

**City of Oconomowoc
Technology Committee**
Aldermen: Spiegelberg, Chairman / Kowieski, Secy /
Aultman Kloth



**Tuesday, August 30, 2022 - 6:00 PM
City Hall - Council Chambers**

Notice: If a person with a disability requires that the meeting be accessible or that materials at the meeting be in accessible format, call the City Clerk at least 48 hours prior to the meeting to request adequate accommodations. Tel: 569-2186.

1. Call meeting to order
2. Consider/Act on Meeting Minutes
 - a. Minutes of May 31, 2022
3. Committee Business
 - a. Review Mission Statement
 - b. Update on Other Communities Technology Committees
 - c. Consider/recommend Potential Committee Involvement to encourage Safety and Transparency regarding 5G Installations - Persick
 - d. Consider/recommend giving Direction to Staff to pursue information regarding a Parking App to help visitors with open parking spaces Downtown or throughout the City and bring back to next committee meeting.
 - e. Consider/recommend Updating Requirements for Cellular Towers to include Annual Testing of Radio Frequency Emissions - Persick
4. Comments / Suggestions from Citizens
5. Set Future Meeting Dates: November 29, 2022 and February 28, 2023
6. Adjourn

Diane Coenen, City Clerk
City of Oconomowoc

Notice is hereby given that a majority of the Common Council and Plan Commission may be present at the above-noticed meeting to gather information about a subject over which they have decision-making responsibility. This constitutes a meeting of the Common Council pursuant to State ex rel. Badke v. Greendale Village Board, 173Wis. 2d 553, 494 N.W. 2d 408 (1993) and must be noticed as such, although the Common Council will not take any formal action at this meeting.

Technology Committee Minutes

May 31, 2022

1. Ald. Karen Spiegelberg called the Technology Committee meeting to order at 6:01 p.m.

Members Present: Jill Persick, Ron Powell, Ald. Aultman-Kloth, Andy Maroni and Ald. Spiegelberg

Members Absent: Ryan Bennett, Ald. Kowieski

Staff Present: Mayor Magnus, Gallo, Sullivan-Murray

2. Committee Business

- a. **Introduction of New Members**

Spiegelberg announced the two new members of the committee, Alder Aultman-Kloth and Andy Maroni, both of which gave a brief introduction.

- b. **Review Technology Mission Statement and Objectives**

Spiegelberg reviewed the Tech committee mission and objectives. No changes were recommended by the committee.

- c. **Update/Discussion on Communications' Companies Cell Installations, Locations, Upgrades, and Recent Applications**

City Planner, Jason Gallo gave a presentation to update the committee on the locations of all current cell installations and any recent applications.

There have been 2 application approvals per year for the last three years. These were all for upgrades to current sites.

- d. **Update/Discussion on Information/Transparency to the Public regarding all Locations of Cell Towers**

City Planner, Jason Gallo, reviewed the various methods of transparency and public information available to residents including:

1. All applications are sent to the Technology Committee, Mayor, City Administrator and Council to review and comment.
2. A condition of approval is the placement of Warning Signage on fencing and equipment shelters.
3. The City Tower inventory and all application materials are posted on the City Website.
4. An Annual Report is produced by the Planning Department that includes all current year tower approvals.

Gallo also noted that all requests for new tower installations require noticing of all adjacent property owners and a public hearing.

- e. **Update/Discussion on How Communities around the Country are Handling the Potential Harms coming from 5G Installations**

Persick shared several recommendations regarding 5G installations from municipalities around the country, including highlights from the New Hampshire recommendations. These recommendations included installing warning signs, requiring setbacks and additional signage on adjacent buildings.

In Wisconsin, Tower installations are allowed in all zoning districts.

The committee discussed contacting Atty. Andrew Caparelli for advice as to what this committee could do to encourage safety and transparency regarding 5G installations. Persick agreed to make first contact.

f. **Consider/act on Recommendation to Common Council to Update the Requirements for Cellular Tower Conditional Use Permits to include Annual Testing of Radio Frequency Emissions**

Persick suggested that the committee make a recommendation to Council to require annual radio frequency emission testing for all towers. Gallo reminded the group that State Statutes say that environmental testing or monitoring cannot be imposed on these towers. For that reason, the city ordinance cannot include this requirement.

g. **Discussion on Future of the Committee, Willingness of those on the Committee to Continue to Serve and Future Agenda Topics**

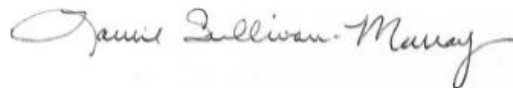
The committee agreed to meet Quarterly and to keep on top of legislation regarding new technology. Spiegelberg will send out more information to the members on future agenda items.

Future meeting dates: August 30th and November 29th

h. **Consider/recommend Amending Section 1.47(d) of the City of Oconomowoc Municipal Code regarding Meeting Frequency of the Technology Committee**

No action was taken at this time.

3. **Adjourn:** Motion to adjourn by Powell, 2nd by Persick at 7:36 p.m.



Laurie Sullivan-Murray, Finance Director
City of Oconomowoc

CAMPANELLI & ASSOCIATES, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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SAMPLE RETAINER AGREEMENT

Campanelli & Associates, P.C. (hereinafter referred to as “the Firm”), is a New York-based law firm whose legal practice includes a concentration upon federal practice, and more specifically, the application of the Federal Telecommunications Act of 1996 (the TCA), and its constraints upon local governments nationwide, pertaining to the siting, installation, regulation, and maintenance of cell towers, small cells, DAS (Distributed Antenna Systems and/or other wireless facilities.

SCOPE OF REPRESENTATION

THE UNDERSIGNED, as authorized representatives of the City of Oconomowoc, Wisconsin (hereinafter referred to as the “Client”), hereby retain the Firm to provide the City with Ordinance Review and Drafting Services.

More specifically, the Firm is being retained, as a consultant, to review and analyze the Zoning Ordinance, City of Oconomowoc Wisconsin¹ and the City of Oconomowoc Strategic Plan² as they pertain to the placement, construction, modification, and permitting requirements for personal wireless services facilities and to draft provisions to replace and/or amend sections thereof, with a more current and comprehensive provision to regulate the installation of wireless facilities within the City.

The Firm shall employ reasonable efforts to draft a new zoning code provision in a manner which will, among other things:

- (a) seek to maximize the City’s ability to exercise the powers which Congress preserved to state and local governments under Section 47 U.S.C.A. §332(c)(7)(A) of the Telecommunications Act of 1996 (hereinafter “the TCA”), to regulate the placement, construction, and modification of personal wireless service facilities; and

1 See the Ordinance at Section 17.001.

2 As last updated on June 15, 2021.

- (b) encompass provisions to seek to ensure that the appropriate City boards and/or representatives will not violate the constraints of the Telecommunications Act of 1996, which are set forth within sections §332(c)(7)(B)(i)(I), §332(c)(7)(B)(i)(II), §332(c)(7)(B)(ii), §332(c)(7)(B)(iii) and §332(c)(7)(B)(iv) of the TCA, and which thereby potentially minimize the risks of federal litigation to challenge any decision of the relevant City Board pertaining to an application seeking permission to install a wireless facility;
- (c) vest any relevant City Board with essential fact-finding functions, and set evidentiary standards, which are critical for the City to make decisions wherein the City can actually assert control over the placement of wireless facilities, within the powers vested in them under 47 U.S.C.A. §332(c)(7)(A) of the TCA; and
- (d) empower the City to protect its citizens against illegally excessive levels of radiation emanating from Non-FCC compliant wireless facilities that are not registered with the FCC.

The Firm shall provide the client with a draft provision based upon the Firm's analysis of the City's existing ordinance and the objectives set forth both therein and within the City's Strategic Plan.

The Firm does not, and will not, guarantee that if the City adopts and implements the code provision drafted by the Firm, it will render any zoning decisions thereafter made by the City immune from legal challenge.

Potential legal challenges may always be raised to challenge zoning decisions of any type, whether they involve applications for approvals such as use permits, special use permits, conditional use permits, wetland permits, or variances (among others), and decisions pertaining to the regulation of wireless facilities are no exception, especially in view of the fact that the law pertaining to wireless facilities is constantly evolving, with new case decisions and new FCC interpretations being rendered and/or handed-down on a continuing basis.

The Firm has disclosed and reaffirms herein to the Client that none of the attorneys within the Firm are admitted to the Bar of the State of Wisconsin. As such, the Firm recommends that any code provisions it drafts under the terms of this agreement be submitted for review by an attorney admitted in the State of Wisconsin before the City moves to adopt same.

Any consulting services to be provided under this agreement shall be provided exclusively within the State of New York, where the attorneys within the firm are duly authorized to practice law and are intended to be limited to those permitted under Rule 5.5 of the Wisconsin Rules of Professional Conduct for attorneys.

The Firm does not maintain, and shall not maintain or establish, even temporarily, any office or operations within the State of Wisconsin.

The Client understands and agrees that in the absence of being granted *pro hac vice* admission to a Court situated within the State of Wisconsin, nothing within this retainer agreement shall require the firm to provide any services, *whatsoever*, within the State of Wisconsin, including but not limited to, appearing before any court or government body, including but not limited to any planning or zoning commission, the filing of any pleadings or papers, of any type, in Wisconsin, or meeting with the Client or any of its representatives, in Wisconsin.

This agreement does not, and shall not, authorize the Firm to represent the Client in any litigation.

If the Client was to become desirous of retaining the services of the firm to commence or defend federal or state litigation with respect to the proposed installation at issue, the Firm would be required to apply for, and obtain, *pro hac vice* admission to any respective federal or state court.

In the event that Client chooses to pursue litigation, the Client may retain the Firm for representation for same, provided that: (a) the parties execute a new or supplemental retainer authorizing the firm to provide such representation, (b) the firm successfully secures *pro hac vice* admission to the respective court,³ and (c) the Firm associates with an attorney or firm duly admitted to practice law within the State of Wisconsin.

FEES, EXPENSES, AND BILLING PRACTICE

In consideration for such drafting services to be provided by the Firm, the clients, by their authorized representatives who execute this agreement herein below, hereby agree to pay the Firm a flat fee in the amount of eight thousand five hundred (\$8,500) dollars to draft such Code provisions.

³ To represent Client within any *federal* action within the State of Wisconsin, the Firm would be required to obtain *pro hac vice* admission directly from the respective U.S. District Court within the State, unless the action were to be brought before a District Court or U.S. Circuit Court to which a member of the firm is already admitted.

A list of Mr. Campanelli's current court admissions are included at the end of this retainer agreement. To represent the Client in a state court action, the Firm would similarly be required to obtain *pro hac vice* admission from the respective Court.

Sample Retainer Agreement
City of Oconomowoc, Wisconsin
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In addition to providing such drafting services, the Firm shall provide up to three-and-one-half (3½) hours of free consulting services to answer any questions City representatives may possess regarding the new code provisions which the Firm drafts for the City and how any relevant City Boards should apply it.

If the City desires more than three-and-one-half (3½) hours of additional consulting services, the Firm shall provide additional consulting services at the billable rate of \$350.00 per hour.

ARBITRATION

The representatives of the Client understand that the City, as the Client, shall have the right to arbitration of any fee dispute which may arise under this, pursuant to Part 137 of the Rules of the Chief Administrator of the New York State Courts, a copy of which will be provided to the Client upon request.

Agreed to this ___ day of August 2022

Campanelli & Associates, P.C.
By: Andrew J. Campanelli
1757 Merrick Avenue, Suite 204
Merrick, NY 11566
(516) 746-1600

City of Oconomowoc
By:

Andrew J. Campanelli

Court Admissions

Mr. Campanelli's current *general* court admissions include the following:

The United States Supreme Court

United States Circuit Court of Appeals

United States Court of Appeals for the First Circuit
United States Court of Appeals for the Second Circuit
United States Court of Appeals for the Fifth Circuit
United States Court of Appeals for the Sixth Circuit
United States Court of Appeals for the Seventh Circuit
United States Court of Appeals for the Eighth Circuit
United States Court of Appeals for the Ninth Circuit
United States Court of Appeals for the Eleventh Circuit
United States Court of Appeals for the Federal Circuit

United States District Courts

United States District Court, Eastern District of Arkansas
United States District Court, Western District of Arkansas
United States District Court, Northern District of Illinois
United States District Court, Central District of Illinois
United States District Court, Southern District of Illinois
United States District Court, District of Nebraska
United States District Court, Northern District of New York
United States District Court, Southern District of New York
United States District Court, Eastern District of New York
United States District Court, Western District of New York
United States District Court, District of North Dakota
United States District Court, Eastern District of Wisconsin

State Courts

State of New York
State of Connecticut (retired)

Note: Current *Pro Hac Vice* Admissions (*current admissions in other federal and state courts*) are not listed.