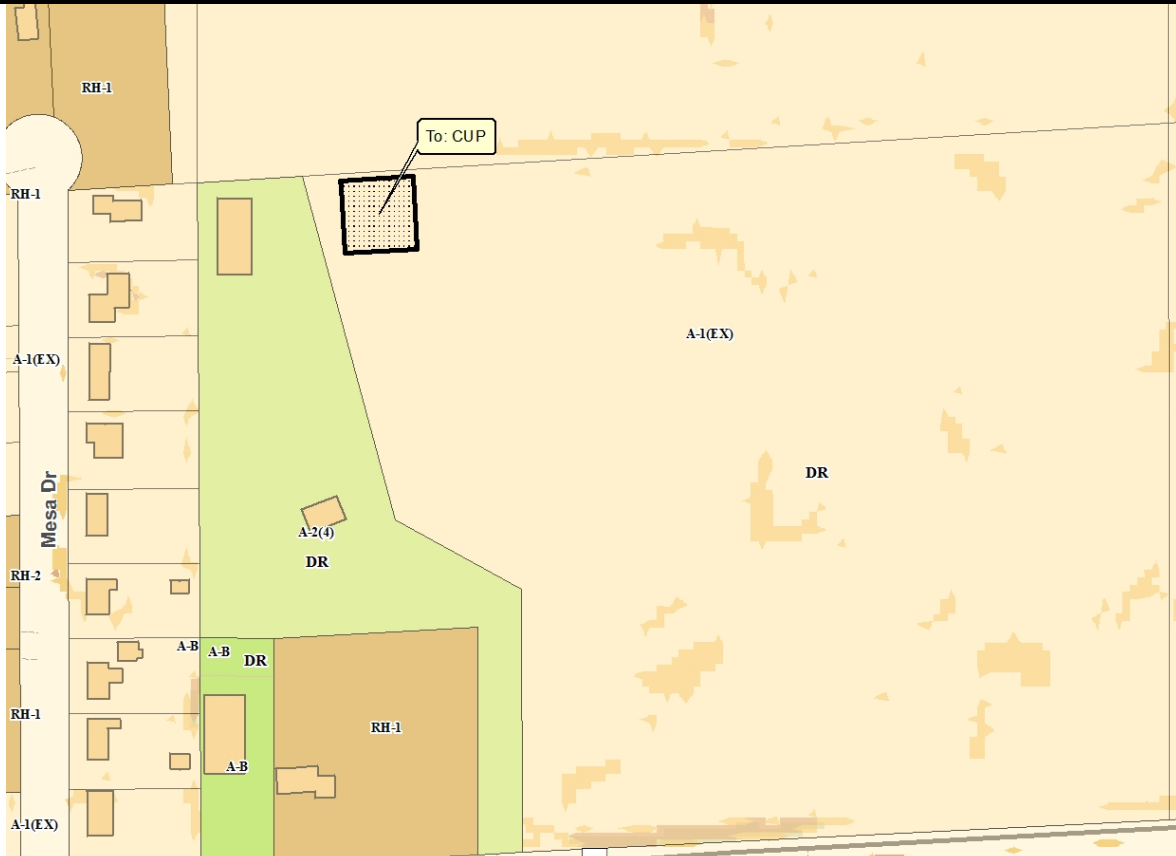




Staff Report

Zoning and Land Regulation Committee

Public Hearing: October 24, 2017	Petition: CUP 02396
Zoning Amendment: None	Town/sect: RUTLAND, Section 18
Acres: 0.23 Survey Req. No	Applicant THOMAS A MARTINSON
Reason: TO CUP: New 199' Communication Tower	Location: NE OF 4614 COUNTY HIGHWAY A



DESCRIPTION: SAC Wireless on behalf of AT&T, requests approval of a Conditional Use Permit to allow installation of a new 199' monopole communication tower on a 10,000 square foot area of the ~40 acre A-1EX zoned property owned by Thomas Martinson northeast of 4614 County Highway A in section 18 of the town of Rutland.

The tower is requested to, "cover a gap in coverage", and is also part of AT&T's "Wireless Local Loop Service", which would provide wireless broadband internet service to households in the area. The tower would not require lighting.

OBSERVATIONS: Surrounding uses of land are agricultural (north and east), rural residential (south), and the single family residential neighborhood of Ponderosa Acres (west). 20 rural residences are located within 300'-1,300' of the proposed tower. The CUP area is comprised of 100% Class II soils. No sensitive environmental features observed.

TOWN PLAN: The property is located in the town's medium density residential area (note 10/24/17 staff report erroneously noted the property was in the town's agricultural preservation area).

RESOURCE PROTECTION: No resource protection corridors located on the property.

STAFF: State law now limits the ability of local governments to regulate tower siting (regulations provided on page 3, below), and also requires a decision to be rendered within 90 days from the date of application (deadline for ZLR action would be Wednesday, November 29, 2017). See pages 2 and 3, below, for staff update and recommendations.

10/24/17 ZLR Public Hearing: Action was postponed due to public opposition and no town action.

TOWN: The town postponed action on the petition at their meeting on 11/9/17 due to not having the 3rd party engineering report available for consideration. There was also public opposition presented at the town meeting.

STAFF UPDATE: A number of issues have been identified with this tower proposal that have not been adequately addressed or resolved in order to validate the need for the tower at the requested location and height. Staff is also concerned that there is insufficient information to document how the proposed tower will fulfill the dual purposes of the tower (mobile/cellular service, and fixed high speed internet). Aside from a single sentence in the cover letter for the petition, the application materials included no clear information regarding the proposed provision of wireless broadband internet services to underserved rural households and businesses. The 3rd party Radio Frequency (RF) engineering consultant, CityScape, has not received the information necessary to conduct a technical review of the proposal.

Staff requested that the applicant agree to extend the timeframe for action to provide time to address a number of issues and concerns identified by staff and the engineering consultant, and to provide an opportunity for the engineering review to be completed and for the town to complete its action on the petition. As of the writing of this report, the applicant has not agreed to an extension of the timeframe.

STAFF RECOMMENDATIONS:

Staff recommends denial of the petition based on the following facts and substantial information:

1. The need to site the proposed tower at the requested location and height has not been validated.

The 3rd party engineer was unable to conduct a technical review to determine if the location and height of the tower is justified based on stated objectives and information provided by the applicant.

2. The selected site is located outside of the search ring submitted by the applicant.

The proposed site is located approximately 0.6 miles outside of the 1/4 mile search ring originally submitted with the application, and approximately .3 miles outside of a 1/2 mile search ring subsequently provided. The applicant has not provided documentation that all eligible sites within the search ring were. The search ring is the general area within which the mobile service support structure should be located to meet radio frequency engineering requirements.

3. The applicant has failed to provide information that demonstrates that the facility will satisfy stated rural broadband service provision obligations and objectives.

The applicant has indicated two objectives for the proposed tower – filling a mobile service (cellular) coverage gap to the west, and providing access to fixed wireless broadband services for households within a federally designated underserved target area located over 1.5 miles to the east. AT&T has received federal funding as part of the “Connect America Fund II” program that seeks to expand high speed broadband internet services to underserved rural areas.

The need to extend high speed broadband internet services to areas of rural Dane County that do not currently have service is clear and well documented. Basic information, such as the anticipated broadband service area, or how many dwelling units in the federally designated target area would be eligible for service, has not been provided.

4. The applicant has not evaluated the feasibility of collocation to achieve its rural broadband service obligations and objectives in the federally designated area located over 1.5 miles to the east of the site. There is an existing 180’ tall communications tower located at 4232 County Highway A which is approximately 1/2 mile from the federally designated rural broadband service area.

5. The proposed conditional use appears to be inconsistent with town comprehensive plan policies.

The subject property is located in the town’s “medium density residential” planning area. The town plan states the following: *“This district is intended to accommodate medium density residential uses at an average density of 1 dwelling per acre. The vast majority of dwelling units are single-family. Public facilities such as parks, open space, and trails are also found here.”*

The town counts communication towers as a “split” or development right toward their density limitation. The eligible development rights have been exhausted from the Martinson farm.

Continued on page 3, below.

6. The proposed conditional use, based on information provided, does not satisfy the following standards found in sections 10.255(2)(h)2, and 10.255(2)(h)6 of the zoning code.

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.

There are 20 residences located 300'-1,300' of the proposed tower. The tower will be visible from these neighboring residential properties resulting in aesthetic, and quite possibly economic, impacts to the property owners. Property owners from the neighboring residential subdivision have expressed their concerns about the impact the tower would have on the use and enjoyment of their properties, as well as concerns about property values.

10.255(2)(h)6:

That the conditional use shall conform to all applicable regulations of the district in which it is located.

The subject property is located in the A-1EX Exclusive Agriculture zoning district. The A-1EX district requires that any conditional use conform to the following additional standards:

10.123(5)a-e

- (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.

Due to the inability to validate the need for the tower at the specific requested location, the proposed conditional use does not meet the standard in 10.123(5)(b).

66.0404 Mobile tower siting regulations.

(4) LIMITATIONS. With regard to an activity described in sub. (2) (a) or a class 2 collocation, a political subdivision may not do any of the following:

(a) Impose environmental testing, sampling, or monitoring requirements, or other compliance measures for radio frequency emissions, on mobile service facilities or mobile radio service providers. **(b)** Enact an ordinance imposing a moratorium on the permitting, construction, or approval of any such activities. **(c)** Enact an ordinance prohibiting the placement of a mobile service support structure in particular locations within the political subdivision. **(d)** Charge a mobile radio service provider a fee in excess of one of the following amounts: **1.** For a permit for a class 2 collocation, the lesser of \$500 or the amount charged by a political subdivision for a building permit for any other type of commercial development or land use development. **2.** For a permit for an activity described in sub. (2) (a), \$3,000. **(e)** Charge a mobile radio service provider any recurring fee for an activity described in sub. (2) (a) or a class 2 collocation. **(f)** Permit 3rd party consultants to charge the applicant for any travel expenses incurred in the consultant's review of mobile service permits or applications. **(g)** Disapprove an application to conduct an activity described under sub. (2) (a) based solely on aesthetic concerns. **(gm)** Disapprove an application to conduct a class 2 collocation on aesthetic concerns. **(h)** Enact or enforce an ordinance related to radio frequency signal strength or the adequacy of mobile service quality. **(i)** Impose a surety requirement, unless the requirement is competitively neutral, nondiscriminatory, and commensurate with the historical record for surety requirements for other facilities and structures in the political subdivision which fall into disuse. There is a rebuttable presumption that a surety requirement of \$20,000 or less complies with this paragraph. **(j)** Prohibit the placement of emergency power systems. **(k)** Require that a mobile service support structure be placed on property owned by the political subdivision. **(L)** Disapprove an application based solely on the height of the mobile service support structure or on whether the structure requires lighting. **(m)** Condition approval of such activities on the agreement of the structure or mobile service facility owner to provide space on or near the structure for the use of or by the political subdivision at less than the market rate, or to provide the political subdivision other services via the structure or facilities at less than the market rate. **(n)** Limit the duration of any permit that is granted. **(o)** Require an applicant to construct a distributed antenna system instead of either constructing a new mobile service support structure or engaging in collocation. **(p)** Disapprove an application based on an assessment by the political subdivision of the suitability of other locations for conducting the activity. **(q)** Require that a mobile service support structure, existing structure, or mobile service facilities have or be connected to backup battery power. **(r)** Impose a setback or fall zone requirement for a mobile service support structure that is different from a requirement that is imposed on other types of commercial structures. **(s)** Consider an activity a substantial modification under sub. (1) (s) 1. or 2. if a greater height is necessary to avoid interference with an existing antenna. **(t)** Consider an activity a substantial modification under sub. (1) (s) 3. if a greater protrusion is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by cable. **(u)** Limit the height of a mobile service support structure to under 200 feet. **(v)** Condition the approval of an application on, or otherwise require, the applicant's agreement to indemnify or insure the political subdivision in connection with the political subdivision's exercise of its authority to approve the application. **(w)** Condition the approval of an application on, or otherwise require, the applicant's agreement to permit the political subdivision to place at or collocate with the applicant's support structure any mobile service facilities provided or operated by, whether in whole or in part, a political subdivision or an entity in which a political subdivision has a governance, competitive, economic, financial or other interest.