

Wisconsin Elections Commission

Marie Schmidt and Steven Schmidt,

Complainants,

EL 24-108

v.

Kaitlyn Bernarde, Kody Hart
and Maryanne Groat

Respondents.

VERIFIED RESPONSE TO COMPLAINANTS' AMENDED COMPLAINT

The Respondents hereby submit this verified response to the amended complaint submitted by Marie and Steven Schmidt to the Wisconsin Elections Commission.

ARGUMENT

After several weeks of discussion and research, I made an informed decision to utilize an absentee ballot drop box for the 2024 General Election. The complainants presented an inaccurate timeline for our absentee ballot drop box installation in the City of Wausau that started on September 19. Internal discussions started on July 5, when the Wisconsin Supreme Court issued their *Priorities USA v. WEC* opinion that held drop boxes are a permissible method of absentee ballot return under state law. The City Clerk worked to determine if having a drop box was best for the city, as well as prepared to install a drop box, while administering the August Partisan Primary Election. I reviewed the Wisconsin Supreme Court decision, Wisconsin Elections Commission (WEC) guidance issued on July 11, 2024, the Election Assistance Commission Election Management Guidelines, the WEC Election Administration manual and the WEC Election Day Manual. I also had discussions with clerks across Wisconsin for their expertise on:

- If they were using or going to be using a drop box for the November election, and
- If they were going to be using co-mingled drop boxes, and

- How many boxes they were going to use

The most important goal that I have, my Clerk's Office staff has, and our poll workers have, is to help ensure every eligible voter can cast their ballot. Having one commingled drop box helped us work towards this goal by:

- Allowing voters to return their ballot outside of regular City Hall hours, Monday-Friday 8am-4:30pm.
- Allowing voters to return their ballot without navigating the City Hall steps or ramp.
- Eliminating drop box confusion and the potential rejection of ballots if they are not returned in the correct drop box.

We did have electors who improperly returned their absentee ballots from 2020 to 2024. When absentee ballot drop boxes were allowed, voters sometimes would place their ballot in the silver payment box, when that was not the designated absentee ballot drop box, as indicated by signage. When absentee ballot drop boxes were not allowed, people still attempted to return their ballots by placing them in the silver payment drop box. In both situations, the clerk's office staff attempted to contact the voter to come to City Hall and verify that that was their ballot that they returned, and verify it was not tampered with. If we could not contact the voter, or did not have their contact information, we would record the ballot as "Not Returned, Sent to Voter for Resolution," and mail the absentee ballot back to the voter if there was time before an election. This drop box confusion does regularly occur, and creates frustration and additional work for the voters, as well as the Clerk's Office staff. If we could eliminate this voter confusion for even a handful of voters for each election, it was worth investing time and resources to create and promote one comingled drop box.

I agree with the complainants that with the privilege of being able to cast an absentee ballot, comes responsibility to ensure the security of the drop box into which the electors are returning their absentee ballots. I took several steps and evaluated security options prior to deploying the absentee ballot drop box including the following.

Re-wrapping the Absentee Ballot Drop Box

We utilized the same absentee ballot drop box that we used from 2020-2022 and had it re-wrapped to be one, clearly labeled official drop box for the City of Wausau to have a sole, secure collection box for residents to be able to trust for their important documents and payments, as well as to be efficient for City staff to collect from. This was not the more convenient option but was intentionally completed to create a long-term official drop box for ballots and payments. The drop box was re-labeled to show the City of Wausau logo and “Official Drop Box” prominently on three sides of the box, to communicate to residents that it is legitimate. This drop box can collect ballots in the weeks before an election 2 to 4 times a year, but also can collect tax payments and citation payments every week of the year.

Secured to the Ground

The white absentee ballot drop box was not open to collect ballots from September 19 to September 22nd, 2024, when it was placed in front of City Hall, but not yet secured to the concrete. For 3 days, the locked and closed for collection absentee ballot drop box was placed in front of City Hall with dozens of people walking, running, biking, parking in front of, and driving past without anyone attempting to remove the box. No one attempted to use the absentee ballot drop box because there was no available slot to deposit into. Before we Regardless, the much smaller silver payment box was open to collect ballots until the white absentee ballot drop box was ready. This silver payment box, which was attached to a concrete slab in front of City Hall for at least 10 years, was arguably as easy to move as the unbolted white absentee ballot drop box. This silver payment box was utilized earlier in 2020 before the new ballot drop box was purchased. I opted to use the white drop box as the permanent official ballot drop box because it could hold more than five ballots at a time before being full due to the large and oblong size of absentee envelopes. Once the white absentee ballot drop box was returned to me on September 30, 2024:

- At 8:27am, I instructed DPW staff to secure the white absentee ballot drop box to the ground as intended the week before.

- At 9:30am, City of Wausau staff verified the silver payment box was empty and closed it for any collection. They also verified the white absentee ballot drop box was untampered with, and empty, and then opened the slot for collection.
- At 1:13pm, I issued a public statement indicating the white absentee ballot drop box was secured and open for collection and the previously utilized silver payment box was removed and no longer in service.

The absentee ballot drop box was secured to the concrete sidewalk from the inside of the box prior to the drop box becoming operational.

Labeled for Payments

In August and September, City staff had internal discussions about what the labeling would convey if we were going to re-wrap the previously used absentee ballot drop box. To remain consistent with the purple insert that was being sent with absentee ballots, we initially kept the “Payment” label on the top of the absentee ballot drop box that was put on the box in 2022. On October 23rd, I directed the Department of Public Works employees to replace the “Payment” label with the “Absentee Ballots, Payments, and Correspondence” label.

Lighting

After reviewing the lighting and before deploying the absentee ballot drop box, I determined it was adequate. Note the quality of the images captured by the cameras appears better when viewed on a computer than printed on paper. I would be reviewing video surveillance footage on a computer and have the capability to share those images with appropriate authorities digitally, if required. Attached are images (Exhibits A-D) from the quad view camera that is pointed at the drop box that was taken two days before the box was placed, but not yet secured and open for collection. These photos were captured at 9:30pm, ensuring it is dark during a September evening in Wisconsin. The viewer can easily make out the payment box (circled in green), blue United States Postal Service Collection box (circled in yellow), and City Hall

railing. I felt confident that we could capture an incident that happened with the drop box, that could aid investigators if needed. Exhibit E is the same photo the mayor provided in the Council packet that the complainants referenced. It was taken at 7:24pm on October 1st from the Northeast quad camera view. Exhibit F was captured at the same moment from the Northwest quad camera view. According to the City's IT staff, The City Hall security cameras switch to a black and white display when they are trying to maximize the available light. In both camera views, you can see the white drop box and the blue USPS box.

After the absentee ballot drop box received so much attention leading up to and during the October 8th, Common Council meeting, I asked the City's Department of Public Works (DPW) to place a temporary light on the drop box on October 9th. In Exhibits G-J taken on October 11, you can see the improved lighting on the box at night with light from the temporary light affixed on the drop box. DPW also cleaned the camera lens when installing the temporary light on October 11 which eliminated glare on the lens, especially when it was raining as evidenced on September 21st (before cleaning in Exhibit K) and on October 31st (post-clean) respectively (Exhibit L).

Not only did I analyze data and review guidance before deploying the absentee ballot drop box, but I also continually worked to ensure the box was secure once I learned new information, such as public interest in the box, and other security threat briefings I received.

Camera

In August, when preparing to potentially install an absentee ballot drop box, I confirmed that there was one video device with four cameras inside the camera housing that was fixed around the location of the box, and that this device was operating 24 hours a day 7 days per week. Exhibits B and C were from this quad camera that records the absentee ballot drop box from two different cameras' views. Exhibits A and D record the approaches to the absentee ballot drop box from the West and East, respectively. I am confident the quad camera was adequate for 24/7 absentee ballot drop box surveillance since the drop box's deployment and through today.

The complainants cite a front door camera that does not show the drop box prominently in focus and they argue it does not provide video surveillance of the box. I do not argue that this front door camera is the primary video surveillance for the drop box. This front door camera is an additional investigative tool if we had to or must research an incident in the future. I requested IT to replace the previous fisheye camera on October 9th, after they informed me, it was at the end of its useful life. Exhibit M is an image from the replacement panoramic camera on the front of City Hall with the drop box circled in red and the USPS collection box circled in yellow. Note, this camera was not replaced until November 13th, after the 2024 Presidential Election.

Proper Opening

The drop box has a proper opening. The previous clerk purchased the secured absentee ballot drop box from a prominent national manufacturer, and we did not alter its standard, compliant opening.

Box Marked for Final Retrieval

Since I decided to use an absentee ballot drop box for this election, and we utilize Central Count for central processing of absentee ballots, I followed previous practice of posting the official absentee ballot drop box closing time closer to election day. It did not seem necessary to post this 47 days before the election day since the plan for the box was to be open the entire time people could vote, including throughout election day. This drop box practice contrasts with closing the drop box the day before election day like in the Village of Rib Mountain or having various final pick-up times at various absentee ballot drop box locations like in the City of Milwaukee. We had one absentee ballot drop box in front of City Hall that was open until 8pm on Election Day. We did post a notice on the box on Election Day morning to inform voters who may have been concerned about whether they could use the box on Election Day, or if they had to go to their poll site to vote, that the box would remain open until 8 p.m.

Secure/ Lock to Prevent Submission of Ballots after the Final Retrieval

I interpreted this guidance for municipalities who do not have a co-mingled drop box. We followed our previous practice to put a sign on the box after collection, which we did at 8pm on Election Day. The final collected ballots were scanned into WisVote as returned, counted at Central Count and then the Central Count tabulators were closed. We cannot accept ballots after the polls are closed. The sign posted on the absentee ballot drop box informed voters that they could no longer return their ballot in the absentee ballot drop box.

YouTube Video

The YouTube video the complainants cite was published online in September 2022, when drop boxes were not allowed to be used to return absentee ballots. This video is still available online, and we are working on updating the video to reflect both the availability of drop boxes and the new absentee certificate envelopes implemented in 2024.

Staff Refusing to Take Absentee Ballots by Hand

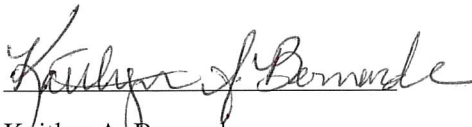
This accusation is not accurate and leaves out important context. The voter came in to return her absentee ballot when the white absentee ballot drop box was removed and we were unsure where the drop box was being held. The voter wanted to know where the white absentee ballot drop box was, and wanted to place her absentee ballot in the drop box. The Clerk's Office customer service staff informed the voter she could hand it to them at the window or place it in the silver payment box outside. As communicated in my official statements, from when the white absentee ballot drop box was removed midday on September 22nd, 2024, until the white absentee ballot drop box was secured and open for collection on September 30th, 2024, we informed voters they could return their ballots in the silver payment box (Exhibits N-O). This box is smaller, so we had additional collections each weekday by two Clerk's Office staff members. We securely and properly collected and recorded seven absentee ballots during this week.

The City of Wausau did have a secure absentee ballot drop box for the 2024 Presidential Election, which collected 596 absentee ballots safely and without incident. We worked diligently to ensure the electors could lawfully and securely return their ballot whether it was in the mail, in person at the Clerk's Office, or in the absentee ballot drop box. Regardless of the improper removal and retention of the drop box for a week, we did take our election administration seriously before, during, and after installing the drop box and did not violate any election laws.

CONCLUSION

For the foregoing reasons, we request that the Wisconsin Elections Commission dismiss the COMPLAINT as amended.

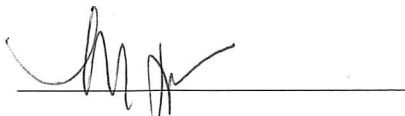
Dated this 11th day of December 2024.



Kaitlyn A. Bernarde



Kody Hart



Maryanne Grant

VERIFICATION

I, KAITLYN A. BERNARDE, being first duly sworn upon oath, state that I personally read the above Verified Response and that it is true and correct based upon my personal knowledge.

Dated this 11th day of December, 2024.


KAITLYN A. BERNARDE

Sworn and subscribed to before me

This 11th day of December, 2024.



Notary Public, State of Wisconsin

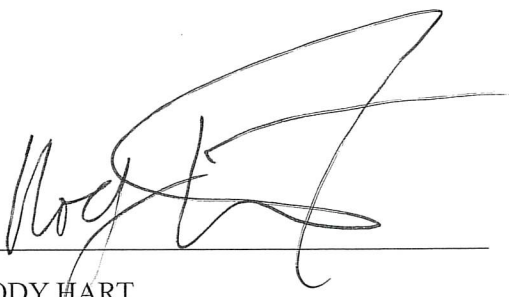
My Commission Expires: 8/4/2028



VERIFICATION

I, KODY HART, being first duly sworn upon oath, state that I personally read the above Verified Response and that it is true and correct based upon my personal knowledge.

Dated this 11th day of December, 2024.


KODY HART

Sworn and subscribed to before me

This 11th day of December 2024.



Notary Public, State of Wisconsin

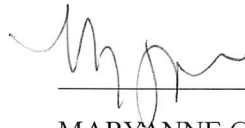
My Commission Expires: 8/4/2028



VERIFICATION

I, MARYANNE GROAT, being first duly sworn upon oath, state that I personally read the above Verified Response and that it is true and correct based upon my personal knowledge.

Dated this 11th day of December, 2024.



MARYANNE GROAT

Sworn and subscribed to before me

This 11th day of December, 2024.



Notary Public, State of Wisconsin

My Commission Expires: 8/4/2028

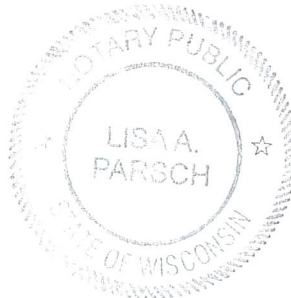


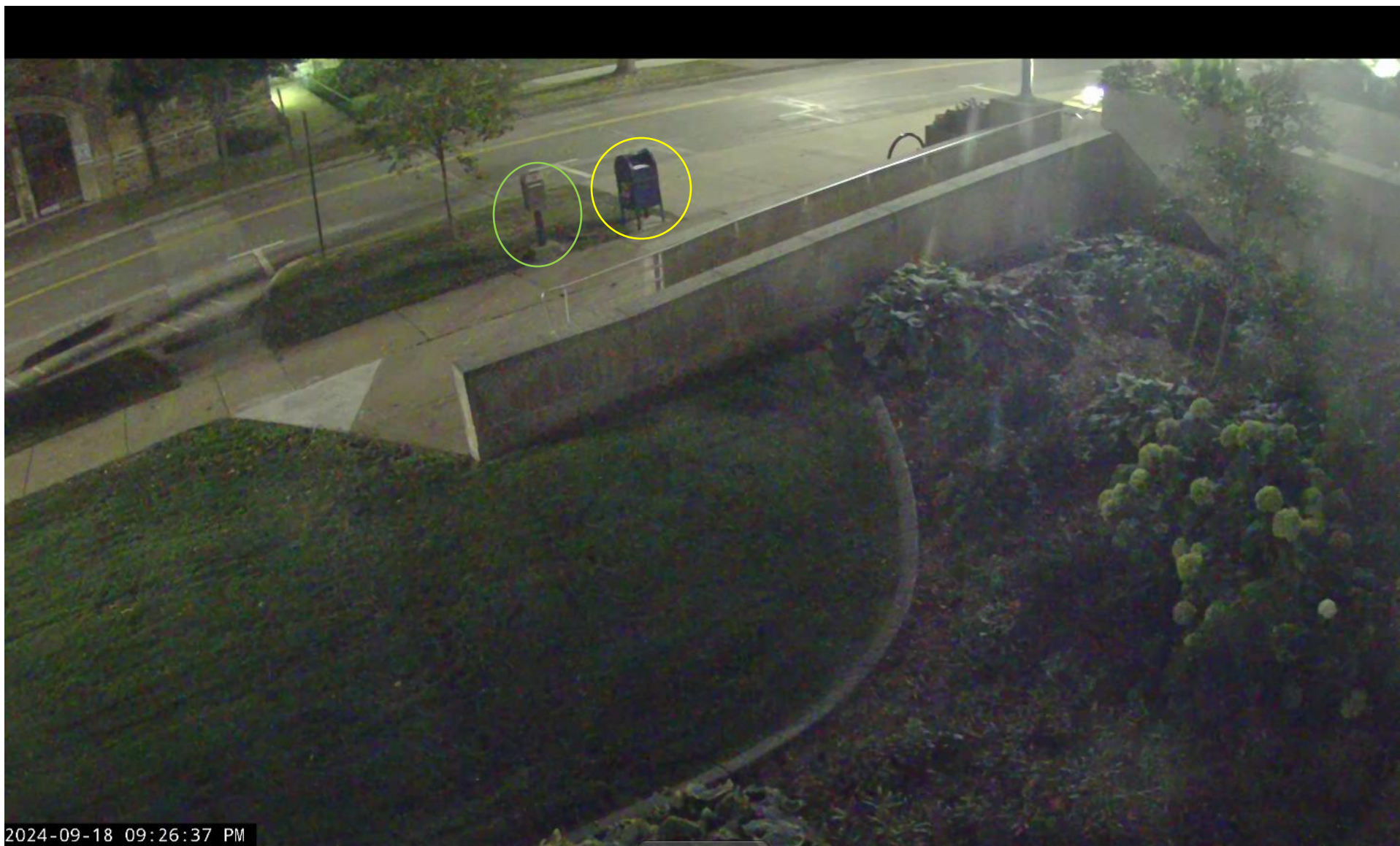
EXHIBIT A: West Camera View from 09/18/2024 at 9:30PM



EXHIBIT B: Northwest Camera View from 09/18/2024 at 9:30PM



EXHIBIT C: Northeast Camera View from 09/18/2024 at 9:30PM



2024-09-18 09:26:37 PM

EXHIBIT D: East Camera View from 09/18/2024 at 9:30PM



EXHIBIT E: Northeast Camera View from 10/01/2024 at 7:24PM

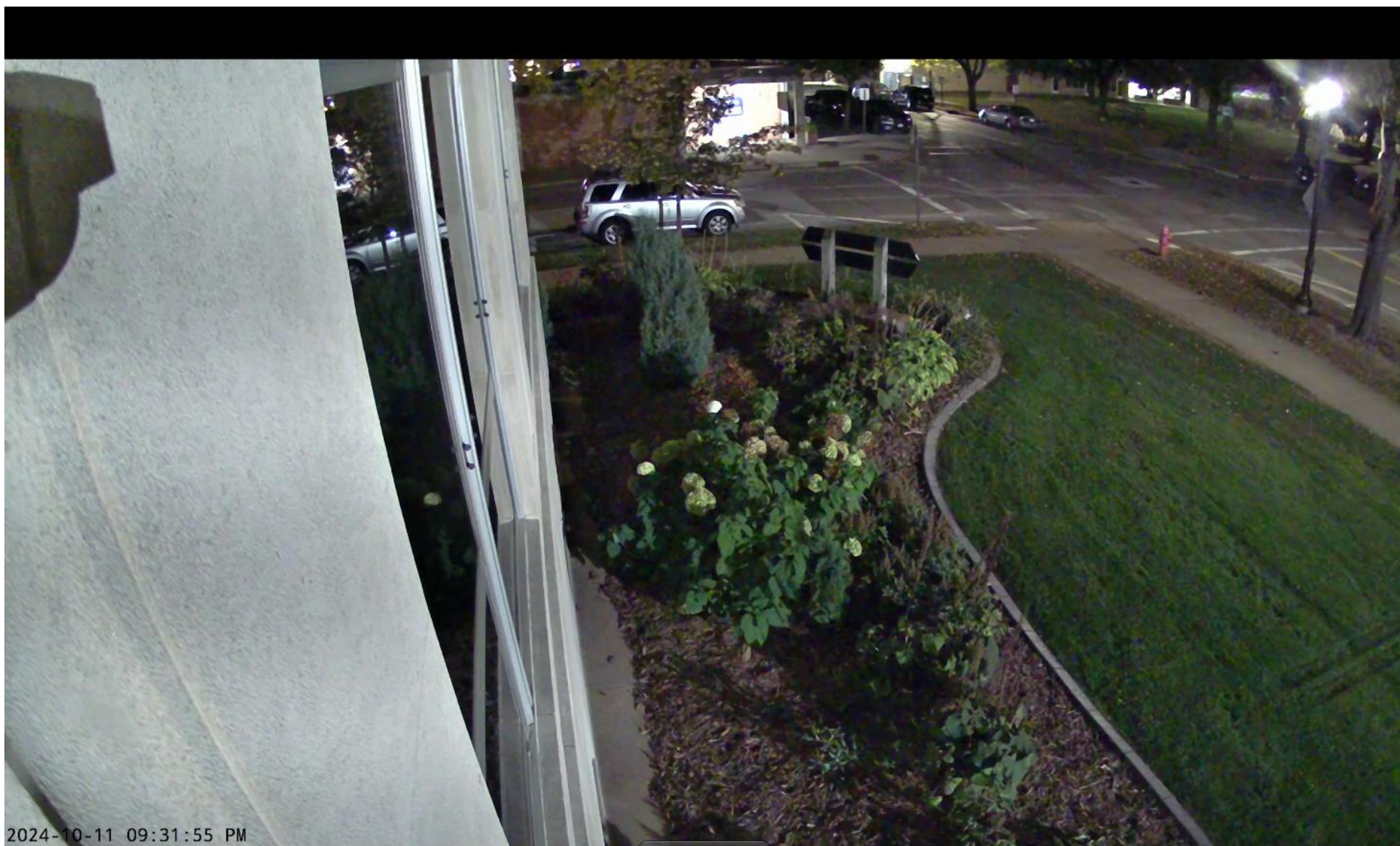


EXHIBIT F: Northwest Camera View from 10/01/2024 at 7:24PM



2024-10-01 07:24:34 PM

EXHIBIT G: West Camera View from 10/11/2024 at 9:31PM



2024-10-11 09:31:55 PM

EXHIBIT H: Northwest Camera View from 10/11/2024 at 9:30PM



2024-10-11 09:30:39 PM

EXHIBIT I: Northeast Camera View from 10/11/2024 at 9:30PM

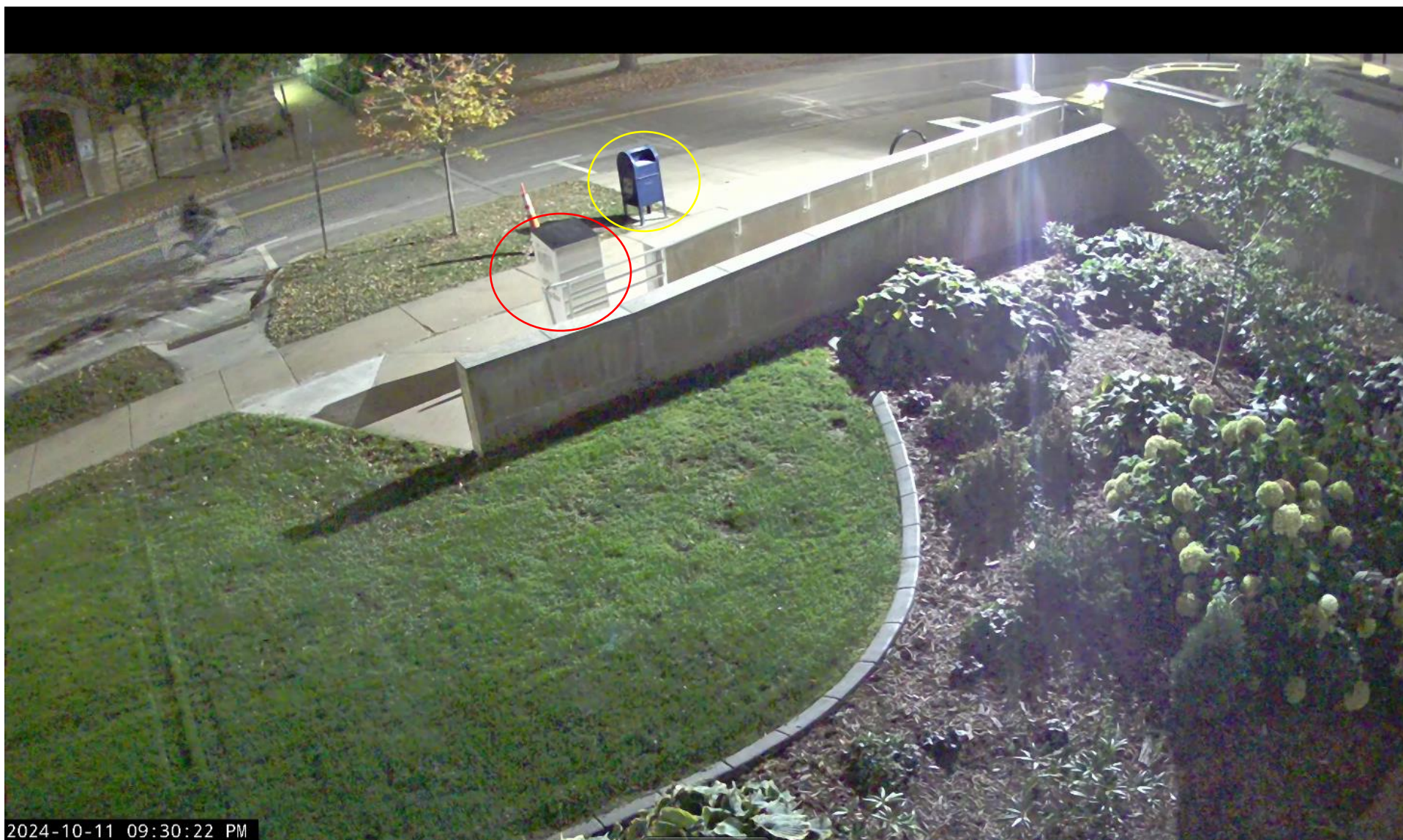


EXHIBIT J: East Camera View from 10/11/2024 at 9:30PM

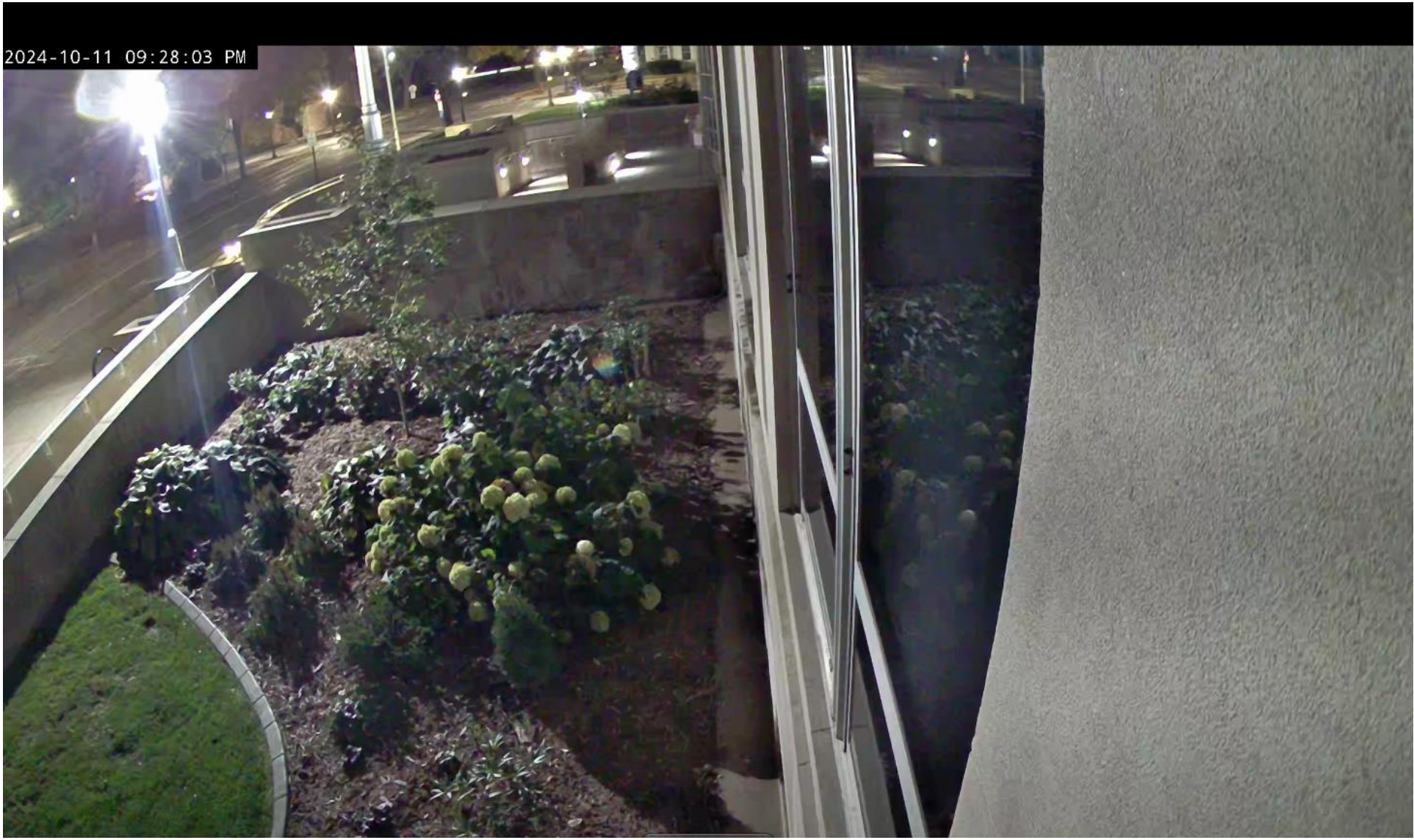


EXHIBIT K: Northeast Camera View from 9/21/2024 at 9:30PM in the rain



EXHIBIT L: Northeast Camera View from 11/5/2024 at 5:30PM in the rain

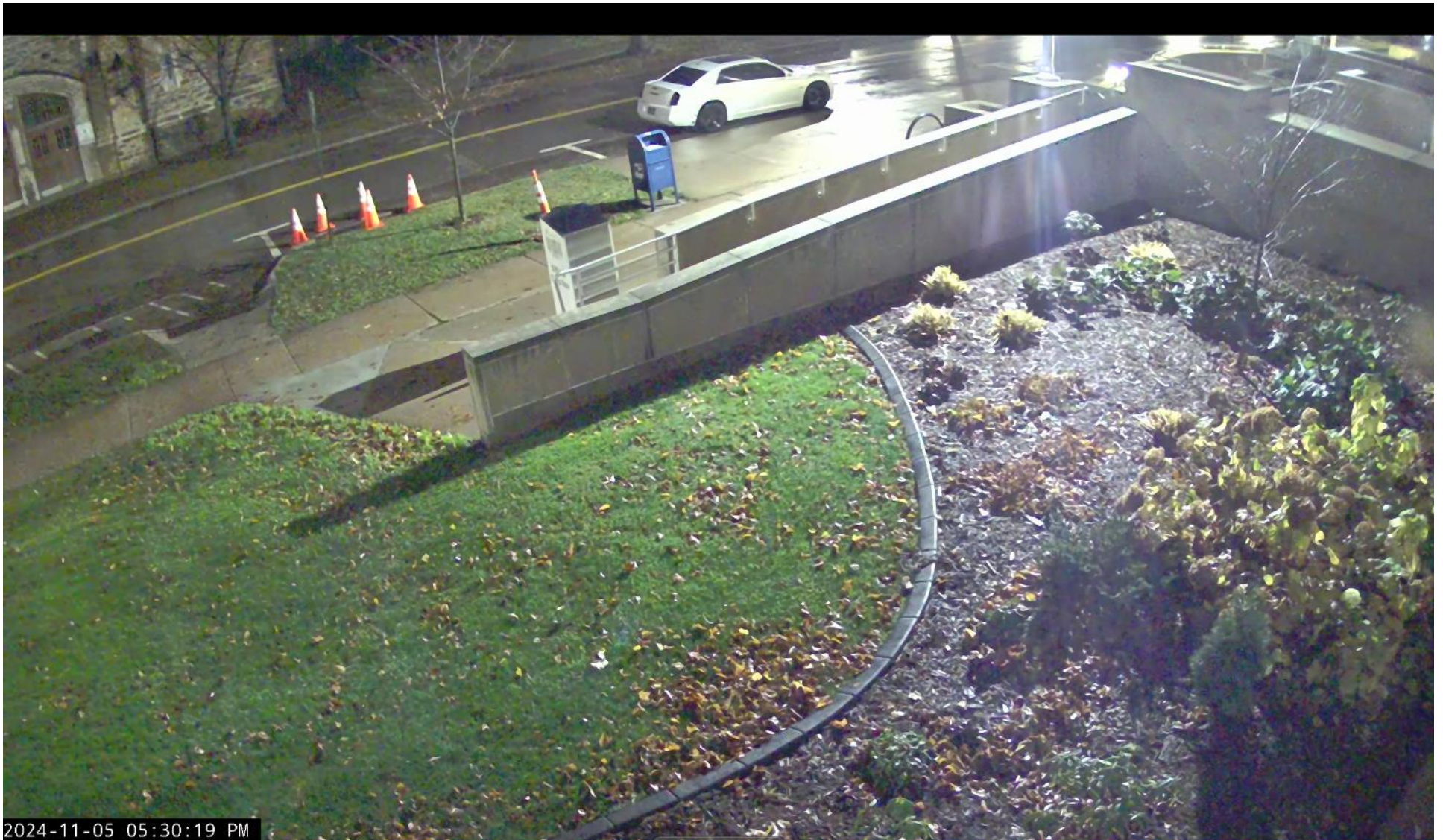
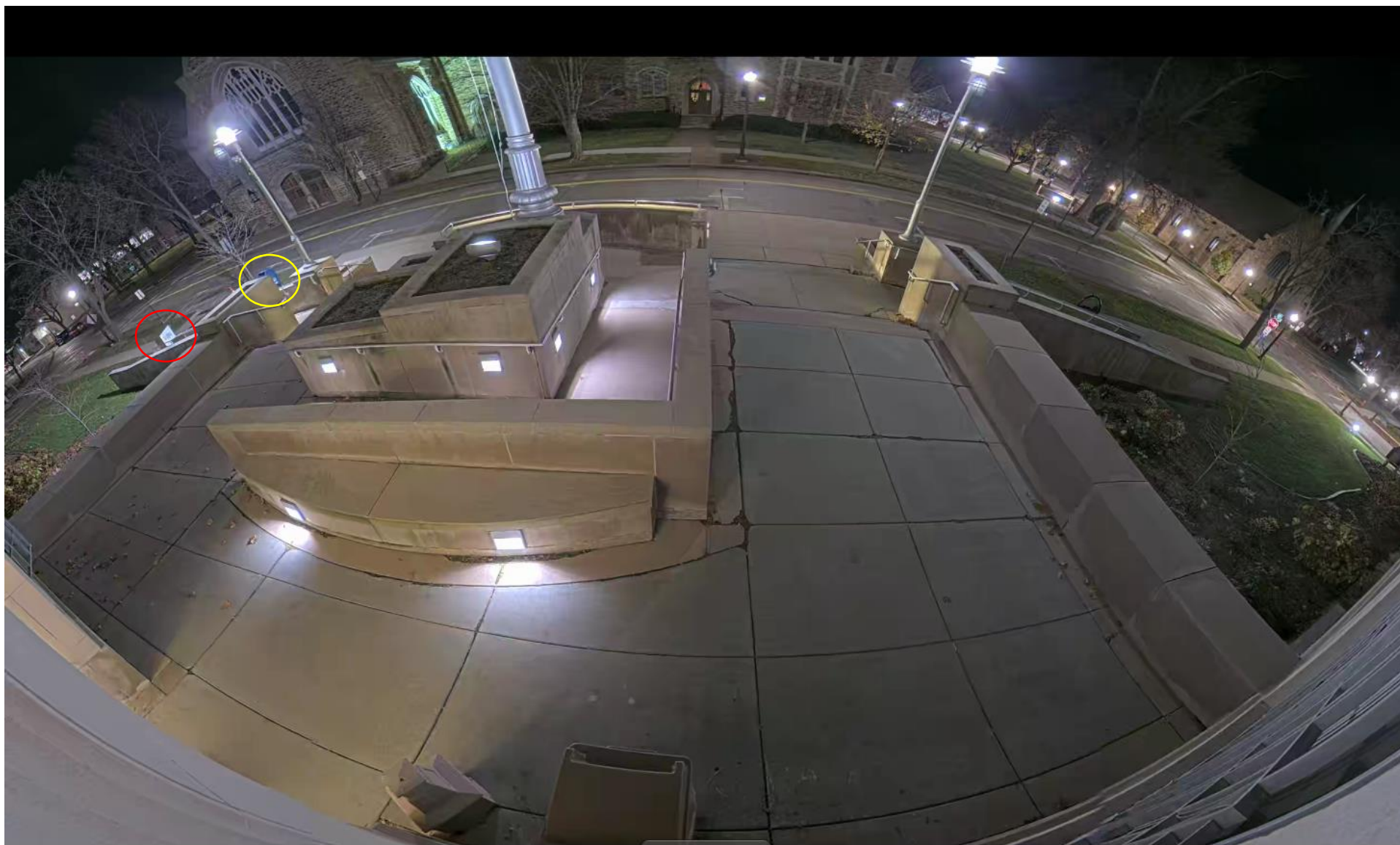


EXHIBIT M: Front Door Panoramic Camera View from 11/13/2024 at 9:30PM





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Kaitlyn Bernarde

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Kaitlyn.bernarde@wausauwi.gov

FOR IMMEDIATE RELEASE

September 25, 2024

Official Statement

After consulting with numerous City officials and reviewing best practices, the City Clerk started the process of providing an absentee ballot drop box, located in front of City Hall. The box was not yet functional: it was locked and clearly labeled, "Kiosk Closed." Since the drop box was closed and locked, no ballots could be accepted. The box was re-labeled on Friday to properly label the box as an "Official Drop Box" to eventually be able to collect payments, ballots, and other important city requests. Once re-labeled, it was the intention of the Clerk's Office to secure the drop box to the ground and then begin accepting absentee ballots.

When City staff went to secure the drop box and open it for collection on Monday morning, it was reported that the drop box had been removed. Again, the drop box was locked and did not have any ballots, payments, or other documents inside.

I reported an election irregularity to the Marathon County District Attorney and the Wisconsin Elections Commission under Wis. Stat. § 7.15(1)(g).

Since this matter has been referred for investigation, the ballot drop box that was originally designated for use is not currently available. Existing video surveillance is not being released at this time to not compromise any potential investigations. At this time, eligible voters who wish to return their absentee ballot to the City Clerk can securely return their own ballot in the silver Payment Box in front of City Hall.



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FOR IMMEDIATE RELEASE

September 30, 2024

**Wausau City Clerk Statement
on Official Drop Box Use**

Absentee ballots were mailed starting September 19, 2024. An official drop box is now secured outside City Hall for residents to submit absentee ballots, payments, and other important city requests as was intended. The drop box has been re-labeled for use and is secured to the ground, in accordance with guidelines from the Wisconsin Elections Commission and the United States Election Assistance Commission. The previously utilized silver payment box in front of City Hall has been removed and will no longer be in service. We appreciate the community's patience.