

ENROLLED ORDINANCE 164-3

APPROVE LAND USE PERMIT TO WISCONSIN ELECTRIC POWER COMPANY  
FOR INSTALLATION, OPERATION, AND MAINTENANCE OF UNDERGROUND  
ELECTRIC POWER LINES AND TWO ABOVEGROUND POLES

WHEREAS it is deemed desirable to allow Wisconsin Electric Power Company, a Wisconsin corporation doing business as We Energies, to install, operate and maintain underground electric power lines and two above ground power poles within Waukesha County property paralleling the Bugline Trail, located in Section 26, Township 8 North, Range 19 East, Village of Sussex, Waukesha County, Wisconsin, and

WHEREAS in consideration of said land use permit, We Energies shall pay to Waukesha County the normal land use permit fee of \$1612.00.

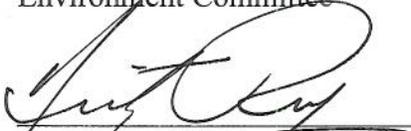
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that a land use permit to install, operate and maintain underground electric power lines and two above ground power poles within Waukesha County property paralleling the Bugline Trail, located in Section 26, Township 8 North, Range 19 East, Village of Sussex, between Wisconsin Electric Power Company, a Wisconsin corporation doing business as We Energies, and Waukesha County, on file in the Department of Parks and Land Use ,is hereby approved.

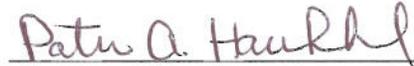
BE IT FURTHER ORDAINED that the County Executive and County Clerk may execute said Agreement on behalf of Waukesha County.

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Presented by:  
Land Use, Parks and  
Environment Committee

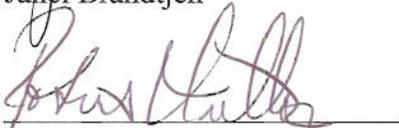
Approved by:  
Finance Committee

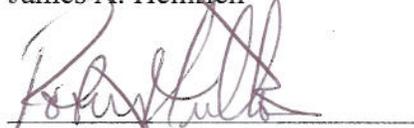
  
Fritz Ruf, Chair

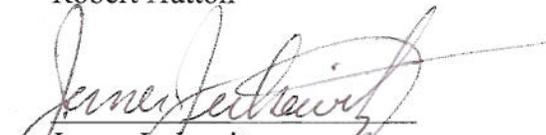
  
Patricia A. Haukohl, Chair

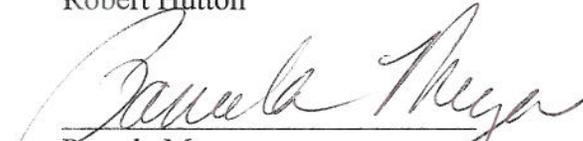
  
Janel Brandtjen

  
James A. Heinrich

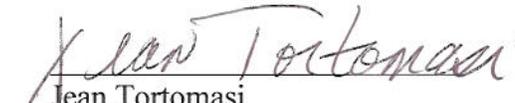
  
Robert Hutton

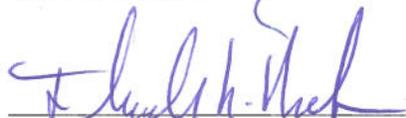
  
Robert Hutton

  
James Jeskewitz

  
Pamela Meyer

  
Walter L. Kolb

  
Jean Tortomasi

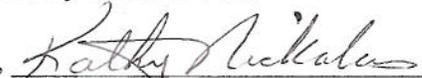
  
Ted Rolfs

  
Steven C. Wimmer

  
Gilbert W. Yerke

  
William J. Zaborowski

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: May 1, 2009,   
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X  
Vetoed: \_\_\_\_\_

Date: 5-4-09,   
Daniel P. Vrakas, County Executive

## LAND USE PERMIT

This Land Use Permit is made between Waukesha County (hereinafter "Owner"), and Wisconsin Electric Power Company, a Wisconsin corporation doing business as We Energies (hereinafter "Utility").

### PROPERTY DESCRIPTION:

See attached Exhibit "A"

### PURPOSE OF LAND USE PERMIT:

This Land Use Permit will allow the Utility to construct, operate, repair and maintain underground utility facilities, conduit and cables and two (2) above-ground poles on Owner's land.

### TERMS:

1. FOR AND IN CONSIDERATION of a sum of One Thousand, Six Hundred and Twelve Dollars (\$1,612.00), the Owner does hereby permit the Utility, the right, permission and authority to construct, operate, and maintain underground utility facilities and two (2) above-ground poles to transmit electrical energy and signals, upon, along, within and beneath those lands known as the Bugline Recreation Trail located in the Northwest  $\frac{1}{4}$  of Section 26, Town 8 North, Range 19 East, Village of Sussex, Waukesha County, Wisconsin, and hereinafter called the "Land Use Permit Area." The location of the Land Use Permit Area is more specifically described as an area of a maximum of one thousand five hundred sixty two (1562) linear feet long by twelve (12) feet wide, as shown on the attached Exhibit "A", which is incorporated into this permit by reference. The installation of any other equipment, including above-ground equipment, or expansion beyond the Land Use Permit Area requires the submission of a site plan to the Owner, the prior written approval of the Director of the Waukesha County Department of Parks and Land Use, and an amendment to this permit. Prior to execution of this permit, the Utility shall submit a Site Plan to the Owner showing the location of the above-ground poles. The above-ground poles shall not be located closer than fifteen (15) feet from the centerline of the existing Bugline Recreational Trail.

The Owner reserves the right to utilize the Land Use Permit Area for future trail improvements, including signage, pavement and grading, and the trail improvements will not impair the ability of the Utility to use its underground facilities or two above-ground poles.

2. The Utility is given the right to trim, cut down and remove trees and brush within a fifteen (15) foot radius of the above-ground poles where, in the opinion of the Utility, the trees and brush will interfere with the construction, operation and maintenance of the Utility's facilities.

The Utility may not trim, cut down or remove trees and brush outside of the fifteen (15) foot radius of the above-ground poles unless it submits a cutting plan to the Owner and obtains prior written approval of the Director of the Waukesha County Department of Parks and Land Use.

3. Hold Harmless: Excepting any claims arising out of negligence or willful acts on the part of the Owner, its employees, agents, or assigns, the Utility will defend, indemnify and hold harmless the Owner and all of its departments, agencies, boards, officers, employees and agents from any and all liability, loss, damages, expenses and costs, including attorneys fees and expenses, that it may suffer or incur as the result of any injury to or death of any person or damage to property which results from any action or omission, in whole or in part, negligent or otherwise, of the Utility or its agents in connection with any use of the Owner's land under this Land Use Permit.
4. Insurance: The Utility shall furnish the Owner with a Certificate of Self-Insurance.
5. The Utility and its agents agree the Bugline Recreational Trail shall remain open for public use at all times, including during construction, maintenance and related activities by the Utility, except

in the case of an emergency. The Utility and its agents shall have the right of access upon the premises for the purposes of exercising the rights herein acquired, and the Utility shall promptly restore the premises to the condition existing prior to the entry by the Utility or its agents. The restoration shall not apply to any trees or brush which may be permitted to be removed pursuant to the rights granted herein. The Utility shall be liable to make prompt payment for any damage caused by it or its agents to any of Owner's fences, parking lots, trail improvements, signs, entrance gates, park improvements, or any other fixtures or facilities of the Owner and for the unauthorized removal of trees.

- 6. Term of Permit: The Utility shall have and hold this Land Use Permit for a term of forty (40) years, commencing on the date on which the Owner executes this document. This Land Use Permit is renewable by the Director of the Department of Parks and Land Use for one additional twenty (20) year period for the fee that is current at the time of renewal. Any renewal thereafter must be approved by the Waukesha County Board of Supervisors.

The Owner reserves the right to revoke this Land Use Permit for cause. However, prior to any revocation, Owner shall give written notice to the Utility and the Utility shall thereafter have sixty (60) days to remedy any breach and bring its use of the land into compliance with this permit.

- 7. Upon revocation or expiration of this Land Use Permit, the Owner may require the Utility to remove any facilities and fixtures placed by the Utility or its agents in the Land Use Permit Area.
- 8. All notices to the Owner shall be sent by certified mail addressed to the Park System Manager, Waukesha County Department of Parks and Land Use, Park System Division, 515 Moreland Blvd, Room AC-230, Waukesha, Wisconsin 53188.
- 9. This Land Use Permit shall be binding upon and inure to the benefit of the heirs, successors and assigns of all parties hereto.

IN WITNESS WHEREOF, the Owner, has caused this Land Use Permit to be approved by the Waukesha County Board of Supervisors and signed by its County Executive and its County Clerk as evidenced below.

Date: \_\_\_\_\_

COUNTY OF WAUKESHA

By \_\_\_\_\_  
Daniel P. Vrakas  
Waukesha County Executive

Date: \_\_\_\_\_

By \_\_\_\_\_  
Kathy Nickolaus  
Waukesha County Clerk

This Land Use Permit is accepted by the Utility by the signature of its authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

By \_\_\_\_\_  
(Title) \_\_\_\_\_  
We Energies

This instrument was drafted by:  
Attorney Deborah B. Price  
Waukesha County Corporation Counsel Office

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-04/28/09

(ORD) NUMBER-1640003

1 D. FALSTAD.....AYE  
 3 R. HUTTON.....AYE  
 5 J. JESKEWITZ.....AYE  
 7 P. HAUKOHL.....AYE  
 9 J. HEINRICH.....AYE  
 11 F. RUF.....AYE  
 13 P. DECKER.....AYE  
 15 P. MEYERS.....  
 17 J. TORTOMASI.....AYE  
 19 S. WIMMER.....AYE  
 21 W. ZABOROWSKI.....  
 23 J. PLEDL.....AYE  
 25 G. YERKE.....AYE

2 T. ROLFS.....AYE  
 4 J. DWYER.....AYE  
 6 J. BRANDTJEN.....AYE  
 8 T. SCHELLINGER....AYE  
 10 D. SWAN.....AYE  
 12 P. WOLFF.....AYE  
 14 B. MORRIS.....AYE  
 16 D. PAULSON.....AYE  
 18 K. CUMMINGS.....AYE  
 20 P. JASKE.....  
 22 P. GUNDRUM.....  
 24 W. KOLB.....AYE

TOTAL AYES-21

TOTAL NAYS-00

CARRIED\_\_\_\_\_

DEFEATED\_\_\_\_\_

UNANIMOUS X

TOTAL VOTES-21