

Staff Report



Zoning and Land Regulation Committee

Questions? Contact:
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Public Hearing: **January 26, 2021**

Zoning Amendment Requested:

CONDITIONAL USE PERMIT FOR: Communication Tower

Size: **0.4 Acres**

Survey Required: **No**

Reason for the request:

195' telecommunication tower (guyed)

CUP 02512

Town/Section:

Primrose / Section 29

Owner

Jeffrey L Webber

Applicant

Bug Tussel Wireless / Cloud 1, LLC

Address:

9108 Ridge Drive



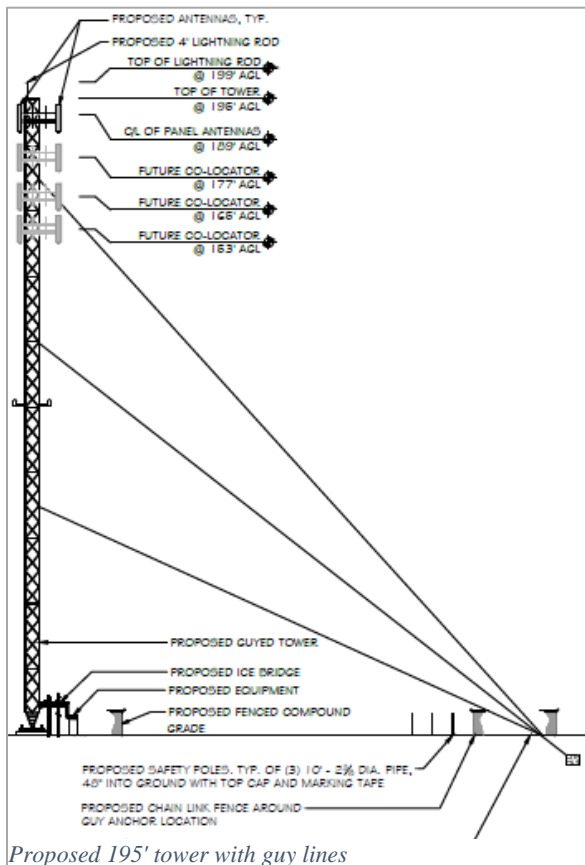
DESCRIPTION: Bug Tussel Wireless and Cloud 1, LLC are requesting approval of a Conditional Use Permit (CUP) for a 195' tall guyed communication tower (199' with lightning rod) that will allow Bug Tussel to provide its wireless internet service to the surrounding area. Applicants have negotiated a lease and easements on a ~0.4 acre area of land owned by Jeffery and Beverly Weber located approximately 500' northwest of the Weber's residence at 9108 Ridge Drive in section 29 of the town of Primrose. The property is part of the Weber's 182 acre farm zoned FP-35 (General Farmland Preservation).

Applicants are proposing the new tower location due to the fact that there are no other existing towers or other collocation options within their identified 1.5 mile search ring. The tower would include three collocation spots for other providers to utilize.

The proposal has been reviewed by an independent radio frequency engineering firm, CityScape Consultants. Their report is available on the [county's legistar site](#) and the findings are briefly summarized below.

Action on tower CUPs must be completed within a state-imposed 90-day timeframe – in this by case January 28 – unless extended by mutual agreement of the applicant and county. Staff requested a one month extension in order to provide ample time for the town and county to hold their respective hearings in January. Bug Tussel has agreed to extend the timeframe by 30 days to *Friday, February 26*.

CONDITIONAL USE PERMIT DECISION MAKING: 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 town board and 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 all of the following standards:

- General standards for approval under s. [10.101\(7\)\(d\)](#)
- Any prescribed standards specific to the applicable zoning district – in this case, section [10.220\(1\)\(a\)](#)
- Any prescribed standards specific to the particular use under s. 10.103 - in this case, section [10.103\(9\)](#)

The town board and/or 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.

The town board and zoning committee must review the proposed conditional use against all of the following standards for approval.

General Standards for Approval of a Conditional Use Permit

1. 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;
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;
3. 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;
4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;
5. 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;
6. That the conditional use shall conform to all applicable regulations of the district in which it is located.
7. That the conditional use is consistent with the adopted town and county comprehensive plans.
8. If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the findings described in s. [10.220\(1\)](#).

Farmland Preservation Standards for Approval of a Conditional Use

The town board and zoning committee must find that the following standards are met before approving any conditional use permit in any Farmland Preservation zoning district:

1. The use and its location in the Farmland Preservation Zoning District are consistent with the purposes of the district.
2. The use and its location in the Farmland Preservation Zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
3. 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.
4. 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.
5. Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

Dane County communication tower ordinance: Approval of a Conditional Use Permit is required for a new or substantially modified communication tower. In addition to the review procedures and standards for all Conditional Use permits, communication tower applications are subject to the provisions of the Dane County communication tower ordinance, section [10.103\(9\)](#). The purpose of the ordinance is to ensure that facilities are sited in a manner that:

1. Protects and promotes public health, safety, community welfare and the quality of life in Dane County as set forth within the goals, objectives and policies of the Dane County Comprehensive Plan, this ordinance, and s. 66.0404 Wis. Stats;
2. Respects the rights and interests of towns, neighboring property owners, and existing land uses on adjoining properties in the decision making process;
3. Recognizes the public necessity for telecommunication facilities and the numerous benefits and opportunities a robust wireless infrastructure make possible for county residents, including improved public safety, efficient production and distribution of goods and services, access to educational resources, and economic development opportunities;
4. Allows appropriate levels of service to be obtained throughout the County, including expansion to rural areas seeking access to personal communications and broadband internet services;
5. Minimizes the number of transmission towers throughout the County;
6. Encourages the joint use of new and existing telecommunication facilities as a preferred siting option;
7. Ensures that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual and environmental impact on the immediate surroundings and throughout the county;
8. Avoids potential damage to adjacent properties from tower failure or ice falls through sound engineering and careful siting of structures; and
9. Provides a public forum to assure a balance between public concerns and private interests in establishing commercial telecommunications and related facilities.

Dane County's ordinance has robust application requirements for communication tower proposals. In addition to providing a detailed statement of intent, site and operations plans, and responses demonstrating how the proposal satisfies the standards for approval of a CUP, applicants must provide technical documentation verifying the need for the tower at the requested height and location. As noted above, this technical information is reviewed and fact checked by a 3rd party engineering firm. The application must also include photo simulations to help decision makers and other interested parties assess the potential aesthetic impact of the proposed tower. The application packet is available on the [county's legistar website](#).

RELEVANT FACTS & INFORMATION

Location, size, existing use and characteristics of subject property: The subject property is a ~182 acre farm located in section 29, the southwest area of the town of Primrose lying north of Ridge Drive and east of County Highway G. The tower site is located approximately 1,550' north of Ridge Drive in a cropped field with gently sloping topography at an approximate elevation of 1,128 feet above mean sea level. Existing use of the property is agricultural.

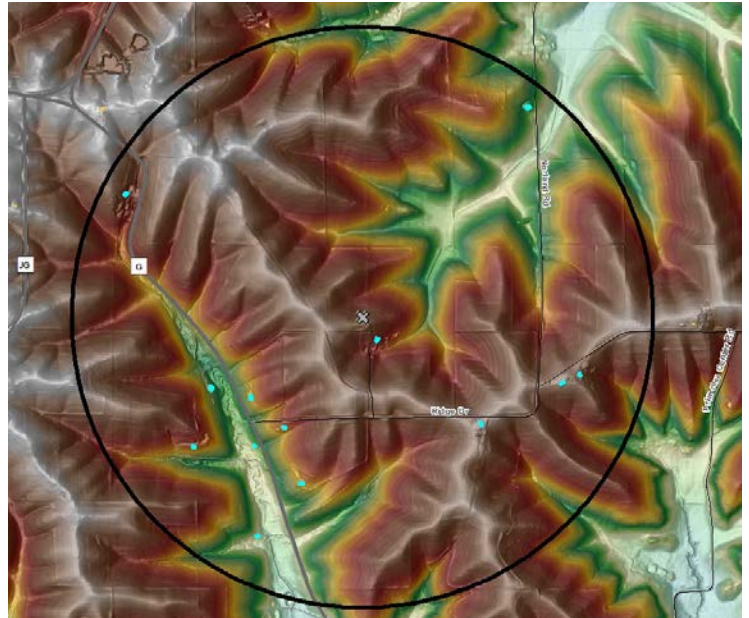
Current zoning and applicable district regulations: The property is zoned FP-35 (General Farmland Preservation). Communication towers are available as a conditional use in this district. All conditional uses are subject to the additional farmland preservation conditional use standards noted above.

Surrounding land uses / neighborhood: Surrounding land uses include agriculture / open space and scattered rural residences. There are 13 residences located within 4,500' of the proposed site, and 95 residences within 2 miles.

No sensitive environmental features or resource protection areas located on the proposed CUP site.

The property is located in a designated farmland preservation area per the Town of Primrose and Dane County comprehensive plans.

Utilities, access, drainage, and other necessary site improvements: The applicant proposes a 40' x 40' fenced gravel compound around the tower site. Access would be via the existing driveway servicing the residence at 9108 Ridge Drive, as well as a planned new gravel extension of approximately 740' to the tower site. No structural development, signage, or onsite waste disposal is proposed. Three down guy wires will extend 156' from the tower to three guy anchor locations to support the guyed tower.



Residences within 4,500' of tower site

Applicable additional standards: In addition to the noted county code standards and requirements, other state and federal regulations apply to siting of communication towers.

TOWN / COUNTY PLAN: The property is within a designated agricultural preservation area in the Town of Primrose and Dane County Comprehensive Plans. Within designated agricultural preservation areas, plan policies focus on preserving both farmland and the town's rural character by strictly limiting the density and siting of development.

The town's density policy applies to all nonfarm development, including, "...non-farm commercial development..." created after the date of town adoption of the comprehensive plan (May 18, 2010). The plan outlines two density options that landowners may choose from when proposing new development. The options allow for different density limitations based different development siting criteria. Density option "A" allows for 1 nonfarm use or "density unit" per 35 acres owned as of April 28, 1981, with development and related infrastructure barred from being located on, or crossing, cropland. Density option "B" allows for 1 nonfarm use per 70 acres owned as of April 28, 1981, with an allowance for a driveway up to 300' in length to cross cropland in order to reach a development site on pasture or woodland. Because the proposed site is located on cropland and would require an access drive crossing cropland, density option "B" would apply. As indicated on the attached density study report, the property is *not eligible* for any additional density units under option "B".

Both the town and county plans include objectives and policies that support expansion and improvement of broadband internet access, particularly in rural and underserved areas.

3rd PARTY ENGINEERING REVIEW: The County relies on a 3rd party radio frequency engineering consultant to provide an independent and unbiased technical review of communication tower proposals. CityScape Consultants has reviewed the proposal for consistency with the county’s tower ordinance, as well as other applicable state and federal laws. CityScape has found that the proposal meets the county tower ordinance requirements. According to the consultant’s report:

CityScape has determined that the area of Dane County Bug Tussel intends to serve also has a demonstrable lack of personal wireless service from any provider, and the primary interest is in providing state-of-the-art wireless communications services to a rural unserved area, both fixed and mobile. Currently, as stated by the Applicant and verified by CityScape, the area’s existing infrastructure is insufficient to address the wireless communications service needs of the citizens in the area.

The CityScape report includes the following recommendations:

Should the Zoning and Land Regulation Committee (“Committee”) approve the Conditional Use Permit application, CityScape recommends the following conditions:

1. At time of permitting, the Applicant shall provide an approved and stamped tower design from a Wisconsin-licensed Structural Engineer certifying that the tower will support the antennas and equipment of at least three (3) total wireless carriers; and,
2. The Applicant shall provide visual screening and/or landscaping to minimize the aesthetic impact of the tower and compound; and,
3. The Applicant shall provide a new fall-zone certification letter for a 195-foot tower; and,
4. The proposed structure shall not be lighted nor should it be painted a color incompatible with the environment.

STAFF ANALYSIS

Staff has been aware of Bug Tussel’s interest in siting a tower in the SW portion of Primrose since 2016. Initial applications for the current site proposed a tower of 300’ in height. Towers over 195’ in height may be permitted approval of a waiver from the zoning committee, provided the applicant either demonstrate “unique transmission condition problems” which cannot be overcome by other means, or some other reason that the committee deems will serve the public interest. The applicant revised the initial request to 195’ after consulting with CityScape on alternative technical options that would achieve essentially the same fixed wireless service coverage objectives.

CityScape’s review finds the proposal to be consistent with the technical requirements of the county tower ordinance.

Common Tower Related Issues. There are a number of issues that are commonly associated with the siting, operation, and maintenance of communication towers. Below is a brief synopsis of these issues in the context of the tower proposed under CUP #2512.

Air navigation. The potential for impacts to air navigation, including nearby private airports, is a concern handled through the FAA. The applicant has provided a copy of the FAA’s “determination of no hazard to air navigation” for this site (see page 77 of application packet).

Fall-down and ice-fall. Catastrophic tower collapse as well as ice fall from towers and guy lines can be a concern for towers located in developed areas. Given the design of the tower and lack of any nearby structures, these should not be issues.

Visual aesthetics. Aesthetics is a highly subjective issue and one of the most significant points of contention often associated with new communication tower requests, particularly those that would involve nighttime lighting. There are 13 residences within ¼ mile of the site, with the closest neighboring residence approximately 1,900' away from the proposed tower. The site is in a relatively exposed location that will be visible from the surrounding area. The tower would not be lighted for nighttime operations. The applicant has submitted photo simulations that illustrate the potential visual impact from a few locations surrounding the property. Under applicable state law, aesthetics cannot be the *sole* determining factor in denying a new tower proposal.

Electromagnetic radiation. The issue of electromagnetic radiofrequency (RF) emissions is commonly raised in response to communication tower proposals. Given the rural location of the site and lack of any nearby residential structures, RF emissions should not be an issue.

Consistency with adopted town / county comprehensive plan: To be approved, a proposed conditional use must be found to meet the standards in section 10.101(7)(d)1. This includes a finding that the proposed conditional use is consistent with the adopted town and county comprehensive plans. Town / county plan goals, objectives, and policies emphasize the preservation of farmland and rural character while also calling for robust wireless communication services.

As noted above, the proposed tower would be subject to the [town comprehensive plan policies](#) limiting the density and siting of nonfarm development. The proposed tower site is located in, and would require an access drive across, cropland. Per the town plan policy, the more restrictive "1 per 70" density option "B" would apply. As indicated on the attached density study, the property is ineligible for any density units under density option "B". The proposal appears to be inconsistent with the town density and siting standards.

Other applicable town/county plan policies support the expansion of high speed internet service to underserved areas of the county.

TOWN: The town voted to deny the CUP application, finding that the proposal failed to satisfy 2 general standards for approval (negative impact on uses, value, and enjoyment of other property; and inconsistent with town comprehensive plan), and 2 standards for approval in a farmland preservation zoning district (inconsistent with purposes of the district, and use is not reasonably designed to minimize conversion of agricultural land).

The following findings of fact were submitted in support of the town action:

The Proposed CUP:

- (I) Violates the County's Standard #7 that the CUP be consistent with existing Town Plan, because (a) it violates the driveway ordinance that does not allow driveways in agricultural land, (b) it violates the requirement that there be no building in agricultural land, and (c) it violates the density policy.
- (II) It is contrary to Standard # 2, because the location of would likely result in a drop in the property value of rural residents and the enjoyment of their property, who chose to reside here because of Town's policies of preserving ag. land and rural character.
- (III) It is contrary to #1 and #3 of the County's standards in Farmland Preservation Areas, for it is inconsistent with purposes of the district (farmland preservation), and it does not minimize the use of agricultural lands.

STAFF RECOMMENDATION: As specified in the [zoning code](#), since the town of Primrose has denied the CUP, the committee need not take any action. The committee's options are limited to taking no action, or also denying after holding the public hearing and making appropriate findings. Staff recommends that the committee take no action.

Telecommunications

Policies and Programs

1. Encourage Dane County communities to adopt enforceable guidelines for siting and removing telecommunications facilities.
2. Strengthen consideration of aesthetics in the building of towers (e.g., education, design competition, exhibits).
3. Maximize coordination of telecommunication facility needs with existing structures, buildings, water towers, etc.
4. Adopt ordinance requiring feasibility study of alternatives before allowing new tower construction.
5. Because Internet communication has become necessary in the conduct of commerce and provision of services in the county, promote countywide wireless Internet service (WiFi).
6. Encourage exploration of municipally owned telecommunication facilities to furnish wireless

[Dane County Comprehensive Plan Telecommunications Policies](#)