IT’S GETTING CROWDED IN HERE:
THE RULES FOR PERMITTING ALL KINDS OF STUFF
IN THE RIGHT-OF-WAYS
WHAT ARE WE DOING TODAY?

• A little bit of legal theory
• A lot of practical application of ROW rules
THE GATEKEEPER
RIGHT-OF-WAY LAW

• Property Law
• Fees and Easements
• Highways
  • Can be either fee or easement
    • Ownership vs. right to use
    • The bundle of sticks
  • Why does it matter?
    • Defines who can do what

The Fee Simple Bundle of Rights

Real estate ownership is, in actuality, the ownership of rights to land. The largest bundle available for private ownership is called “fee simple.”
WHAT CAN GO IN THE ROW?

• Public ROW is available for all public uses consistent with:
  • The dimensions of the road
  • The type of service expected of the road
  • The location of the road
• Not limited to surface travel
  • Can include uses contemplated to be in the public interest and for the public benefit.
    • Sewers, gas, electricity, lighting, telephone, Internet, television
• Who makes this determination
  • Courts
  • Legislature
QUICK SURVEY

• Yes
  • Gas, electric, telephone, Internet, sewer, television

No
  • Lumber mill
  • Trolley tracks
  • Improvement of ROW that solely benefitted private developer’s complex
REGULATORY FRAMEWORK

- MCL 224.19b – ROW Permits
  - Covers all work within ROW that is not wireless small cells
  - Specific and unique provisions for Telecommunications and Video Service Providers

- MCL 460.1301, et seq. – Small Cell Permits
  - Very specific rules for small cell permits

- MCL 247.183-.184 – General consent law
  - Covers everything, but in generic terms

- MCL 484.3101, et seq. – Metro Act
  - Covers telecommunications providers
  - Defined to include cable television operators that provide telecommunications services and vice versa
  - Does not directly involve County Road Commissions
WHICH FRAMEWORK IS IT?

• Public Utility Electric Lines
• MCL 224.19b
  • Most freedom in fashioning requirements and recovering costs.
  • Fees sufficient to cover only the necessary and actual costs applied in a reasonable manner for issuing the permit and for review of the proposed activity, inspection and related expenses.
  • Fees for annual and emergency permits.
  • Bonds, etc.
WHICH FRAMEWORK IS IT?

• Public Utility Sewer Lines
• MCL 224.19b
  • Most freedom in fashioning requirements and recovering costs.
  • Fees sufficient to cover only the necessary and actual costs applied in a reasonable manner for issuing the permit and for review of the proposed activity, inspection and related expenses.
• Fees for annual and emergency permits.
• Bonds
WHICH FRAMEWORK IS IT?

• Telephone lines
• MCL 224.19b
  • Telecommunication Service Provider Rules Apply
  • Fees sufficient to cover any necessary and actual costs for inspections related to work in the right-of-way
  • Permit fee capped at $300 per permit or $1000 per “project”
    • Increased to $600 and $2000 in counties with more than 250,000 residents
    • Definition of “project” is up to Road Commission
  • One bond, capped at $20,000 or $40,000
• MCL 484.3101
  • Municipal permit and franchise
WHICH FRAMEWORK IS IT?

- Manure Lines
- Do they pass the gateway test?
  - NO!!!
  - Only if permission of every adjacent affected landowner and does not interfere with public easement.
- If permission is obtained, then MCL 224.19b controls
  - Most freedom in fashioning requirements and recovering costs (bonds okay).
  - Fees sufficient to cover only the necessary and actual costs applied in a reasonable manner for issuing the permit and for review of the proposed activity, inspection and related expenses.
- Fees for annual and emergency permits.
Milk Transmission Lines
Do they pass the gateway test?
• NO!!!
  • Only if permission of every adjacent affected landowner and does not interfere with public easement.
If permission is obtained, then MCL 224.19b applies
• Most freedom in fashioning requirements and recovering costs (bonds okay).
  • Fees sufficient to cover only the necessary and actual costs applied in a reasonable manner for issuing the permit and for review of the proposed activity, inspection and related expenses.
• Fees for annual and emergency permits.
WHICH FRAMEWORK IS IT?

• Wireless Small Cell Facility
• MCL 460.1301, et seq. –Small Cell Permits
  • Definitions
  • Authorizes collocation, not provision of services
  • Annual fee per pole or WSS
  • Shot clock for decisions
  • One time permit fee for SCF
    • $200 or $300
  • Can require additional permit for work that will affect traffic patterns or obstruct vehicular or pedestrian traffic
• Bonding –$1000 per SCF
1. Is the permit for a pole or WSS that was erected after March 12, 2019?

   - NO: Can require annual fee up to $20
   - YES: Can require annual fee up to $125

   AND

2. Is it small cell facility (SCF) only or SCF/utility pole combo?

   - AND
   - COMBO: One-time fee capped at $300
   - SCF ONLY: One-time fee capped at $200

3. Will you require a bond?

   - NO
   - YES: Amount capped at $1,000 per SCF

4. Will you require a letter of credit?

   - NO
   - YES
WIRELESS: COLOCATION ON AUTHORITY VS. NONAUTHORITY POLES

1. Will the SCF be attached to an authority pole?

   - NO
     - Collocation fee ≤ $50 per nonauthority pole per application
     - Fee increased every 5 years from effective date of act by 10%
   - YES
     - AND
       - Collocation fee ≤ $30 per year per authority pole
       - AND
25-day shot clock for evaluating application completeness

IF

10-day shot clock for evaluating for completeness of supplement

WHEN COMPLETE

COMPLETE

IS IT COLOCATION OR NEW/REPLACEMENT FACILITY?

COLOCATION

60 days total, exclusive of tolled periods

SUPPLEMENTED

NEW OR REPLACE

90 days total, exclusive of tolled periods

IS THERE ANOTHER APPLICATION FILED WITHIN 1 WEEK OR EXTENSION REQUESTED?

YES

15 additional days for each event, up to 30 additional days total

NO

IS THE APPLICATION DENIED?

YES

30 day cure and 30 day review period
WHICH FRAMEWORK IS IT?

- Internet Lines
- MCL 224.19b
  - TSP/VSP Rules Probably Apply
    - ISP’s probably have licenses under TA or UVSLFA
  - Fees sufficient to cover any necessary and actual costs for inspections related to work in the right-of-way
  - Permit fee capped at $300 per permit or $1000 per “project”
    - Increased to $600 and $2000 in counties with more than 250,000 residents
  - Definition of “project” is up to Road Commission
- MCL 484.3101
  - Municipal permit and franchise
Is the total population greater than 250k?

- Yes
  - Can require a fee up to $600
    - BUT
      - Are there multiple permits per project?
        - IF YES
          - Fee capped at $2,000 total for all permits per project
          - Can require one bond or LOC for all permits up to $20,000
        - IF NO
          - Can charge for annual maintenance permit ≤$300/$600 per provider
    - BUT
      - Can require one bond or LOC for all permits up to $40,000
  - NO
    - Can require a fee up to $300
    - BUT
      - Are there multiple permits per project?
        - IF YES
          - Fee capped at $1,000 total for all permits per project
          - Can charge for annual maintenance permit ≤$300/$600 per provider
        - IF NO
          - Can require a fee up to $300

Provider must have insurance ≥ $2,000,000
MISS DIG

• MCL 460.721
• Large number of claims
• Act does a bit of dance around immunity.
  • The GTLA waives immunity as provided in the Act
  • The Act, in turn, creates a system of civil penalties
    • But it also preserves immunity defenses available in the GTLA.
LOOKING FOR MORE INFORMATION?

THANK YOU!

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