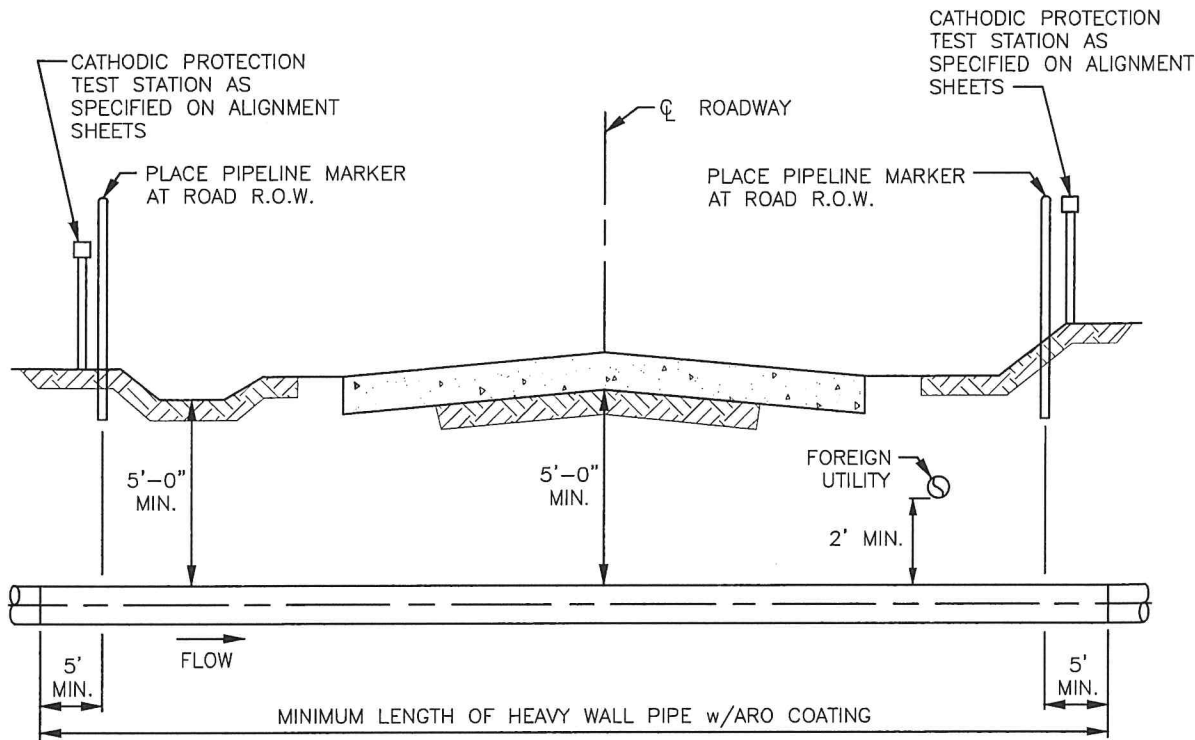


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WISCONSIN RELIABILITY PROJECT

TYPICAL  
BORED ROAD CROSSING

NO.	REVISION	APP'D	DATE	DRAWN BY	DATE	SCALE:	DRAWING NUMBER	ISSUE
△				RJR	03/10/2017	NTS		
△	ISSUED FOR REVIEW	CEN	02/18/22	ESG	04/09/2017			
△	ISSUED FOR 30% REVIEW	CEN	12/08/21	ENGINEERS REVIEW DSB	03/15/2019		3845-ROW-15	B



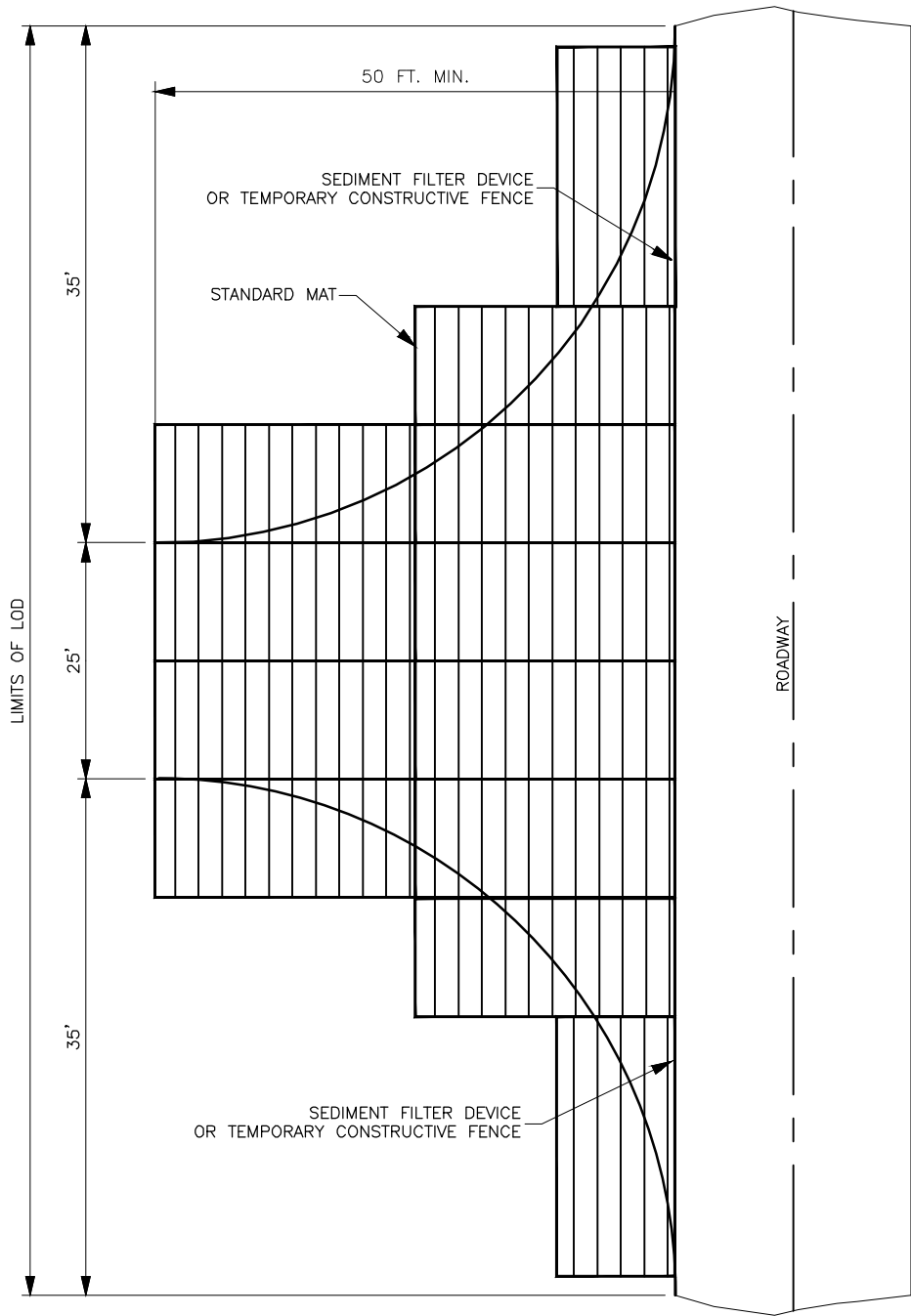
**NOTES:**

1. CONTRACTOR SHALL INSTALL THE HEAVY WALL STEEL PIPE, BACKFILL AND REPLACE ROAD SURFACE IN ACCORDANCE WITH PERMIT ISSUED BY THE GOVERNMENT BODY HAVING JURISDICTION AND/OR IN ACCORDANCE WITH THE SPECIFICATIONS, WHICHEVER IS THE MOST STRINGENT.
2. THE PIPELINE SHALL CROSS AS NEAR TO RIGHT ANGLE AS POSSIBLE AND ECONOMICALLY PRACTICAL.
3. THE HEAVY WALL STEEL PIPE SHALL BE INSTALLED TO EXTEND A MINIMUM OF FIVE (5) FEET BEYOND THE RIGHT-OF-WAY LIMITS ON EACH SIDE OF ROAD.
4. ANY OPEN CUT TRENCH SHALL BE IN ACCORDANCE WITH STATE OR COUNTY SPECIFICATIONS AS DEFINED IN THE SPECIFICATION AND STANDARD.
5. AS REQUIRED, USE APPROVED WIDOT/ILDOT FLOWABLE FILL SPECIFICATION FOR BACKFILL MATERIAL ABOVE THE PIPE.
6. REPLACE SUB-GRADE AND ROAD SURFACE MATERIAL WITH EQUAL OR GREATER THICKNESS AND WITH EQUAL OR GREATER MATERIAL AND SPECIFICATIONS TO PROVIDE A SMOOTH AND CONTINUOUS ROAD SURFACE.

NOT TO SCALE

				<b>TC Energy</b>			<b>M M</b> <small>MOTT MACDONALD</small>		
				<b>WISCONSIN RELIABILITY PROJECT</b>					
				TYPICAL <b>OPEN CUT ROAD</b>					
NO.	REVISION	APP'D	DATE	DRAWN BY	DATE	SCALE:	DRAWING NUMBER	ISSUE	
△				RJR	03/10/2017	NTS			
△				ESG	04/09/2017				
△	ISSUED FOR 30% REVIEW	CEN	12/08/21	ENGINEERS REVIEW DSB	03/15/2019		3845-ROW-18	A	





NOTES:

1. BOARD ROADS TO BE USED FOR ROADWAY ENTRANCES IN WETLANDS AND FOR TEMPORARY ACCESS ROADS.
2. BOARD ROADS ARE CONSTRUCTED BY LAYERING A BASE OF THE INTERLOCKING MATS PARALLEL TO THE ROAD IN A STAGGERED MANNER. OTHER METHODS OF BOARD ROAD CONSTRUCTION CAN BE USED IF APPROVED BY THE ENVIRONMENTAL AFFAIRS CONSTRUCTION DEPARTMENT.
3. BOARD ROADS WILL BE UNDERLAIN WITH GEOTEXTILE FABRIC WHERE REQUIRED.
4. BOARD ROADS SHOULD BE MAINTAINED SO AS NOT TO ALLOW EXCESS MUD TO ACCUMULATE.

NOT TO SCALE



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MACDONALD

ANR WISCONSIN MAIN LINE 301 (NPS 14 18 22 AND 30 1949) WOODSTOCK SECTION

TEMPORARY ROAD ENTRANCE  
BOARD ROAD RIGHT-OF-WAY

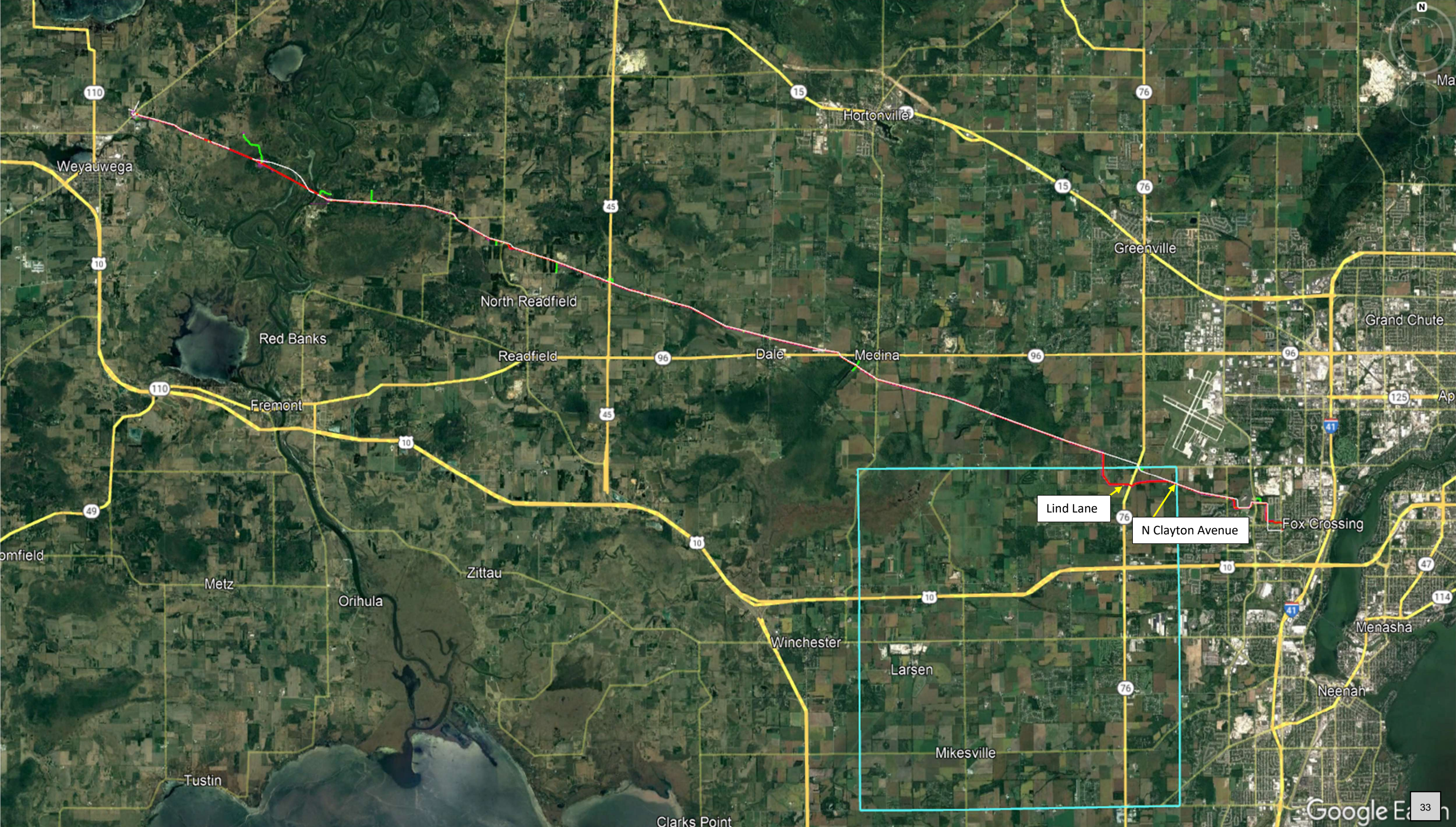
NO.	REVISION	APP'D	DATE				SCALE: <u>NTS</u>	
				DRAWN BY	AKW	DATE	11/17/2021	
				DRAFTING CHECK	RJR	DATE	11/17/2021	
				ENGINEERS REVIEW	DSB	DATE	11/17/2021	
							DRAWING NUMBER	3845-CD-004

**ANR Pipeline Company/TC Energy  
Wisconsin Reliability Project (WRP)**

**24" to 30" Natural Gas Pipeline**

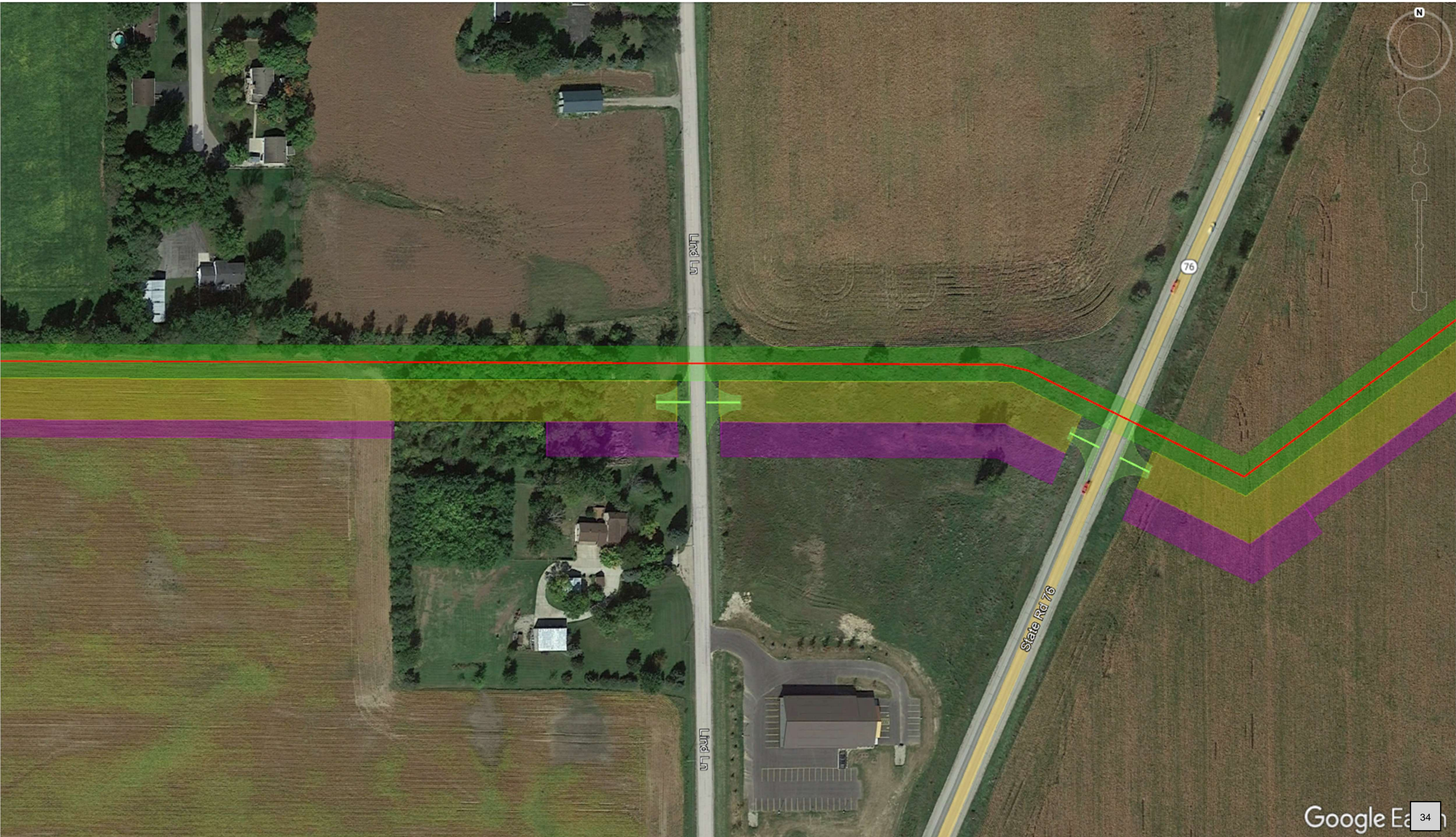
**PL3 (24 Total Miles) Waupaca County (9.5 Miles), Outagamie County (10.1 Miles), & Winnebago County (4.4 Miles) – Town of Clayton (1.6 Miles)**

Item A.



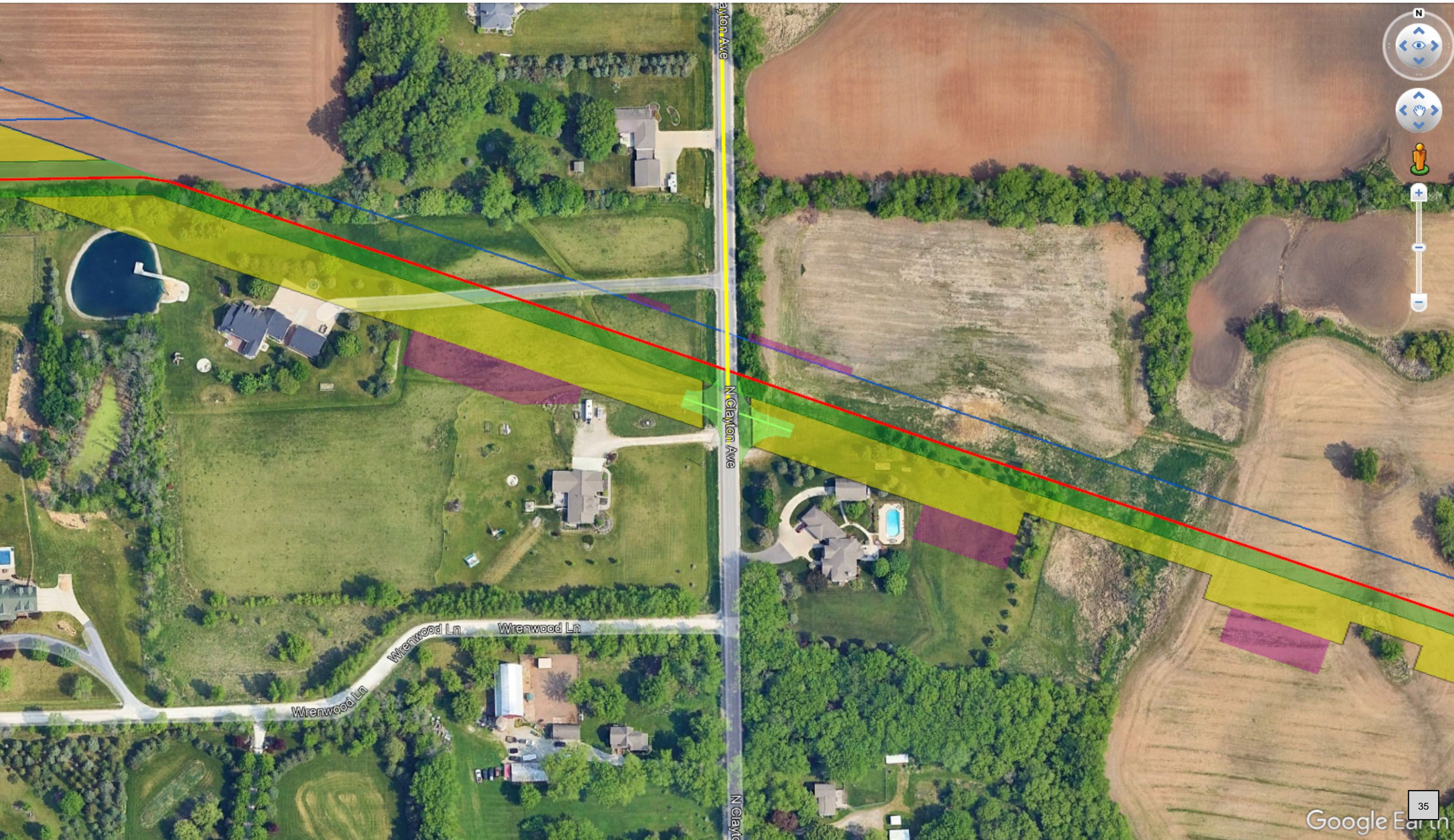
PL3  
Lind Lane  
Town of Clayton  
44.239404°, -88.544869°  
Type of Crossing: Bore

Item A.

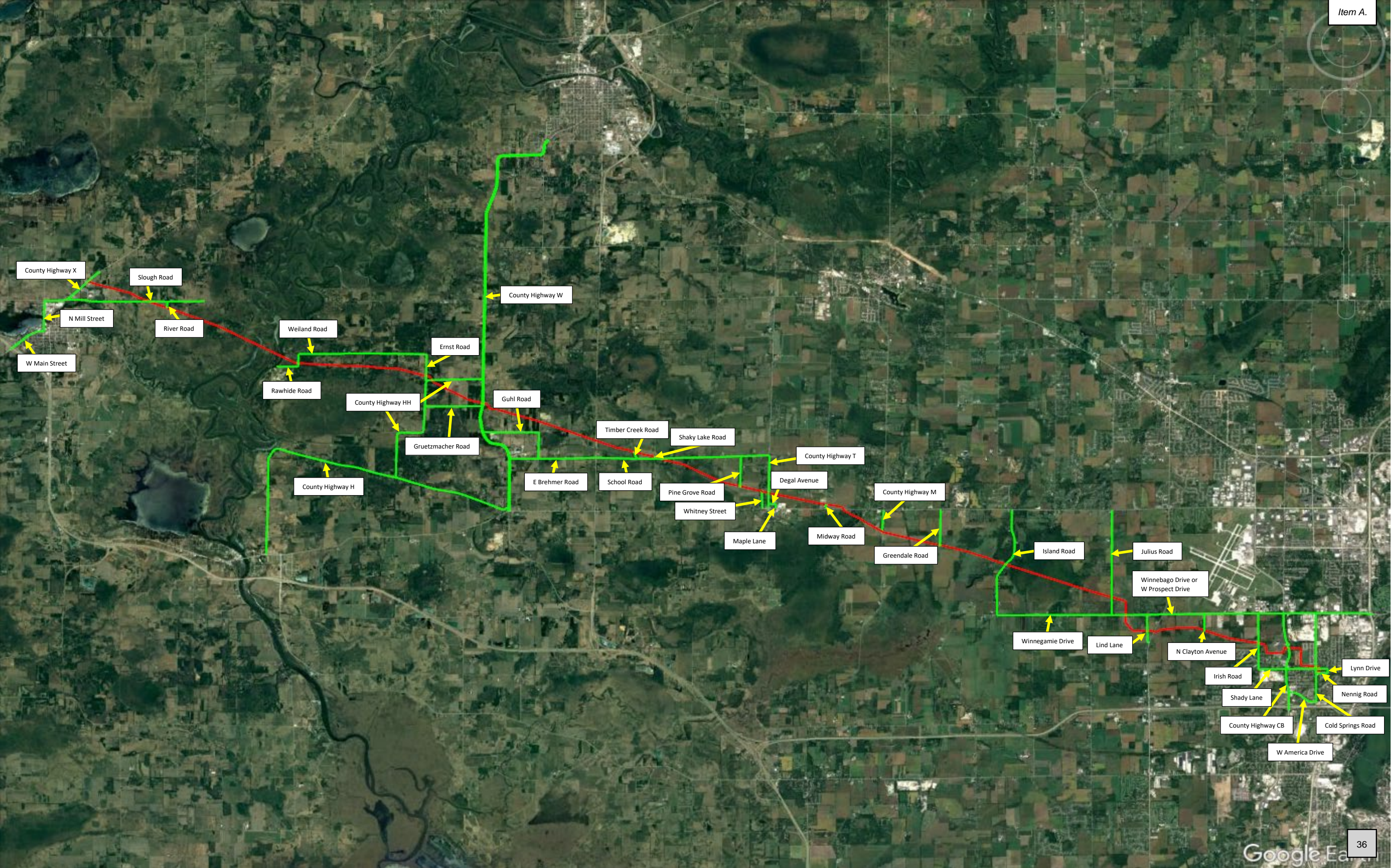


PL3  
N Clayton Avenue  
Town of Clayton  
44.239538°, -88.524709°  
Type of Crossing: Bore

Item A.



Item A.





Lind Lane





MEMORANDUM

**Business Item B**

From: Administrator/Staff

To: Town Board

Re: Town Board review & discussion of a resident request to consider the implementation of railroad quiet zones within the Town of Clayton.

Chair Geise was approached by a resident who requested the Board discuss the option of implementing railroad quiet zones.

**DISCUSSION ITEM ONLY – NO ACTION TO BE TAKEN**

If you have any questions about this information, please feel free to call or e-mail me.

Respectfully Submitted

Kelsey