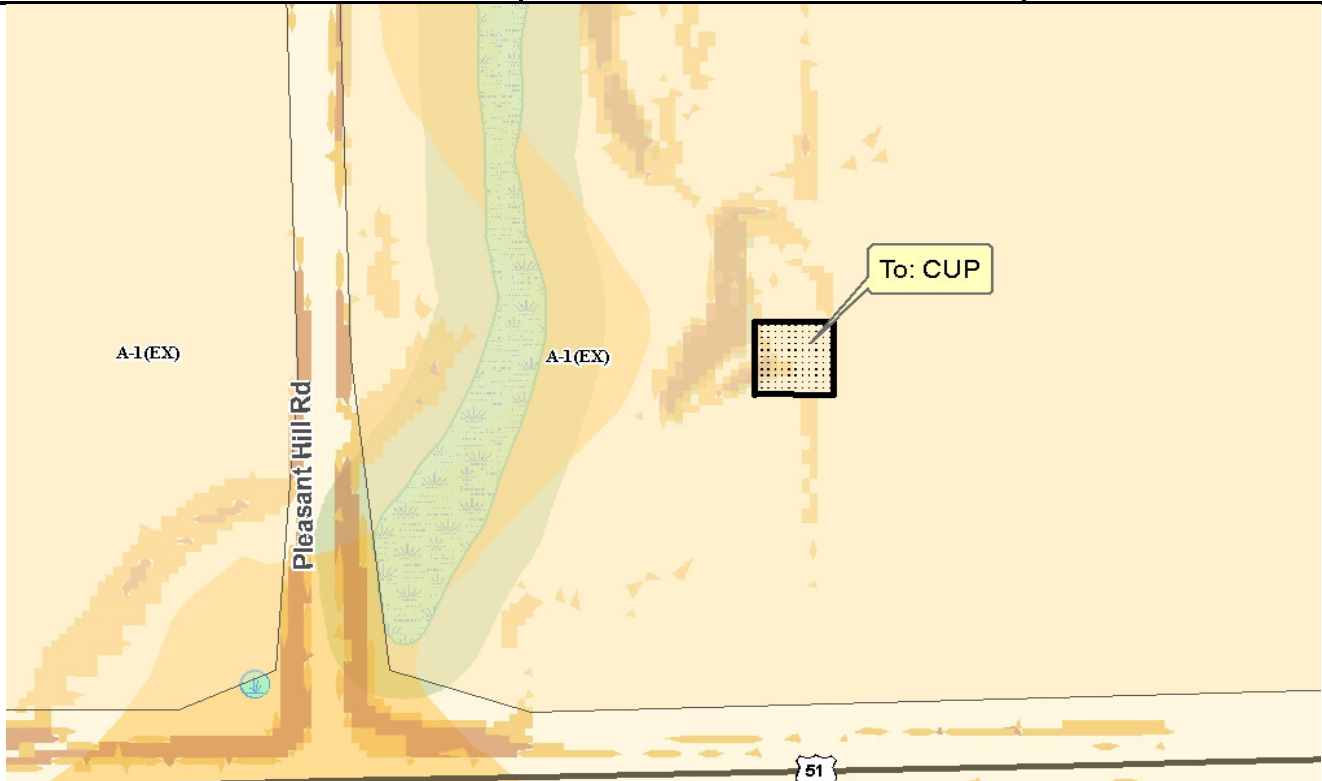




Staff Report

Zoning and Land Regulation Committee

<i>Public Hearing:</i> August 23, 2016	<i>Petition:</i> CUP 2356
<i>Zoning Amendment:</i> None	<i>Town/sect:</i> Dunkirk Section 02
<i>Acres:</i> .36 <i>Survey Req. No</i>	<i>Applicant</i> Donald P Squire JR
<i>Reason:</i> 155' Monopole communication tower (extendable to 190')	<i>Location:</i> NE corner of State Highway 51 and Pleasant Hill Rd



DESCRIPTION: Applicant, Verizon Wireless, proposes to construct a new 155' monopole communication tower on A-1EX zoned property owned by Donald Squire, Jr at the NE intersection of State Highway 51 and Pleasant Hill Road in section 2 of the town of Dunkirk. The tower would be engineered to be extendable to 190', should additional height later be needed by another carrier seeking to collocate its equipment on the tower. The tower would not require lighting.

OBSERVATIONS: The proposed CUP boundary consists of 50% cropland and 50% woodland, and is comprised of 80% class II soils. The property is surrounded by agricultural land, and approximately 8 rural residential lots are located within 2000' of the proposed tower. No sensitive environmental features observed on the subject property.

TOWN PLAN: The property is located 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 2, below), and also requires a decision to be rendered within 90 days from the date of application (deadline for ZLR action would be Thursday, September 29, 2016). The proposal has been sent to the county's independent Radio Frequency (RF) engineering consultant, Evans Engineering Solutions for review against the county's tower ordinance. Please see attached RF engineer's report and recommendations. In addition to any recommendations from the consulting engineer, staff has recommended potential conditions of approval, below. Note that the applicant has requested an access permit from WISDOT for driveway access onto State Highway 51.

TOWN: Approved conditioned upon access to the tower site being from State Highway 51.

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.

Proposed Conditional Use Permit #2356

In order for an applicant to obtain a Conditional Use Permit, the Zoning and Land Regulation Committee must find that all of the following standards are met for the proposed land use:

1. The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or welfare.
2. 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.
3. 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.
4. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being made; and
5. That adequate measures have been or will be being taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and
6. That the conditional use shall conform to all applicable regulations of the district in which it is located.

Staff has prepared a list of conditions that may be used in order to meet the six standards as listed above to allow the conditional use on the property. Please note that the conditions may need to be changed or additional conditions added to address potential nuisances that may come to light during the public hearing.

1. The primary use of the communication tower permitted under Conditional Use Permit No. 2356 shall be for the transmission and reception of cellular/PCS wireless voice / data communications, and related telecommunications equipment.
2. The communication tower placed, constructed or modified under Conditional Use Permit No. 2356 shall accommodate the collocation of telecommunications equipment for at least two (2) additional telecommunications providers. The initial height of the tower shall be 155' above ground level. However, the tower shall be engineered to be extendable to a maximum height of 190 feet above ground level. Extension beyond the maximum permitted height of 190 feet above ground level shall require amendment and approval of a new Conditional Use Permit.
3. The minimum of two (2) collocation sites required hereunder need not be available on the tower as initially placed, constructed, or modified, provided that the tower will support the later addition of the collocation sites as specified in condition #2, above.
4. Collocation sites required hereunder shall, upon request, be made available by the holder of Conditional Use Permit No. 2356 for the mounting of technologically compatible antenna arrays and equipment at the prevailing market rate in the region and upon contractual provisions which are standard in the industry.
5. The holder of Conditional Use Permit No. 2356 is permitted, if needed, to construct a building of no more than 14 feet in height (as defined in section 10.01 (8) of the Dane County Zoning Ordinance in effect in March 1997) and 314 square feet in floor area for use directly incidental and necessary to the use of the tower. Any other user collocating on the tower permitted herein is permitted to construct a building of no more than 14 feet in height (as defined in section 10.01 (8) of the Dane County Zoning Ordinance in effect in March 1997) and 314 square feet in floor area for use directly incidental and necessary to the use of the tower. Two or more users of the tower may build a single building with a floor area of no more than 314 square feet per user sharing the building. Buildings constructed or used by tower collocators shall be subject to all conditions established for Conditional Use Permit No.2356, including locational requirements contained in the site plan.

6. The holder of Conditional Use Permit No. 2356 shall, through ownership, lease, option or other means, at all times have the right to use the land associated with the permitted tower for uses related to the use of the collocation sites required hereunder, including the construction and use of buildings as permitted under paragraph 5 herein.
7. The final site plan(s) and design drawings submitted with the CUP #2356 application materials, are fully incorporated herein and continued effectiveness of Conditional Use Permit No. 2356 is expressly conditioned upon compliance with those plans.
8. Upon written inquiry by the committee, the holder of Conditional Use Permit No. 2356 shall have the burden of presenting to the committee credible evidence establishing to a reasonable certainty the continued compliance with all conditions placed upon the conditional use permit. Failure to establish compliance with all conditions placed upon the conditional use permit 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 conditions on Conditional Use Permit No. 2356, all reasonable costs and 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.
9. The holder of Conditional Use Permit No. 2356 shall within 30 days of any collocation on the permitted tower provide the committee with written notification of the identity of the collocator and the nature of the equipment installed. Within 30 days of the date on which any collocated use ceases, the permit holder shall provide the committee with written notice of the cessation of such use. Any changes due to collocation or otherwise shall be reviewed by the Zoning Administrator prior to implementation to determine if permits are needed and to determine that such changes are in compliance with terms of the CUP and does not significantly alter the appearance or structural integrity of the tower approved and permitted under this CUP.
10. If at any time the communication tower permitted under Conditional Use Permit No. 2356 ceases to be used for the primary use, as identified in paragraph 1 above, for a continuous period of 12 months the permit holder shall, upon notification by the committee, dismantle and remove the tower. If the tower is not removed within 30 days of such notification, Dane County may enter upon the premises and remove the tower at the expense of the holder of the conditional use permit.
11. Prior to issuance of the requested conditional use permit, and as a condition of its continued validity, applicant shall provide Dane County with a bond, or evidence of an existing bond, in the amount of \$20,000 ensuring performance of applicant'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 30 days prior to the termination or expiration of the bond required hereunder.
12. The applicant shall file a Notice of Proposed Construction on Form 7460-1 to the FAA to assure that the tower will not impact air traffic.
13. Contact with Wisconsin DOT Bureau of Aeronautics should be made prior to construction, if it has not already been done, to determine whether notification to that agency is required.
14. All tower components, appurtenances and transmission lines should be securely bonded and grounded to prevent RF interference caused by stray signals.

15. A Wisconsin-licensed Structural Engineer will approve and stamp the tower design, and certify that the tower can support up to three additional cellular/PCS voice / data antenna arrays.
16. The applicant shall utilize a galvanized or painted finish on the tower to minimize visual impact, if permitted by the FAA.
17. The applicant shall paint steel appurtenances the same color as the tower to minimize visual impact.
18. The tower lease area shall be surrounded by a security fence with fabric privacy screening.
19. Failure to comply with any of the aforesaid conditions shall be grounds for the committee to immediately revoke Conditional Use Permit No. 2356.
20. Access to the tower site shall be from US Highway 51.