

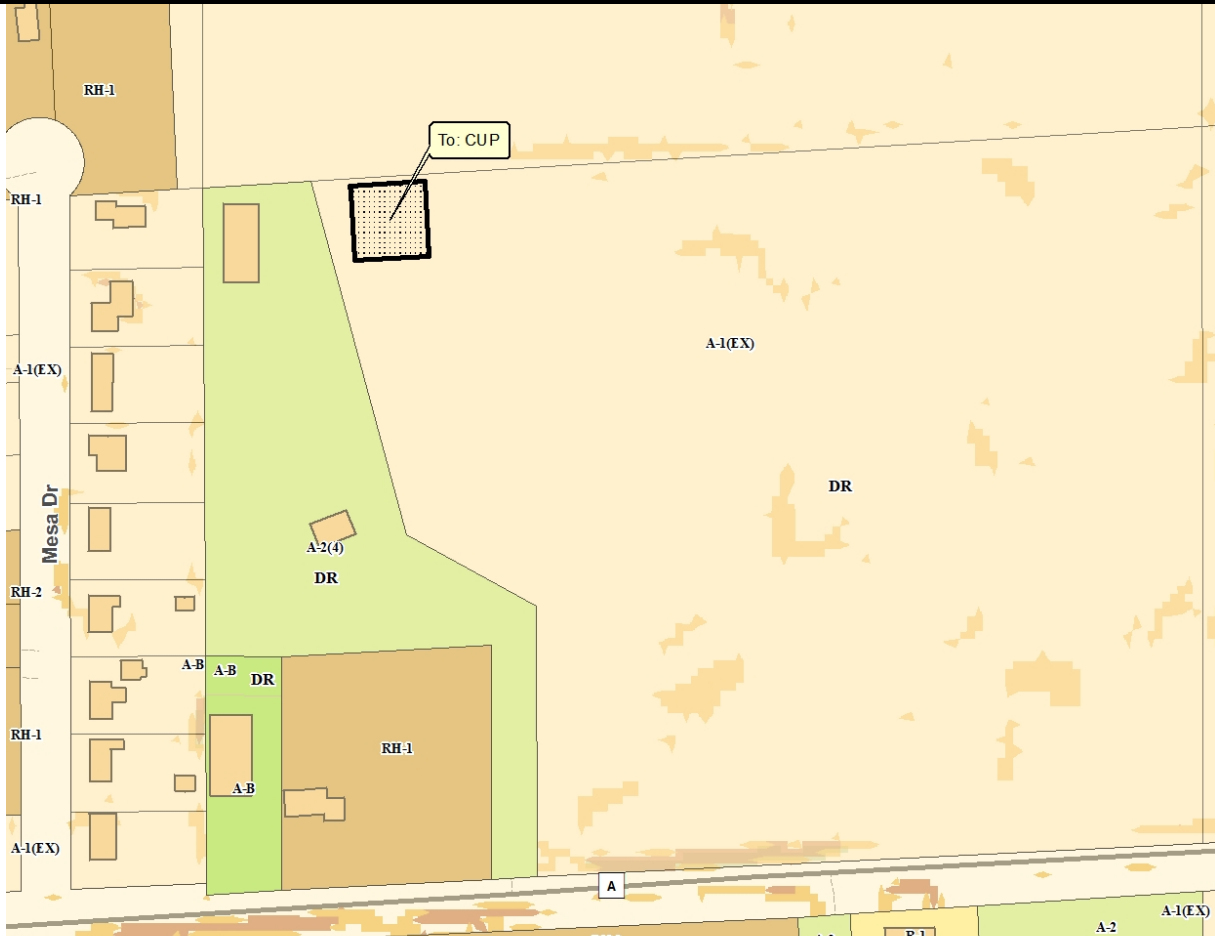


Staff Report

March 27, 2018

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 intended to accomplish two objectives: cover a gap in mobile cellular service coverage to the west of the site, and also to deploy fixed wireless broadband internet service to underserved households in a federally designated target area located to the east in the town of Dunn. AT&T has received federal funding under the FCC's Connect America Fund II program to deploy broadband internet service in the target 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 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 that the town density policy regarding non-farm development, which counts communication towers, applies within the medium density residential area. Town plan policies seek to prevent the establishment of incompatible non-residential land uses near existing residential subdivisions.

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

STAFF: See attached engineering report and below for staff update and recommendations.

TOWN: At it's meeting on 3/5/18, the town board forwarded the petition to Dane County with no recommendation.

STAFF UPDATE: As noted in the staff report presented to the ZLR Committee for its meeting on 11/28/17, a number of problematic issues have been identified with this tower proposal (see attached prior report for discussion). The ZLR committee postponed action on the petition at its meeting on 11/28/17, agreeing to an extension of the timeframe for action and notifying the applicant that they should provide all information requested so that a detailed analysis and report could be performed by the county's 3rd party engineering consultant, CityScape Consultants.

CityScape has completed its review and report and has found that, "*The Applicant has failed to reasonably substantiate the need for a new mobile service support structure at the proposed location...*" The report further states that "...CityScape ...does not support this proposal in its current form." Please refer to the attached engineer's report.

Prior to the March 13th ZLR work meeting, AT&T requested that a conference call be held between engineering staff from AT&T and CityScape to address issues identified in the CityScape report. That call was held on March 9, 2018. County staff participated in that call, along with AT&T representative Jim Jermain.

AT&T requested that CityScape revise its report to address a number of issues AT&T had with the report. One of AT&T's requests was that the report be revised to state that AT&T has demonstrated a need for the proposed tower at the requested location. In fact, the report notes the prior history of AT&T's request for a tower site at 783 CTH MM under CUP 2253 which was approved by the ZLR Committee on December 17, 2013. CityScape has not provided an updated report and has indicated to staff that it stands by its technical findings and recommendations.

It is important to note that 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.

Summary Discussion of Issues – Fixed Wireless Broadband Service Objective: As indicated in the application and supplemental materials provided by AT&T, the proposed tower is intended to accomplish two objectives: filling a mobile service (cellular) coverage gap to the west of the site and also to deploy fixed wireless broadband service to households within a federally designated target area of underserved households to the east "in the town of Dunn" as part of AT&T's obligations as a recipient of funding through the FCC's Connect America Fund II program ("CAF II"). The CAF II program is designed to extend high speed internet services to un-served and underserved rural areas of the country. AT&T has indicated that it is seeking to provide fixed wireless internet service with a speed of 10MB download / 1MB upload to prospective customers in portions of the target area. See attached map showing a portion of the federally designated target area in the towns of Dunn and Rutland.

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. Staff has confirmed with the town of Dunn that there are concentrations of households that do not have adequate access to high speed internet service, particularly in subdivisions located along Hawkinson Road, and also that the town has been in contact with AT&T regarding the possible deployment of services.

However, to date, AT&T has provided no detailed information regarding its plans to provide the fixed wireless services within the target area. An October 24, 2017 letter from AT&T engineer John McCann stated that, "*The location that AT&T is seeking approval for was chosen to best cover the underserved communities and the Living Units (LU's) as required by the FCC guidance. The height of 199' is required to cover the LU's defined by CAF II and a lower height would diminish the capabilities to cover required area without additional facilities.*" Despite this statement, basic information, such as the anticipated broadband service area, or number and location of dwelling units within the federally designated target area eligible for service, has not been provided. What information has been provided demonstrates that AT&T has not designed a system based on meeting the CAF II objectives of providing services in the target area. Rather, the design is based on using existing AT&T mobile service towers and, in this instance, identified mobile service needs. When staff has asked for an explanation of why existing tower(s) located closer to and within the CAF II target area were not evaluated for collocation possibilities for the broadband service, the response has been that collocation would be "economically burdensome" and also that AT&T's CAF II obligations are statewide and therefore they have no responsibility to maximize the provision of service within any specific target area.

Summary Discussion of Issues – Mobile Service (Cellular) objective: As indicated in the engineer's report, the application materials included a ¼ mile search ring centered on the Reindahl Quarry property where AT&T previously received approval for a new cell tower under CUP 2253. An engineer's statement accompanied the application noting that there were no willing landowners within the search ring and so the Martinson property was pursued as an acceptable alternative. Staff have asked that AT&T engineers confirm whether or not the initial ¼ mile search ring provided with the application is valid for the dual objectives of the proposed tower. No such confirmation has been provided. However, according to a letter from Jim Jermain on March 19, AT&T engineers did examine the feasibility of using a site on the Reindahl property for meeting both the mobile service and broadband service objectives following the March 9 conference call. According to Mr. Jermain's letter, the engineering analysis determined that the Reindahl property, located roughly 3/4 of a mile west of the Martinson CUP site, was, "...too far west to adequately serve the CAF II coverage need to the east." It's worth noting that AT&T has not provided any map showing coverage need for the broadband target area. This raises a number of concerns, including the basic validity of information AT&T provided in support of its application.

STAFF RECOMMENDATIONS:

Staff recommends denial of the petition based on the following findings of fact:

1. As detailed in the attached engineering report, the applicant has failed to substantiate the need for a new communication tower at the proposed location based on the objectives stated in the application materials.
2. The proposed site is located outside of the search ring submitted with the application. The applicant has provided conflicting and contradictory information regarding the identification of search rings.
3. The applicant failed to submit a search ring documenting the need for a tower at the proposed location to provide rural broadband internet services, failed to adequately document the area eligible to receive such services, and failed to adequately evaluate the feasibility of collocation on an existing tower within the federally designated broadband target area.
4. The proposal is inconsistent with the town/county comprehensive plan. Town plan policies seek to prevent the establishment of new, incompatible non-residential land uses near residential subdivisions and seek to preserve farmland and rural character. In addition, the town counts communication towers as a "split" against the density policy. As indicated on the attached density study report, the available density units on the Martinson property have been exhausted.

Based on the findings of fact, the request fails to meet standards 2 and 6 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. *There are 20 residences located within 300'-1,300' of the proposed tower. Property owners from the neighboring residential subdivision have expressed their concerns the proposed conditional use will result in a substantial diminishment in uses, values, and enjoyment of their property.*
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).*

Also based on the findings of fact, 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 applicant has failed to consider alternative locations within the originally provided search ring, including the 20 acre Reindahl site of previously approved CUP 2253 at 783 CTH MM, and also refused to adequately consider collocation options for the proposed broadband service.*