

Staff Report
May 17, 2019



**Zoning and
Land Regulation
Committee**

Questions? Contact:
Majid Allan – 267-2536 or
allan@countyofdane.com

Public Hearing: **March 26, 2019**

Zoning Amendment Requested:

TO CUP: 250' Communication Tower (lighted)

Size: **0.23 Acres**

Survey Required: **No**

Reason for the request:

250' Communication Tower (lighted)

CUP 02456

Town/Section:

**MONTROSE, Section
30**

Applicant

DENNIS V NOLDEN

Address:

**IMMEDIATELY EAST
OF 484 FRITZ RD**

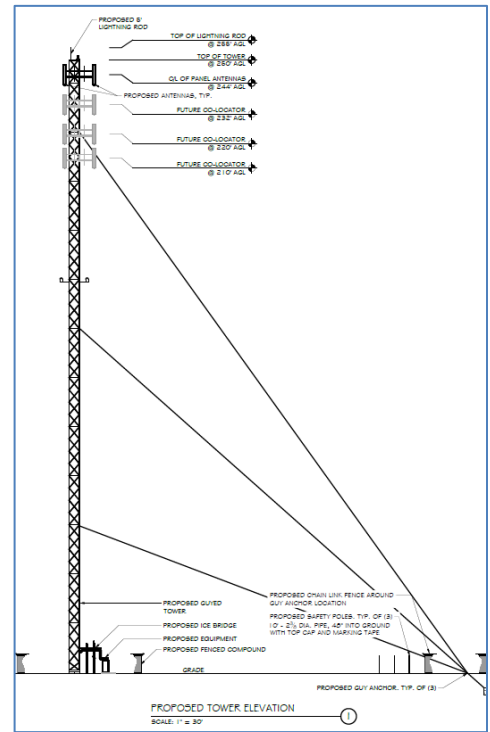


CONDITIONAL USE PERMIT REQUEST SUMMARY: Bug Tussel Wireless is requesting approval of a Conditional Use Permit to allow installation of a 250' tall communication tower (255' with lightning rod) on a 10,000 square foot area of the ~320 acre Dennis and Lisa Nolden farm located northeast of the intersection of Montrose and Fritz Roads in section 30 of the town of Montrose. In the application submittal, Bug Tussel Wireless provides information in support of the company's plan to provide fixed wireless internet service to area residents. The application also indicates that AT&T mobile phone service and "FirstNet" coverage will also be provided, but no documentation was provided to substantiate the claim. FirstNet is a federal government supported nationwide interoperable public safety broadband network being deployed by AT&T.

The proposed tower would feature a lattice design and be supported by guyed lines. The applicant indicates that the tower would require lighting per FAA regulations with a red beacon at approximately 250' and a white mid beacon light at approximately 160'.

CONDITIONAL USE PERMIT PROCESS: Conditional uses are those uses which, because of their unusual nature and potential for impacts on neighboring lands, public facilities, the environment or general welfare, warrant special consideration and review. The zoning ordinance includes specific requirements and standards for review and approval of conditional use permits.

In order to obtain a Conditional Use Permit, an applicant must provide **substantial evidence** to demonstrate that the application, and all requirements and conditions established by the county relating to the conditional use, are or shall be satisfied. Substantial evidence means, *“facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.”*



Prior to granting or denying a conditional use, the zoning committee shall make written findings of fact based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets the applicable standards specified in the ordinance.

The zoning committee must deny a conditional use permit if it finds that the standards for approval are not met, and must approve if it finds that the standards for approval are met. The decision to approve or deny a conditional use permit must be supported by substantial evidence. Any conditions imposed must be based on substantial evidence, related to the purpose of the ordinance, reasonable, and, to the extent practicable, measurable.

Dane County communication tower ordinance: All new communication tower applications are subject to review against the provisions of the Dane County communication tower ordinance (section 10.194). One of the primary objectives of the county's tower ordinance is to provide for a robust wireless infrastructure while minimizing the number of tower facilities needed. This is established in the first two provisions of the ordinance, which state the following:

Section 10.194(1)

It is intended that conditional use permits shall be issued under this section to accommodate the expansion of wireless communication technology while minimizing the number of tower sites through the requirement that permitted towers be placed or constructed so that they may be utilized for the collocation of antenna arrays to the extent technologically and economically feasible.

Section 10.194(2)

No conditional use permit for the placement or construction of a tower shall be issued unless the applicant presents to the committee credible evidence establishing to a reasonable degree of certainty the following:

- a. No existing communication tower is located within the area in which the applicant's equipment must be located; or
- b. No existing communication tower within the area in which the applicant's equipment must be located is of sufficient height to meet applicant's requirements and the deficiency in height cannot be remedied at a reasonable cost; or

- c. No existing communication tower within the area in which the applicant's equipment must be located has sufficient structural strength to support applicant's equipment and the deficiency in structural strength cannot be remedied at a reasonable cost; or
- d. The applicant's equipment would cause electromagnetic interference with equipment on the existing communication tower(s) within the area in which the applicant's equipment must be located, or the equipment on the existing communication tower(s) would cause interference with the applicant's equipment and the interference, from whatever source, cannot be eliminated at a reasonable cost; or
- e. The fees, costs or contractual provisions required by the owner in order to collocate on an existing communication tower are unreasonable relative to industry norms; or
- f. The applicant demonstrates that there are other factors that render existing communication towers unsuitable or unavailable and establishes that the public interest is best served by the placement or construction of a new communication tower.

Standards for approval of a Conditional Use Permit: In addition to the requirements included in the county's communication tower ordinance (section 10.194), the zoning committee must find that all the following general standards for approval are met for the proposed conditional use:

Section 10.255(2)(h)

- a. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare;
- b. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use;
- 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. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;
- 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 conform to all applicable regulations of the district in which it is located.

Standards for approval of a Conditional Use Permit in certified Farmland Preservation zoning districts: As required under the state farmland preservation statute and county zoning code, additional standards also apply to conditional use permits proposed in a state-certified farmland preservation category.

- a. The use and its location in the A-1 Exclusive Agriculture zoning district are consistent with the purposes of the district.
- b. The use and its location in the A-1 Exclusive Agriculture zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
- c. The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.
- d. The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
- e. Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible

Consistency with adopted comprehensive plans: As required under section 10.255(1)(d), the county zoning committee shall review all zoning map amendments and Conditional Use Permit applications for consistency with the relevant adopted comprehensive plans of the town and county.

RELEVANT FACTS & INFORMATION

Location, size, existing use and characteristics of subject property: The subject property is part of a ~320 acre farm located northeast of the intersection of Montrose and Fritz Roads in southwestern town of Montrose (section 30). The site is located in a field with gently sloping topography. Applicant indicates the ground elevation of the site is 995' above Mean Sea Level (MSL). Existing use of the property is agricultural.

Current zoning and applicable district regulations: The property is zoned exclusive agriculture (A-1EX / FP-35). Communication towers are available as a conditional use in this district. All conditional uses are subject to the additional standards noted above.

Surrounding land uses / neighborhood: Surrounding land uses include agriculture / open space and scattered rural residences. There are 7 residences located within 1/2 mile of the proposed site, 28 within 1 mile, and 754 within 3 miles. Most of the residences within the 3 mile area are located in the Village of Belleville. Applicant indicates the ground elevation of the site is 995' above Mean Sea Level (AMSL). No sensitive environmental features or resource protection areas located on the proposed CUP site. There is an existing SBA Communications tower located approximately 1.2 miles to the Southwest of the site near the intersection of State Highways 69 and 92. Both the applicant and SBA have confirmed that there is an existing collocation spot on the existing tower at 160' (1,280' AMSL).

Utilities, access, drainage, and other necessary site improvements:

The applicant indicates that power consisting of a minimum 600 amp single phase service is proposed. Access to the site is proposed via a gravel access road out to Fritz Road. The 50'x50' fenced compound area would have a gravel base with outdoor cabinets housing electronics and related equipment placed on a small concrete pad.



Applicable additional standards: See requirements of section 10.194, 10.123(5) noted above. Other state and federal regulations apply to siting of communication towers.

TOWN / COUNTY PLAN: The property is within a designated agricultural preservation area as shown in the Town of Montrose Comprehensive Plan / Dane County Comprehensive Plan and Dane County Farmland Preservation Plan. The Montrose plan includes statements acknowledging the need for improved telecommunications services in the town. Within designated agricultural preservation areas, plan policies focus on preserving both farmland and the town's rural character by strictly limiting nonfarm development. The plan also encourages "dark night skies" and requires the careful siting of new communication towers. The Dane County Comprehensive Plan includes policies supporting expansion of internet / WiFi services to underserved areas of the county, as well as maximizing coordination of telecommunication facility needs with existing structures (i.e., collocation). Like the town plan, the county plan also includes provisions that seek to limit conversion of agricultural land to nonagricultural uses.

BACKGROUND: Staff was first made aware of Bug Tussel’s interest in a tower at this specific location in early 2016 when a preliminary application was submitted on behalf of the company by agent Scott Littell. A second site in the town of Primrose was also being pursued. At the time, Bug Tussel was in the process of planning expansion of its fixed wireless services into southern and western Dane County and the surrounding counties of Green, Iowa, and Sauk. Given the interest in providing for high speed internet service options in unserved areas of rural Dane County, staff met with Bug Tussel representatives in April of 2016 to learn more about the proposed expansion.

Company representatives explained that they were seeking to deploy a total of 7 sites on the western and southern edges of the county between the towns of Mazomanie in the northwest to Montrose in the southeast. In addition, the representatives stated that their proposal involved not just delivering fixed wireless internet services, but would also include the mounting of GSM cellular phone equipment to service a major carrier’s (AT&T) roaming service agreement with Bug Tussel.

In consultation with the county’s RF Engineering Consultant at the time, it was recommended that Bug Tussel consider submitting applications simultaneously for multiple sites. Staff has been in contact with Bug Tussel agents many times since the initial contacts in 2016 regarding possible tower sites and collocation alternatives. This included providing assistance to investigate the feasibility of using existing county tower facilities in the towns of Black Earth and Blue Mounds. Staff also recommended that Bug Tussel investigate collocation options on the WSUM and SBA towers located in the town of Montrose. It is staff’s understanding that Bug Tussel ultimately decided to move some of its planned sites into neighboring Iowa County and has chosen to pursue approval of individual sites now that they’ve established a network presence in the areas surrounding Dane County.

Since 2016, staff has remained in contact with Bug Tussel and provided ongoing advice and assistance regarding the county’s application procedure and ordinances. This has included numerous phone calls and email exchanges with Bug Tussel representatives.

DECISION MAKING CONSIDERATIONS: In addition to reviewing proposals for consistency with adopted town and county comprehensive plans and compliance with county zoning code provisions and federal law, there are several state statutes that apply to local consideration of a proposed Conditional Use Permit and/or new mobile service support structures (towers). 2017 Wisconsin Act 67 established criteria for local consideration and action on Conditional Use Permit requests. The Act requires that decisions must be based on “substantial evidence”, and not merely personal preference or speculation.

Act 67 requirements: Specifically, the Act requires that, *“The applicant must demonstrate that the application and all requirements and conditions established by the county relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The county’s decision to approve or deny the permit must be supported by substantial evidence.”* Section 59.69(5e)(b)2

Substantial evidence means, *“facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.”*

Mobile Tower Siting Regulations: Section 66.0404 of state statutes – *Mobile Tower Siting Regulations* –places certain requirements and limitations on local regulation of the siting of “mobile service support structures” (cell towers). Although the applicant indicates that the proposed tower would provide mobile phone services for a “major carrier”, the county’s RF engineering consultant has noted that no substantial evidence has been submitted in support of the claim for these additional services (see quoted report excerpt, below). As such, the RF engineering review of the tower is limited to the information submitted in support of the fixed wireless internet service to be provided by Bug Tussel.

The staff report provided to the committee for the March 26, 2019 Public Hearing noted that: “It is unclear if this statute applies to towers proposed for the purpose of providing fixed wireless service.” That comment was based on the fact that the statute applies to the siting of “mobile service support structures”. The statutory definition of “mobile service”

in s. 66.0404(1)(k) references the definition of the same term provided in 47 USC 153(33) of the federal code. Staff consulted with corporation counsel, as well as CityScape's legal counsel on this issue. Based on the fact that Bug Tussel's application only provided documentation for the provision of fixed wireless internet service, the proposed tower *does not qualify* as a "mobile service support structure" because the definition of "mobile service" does not include fixed wireless internet service.

Applicable county ordinance: The CUP application was made on January 23, 2019, and the public hearing on the proposal was held on March 26, 2019. On April 9, 2019 the town of Montrose adopted the new Dane County zoning code. Although the town has adopted the new county code, state law requires that applications must be considered under the ordinance in effect at the time the application was made (sec. 66.10015 Wis Stats). Staff have processed and reviewed the application based on the prior zoning ordinance.

ADDITIONAL INFORMATION SUBMITTED: Two additional items have been submitted since the March 26, 2019 ZLR Committee public hearing which were not reviewed in the initial staff report. The first is a letter and radio frequency engineering analysis submitted at the 3/26/19 public hearing by attorney Kevin Pollard on behalf of SBA Communications. The letter and analysis attempts to address the feasibility of collocation of Bug Tussel's equipment on the existing SBA tower near the intersection of State Highways 69 and 92.

SBA's regional site marketing manager, Kent Meier, states in the letter that the existing tower, "*...has more than adequate structural capacity and space for collocation.*" The SBA submitted engineering analysis compared predicted coverage from the existing SBA tower and the proposed Bug Tussel tower. The analysis alleges that the existing SBA site and proposed Bug Tussel site result in similar coverage.

The second piece of additional information is a letter dated April 22, 2019 from the applicant's representative, Brentt Michalek, attempting to document that collocation on the existing SBA tower would be "economically burdensome" to Bug Tussel. The letter references the following provision of the county zoning code regarding unreasonable costs to collocation: "The cost of eliminating impediments to collocation shall be deemed reasonable if it does not exceed by 25 percent the cost of constructing a new tower on which to mount applicant's equipment." Section 10.194(3)

The cost comparison provided on page 2 of the document alleges that the cost of collocation on the SBA tower would total \$510,000, whereas the cost of constructing the proposed new tower would total \$355,000 for a cost differential of 35.8%. As detailed in the Staff Analysis section, below, the costs provided are speculative in nature and it is apparent that the applicant misapplies the "reasonable cost" provision of the code. See below for additional information and analysis of the SBA and applicant letter.

3rd PARTY ENGINEERING REVIEW: The county relies on a 3rd party consultant to provide an independent technical review so that county officials have an unbiased perspective to rely upon when considering requests for approval of a Conditional Use Permit for a new communication tower. As with all applications for a new communications tower, the current proposal has been reviewed by the county's 3rd party Radio Frequency (RF) engineer, CityScape Consultants. CityScape has identified numerous questions and concerns with the proposal (see attached report). These include questions as to Bug Tussel's consideration of the feasibility of collocation on the existing SBA Communications tower located approximately 1.2 miles from the site near the intersection of State Highways 69 and 92. The CityScape report conclusion states:

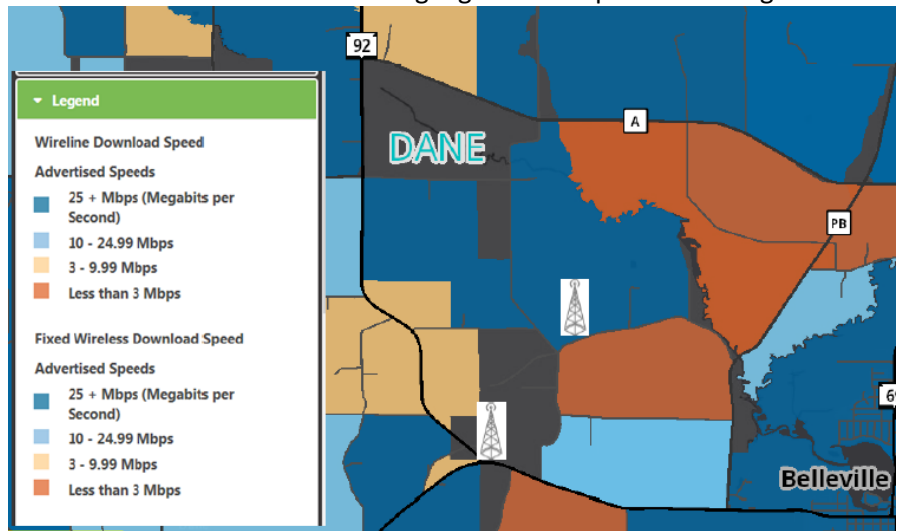
"It is CityScape's opinion that the Applicant has only demonstrated the need to install its antennas on a structure in the vicinity to improve its fixed wireless service. The submittals have conflicting information as to the validity of the search ring. The reduction in size and shift of the search ring is not substantiated. The coverage maps compare indoor signal levels between the proposed and SBA sites which is not relevant for fixed wireless service. Last, the indication that AT&T/FirstNet will also utilize this tower does not eliminate the possibility that AT&T/FirstNet could utilize another tower in the area, such as the SBA tower. Furthermore, without any formal information from AT&T/FirstNet such as need or coverage maps, any assumption that this

site is needed for AT&T/FirstNet is unsubstantiated. For these reasons, CityScape does not find justification for a new, 255-foot lighted tower, as proposed by Bug Tussel Wireless.”

STAFF ANALYSIS: The need to extend high speed internet services to areas of rural Dane County that do not currently have service is well documented. Staff reviewed information available on the Wisconsin Public Service Commission Broadband Office website to investigate the need for service in the area and to gauge service speeds that Bug Tussel provides in nearby areas of Green County where they have existing facilities. (Though requested, no information on potential service speeds or eligible households was provided in the application submittals.)

According to the PSC’s Wisconsin Broadband Map, there are areas lacking high speed internet options in parts of southern Montrose. The broadband map also shows that Bug Tussel has advertised download speeds of 4 Mbps and upload speeds of 1 Mbps in adjoining areas of Green County

<https://maps.psc.wi.gov/apps/WisconsinBroadbandMap/>.



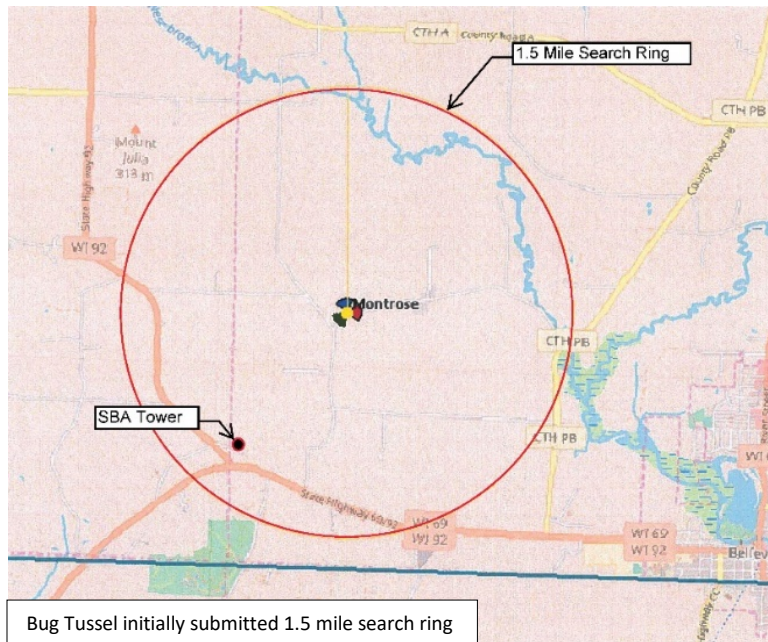
Ordinance requirement for collocation: Since its adoption in 1997, the primary objective of the county’s tower ordinance has been to provide for a robust wireless infrastructure **while minimizing the number of tower facilities needed** (emphasis added). Indeed, the first provision in the county’s tower ordinance states the following:

“It is intended that conditional use permits shall be issued under this section to accommodate the expansion of wireless communication technology while minimizing the number of tower sites through the requirement that permitted towers be placed or constructed so that they may be utilized for the collocation of antenna arrays to the extent technologically and economically feasible.” Section 10.194(1)

Collocation is also addressed in state law (section 66.0404). The relevant statute includes provisions designed to facilitate collocation by limiting local regulation of collocation proposals. In addition, the statute indicates that refusing to evaluate the feasibility of collocation can be grounds for denying an application for a new mobile service support structure (cell tower). Staff is concerned that substantial evidence has not been provided that would demonstrate that the existing SBA tower is not a feasible collocation alternative for the applicant.

As detailed in CityScape’s report, there are concerns with information provided by Bug Tussel in support of the application, including the submittal of multiple search rings, affidavits, statements, and engineering studies, some of which provide contradictory information.

Search ring: One of the fundamental pieces of information that must be submitted with a new tower application is the



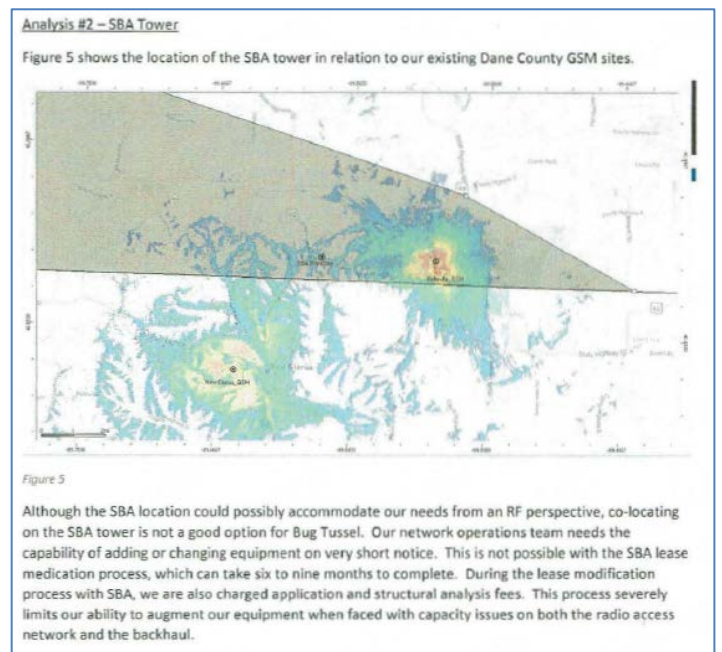
applicant's "search ring". The search ring is the area within which the applicant needs to site a tower in order to meet its network and coverage objectives. As noted in the background section, above, county staff have been aware of Bug Tussel's interest in siting a new tower on the Nolden property since early 2016. The 2016 preliminary application, as well as the initial October 2018 Bug Tussel application, identified a search ring distance of 1.5 miles. The existing SBA Communications tower is located approximately 1.2 miles from the site – within the initial search ring identified by Bug Tussel.

The initial application submittal included a statement dated March 8, 2016 by Bug Tussel engineer, Dean Hansen, on the feasibility of collocation on the existing SBA tower. The statement indicated that, "Although the SBA location could possibly accommodate our needs from an RF perspective, co-

locating on the SBA tower is not a good option for Bug Tussel." The statement goes on to indicate that the reason collocation was not pursued was because Bug Tussel requires the capability of adding or changing equipment on very short notice, which would not be possible because of an alleged cumbersome SBA leasing process (see Addendum #4 and graphic at right).

County staff has been contacted by SBA Communications staff who've indicated their willingness to discuss collocation with Bug Tussel representatives. SBA staff also noted that they host Bug Tussel on their towers in other locations in Wisconsin. SBA is a company that owns and rents space on towers, and has indicated that they have space available on their existing tower near State Highways 69 & 92 at 160'. SBA's willingness to host Bug Tussel on its tower was reiterated by company representatives both verbally and in written documentation provided to the ZLR Committee at the March 26, 2019 public hearing.

Analysis of information and documentation: The initial affidavit submitted by Bug Tussel engineer, Scott Reiter dated 6/25/18, references an analysis of collocation on the existing tower "located within one mile of the proposed tower site", however, no such analysis was actually provided. The initial submittal also included a "Design Search Ring" map dated 6/22/18 showing a 1.5 mile ring centered on the subject property. Both county staff and CityScape repeatedly requested that Bug Tussel provide additional information regarding the feasibility of collocation on the existing SBA Tower. Bug Tussel instead provided a subsequent submittal that included a "search ring release" showing a new search ring with a radius of only 1 mile.



The submittal was accompanied by a second affidavit by Mr. Reiter dated 12/11/18 which simply indicated that there were no existing towers or structures within the "new" 1 mile search ring.

It should be noted that, despite the new affidavit and written statement, the December submittal included a map still showing a 1.5 mile radius search ring. Similarly, both the original and subsequent submittals included reference to the same 1.5 mile search ring as evidenced in the applicant's Communication Tower Information Form (pages 4 & 5, of CUP 2456 Application).

When county staff again requested information and analysis of collocation on the existing SBA tower, Bug Tussel provided a third submittal and affidavit from Mr. Reiter dated 1/7/19 (see Addendum #1). The January submittal provided a technical review comparing the proposed new tower site and the existing SBA tower. The analysis mentioned that the 160' collocation spot available on the SBA tower would not provide the same coverage that Bug Tussel would obtain from their planned 250' tower. However, as indicated in the CityScape report, the analysis does not appear to have been based on the effective elevation of the existing SBA tower, which is located at a ground elevation that is 125'-130' higher than the proposed Bug Tussel site. The effective height of the 160' collocation spot on the SBA tower is 1,280' MSL, 35'-40' higher than the effective height of the proposed 250' tower, which is 1,240-45' MSL (see attached elevation map).



The tower ordinance requires that, "...permitted towers be placed or constructed so that they may be utilized for the collocation..." The existing SBA tower has collocation space available, is located at a higher elevation near the intersection of two state highways, and is within the initial search ring provided by Bug Tussel. The proposed Bug Tussel tower is located at a lower elevation and in a more remote area of the town that would not satisfy the ordinance requirement for placement in a manner that promotes collocation.

Bug Tussel letter regarding economic burden: Bug Tussel has submitted a letter dated 4/22/19 stating that collocation would be "economically burdensome" and would exceed the threshold referenced in the county's tower ordinance. As noted in the section above, Bug Tussel provides a cost comparison alleging that collocation would be \$155,000 more expensive than constructing a new tower. The comparison also provides estimates of the long term lease costs of collocation versus the land rents paid to the property owner of the subject site, however staff believes such references to the long term costs of leasing space on a tower are immaterial to determining compliance with the ordinance.

Staff contacted SBA's site marketing manager, Kent Meier, and was informed that there have been no negotiations between SBA and Bug Tussel over possible collocation on the existing tower. As a result, staff has no way of verifying the cost information provided in the Bug Tussel analysis, which appears to be speculative in nature.

In addition, the applicant's analysis mischaracterizes the applicable provisions of the county's tower ordinance. Sections 10.194(2)(b), (c), and (d) outline circumstances where an existing tower is available for collocation, but is deficient in terms of height, structural capacity, or electromagnetic interference to meet the needs of an applicant. The ordinance provision referenced in the applicant's 4/22/19 letter (sec. 10.194(3)), allows for approval of a conditional use permit for a new tower if an applicant can provide evidence to demonstrate that the specified deficiencies exist and cannot be remedied "at reasonable cost". The applicant has not provided any evidence of a deficiency due to inadequate height, structural integrity, or electromagnetic interference.

Though not referenced in the letter, section 10.194(2)(e) allows for approval of a conditional use permit for a new tower if an applicant provides evidence to demonstrate that the, "...fees, costs or contractual provisions required by the owner... are unreasonable relative to industry norms." The applicant has not engaged in negotiations with SBA to

determine the actual fees, costs, or contractual provisions for collocation on the existing tower and therefore has not provided evidence that such costs are unreasonable relative to industry norms. It should be noted that charging excessive fees for collocation would constitute a violation of section 10.194(5), and the terms of SBA's Conditional Use Permit, which requires that collocation spots be made available "...upon contractual provisions which are standard in the industry and at prevailing market rates..." That the applicant's analysis is allegedly based on existing lease agreements with SBA suggests that such amounts may in fact be in line with industry norms and "prevailing market rates". Again, no evidence of fees, costs, or other impediments to collocation on the existing SBA tower has been provided.

SBA letter and engineering analysis on collocation: The letter and engineering analysis submitted at the 3/26/19 ZLR hearing by SBA's representative, Kevin Pollard, conveys SBA's interest in exploring collocation possibilities with Bug Tussel. The engineering analysis alleges that collocation on the SBA tower would result in similar coverage as the proposed new tower. This analysis has not been reviewed by the county's 3rd party engineering firm, CityScape Consultants, so its accuracy is not addressed. As noted in the sections above, the responsibility lies with the applicant, not the county or a third party, to demonstrate that they meet all ordinance requirements. Both staff and CityScape requested that Bug Tussel provide a similar analysis on numerous occasions. When an analysis was eventually provided, CityScape found that the coverage comparison maps were, "...an inaccurate illustration of coverage."

Consistency with adopted town / county comprehensive plan: Proposals for new communication towers must be viewed in light of sometimes competing planning goals, objectives, and policies. Town / county plan goals, objectives, and policies emphasize the preservation of farmland and rural character while also calling for the expansion of rural high speed internet service. As noted in the sections above, staff is concerned that the feasibility of collocation has not been pursued, even though required by the ordinance. Converting land from agricultural use for the purpose of erecting a 250' lighted communication tower with ancillary facilities would conflict with plan policies which emphasize preservation of farmland and rural character. In addition, the town plan encourages preservation of "dark night skies".

Tower lighting has been noted as a significant issue of concern for rural Dane County residents in the siting of telecommunication towers in the past, including the WSUM radio tower located in section 16 of Montrose, south of County Highway A. Residents have expressed concern that towers in general, but lighted towers in particular, negatively impact the use and enjoyment of their properties. Neighboring residents offered testimony at the ZLR public hearing and also the town Land Use Committee meeting on 4/22/19 detailing concerns over the proposed tower, including negative impacts on the town's rural character.

Staff conducted a viewshed analysis to determine which nearby residences would likely be able to see the required lighting atop the tower. Based on that analysis, of the approximately 754 residences located within 3 miles of the proposed tower site, 571 would see the light at 250' on the tower (this includes households in Green County). The majority of those residences, 440 are located in the Village of Belleville. See attached viewshed map. Staff is concerned that the proposal is not consistent with the comprehensive plan.

STAFF RECOMMENDATIONS: Under the applicable provisions of the county code and state statutes, an applicant must provide substantial evidence demonstrating, *“...that the application and all requirements and conditions established by the county relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence.”*

Applicants for a new communication tower must meet the requirements established in the county tower ordinance (section 10.194), and must satisfy the Conditional Use Permit standards found in section 10.255(2)(h) and 10.123(5).

As detailed in the various sections of the staff report, as well as the attached CityScape engineering report, the application submittal includes contradictory information and fails to provide substantial evidence that the proposal meets all applicable requirements.

Staff recommends denial of the Conditional Use Permit application based on the following:

1. As detailed in the attached engineering report, the applicant has failed to substantiate justification for the proposed new fixed wireless tower based on the requirements of the county ordinances.
2. The applicant has not provided substantial evidence demonstrating that the proposed use satisfies all requirements and conditions required by county ordinance.

The county tower ordinance states that, *“No conditional use permit for the placement or construction of a tower shall be issued unless the applicant presents to the committee credible evidence establishing to a reasonable degree of certainty the following... No existing communication tower is located within the area in which the applicant's equipment must be located.”* The applicant has not provided credible or substantial evidence that collocation on the existing SBA tower located approximately 1.2 miles from the proposed site is not a viable option. SBA representatives indicated at the public hearing and in a written statement and engineering analysis that they have collocation space available on the existing tower located near the intersections of State Highways 69 and 92 that they believe will allow Bug Tussel to meet the stated coverage objectives. In addition, the proposal does not satisfy several additional standards for approval of a Conditional Use Permit (see below).

3. The applicant has failed to evaluate the feasibility of collocation on the existing communication tower located within the applicant's search ring.

The application submittal referenced and included a map showing a 1.5 mile search ring centered on the subject property. There is an existing communication tower located within 1.5 miles of the site. The sworn statement dated 6/25/18 which referenced a, *“true and correct copy of an analysis... which compares the coverage that Bug Tussel Wireless would have if it were to collocate on the existing structure located within one mile of the proposed tower site.”* No such analysis was provided.

The sworn statement dated 12/11/18 amended the 6/25/18 statement to remove reference to the existing SBA tower and was accompanied by a “Search Ring Release” showing a smaller 1-mile search ring on one page, and a “Design Search Ring” dated 11/29/18 on a separate page again showing the original 1.5 mile search ring. The sworn statement dated 1/7/19 amended the 12/11/18 statement to again acknowledge the presence of the SBA tower within 1.2 miles of the center of the search area and included an attached coverage comparison which the county's 3rd party engineer reviewed and found to be, *“an inaccurate illustration of coverage”*, because it failed to account for the relative differences in ground elevations between the sites.

In addition to the questionable veracity of the 3 conflicting sworn statements, the applicant has failed to address any of the substantive concerns regarding the feasibility of collocation expressed in either the CityScape report, or the original staff report.

4. The proposed installation of a 255' lighted communication tower would be inconsistent with town/county comprehensive plan policies. Plan policies encourage maximizing coordination of communication infrastructure (collocation) and place an emphasis on protecting agricultural land and rural character. The proposed use would convert agricultural land to a nonagricultural use and the required lighting on the tower would negatively impact the rural character of the town. The tower is proposed in designated farmland preservation area. As noted above, options for collocation exist but have not been considered. As such, the proposed conditional use is neither reasonable or appropriate considering alternative locations are available.

In addition to failing to provide substantial evidence to demonstrate the proposal satisfies the requirements noted above, the proposal also fails to meet standards 2 and 6 for approval of a Conditional Use Permit found in section 10.255(2)(h):

2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use. *Nearby property owners have expressed their concerns the proposed conditional use will result in a substantial diminishment in uses, values, and enjoyment of their property. Staff conducted a viewshed analysis and determined that, of 754 residences within 3 miles of the site, 571 would be able to see the beacon light atop the tower.*
6. That the conditional use shall conform to all applicable regulations of the district in which it is located. *The request does not conform to standard B for conditional uses in the certified farmland preservation zoning district (A-1EX).*

The request fails to meet standard B under section 10.123(5) for conditional uses in the A-1EX zoning district:

- b. The use and its location in the A-1 Exclusive Agriculture zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law. *The subject property is part of a large, active farm operation within a designated farmland preservation area. The applicant has failed to evaluate the feasibility of collocation on an existing communication tower. Development of the new tower site would unnecessarily convert land from agricultural use.*

The ordinance standards noted above are present in both the ordinance in effect as of the filing date of the Conditional Use Permit application as well as the new county zoning ordinance adopted by the town of Montrose on April 9, 2019.

MARCH 26th ZLR MEETING: The Committee postponed action due to public opposition and no town action.

TOWN: The Town Board denied the CUP application based on findings of fact.