

To: Menahga Planning Commission  
From: Gina Ellingson, City Administrator  
Date: December 26, 2018  
Re: Conditional Use Permit Application by Uniti Towers, LLC

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**Background**

On September 6, 2018, the Planning Commission recommended approval of a conditional use permit application from Uniti Towers, LLC for a cellular communications tower on property located at 1043 Aspen Avenue South. The City Council approved Uniti’s application on September 10, 2018.

In November 2018, American Towers, LLC and ATC Sequoia LLC commenced a lawsuit against the City and Uniti. Among other things, the complaint in the lawsuit alleges that the City acted arbitrarily and unreasonably in approving Uniti’s CUP application. The complaint also alleges that Uniti is required to submit a new CUP application because the location and proposed height of Uniti’s tower have changed since the Planning Commission first considered Uniti’s application. Although Uniti does not believe that a new application is needed, they have voluntarily chosen to submit one.

**Application**

Uniti proposes to build a 300-foot telecommunications tower and associated equipment. The site for the tower will be 1043 Aspen Avenue South, which is located in the Agricultural, Residential (A-R) zoning district. The property is currently used for agriculture purposes. The proposed tower is approximately 200 feet east of the location that was the subject of Uniti’s previous application. Uniti seeks a Conditional Use Permit to construct the tower.

**Zoning Code Provisions**

Uniti’s application is being presented to the Planning Commission as required by City Code Section 151.50(B), which requires at least one public hearing on any application for a CUP. The City Council will also be considering this matter at a public hearing on January 3, 2019. Notice of the public hearings has been published in the City’s official newspaper and mailed to the owners of property located within 350 feet of the property that is the subject of the application.

City Code Section 151.50(A)(2) provides as follows:

**§ 151.50 CONDITIONAL USE PERMITS.**

- (A) *Permitted uses.* Conditional use permits may be issued for any of the following:

- (2) Public utility or public service uses or public building in any district when found to be necessary for the public health, safety, convenience or welfare;

In order to recommend approval of Uniti's CUP application pursuant to this provision, the Planning Commission must find that: (1) Uniti's proposed use is a "public utility" or a "public service;" and (2) the proposed use is "necessary for the public health safety, convenience or welfare."

### **Public Service**

The City Code does not define "public service." The Merriam-Webster Dictionary defines that term as follows:

- 1: the business of supplying a commodity (such as electricity or gas) or service (such as transportation) to any or all members of a community
- 2: a service rendered in the public interest

Uniti's proposed wireless telecommunications facility meets the above definition and also meets the commonly accepted meaning of the term "public service" for several reasons.

First, wireless telecommunications systems provide a public service by allowing individuals to make calls for personal and business purposes and also for emergency services when not near a telephone landline. In fact, wireless telecommunications systems are required by law to design and maintain their system to dial the 911 number without charge to the caller. Also, wireless telecommunications service providers must plan and implement integration with enhanced 911 systems operating in their service territories to meet Federal Communications Commission-enhanced 911 standards.

Second, as noted by the Federal Communications Commission in its 2016 Annual Report and Analysis of Competitive Market Conditions with respect to Mobile Wireless, "mobile wireless services are an essential and ubiquitous part of Americans' daily lives." Wireless telecommunications enhance the ability of City residents and visitors to communicate with others and to connect to the internet.

Finally, a new telecommunications facility will likely lead to expanded or improved wireless coverage in the existing service areas within the City. Also, in order to accommodate newer technologies, mobile service providers have historically deployed more cell sites as noted in the same FCC report above. Therefore, this facility may help contribute to newer technologies being deployed in the City.

### **Necessary for the public health, safety, convenience or welfare**

The City's zoning code does not define the phrase "necessary for the public health, safety, convenience or welfare." In context, the word "necessary" does not mean "absolutely essential." Rather, "necessary" simply means the proposed tower is useful, appropriate, and suitable. Uniti's proposed facility is necessary for the public health, safety, convenience or welfare because the facility will:

- 1) increase the ability of City resident's to seek emergency and non-emergency medical help, and
- 2) allow City residents and visitors to conveniently access wireless service.

### **Summary**

For the above reasons, City staff believes that Uniti's CUP application meets the criteria for approval under the City's Zoning Code Section 151.50(A)(2).

After reviewing the application for the CUP, the Planning Commission needs to recommend to City Council whatever action it deems advisable, but it shall not recommend the granting of a permit unless it finds that the establishment, maintenance or conducting of the use for which a permit is sought will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, convenience or welfare of the persons residing or working in the neighborhood. Uniti's proposed tower will enhance neighboring residents' health, safety, convenience and welfare for the same reasons explained above relating to the CUP criteria.

Two telecommunication towers already exist near Uniti's proposed tower. However, the City Code does not require the Planning Commission to consider their existence before making a recommendation to the City Council. Even if the Planning Commission needed to consider the existence of the other towers, the Federal Communications Commission, in the same report quoted above, states: "Preserving and promoting competition in the provision of mobile wireless services is central to the Commission's mission and is critical for driving innovation and investment to the ultimate benefit of the American people and economy."

### **Recommendation**

City staff recommends that the Planning Commission recommend approval of Uniti's CUP application and adopt the following findings:

- 1) The proposed tower amounts to a public service use.
- 2) The proposed tower is necessary for the public health, safety, convenience or welfare.
- 3) The proposed tower will not be detrimental to the health, safety, morals, comfort, convenience or welfare of the persons residing or working in the neighborhood.
- 4) The application for the CUP meets the criteria for approval under the City's Zoning Code Section 151.50(A)(2).