City of Atlantic
Board of Adjustment
Agenda
Monday, January 8, 2024; 5:30 P.M.
Atlantic City Hall, City Council Chambers

I. Call to Order.

II. Approval of Agenda.

III. Approval of the December 11, 2023, Minutes.

IV. Nominations for Vice-Chair of the Board of Adjustment.

V. Order to Approve the Proposed Nominee as the Vice-Chair for the Board of Adjustment.

VI. Public Hearing to Consider a Conditional Use Permit Application by Massena Telephone Company for the Property Currently Identified as 703 East 14th Street, that Would Allow for the for the Operation of a Telephone Transmission Equipment Building (Fiber-Optic Network) in a R-2 Low Density Single Family Residential District as Allowed by Section 5.030(7) of the Zoning Ordinances of the City of Atlantic, Iowa, with the Conditional Use Permit Transferring to a New Lot that Shall be Identified as 1400 South Olive Street, Atlantic, Iowa 50022. (Pending Regulatory Approval).

VII. Discussion and Vote on the Conditional Use Permit Application by Massena Telephone Company for the Property Currently Identified as 703 East 14th Street, that Would Allow for the for the Operation of a Telephone Transmission Equipment Building (Fiber-Optic Network) in a R-2 Low Density Single Family Residential District as Allowed by Section 5.030(7) of the Zoning Ordinances of the City of Atlantic, Iowa, with the Conditional Use Permit Transferring to a New Lot that Shall be Identified as 1400 South Olive Street, Atlantic, Iowa 50022. (Pending Regulatory Approval).

VIII. Discussion and Recommendation on Future Meeting Dates and Times.

IX. Next Regular Meeting: None Scheduled

X. Adjournment.

Board of Adjustment
December 11, 2023
5:30 p.m.

The Board of Adjustment met in regular session at 5:35 P.M. with Ihnen presiding as Chair. Members present were: Cappel, Munson, Krengel, and Shouse. Absent: None. Also present: Zoning Administrator Lund and Fourth Ward Councilwoman Hartkopf by telephone.

Cappel moved, Munson seconded, to approve the agenda. Passed.

Ihenen next welcomed new Board members, Emily Krengel and Shawn Shouse.

Shouse moved, Cappel seconded, to approve the minutes of the May 22, 2023, meeting as presented. Passed.

Ihnen outlined the rest of the agenda and placed a 5-minute time limit during the public hearing for the applicant and required notice recipients, 2 minutes for other speakers.

Ihnen proceeded to open the public hearing and invited Dr. Erin Conrad-Schwarte, the applicant for the conditional use permit for Cass County Animal Clinic, LLC at the Property 2309 Whitney Street (East 22nd Parcel), the permit would allow for the operation of a veterinary clinic in a "R-2" Low Density Single Family Residential District as allowed by Section 5.30(3) of the Zoning Ordinances of the City of Atlantic, Iowa.

Dr. Conrad-Schwarte, 56424 Durango Road, stated that finding commercial space in Atlantic is difficult, found this property and took a chance on a conditional use permit, but did not intend to make a ruckus. The clinic provides services for dogs, cats, cattle, sheep, goats, and pigs. The main part of the business is not boarding. Approximately 1.5 dogs would be boarded per day. Only outside in runs during the day. Over the weekends, they are let out 2-3 times a day.

She further stated the livestock will be enclosed by fences. The livestock is not kept overnight except for neonatal baby animals. She stated she was open to buffering materials between the business and the abutting property owners.

The next speaker was abutter, Sean Macha, 1907 East 22nd. He stated his property was 150 feet from the proposed building. He stated he had degrees related to animal science and understands the business, but is expecting his residential property to be protected by the Zoning Ordinance. He stated the definition of a veterinary clinic and it specifically was not included the conditional uses list for R-2. He was very concerned with the conditions and regulations of the proposed use. Would their be limits on the number of animals and activities going on the property? Emphasized the general welfare of the use of his property. Smells. Further, it may disrupt the orderly development of the

Dr. Conrad-Schwarte, responding stating the maximum capacity. She clarified that semen testing bulls will be a service of the clinic. She pointed out that cows are quickly processed services,

emphasizing the animal's need for a low-stress environment, and returning them to their comfort zone, the pasture. The manure can be transported off site. Floor drains are designed to keep the clinic as clean as possible for the benefit of the staff and neighbors. Cattle or livestock getting free is a rare occurrence and they tend to go towards open pasture, not buildings or the highway.

Keith Steffens, 300 West 22nd Street, stated he is very pro-agriculture and it is his livelihood. Questioned the point of the meeting. Specifically, sections B, C, F, G of the conditional use requirements of the Zoning ordinance would not pass.

Bob Harris, 63586 Galveston Road, spoke on behalf of his father who supports the medical definition and that the distinction between the human and non-human is not relevant, it is still medical care. Research shows these clinics do not impact property values and listed a number of developments that did not impact property values. He stated that there is plenty of land for residential development in Atlantic that is not being used. He stated that for a community of our size, Atlantic needs 2.9 clinics in town.

Josh Dvorak, 1505 East 22nd Street, argued there is a distinction between medical institution and health facility. He stated that City Administrator/Zoning Administrator Lund shot down his proposed car repair business on this exact property. He further claimed equivalence on commercial activity between a veterinary clinic and a car repair business. He also cited safety concern for children in relation to the livestock.

Brad Strouth, 1609 East 22nd Street, abutter, stated he believe there would be traffic problems, odors, and flies and this facility should not be in a residential area.

Skyler Handlos, 2304 Whitney Street. Just bought his property, so he did not receive a notice. He stated he was not in favor of a vet clinic in a residential area.

Macha stated there are no commercial businesses in the area.

Bob Harris said there was a church and a catering business, implying one on Mr. Macha's property.

Atlantic Police Sergeant Smith firmly stated that there would be no back and forth arguing between individuals during this meeting.

Atlantic Fifth Ward Councilman Dana Halder spoke about the topography and the water runoff issues.

Dr. Conrad-Schwarte responded that the current crop ground would mitigate the runoff issues.

Hal Snow, 2036 Park Drive in Cedar Falls, stated that he was the Architect and civil engineer on this project. He stated this building will be governed by a variety of regulations that will control site drainage.

Dvorak stated there is no curb or gutter. They need to build up the ground for the building.

Snow countered the entire property curves down.

Maccha asked if the permit can be revoked.

Lund said yes if the conditions are violated.

Steffens asked about if it is a clinic for pets or livestock.

Snow said that both would be included.

Munson asked about sanitary sewer. Macca has sanitary sewer. Others have septic.

Code Enforcement Officer, and former Wastewater Treatment Plant Operator, Kris Erickson said tarps are there to keep the pumps from freezing, that the depths are fine.

Peggy Jacobs, 1902 Redwood Drive, stated she is all for veterinary services. However, she is concerned It would hurt her property value and that of the neighborhood is not in favor of the clinic's location.

Shouse moved, Krengel seconded to Close the Public Hearing. All in favor. Passed.

Ihnen then proceeded to the discussion and vote to determine if a veterinary clinic is a use of similar character to zoning ordinance section 5.30(3) "Health and Medical Institutions, Including Convalescent, Hospitals, Nursing, Retirement or Rest Homes."

Krengel stated she cannot say the clinic is not medical.

Ihnen discussed medical definitions as they related to the Ordinance. Cappel agreed with her assessment.

Shouse explored the nature of the practice. Small animals produce less traffic, larger animals will produce more traffic and that is not similar to clinics. He stated he was more sympathetic to an agricultural definition because of the large animal issue. He stated he researched Montgomery County and Sioux Center regulations. Veterinary clinics are allowed in both agriculture and commercial districts. However, in the City of Ely, veterinary services are a commercial use and are not allowed in the residential district.

Munson had an acreage south of Treynor. Septic systems are challenging. Financial hardship on property owners and demands on the sanitary sewer system. Lund said no capacity issues with the Atlantic sanitary sewer system and the only hardship on the owners is outlined in the Code of Ordinances for conversion from septic.

Shouse stated that water drainage is addressed on the site plan. Noise. Odors. Livestock and manure all appear to be issues affiliated with agriculture. He wanted to see discussion on potential mitigation, does not want to inflict noise pollution on the neighbors.

Conrad said there are Indoor and outdoor kennels. Weather permitting, they would be allowed outside, but mostly inside.

Krengel wanted it clarified if it was a farm currently and animals could be allowed.

Lund discouraged classifying this under agriculture, Shouse agreed that veterinary clinics should be their own category as it is obvious to him that none of the others fit.

Ihnen requested a motion on the floor to determine if it is a similar use under 5.30.

> Shouse moved to consider a veterinary clinic as of similar use and character of other conditional uses under 5.30, Munson seconded. Munson, Cappel, Shouse, Krengel in favor. Ihnen opposed. Motion carried.

Ihnen moved on to the discussion and vote on the conditional use permit application by Cass County Animal Clinic, LLC for the property 2309 Whitney Street (East 22nd Parcel) that would allow for the operation of a veterinary clinic in a "R-2" Low Density Single Family Residential District as allowed by Section 5.30(3) of the Zoning Ordinance.

Munson gives the benefit of the doubt to Dr. Conrad.

Ihnen stated that there are seven requirements to satisfy for the consideration of a conditional use permit as outlined in Section 25.080(5).

The first, subsection a states "That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare." Ihnen does not see a threat to public health, nor does Krengel, nor Shouse."

Krengel stated morals is not a concern with this development.

Cappel is concerned safety may be compromised with livestock near small children. Comfort or general welfare is in question for Cappel, which Shouse concurred.

Both Councilwoman Otte and Councilman Halder stated they received calls from constituents all in opposition to the application.

Krengel did not feel the standard of b can be assured. She believes the applicant means and intends well, but b is a standard that cannot be assured.

Dr. Conrad-Schwarte requested to speak and was granted so by Ihnen. Dr. Conrad-Schwarte was emotional and stated she did not make this application in order for it to generate so much conflict in the neighborhood, and no longer felt this application was positive nor productive. She respectfully requested to withdraw her conditional use permit application.

The consensus of the Board was that they could not find facts that support that positively for subsections a and b. In light of this and Dr. Conrad-Schwarte's request, Cappel recommended the Board deny the conditional use permit application.

Ihnen asked if there was a motion to deny the conditional use permit application.

Shouse moved to deny the conditional use permit, Munson seconded. All in favor. Passed

The next regular meeting is not scheduled, but Lund indicated another meeting may required in January or February, that he had already been contacted by an applicant.

Munson moved, Cappel seconded, to adjourn at 7:37 P.M. Passed.

_____
Chair

Attest:_____
Secretary

CITY OF *Atlantic*

CONDITIONAL USE PERMIT APPLICATION

Applicant must complete the following information

Address where the conditional use permit will be applied: 1400 S Olive St (address pending with City Clerk)

Applicant's Name: Massena Telephone Company Applicant's current Phone: 712-779-2227

Applicant's Current Address: 211 Main St Massena, IA 50853

Affidavit: Are you, the applicant, authorized on behalf of the property owner to make an application for the conditional use permit being applied? ☑ YES ☐ NO

This section to be completed by Applicant

Legal Description of the Affected Premises

Addition: Park Meadow Block: 1 Lot: 1

Zoning District: R2 Property Use: Communication Shelter

Explanation for the Conditional Use Permit Sought by Applicant:

Massena Telephone Company is expanding its fiber-optic network to serve residents and businnesses in Atlantic. The company wishes to install a communications shelter to house its fiber-optic line terminals and associated electronics.

The shelter is a prefab concrete panel building, 11'x20' nominal dimensions.

Massena Telephone has an agreement to purchase the described property from current owner Compass Properties. The agreement is conditional upon Massena Telephone's ability to get conditional use permit and building permits for the proposed structure.

This section to be completed by Applicant

Supporting Information

The Board of Adjustment may authorize the Zoning Administrator to issue a conditional use permit for conditional uses provided that such conditional uses or structures are in accordance with the purpose and intent of this Ordinance and are found not to be hazardous, harmful, offensive, or otherwise adverse to the environment, the applicant or the value of the neighborhood or community. While it is not required, a professional land use attorney may be consulted in drafting answers to these questions and/or submit answers in a paper that address these questions in substitution of the supporting information pages.

Will the establishment, maintenance, or operation of the proposed conditional use be detrimental to or endanger the public health, safety, morals, comfort, or general welfare?

No.

Will the conditional use be injurious to the use and enjoyment of other property in the immediate vicinity? Will the conditional use permit substantially diminish and impair property values within the neighborhood?

No

This section to be completed by Applicant

Will the establishment of the conditional use impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district?

No.

Are there adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided to the site?

Yes. The lot has access to E 14th St and S Olive St. Electricity will be provided by AMU.

The shelter will not need water or sewer utilities. Drainage patterns will not change in a material way.

This section to be completed by Applicant

Have adequate measures been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets?

There will be no customer traffic at this location. Vehicle traffic will be minimal.

One or two techs may visit the shelter one or two times on most weekdays,

usually during the day.

Does the conditional use, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance, be modified as provided in Article 23?

YES

This section to be completed by Applicant

Is the proposed use consistent with the comprehensive plan?

Yes

Affidavit: I hereby claim that all the above statements and statements contained in any attached papers are true.

Applicant's Signature: _____ Date: 12-27-2023

Attach the following if Necessary:

A. A letter of authorization from the owner or lessee
B. Additional justification for the request.
C. Site plans or building permit applications that may be relevant to the application.

This section to be completed by Zoning Administrator

BOARD OF ADJUSTMENT

☐ Approved ☐ Denied Date: _____ Fees: _____

PRESIDING CHAIR OF THE BOARD OR BOARD SECRETARY: _____

Comments:

CITY OF Atlantic

23 East 4th Street
Atlantic, IA 50022
City Hall: (712) 243-4810
Fax: (712) 243-4407
www.atlanticiowa.com

CITY OF ATLANTIC STAFF ANALYSIS

Topic: Conditional Use Permit for Massena Telephone Company at 703 East 14th Street.
Prepared For: Board of Adjustment
Date: January 4, 2024
Staff Contact: John Lund (712) 243-4810 johnlund@cityofatlantic.com

Analysis

The Massena Telephone Company has applied for a conditional use permit for 703 East 14th Street, of which it is a conditional purchaser that intends to divide the property located at 703 East 14th Street, Atlantic, Iowa, 50022 and carry the conditional use permit to the new property to be identified as 1400 South Olive Street. The Conditional Use Permit would allow for the operation of a telephone transmission equipment building (fiber-optic network) in a R-2 Low Density Single Family Residential District as allowed by section 5.030(7) of the Zoning Ordinances of the City of Atlantic, Iowa.

The Board of Adjustment will have to hold a public hearing before discussion can commence on the conditional use permit application. Following the public hearing, the Board will then proceed to review the conditional use permit itself, using the standards outlined in the Zoning Ordinance and listed in this analysis.

The facts of the application are as follows.

- The proposed site of the communication shelter is 703 East 14th Street. This is indicated in the yellow box on the image found on the top of page 2.
- 703 East 14th Street is in the "R-2" Low Density Singly Family Residential District. The zoning for the surrounding property is also R-2.
- 703 East 14th Street is owned by Compass Properties, LLC, 3115 56th St., Des Moines, IA 50310.
- Massena Telephone has an agreement with Compass Properties to purchase a portion of the land to the west of the current building on the property, known in town as "the old Y." The agreement is conditional upon Massena Telephone's ability to get a conditional use permit and building permit for the proposed communication shelter.

- Massena Telephone states the following concerning their proposed use of the property:

  > "Massena Telephone company is expanding its fiber-optic network to serve residents and businesses in Atlantic. The company wishes to install a communications shelter to house its fiber optic-line terminals and associated electronics. The shelter is a prefab concrete panel building 11' x 20' nominal dimensions."

- Massena Telephone has provided a site plan and full explanation of the site plan according to the site plan requirements of Section 26.40 of the Zoning Ordinance. All regulations within the Zoning Ordinance concerning the development are met under the site plan itself and its supporting notes on the official site plan checklist.

- No potential issues on the site plan were identified. However, minor issues are typically addressed by the Planning & Zoning Commission during the site plan review process.

- Telephone transmission equipment buildings, or communication shelters for the internet are not a permitted use in the R-2 district, but it may be a conditional use.

- Section 2.030 outlines all the definitions of the Zoning Ordinance. The definition of telecommunication is the following "The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." This applies to the classic telephone,

telegraph, but also to the internet. Information sent, regardless of how it is processed, through sound, vibrations, or spectrums of light, will come out on the receiving end as they did from the inputter.

- Another conditional use that would also be allowed in the R-2 district is that of a public utility. Section 2.030 defines a public utility as follows.
  "Public Utility: Any business the purpose of which is to furnish to the general public:
  - Telephone service
  - Wastewater treatment plant
  - Telegraph service
  - Electricity
  - Natural gas
  - Water
  - Transportation of persons and property
  - Solid waste disposal
  - Community closed circuit telecast
  - Public internet services
  - Any other business so affecting the public interest as to be subject to the supervision or regulation by any agency of the State.

- At the time of writing this analysis, there have been no calls, e-mails, or letters of support or opposition to the proposed project.

- All required notices and mailings have been issued within the timelines outlined under Section 25.080(4).

Atlantic Zoning Ordinance, Comprehensive Plan, and Standards of Review

The duties of the Board and how a decision is to be arrived at are outlined in our Zoning Ordinance and Iowa Case law, with case law largely focused on the Board being bound to its own ordinances.

Regarding our ordinances, Section 25.080(1) of the Zoning Ordinance states:

> "The Board of Adjustment may authorize the Zoning Administrator to issue a conditional use permit for conditional uses provided that such conditional uses or structures are in accordance with the purpose and intent of this Ordinance and are found not to be hazardous, harmful, offensive, or otherwise adverse to the environment, the applicant or the value of the neighborhood or community."

That is the first, and broadest standard the Board will need to consider.

Section 25.080(3) outlines the process of review and approval process.

> "The Board of Adjustment shall review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems and the proposed operation."

Lastly, there are seven requirements to satisfy for the consideration of a conditional use permit as outlined in Section 25.080(5).

To grant a conditional use permit, the Board of Adjustment must find that:

a. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.

b. That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted and will not substantially diminish and impair property values within the neighborhood.

c. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

d. Those adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.

e. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

f. That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance, be modified as provided in Article 23.

g. That the proposed use shall be consistent with the comprehensive plan.

The Board must come to a conclusion on each of these standards. Each of the standards must be satisfied in order to approve the conditional use permit. Even the failure of one standard would be fatal to the application.

Regarding the Zoning Regulations that concern the standards outlined in f. and g., the following information is relevant.

Section 5.010 of the ordinance states the purpose and intent of the “R-2” Low Density Single Family Residential District:7

> “The "R-2" District is established for the purpose of low and medium density single-family dwelling control and to allow home occupations, certain public facilities, and certain special uses. This district takes into account areas which were platted into smaller lots during early years of City growth. It is intended that no uses be permitted in this district which will devaluate property for residential purposes or to interfere with the health, safety, and order, or general welfare of persons residing in the district. Regulations are intended to control population density and to provide adequate open space around buildings and structures.”

Permitted uses in this zone include:

- Single family detached dwelling.
- Public parks, playgrounds and recreation areas, and related buildings operated by a public agency.
- Schools, public and private.
- Church or similar place of worship.
- Public libraries, museums or similar public buildings.

Conditional uses in R-2 are as follows:

- Two Family Attached Dwellings.
- Cemeteries.
- Health and medical institutions, including convalescent, hospitals and nursing, retirement or rest homes
- Privately operated country clubs, golf courses, swimming clubs, riding stables, and similar recreation uses provided that any principal accessory building in connection therein shall be located not less than 200 feet from any lot in an "R" District.
- Public or private utility and service uses, including but not limited to electric sub-stations, gas regulator stations, radio and television transmitting towers.
- Sewage treatment plants and lagoons.
- Telephone transmission equipment buildings.
- Filtration plants.
- Railroad right-of-way.
- Water reservoirs.
- Philanthropic and charitable institutions.
- Day care centers and nursery schools.
- Bed and Breakfast Homes and Bed & Breakfast (Expanded Services).
- Communications tower.
- Solar energy system.
- Farming and similar agricultural uses provided
- All other uses of a similar character as may be determined by the Board of Adjustment

Standard g addresses the Comprehensive Plan. The Comprehensive Plan is a document the State requires us to have for the long-term planning and development of the community. Our Comprehensive Plan was updated in 2018 and addresses many different issues.

Unfortunately, the document does not provide much guidance on conditional uses. A search of the document with Microsoft Word does not show the word “conditional use” appearing anywhere in the document. However, it does address the R-2 District and Telecommunications.

Page 35 of the Comprehensive Plan provides the following information about the R-2 Zone.

> “**Low Density Single Family Residential Development:** The low-density single family residential district can include single family detached dwellings, parks/recreational areas, schools, churches, and libraries. This area is meant to promote single family dwellings while controlling the density and maintaining adequate open space. Much of the land

between 14th and 22nd Street is currently zoned for this low density and in years to come, land south of 22nd Street will likely be added as it comes time to develop new housing."

Page 37 further provides land use categories and characteristics that give further guidance on R-2.

Land Use Category	Use Characteristics	Features and Location Criteria
Low Density (Single Family) Residential	Restrictive land uses, emphasizing single family detached development. Innovative single family forms may be permitted with special review.	Density is 1 to 4 units per acre, although these areas may include some single family attached projects with densities up to 6 units per acre in small areas
	Civic uses are generally allowed, with special permission for higher intensity uses.	Should be insulated from adverse environmental effects, including noise, smell, air pollution, and light pollution.
	Manufactured units with certification from the United States Department of Housing and Urban Development (pos-t1976 units) that comply with other criteria in the State statute may be treated as conventional single family construction.	Should provide a framework of streets and open spaces.
		Developments will be provided with full municipal services.
		Commonly zoned as A1 (Agricultural) or Rural Residential (RR)

The Board will have to interpret what guidance, if any, the Comprehensive Plan offers in regard to a change in property use within the R-2 District and what the appropriate. However, on page 62 pf the Comprehensive Plan, Telecommunications is specifically addressed:

"TELECOMMUNICATIONS

Being able to connect to the internet is becoming increasingly important for business, industry, and residents. Companies are relying on the internet more for the functionality of their business. Also telecommuting to work is an option for some people to work from home. There are several levels of internet speed, the fastest being fiber broadband. Currently, according to the broadband service inventory map for Cass County, all of the city of Atlantic is in the cable broadband category. This shows that there is room for improvement with the broadband services provided."

Case Law Guidance from the Iowa Supreme Court on Conditional Use Permits and the Role of the Board of Adjustment

The Iowa Supreme Court has provided critical guidance to local government Boards of Adjustment over the decades through their various rulings. The following cases outline the duties of the Board and where the burden of evidence and review reside in adjudicating a conditional use permit.

First, in *Johnson v. Board of Adjustment (1976)* the Supreme Court determined the burden of proof resides on the applicant, not the Board, in justifying why a conditional use permit should be issued.

Second, the *Citizens Against the Lewis and Clark (Mowery) Landfill v. Pottawattamie County Board of Adjustment (1979)* states that the Board of Adjustment must make written findings on its proceedings and that these findings must be sufficient to allow any Court reviewing the Board's ruling to determine if factual basis and legal principles upon which the board acted were indeed factual, legal, and reasonable.

Next, the Court is largely deferential to the Board of Adjustment. The Board's decision is given similar weight as a verdict of a jury. The Courts generally confine their review to the substance of the local government's own ordinance, facts of the case and process in which the decision is rendered. Specifically, in *Cyclone Sand & Gravel Co. v. Zoning Board of Adjustment (1984)* the Supreme Court set a standard that if the reasonableness of the Board's decision is "open to a fair difference of opinion, the court may not substitute its decision for that of the Board."

In *Willet v. Cerro Gordo County Zoning Board of Adjustment (1992)* the Court accepted of the conditional use permit concept, understanding that these permits are to provide some flexibility in contrast to an otherwise rigid Zoning Ordinance. Further, they acknowledge the authority of a Board of Adjustment to place reasonable limitations on a conditional use permit to mitigate incompatible uses.

In *W & G McKinney Farms, L.P. v. Dallas County Board of Adjustment (2004)* the Court cites *Cyclone* stating "An application for a conditional use permit must meet all conditions of an ordinance. The failure to satisfy even one of the ordinance's conditions is fatal to a permit application." Further in *McKinney* the question of the Comprehensive Plan is addressed. The document itself is viewed as a legitimate document for evaluating applications and uses the words contained within as a basis for review.

Conclusion

The Board of Adjustment may accept the application without conditions, accept the application and place conditions of operation attached to the permit or may reject the application entirely. In arriving at a decision the Board should keep the following in mind:

- The only issue to be addressed by the Board is if the criteria provided by the Zoning Ordinance is satisfied for a conditional use permit.

- Section 25.080(1) states that a permit shall not be issued that is "otherwise adverse to the environment, the applicant or the value of the neighborhood or community." This last sentence indicates that community desires and needs play a role with conditional use permits. However, caution is to be exercised, decisions narrowly based on passion and subjective feelings are unlikely to be given favorable consideration by a court, as opposed to those based on sound logic, professional knowledge, and broad consideration of multiple factors.

- The impact of the communications shelter on the existing, permitted uses of the abutting properties is relevant to the Board's deliberations.

- All requirements for a conditional use permit must be satisfied for the permit to granted. Failure on any one requirement should result in a rejection of the application. Again, the burden is on the applicant to prove these are being satisfied.

- Whether the permit application is granted or denied, findings of fact should be made prior to the decision.

- A majority of the Board will be required to either approve or reject the application, meaning that three members must vote in favor of the motion on the floor for it to be adopted.

- Unlike variances, site plan reviews, or rezoning applications, I do not have a professional opinion to offer on this application. In those circumstances, Iowa Courts has set hidden standards in case law that really direct the Board of Adjustment or Planning & Zoning Commission to a legally defensible conclusion. However, when it comes to interpreting the definitions of the Zoning Ordinance and Conditional Use Permits, the Courts are deferential and treat the Board of Adjustment like a jury making a verdict. The only thing we will be held accountable for would be if we ignore our own ordinance or place arbitrary or capricious standards to this application in contrary to prior precedent.

Official Checklist for Site Plan Requirements

Project Name: **Massena Telephone Communication Shelter**

Date: December 17, 2023

All site plans required under Section 26.040 shall include the following information:

- ☐ Date of preparation, north arrow and scale. *Prepared 12-27-2023. North arrow and measurements included on diagram.*
- ☐ Legal description and address of the property. *1400 S Olive St, Pending City Clerk's approval.*
- ☐ Name and address of the record property owner, the developer or builder, and preparer of the site plan.

  Owner: Compass Properties
  3115 56th St.
  Des Moines, IA 50310

  Builder TBD

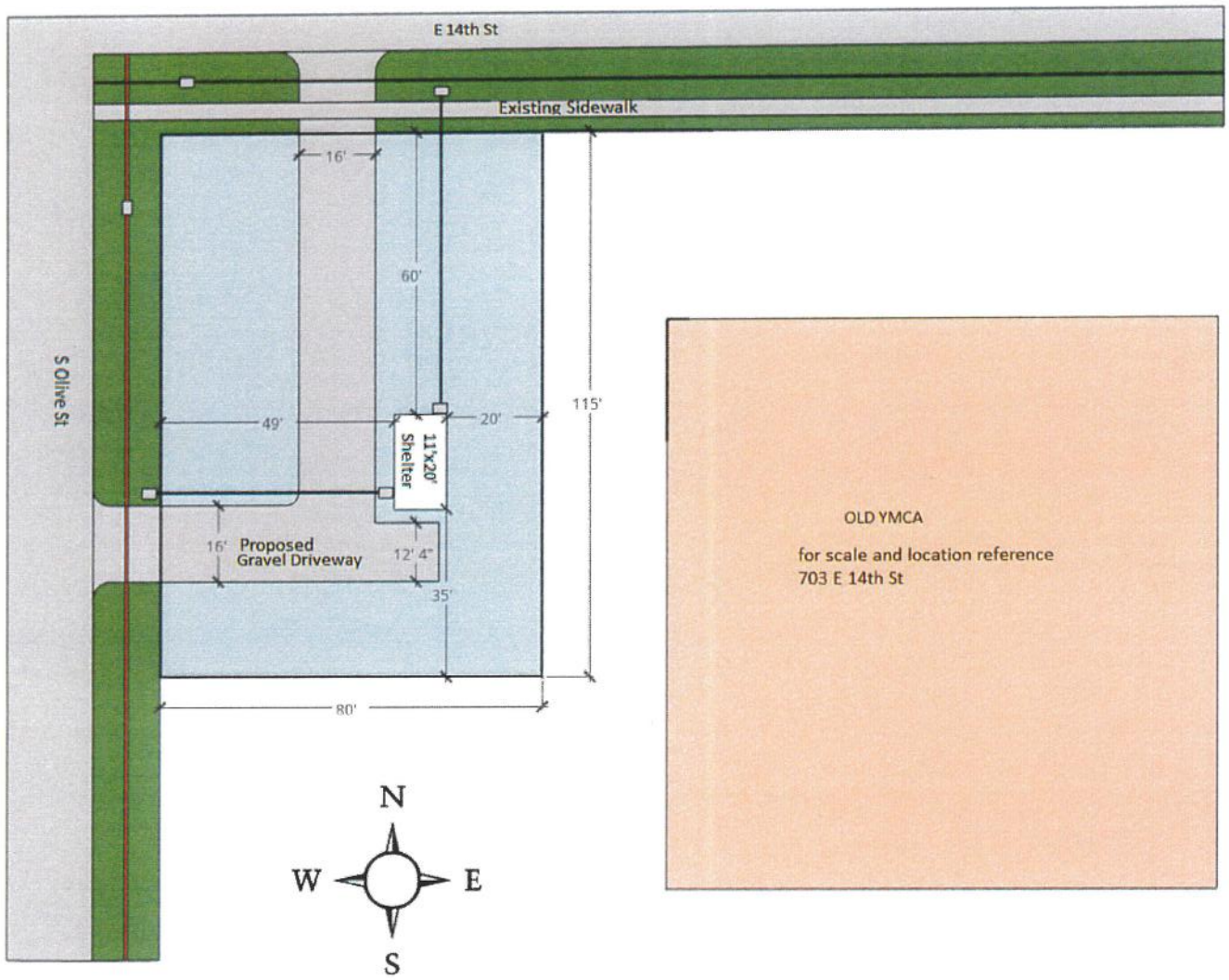
  Preparer: Mike Klocke, GM
  Massena Telephone Company

- ☐ Existing and proposed zoning. *Existing R2, no change proposed.*
- ☐ Total area of proposed site. *9200 sq ft*
- ☐ Total number, type of and distance between all buildings to include floor area and number of stories for each building. *One building, 220 sq ft, single story*
- ☐ The number of dwellings, units, bedrooms, offices, etc. *Communication Shelter*
- ☐ Total number of parking spaces to include location and dimensions of all existing and proposed parking stalls, loading areas, entrance and exit drives, sidewalks, dividers, planters and other similar permanent improvements. *Included in site diagram*
- ☐ Building setback lines as required by zoning districts. *Backyard: minimum 20% of lot depth which is 16'.*
- ☐ Location of trees six (6) inches or larger in diameter and wooded areas featured on the site. *Plan to remove all trees*
- ☐ Location of any area subject to flooding by a one hundred (100) year storm. *None Known.*
- ☐ Location of proposed and existing wells and septic systems. *None Known.*
- ☐ Location, amount and type of any proposed landscaping, plantings, fences, walls, monuments, statues, location and size of all solid waste containers and other manmade features to be used in the landscape. *None planned.*
- ☐ Location and type of any existing and proposed signs. *None planned.*

- ☐ Existing and proposed utility lines and easements to include location, size and capacity of existing public utilities. *See diagram for known utilities. Others unknown at this time. We do not plan to connect to sewer or water at this time. We will work out a plan with AMU for power.*

- ☐ Location and dimensions of all existing and proposed paved surfaces and all abutting streets to include vehicle circulation pattern. *Please see the diagram*

- ☐ The site plan shall include a drainage plan to show area, slopes and runoff of the site. This plan shall also indicate the connections to existing storm sewers or drainage ditches and the courses surface water shall take for exit from the property. *This property gently slopes frow west to east and from north to south. We do not plan to change the flow of surface water in a material way.*



Prepared by Mike Klocke
General Manager
Massena Telephone Company
12-27-2023

Address TBD, possibly 1400 S Olive St

Pending approval by City Clerk

This lot is the NW section of 703 E 14th Street, as drawn.

It is similar to the former Lot 1 of Park Meadow Addition, which was combined with Lot 2 of Park Meadow Addition. Survey is pending.

Current Property Owner: Chris South/Compass Properties
Lot dimensions 80'x115', Area 9200 sqft
Shelter Dimensions: 11'Wx20'Lx11'H
Shelter Construction: Prefab concrete panel

Shelter Foundation: Concrete perimeter footing or concrete piling, pending engineering

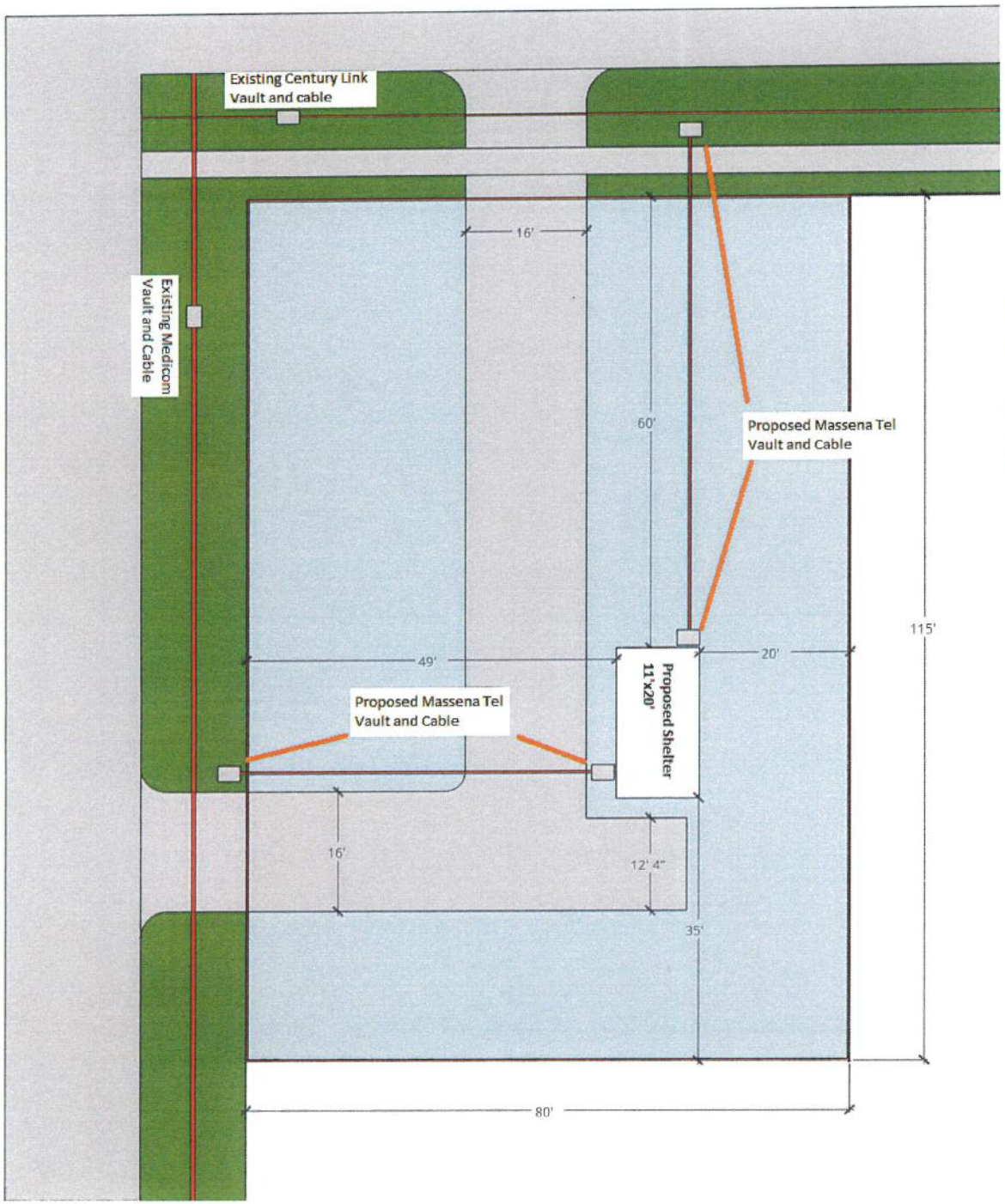
Shelter Use: To house fiberoptic terminals and associated electronics for providing communication services to Atlantic and surrounding area. This will NOT be a business office, there will be NO customer traffic.

Wells and septic: None known.

Utilities as marked, others TBD.

Lot currently slopes about 5% grade west to east, surface water drains to a steep bank at the east edge of the lot. The plan includes leveling the specific areas for the shelter and driveway but will not signficantly change the drainage of the lot. No known storm sewers or drainage ditches

The lot will be planted to grass except where the driveway and shelter are located.



Page 2-Detail View

Proposed Site Plan w/Communication Shelter
Massena Telephone Company

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