

TOWN OF RUTLAND
Ordinance No. 12.5

AN ORDINANCE RELATING TO CHANGES TO ZONING DISTRICT
BOUNDARIES AND CONDITIONAL USE PERMITS REQUESTED TO
ALLOW THE CONSTRUCTION AND OPERATION OF COMMUNICATION TOWERS

The Town Board of Supervisors of the Town of Rutland, Dane County, Wisconsin, do ordain as follows:

- 1) Findings and Purposes. The construction and operation of Communication Towers raises unique land use and aesthetic considerations. The growth of the personal wireless services industry has generated, and will continue to generate, numerous requests for the siting, construction and operation of Communication Towers in Dane County and in the Town of Rutland, requiring the Town to review and take action on requests for changes to zoning district boundaries and conditional use permits. The purposes of this ordinance are as follows:
 - a) To ensure that the Town will receive adequate information to properly evaluate applications for changes to zoning district boundaries and conditional use permits requested to allow the construction and operation of Communication Towers;
 - b) To create a process that will facilitate the orderly and efficient evaluation of and action on applications for changes to zoning district boundaries and conditional use permits requested to allow the construction and operation of Communication Towers, and that will off-set the cost of processing and evaluating such applications;
 - c) To accommodate the provision of personal wireless services, while protecting the public health, safety and general welfare;
 - d) To facilitate an appropriate pattern of Communication Tower sitings, and to encourage practices that reduce the proliferation, adverse aesthetic impacts, and other potential negative impacts associated with Communication Towers, through careful siting and design standards;
 - e) To preserve the Town's remaining agricultural land uses;
 - f) To avoid potential damage to adjacent properties from the construction and operation of Communication Towers;
- 2) Authority. This ordinance is enacted pursuant to the Town's authority under sec. 59.69(5)(e), Wis. Stats., sec. 10.255 of the Dane County Code of Ordinances, and sec. 60. 10(2)(c), Wis. Stats.
- 3) Definitions.
 - a) "Communication Tower" means any structure, whether free-standing or attached to an existing building or structure, that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like.
 - b) "Search ring" is that land area with optimal location and elevation for an antenna facility that a qualified engineer has determined is needed for the provision of wireless communication services.

- c) "Fall-down radius " is the distance that a qualified engineer has determined in the tower design that is needed in the event the tower was to collapse.
- 4) Pre-Application Conference. Individuals intending to apply for a change to zoning district boundaries or a conditional use permit are requested and encouraged to meet with the Town of Rutland Plan Commission before formally applying to Dane County for a zoning change or a conditional use permit. Applicants are requested to provide a map showing the applicant's proposed search ring and preliminary plans as to a Communication Tower site. The purpose of the pre-application conference is to discuss the best potential sites within the search ring, and to determine whether preferred locations exist within the search ring, before applicants make formal arrangements with landowners or make formal application for a zoning change or conditional use permit. The Plan Commission would not make final determinations on any issue at the pre-application conference.
- 5) Application and Fees. Before the Town of Rutland will evaluate a proposed change to a zoning district boundary or conditional use permit, the following must be submitted to the Town Clerk:
 - a) A non-refundable application fee of \$500;
 - b) A \$1000 professional services fee escrow. The escrowed funds will be applied to reimburse the Town for any engineering, legal, planning or other professional services obtained by the Town in connection with the application. Upon completion of construction of the approved Communication Tower, or upon a final determination denying the application, the unused balance of the escrow account will be refunded to the applicant. In the event the Town incurs fees for professional services in excess of the escrowed amount, the applicant shall pay the balance to the Town within 30 days after the date of an invoice from the Town for such amounts.
 - c) The name and address of the applicant and, if different, the owner and operator of the Communication Tower and antennas to be located on the Communication Towers;
 - d) The name, address, and phone number of the applicant's primary contact person;
 - e) The address and legal description of the proposed Communication Tower location;
 - f) A textual and graphic depiction of the Proposed Communication Tower, and a description of the operation or use of the Communication Tower and site;
 - g) A detailed site plan, including all accessory structures and landscaping;
 - h) Written evidence of the applicant's legal interest in the site, such as a deed, easement, lease agreement or option;
 - i) Copies of all documents submitted to Dane County in support of the application;
 - j) All documents maintained by the applicant or the owner of the proposed Communication Tower or antennas relative to health hazards associated with the construction and operation of the Communication Tower or antennas;
 - k) A map showing the location of lands owned by the Town or school district, existing towers, and existing private structures (silos, church steeples, utility towers; etc.) within two miles of the

proposed site, and an analysis of why those lands and/or structures cannot be used for the Communication Tower or antenna site;

- l) The Plan Commission may require that the applicant provide, at its expense, an independent engineering analysis, if such analysis has not already been required by and made available to the Town by Dane County, addressing the need for a Communication Tower at the proposed site, and such other related matters as requested by the Plan Commission or may obtain such an analysis and charge the cost thereof against the professional services fee escrow;
 - m) The Plan Commission may require that the applicant provide information regarding the applicant's then Current plans for future placement or construction of Communication Towers in the Town.
- 6) Procedure. The following procedures shall apply to an application for a change to a zoning district boundary or for a conditional use permit:
- a) The Plan Commission will hold a public hearing on the application, preceded by notice to Town of Rutland residents and the clerk of any town or municipality that reside or exist within two miles of the proposed Communication Tower, if the tower is proposed to be lighted, or one mile, if the tower will not be lighted. For purposes of this subsection, a Communication Tower will be deemed proposed to be lighted unless such lighting is prohibited by a deed restriction or other legal regulation enforceable by the Town. The public hearing shall not be held until the Town has received and reviewed the application report from Dane County.
 - b) The Plan Commission will make a recommendation to the Town Board.
 - c) Following receipt of the Plan Commission recommendation, the Town Board will act on the application.
- 7) Changes to Zoning District Boundaries.
- a) Standards. The Town shall consider the following standards and factors in determining whether to approve or disapprove a proposed change to zoning district boundaries to allow construction of a Communication Tower:
 - i) Whether the proposed change in zoning is consistent with the Town of Rutland Land Use Plan;
 - ii) Whether the proposed Communication Tower is needed at the proposed site for the provision of wireless communication services;
 - iii) Whether a preferred site is available for antenna structures. Preferred sites include:
 - (1) Existing structures;
 - (2) Town or school district lands where new communication towers will not interfere with activities or aesthetics on the site;
 - (3) Private lands where communication towers will not interfere with activities or aesthetics on the site;
 - (4) New communication towers in residential areas only if such towers are uniquely designed to blend into the uses on the site and to be compatible with the surrounding area. Examples of such unique towers would include steeples or bell towers for churches, light poles, or similar camouflaging techniques;

- iv) Whether the proposed structure would endanger the health and safety of people or animals, including, but not limited to, the likelihood of the failure or collapse of such structure, or the potential of falling ice;
- v) Whether the existence or operation of the proposed Communication Tower would cause objectionable noise, glare, physical activity or effects that will impair the peaceful enjoyment of neighboring properties;
- vi) The extent to which sight lines from existing homes and roadways would be adversely affected by the Communication Tower;
- vii) The extent to which the design, location or other features of the proposed Communication Tower will adversely affect the aesthetics of natural areas and the extent of the applicant's efforts to minimize such impacts;
- viii) The extent to which the proposed Communication Tower will be visible from lands owned by the Wisconsin Department of Natural Resources or the U.S. Fish and Wildlife Service or the Bass Lake or Island Lake areas.
- ix) Zoning district changes will not be approved if construction and operation of the Communication Tower would require filling of wetland areas;
- x) Such other factors as the Plan Commission or Board deem relevant to the application.

b) Conditions. Approval of a change in a zoning district boundary to allow construction and operation of a Communication Tower shall be subject to the following conditions, which shall be implemented through recorded covenants and restrictions and other agreements satisfactory to the Town. The Town's approval of an application shall be conditioned upon the recording by the applicant, prior to the commencement of construction of the Communication Tower, of a deed restriction which reads substantially as follows:

The development and use of the parcel shall be subject to the following restrictions:

[Insert applicable restrictions] These restrictions shall run with the land and shall be binding on the declarant, its agents, successors, heirs and assigns. These restrictions may not be amended, modified or rescinded without the written approval of the Town of Rutland Board of Supervisors. A violation of these restrictions may be enforced by the Town of Rutland at law or in equity in any court of competent jurisdiction.

- i) No graphic message or advertising may be permitted on Communication Towers. This would not prohibit the use of warning or equipment information signs;
- ii) Fencing and locks must be provided to secure the site.
- iii) Vegetative buffering must be provided to separate the facility and accessory buildings from adjacent land uses unless the Plan Commission finds that such buffering is not necessary due to natural site features or the design of the proposed Communication Tower;

- iv) The Communication Tower shall be galvanized or painted gray. The Plan Commission may approve light blue as an alternative color upon a showing by the applicant that good reasons exist to modify this requirement. The use of mottling as a camouflage is encouraged;
- v) Communication Towers and their antennas, accessory buildings and other structures located on the parcel shall not be externally illuminated, except to the extent required by regulation or lawful order of the Federal Aviation Administration or another federal or state regulatory authority with proper jurisdiction, provided, however, that reasonable levels of illumination of the ground level around such structures shall be permitted for security, personal safety and similar purposes.
- vi) Towers shall be set back from all residential, farm and commercial buildings, public roadways and lot lines by a minimum distance of the design fall-down radius of the tower, including all antennas and attachments.
- vii) If a new equipment building is necessary in connection with the construction or operation of the Communication Tower, it shall be situated and screened with landscaping or other appropriate screening materials as required by the Plan Commission;
- viii) "No trespassing" signs shall be posted on all sides of the exterior of any security fencing;
- ix) Such other site design requirements and conditions as the Town determines appropriate to minimize adverse impacts;
- x) If an antenna is being integrated with an existing structure, reduced requirements for items (i) through (viii) may be approved by the Plan Commission;
- xi) The owner of any Communication Tower shall provide performance bonds, or demonstrate financial responsibility to the Town's satisfaction, to ensure compliance with all applicable requirements for removal of Communication Towers and equipment, if not required by Dane County as a condition of the county application.
- xii) The owner of any Communication Tower shall maintain insurance against liability for personal injury, death or property damage caused by the maintenance and/or operation of the Communication Tower with a single combined limit of not less than \$1,000,000 per occurrence and shall name the Town of Rutland as an additional insured. The policy shall contain a provision that it may not be canceled or materially modified without the approval of the Town. The Owner shall provide the Town with a certificate of such insurance upon issuance of the initial policy and upon each renewal.

8) Conditional Use Permits.

- a) Standards. The Town shall apply the following standards in evaluating applications for conditional use permits and advising Dane County of the Town's recommendation regarding approval, conditional approval or disapproval of the proposed conditional use:
 - i) Whether the establishment, maintenance or operation of the Communication Tower will be detrimental to or endanger the public health, safety, comfort or general welfare, including more specifically the following:

- ii. Whether the proposed Communication Tower is needed at the proposed site for the provision of wireless communication services;
- iii. Whether a preferred site is available for antenna structures. Preferred sites include:
 - (a) Existing structures;
 - (b) Town or school district lands where new Communication Towers will not interfere with activities or aesthetics on the site;
 - (c) Private lands where Communication Towers will not interfere with activities or aesthetics on the site;
 - (d) New Communication Towers in residential areas only if such towers are uniquely designed to blend into the uses on the site and to be compatible with the surrounding area. Examples of such unique towers would include steeples or bell towers for churches, light poles, or similar camouflaging techniques;
- iv) Whether the uses, values and enjoyment of other property in the neighborhood for purposes already permitted would in any foreseeable manner be substantially impaired or diminished by the establishment, maintenance or operation of the Communication Tower, including more specifically:
 - (a) Whether the proposed structure would endanger the health and safety of people or animals, including, but not limited to, the likelihood of the failure or collapse of such structure, or the potential of falling ice;
 - (b) Whether the existence or operation of the proposed Communication Tower would cause objectionable noise, glare, physical activity or effects that will impair the peaceful enjoyment of neighboring properties;
 - (c) The extent to which sight lines from existing homes and roadways would be adversely affected by the Communication Tower;
 - (d) The extent to which the design, location or other features of the proposed Communication Tower will adversely affect the aesthetics of natural areas and the extent of the applicant's efforts to minimize such impacts.
- v) Whether the establishment of the conditional use will impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;
- iv) Whether adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;
- v) Whether adequate measures have been or will be taken to provide ingress and egress so designed to minimize traffic congestion in the public streets;
- vi) Whether the proposed conditional use conforms to all applicable regulations of the district in which it is located;

vii) Whether the proposed conditional use meets all conditions required for issuance of a conditional use permit under sec. 10.194 of the Dane County Code of Ordinances, and any amendments or modifications thereto.

b) Conditions. A recommendation of approval of a conditional use permit for the construction and operation of a Communication Tower shall be subject to the following conditions, which shall be implemented through recorded covenants and restrictions and other agreements satisfactory to the Town:

i) No graphic message or advertising may be permitted on Communication Towers. This would not prohibit the use of warning or equipment information signs;

ii) Fencing and locks must be provided to secure the site.

iii) Vegetative buffering must be provided to separate the facility and accessory buildings from adjacent land uses unless the Plan Commission finds that such buffering is not necessary due to natural site features or the design of the proposed Communication Tower;

iv) The Communication Tower shall be galvanized or painted gray. The Plan Commission may approve light blue as an alternative color upon a showing by the applicant that good reasons exist to modify this requirement. The use of mottling as a camouflage is encouraged;

v) Communication Towers and their antennas, accessory buildings and other structures located on the parcel shall not be externally illuminated, except to the extent required by regulation or lawful order of the Federal Aviation Administration or another federal or state regulatory authority with proper jurisdiction, provided, however, that reasonable levels of illumination of the ground level around such structures shall be permitted for security, personal safety and similar purposes.

vi) Towers shall be set back from all residential, farm and commercial buildings, lot lines and public roadways by a minimum distance of the design fall-down radius of the tower, including all antennas and attachments.

vii) If a new equipment building is necessary for transmitting, receiving and switching equipment, it shall be situated and screened with landscaping or other appropriate screening materials as required by the Plan Commission;

viii) "No trespassing" signs shall be posted on all sides of the exterior of any security fencing;

ix) Such other site design requirements and conditions as the Town determines appropriate to minimize adverse impacts;

x) If an antenna is being integrated with an existing structure, reduced requirements for items (i) through (viii), may be approved by the Plan Commission;

xi) The owner of any Communication Tower shall provide performance bonds, or demonstrate financial responsibility to the Town's satisfaction, to ensure compliance with all applicable requirements removal of Communication Towers and equipment, if not required by Dane County as a condition of the county permit.

xii) The owner of any Communication Tower shall maintain insurance against liability for personal injury, death or property damage caused by the maintenance and/or operation of the Communication Tower with a single combined limit of not less than \$1,000,000 per occurrence and shall name the Town of Rutland as an additional insured. The policy shall contain a provision that it may not be canceled or materially modified without the approval of the Town. The Owner shall provide the Town with a certificate of such insurance upon issuance of the initial policy and upon each renewal.

9) Severability. Any provision of this ordinance adjudged to be invalid or unlawful shall not affect the validity of the other provisions hereof.

10) Effective Date. This ordinance shall be effective upon passage and posting/publication pursuant to law.

The foregoing ordinance was duly adopted by the Town Board of Supervisors of the Town of Rutland at a meeting held on January 3, 2002.

____s/Dale Beske_____
Dale Beske, Chairman

Attest: ____s/Dawn George_____
Dawn George, Clerk