

CITY OF MENAHGA, MINNESOTA

**Resolution No. 2019-001**

**A Resolution of the Menahga City Council Approving a Conditional Use Permit to Uniti Towers, LLC for a Telecommunications Tower on Property Located at 1043 Aspen Avenue South**

WHEREAS, on September 6, 2018, the Planning Commission adopted Resolution 2018-001 recommending that the Menahga City Council approve a conditional use permit (CUP) for Uniti Towers to construct and maintain a wireless communications tower on property located at 1043 Aspen Avenue South; and

WHEREAS, on September 10, 2018, the City Council adopted Resolution 2018-016 approving Uniti's CUP Application; and

WEREAS, in November 2018, American Towers, LLC and ATC Sequoia LLC commenced a lawsuit against the City and Uniti contending that the City acted arbitrarily and unreasonably in approving Uniti's CUP application; and

WHEREAS, Uniti has submitted a new CUP application to build a 300-foot telecommunications tower and associated equipment on property located at 1043 Aspen Avenue South, which is in the Agricultural, Residential (A-R) zoning district; and

WHEREAS, the proposed tower is approximately 200 feet east of the location that was the subject of Uniti's previous application; and

WHEREAS, the Planning Commission considered Uniti's new application for a CUP on December 31, 2018 and after a public hearing on the matter recommended approval of the application; and

WHEREAS, City Code Section 151.50(A)(2) provides that conditional use permits may be issued for public service uses in any district when found to be necessary for the public health, safety, convenience, or welfare;

WHEREAS, the City received a letter dated December 26, 2018 from the attorney for American Towers raising the following objections to Uniti's CUP application:

- a. The proposed tower is unnecessary and will be detrimental to the community;
- b. Cell towers are not public utilities;
- c. The Menahga City Code does not contemplate cell towers; and
- d. There is no necessity for Uniti's proposed tower as required by City Code Section 151.50(A)(2)

WHEREAS, the Planning Commission reviewed and considered the objections raised by the attorney for American Towers and did not agree with those objections for the following reasons:

- a. Based on the findings of fact set forth below, the proposed tower is necessary because it useful, appropriate, and suitable, and the proposed tower will not be detrimental to the community;
- b. The Planning Commission's recommendation is based on its finding that the proposed tower is a public service use, not a public utility;
- c. Although the Menahga City Code does not specifically use the term "cell tower," the term "public service" encompasses cell towers for the reasons set forth below. In addition, two cell towers are already located in the City in close proximity to Uniti's proposed tower. Both of those towers are owned by American Towers, which is the only objecting party to Uniti's application; and
- d. City Code Section 151.50(A)(2) uses the word "necessary" not "necessity." For the reasons set forth below, the proposed tower is necessary because it useful, appropriate, and suitable. City Code Section 151.50(A)(2) does not require the applicant to establish that the proposed tower is absolutely essential.

WHEREAS, the City Council agrees with the Planning Commission's reasons for rejecting American Towers' objections to Uniti's CUP application.

**NOW, THEREFORE BE IT RESOLVED**, by the City Council that Uniti's application for a CUP meets the criteria in City Code Section 151.50(A)(2) and therefore the City Council approves the CUP application.

**NOW, THEREFORE BE IT FURTHER RESOLVED** that the City Council adopts the findings of fact made by the Planning Commission. Specifically, the City Council finds as follows:

1. The proposed tower is a "public service use."
  - a. Although, the City Code does not define "public service," the Merriam-Webster Dictionary defines that term as: (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; or (2) a service rendered in the public interest;
  - b. Uniti's proposed wireless telecommunications facility meets the above definition and also meets the commonly accepted meaning of the term "public service" for the following reasons:
    - i. 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. Wireless telecommunications systems are required by law to

design and maintain their system to dial the 911 number without charge to the caller;

- ii. 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;
  - iii. Wireless telecommunications enhance the ability of City residents and visitors to communicate with others and to connect to the internet;
  - iv. The Federal Communications Commission has concluded that “mobile wireless services are an essential and ubiquitous part of Americans’ daily lives”; and
  - v. 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.
2. The proposed tower is “necessary for the public health, safety, convenience or welfare.” The City Council agrees with the Planning Commission’s conclusion that in this context the word “necessary” does not mean “absolutely essential.” Rather, “necessary” means that the proposed use is useful, appropriate, and suitable. The Planning Commission’s and City Council’s conclusions are consistent with the following definition of “necessary” in Black’s Law Dictionary:

“As used in jurisprudence, the word “necessary” does not always import an absolute physical necessity, so strong that one thing, to which another may be termed “necessary,” cannot exist without that other. It frequently imports no more than that one thing is convenient or useful or essential to another.”

In addition to the findings set forth above, Uniti’s proposed facility is necessary for the public health, safety, convenience or welfare because:

- a. the facility will increase the ability of City residents to seek emergency and non-emergency medical help, and

- b. the facility will allow City residents and visitors to conveniently access wireless service.
3. The tower will not be detrimental to the rural character of the surrounding area because two other telecommunication towers already exist in close proximity to Uniti's proposed tower.
4. For the reasons set forth above, the proposed tower will not be detrimental to the general public health and welfare, and will not be detrimental to the health, safety, morals, comfort, convenience or welfare of the persons residing or working in the neighborhood.

Passed and approved by the City Council of the City of Menahga this 3<sup>rd</sup> day of January 2019.

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Patrick Foss, Mayor

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Gina Ellingson, City Administrator