

MEMO

To: Zoning & Land Regulation Committee (ZLR)
From: Majid Allan, Senior Planner
Date: August 17, 2023
Subject: Staff update and recommendations on Reconsideration of Conditional Use Permit #2578

Application summary: Request is for a Conditional Use Permit to allow installation of a 199' communications tower on the ~4 acre RR-2 zoned property at 1576 Spring Road the Town of Dunkirk

Property owner: Brett Lunde

Applicants: Iron Mountain Towers, LLC ("TowerKing") and DISH Wireless LLC

Agents for Applicants: Derek McGrew (Cellulsite); Jake Remington (Husch Blackwell LLP)

Background

At its meeting on March 14, 2023, the ZLR Committee moved to reconsider Conditional Use Permit application #2578 for a communications tower after learning of airspace safety concerns from the owner the nearby private Matson airport, who was not informed of the proposal as required under county ordinance. The Committee held a hearing on April 25, 2023 during which the owner and users of the airport expressed concerns that the tower would pose a safety hazard. The applicant provided a report from a consultant they engaged suggesting that the tower did not represent a safety hazard.

In order to determine whether or not the tower posed an airspace safety hazard, the county sought outside expertise to review the situation in accordance with section [10.101\(7\)\(b\)5](#). As required by ordinance, the applicant for the conditional use permit shall bear all reasonable costs and expenses associated with such outside consultation. With the written consent of the applicant to pay the associated costs, the county selected Aviation Safety Compliance LLC (ASC) to review the airspace safety concerns.

The [consultant's report](#) recommends that the tower either be relocated to the east or west, or lowered in height. Their findings included the following:

- ASC finds that reducing the height to 163 feet would mitigate the risk to an acceptable level.
- ASC finds that the tower should be illuminated with white (day) and red (night) lights regardless of height (199 or 163 feet) to mitigate risk.

John Cox and/or Jim Hosey will attend the August 22nd ZLR meeting remotely and will be available to summarize their review and findings and respond to any questions the Committee may have.

The applicant has indicated that they accept the findings and recommendations of the consultant to lower the height of the tower to 163' with appropriate day and night time lighting.

Staff Recommendation

Based upon the consultant's review and recommendations, staff believes that a communications tower not to exceed 163' above ground level, and illuminated with white (day) and red (night) lights satisfies the [standards for approval of a conditional use permit](#). Staff recommends that the committee re-approve CUP 2578 with amended conditions as detailed below.

Conditions applicable to all CUPs from section [10.101\(7\)\(d\)2.a.](#):

1. Any conditions required for specific uses listed under s. [10.103](#). (See below)
2. The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan and phasing plan. *The applicant shall provide an updated site plan and construction drawings for a tower not to exceed 163' above ground level.*
3. New and existing buildings proposed to house a conditional use must be constructed and maintained to meet the current requirements of the applicable sections of the Wisconsin Commercial Building Code or Uniform Dwelling Code.
4. The applicant shall apply for, receive and maintain all other legally required and applicable local, county, state and federal permits. Copies of approved permits or other evidence of compliance will be provided to the zoning administrator upon request.
5. Any ongoing business operation must obtain and continue to meet all legally required and applicable local, county, state and federal licensing requirements. Copies of approved licenses or other evidence of compliance will be provided to the zoning administrator upon request.
6. Existing onsite wastewater sewage disposal systems, if any, serving the conditional use must be inspected by a licensed plumber to determine its suitability for the proposed or expanded use. Deficient systems must be brought, at the owner's expense, into full compliance with the current requirements for new development of the state plumbing code and Chapter 46, Dane County Code.
7. All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
8. Off-street parking must be provided, consistent with s. [10.102\(8\)](#).
9. If the Dane County Highway, Transportation and Public Works Department or the town engineer determine that road intersection improvements are necessary to safely accommodate the conditional use, the cost of such improvements shall be borne by the landowner. Costs borne by the landowner shall be proportional to the incremental increase in traffic associated with the proposed conditional use.
10. The Zoning Administrator or designee may enter the premises of the operation in order to inspect those premises and to ascertain compliance with these conditions or to investigate an alleged violation. Zoning staff conducting inspections or investigations will comply with any applicable workplace safety rules or standards for the site.
11. The owner must post, in a prominent public place and in a form approved by the zoning administrator, a placard with the approved Conditional Use Permit number, the nature of the operation, name and contact information for the operator, and contact information for the Dane County Zoning Division.
12. The owner or operator must keep a copy of the conditional use permit, including the list of all conditions, on the site, available for inspection to the public during business hours.
13. Failure to comply with any imposed conditions, or to pay reasonable county costs of investigation or enforcement of sustained violations, may be grounds for revocation of the conditional use permit. The holder of a conditional use permit shall be given a reasonable opportunity to correct any violations prior to revocation.

Conditions of approval specific to communications towers (derived in part from section [10.103\(9\)\(d\)](#)).

1. The communication tower approved under CUP 2578 is intended to support installation of mobile service facility(ies) as defined under sec. 66.0404, Wisconsin Statutes, and shall be designed to support, without substantial modification, at least three users (the primary user and two collocation sites). A Wisconsin-licensed Structural Engineer shall approve and stamp the tower design, and certify that the tower can support at least three users.
2. Visual screening and/or landscaping shall be installed around the fenced tower compound to minimize the aesthetic impact of the tower and compound area. The compound area shall be fenced with hedgeline style

fencing and a minimum of 3 trees shall be planted. The permit holder must obtain town board approval of the fencing and tree plantings prior to installation. Any trees planted shall be maintained in viable growing conditions.

3. The tower shall include daytime (white) and nighttime (red) lighting. Lighting shall be installed and maintained in accordance with FAA Advisory circular 70/7460-1 M. To the extent it is consistent with the aforementioned FAA Advisory circular, the tower shall utilize an LED lighting kit. If Matson airport ceases to operate in the future, the owner/operator of the tower shall remove the safety lighting.
4. The proposed structure shall not be painted a color incompatible with the environment.
5. The tower owner shall make the collocation sites required hereunder available for the placement of technologically compatible antenna arrays and equipment upon contractual provisions which are standard in the industry and at prevailing market rates allowing the permit holder to recoup the cost of providing the collocation sites and a fair return on investment.
6. No lease or deed restriction on property that is proposed for the location of a mobile service support structure or mobile service facility shall preclude the owner or lessee from entering into agreements, leases, or subleases with other providers or prohibit collocation of other providers.
7. Upon written inquiry by the committee, the holder of a Conditional Use Permit issued under this section shall have the burden of presenting to the committee credible evidence establishing to a reasonable certainty the continued compliance with all applicable standards and conditions placed upon the conditional use permit. Failure to establish compliance with the standards and conditions shall be grounds for revocation of the permit. In the event the committee determines that it is necessary to consult with a third party to ascertain compliance with the standards and conditions, all reasonable costs and expenses, except travel expenses, associated with such consultation shall be borne by the holder of said conditional use permit. Failure to pay such costs and expenses or provide information requested by the committee shall be grounds for revocation of the conditional use permit.
8. Within 90 days of approval of the conditional use permit, or prior to issuance of a zoning permit for construction of the approved communication tower, whichever comes first, the tower owner shall provide Dane County with a bond, or evidence of an existing bond, in the amount of \$20,000 ensuring performance of owner's obligation to remove any communication tower, array or any other equipment or structure placed or erected pursuant to the conditional use permit, including payment for such removal by Dane County or its agent, in the event the permit is revoked or the use permitted thereunder ceases for a continuous period of 12 months. Said bond shall expressly state that it will remain in full force and effect for a period of at least six months after the surety provides Dane County written notification of expiration or termination of the surety's obligation under the bond. Applicant shall remove any communication tower, array or any other equipment or structure placed or erected pursuant to the conditional use permit no less than 60 days prior to the termination or expiration of the bond required hereunder.
9. If the mobile service facility(ies) to be provided from the communication tower are not installed within 1 year of the date of conditional use permit approval, or if the mobile service facility(ies) are later removed, or cease to be used for a continuous period of 12 months, the county zoning committee may take action to revoke the conditional use permit. In the event the permit is revoked, the tower owner shall remove the tower within 60 days of the county zoning committee action. If the tower is not removed within the 60 days, the county may enter upon the premises and remove the tower at the expense of the tower owner.