

Chapter 322

MOBILE TOWER SITING

[HISTORY: Adopted by the Town Board of the Town of La Pointe 8-26-2014 by Ord. No. 2014-04. Amendments noted where applicable.]

§ 322-1. Title.

This chapter is entitled the "Town of La Pointe Mobile Tower Siting Permit Ordinance."

§ 322-2. Purpose.

The purpose of this chapter is to regulate by zoning and building permit: 1) the siting and construction of any new mobile service support structure and facilities; 2) with regard to a Class 1 co-location, the substantial modification of an existing support structure and mobile service facilities; and 3) with regard to a Class 2 co-location, co-location on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

§ 322-3. Authority.

The Town Board has the specific authority under §§ 60.61 and 66.0404, Wis. Stats., to adopt and enforce this chapter.

§ 322-4. Adoption.

This chapter, adopted by a majority of the Town Board on a roll call vote with a quorum present and voting and proper notice having been given, provides for the regulation by zoning permit of: 1) the siting and construction of any new mobile service support structure and facilities; 2) with regard to a Class 1 co-location, the substantial modification of an existing support structure and mobile service facilities; and 3) with regard to a Class 2 co-location, co-location on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

§ 322-5. Definitions.

All definitions contained in § 66.0404(1), Wis. Stats., are hereby incorporated by reference.

§ 322-6. Siting and construction of any new mobile service support structure and facilities.

A. Application process.

- (1) A Town conditional use permit is required for the siting and construction of any new mobile service support structure and facilities.
- (2) A written conditional use permit application must be completed by an applicant and

submitted to the Town. Applications for a conditional use permit shall be made on application forms approved by the Town Plan Commission. The applicant must include the following information:

- (a) The name and business address of, and the contact individual for, the applicant.
 - (b) The location of the proposed or affected support structure.
 - (c) The location of the proposed mobile service facility.
 - (d) If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
 - (e) If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
 - (f) If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose co-location, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that co-location within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
- (3) The following procedure must be followed:
- (a) The conditional use permit application fee, established by the Town Board in the Town Fee Schedule,¹ shall be paid at the time the application is filed and shall not be refundable unless the application is withdrawn prior to consideration by the Town Plan Commission. Any expense incurred by the Town for publishing notices prior to the withdrawal of the application will be deducted from the refund. Applications originated by the Town shall be exempt from the application fee.
 - (b) Applications and supporting documents shall be submitted in 12 copies to the Zoning Administrator, who shall receive the application and conduct a review and research of the application and documents. Within 10 days after the Zoning Administrator's receipt of the application, the Zoning Administrator shall deliver the application and related materials to the Town Plan Commission for its review and consideration. The Zoning Administrator shall make a preliminary inspection of the property to confirm the accuracy of the application

1. Editor's Note: The Fee Schedule is available in the Town offices.

and identify potential issues or considerations. The Town Plan Commission and/or Zoning Administrator may require the applicant to submit other pertinent data and information they deem necessary to properly evaluate the request. Such information may include, without limitation because of specific enumeration:

- [1] A plan of the area showing contours, soil types, wetlands, ordinary high water mark, groundwater conditions, bedrock, slope and vegetative cover.
 - [2] A survey prepared by a registered land surveyor showing existing and proposed development, location of buildings, structures, parking areas, traffic access, driveways, walkways, piers, open spaces, and landscaping.
 - [3] Sewage disposal facilities, water supply systems and arrangements of operations thereof.
 - [4] Specifications for areas of proposed filling, grading and lagooning.
 - [5] Building plans, including floor plans and exterior designs or elevations.
 - [6] Development schedule indicating the appropriate date when construction can be expected to begin and be completed, including initiation and completion dates of separate stages of a phased development.
- B. The Town Plan Commission shall establish a date for a public hearing on the application to be held within 30 days of receipt of the completed application and related documents. A Class 2 notice under Chapter 985, Wisconsin Statutes, shall be published in the Ashland Daily Press once per week for two consecutive weeks with the last insertion occurring at least seven days prior to the public hearing. Notice of the public hearing shall be mailed by first class mail at least 10 days before the public hearing to all owners of record of lots or parcels within 300 feet of the property, except as may be extended or expanded otherwise at the discretion of the Zoning Administrator and/or the Town Plan Commission. Notice shall also be posted at the posting locations designated by the Town Board at least 10 days prior to the public hearing. A copy of the application and relevant documents shall be kept by the Zoning Administrator in the Zoning Office for public inspection.
- C. The public hearing shall be a joint hearing of the Town Plan Commission and Town Board with a quorum of voting members in attendance.
- D. All members of the Town Plan Commission and Town Board shall make every effort to personally inspect the proposed site before the public hearing on the matter.
- E. Unless the applicant waives the right to timely action in writing, within 30 days of the public hearing, the Town Plan Commission shall meet to consider the application and make a recommendation to the Town Board. Section 10.2(A)(1 through 3)² shall apply to members of the Commission when making a recommendation. The recommendation shall be in the form of a motion approved by a majority of the Town Plan Commission members. No Commissioner may vote on the application without either attending the public hearing or having submitted a signed affidavit stating that he/she listened to the recording of the

2. Editor's Note: This refers to Section 10.2(A)(1) through (3) of the Town of La Pointe Zoning Ordinance, which is available in the Town offices.

public hearing. If the recommendation is for approval, the motion shall include any terms or conditions recommended to be included in the conditional use permit. These conditions may address the site plan, timetable of development, operation of the proposed use, surety requirements for performance of required activities, or other considerations relevant to applicable standards. The decision of the Town Plan Commission shall be recorded in the minutes and shall be specifically related to the standards of this chapter and/or of documents related to this chapter.

- F. Within five days after the Town Plan Commission decides to recommend issuance of a conditional use permit, the Commission shall provide notice by personal delivery or by first class mail to the applicant, all owners of record of lots or parcels within 300 feet of the property and each objector of record, and shall post the recommendation at the designated Town posting sites. The Zoning Administrator shall forward a copy of all records associated with the recommendation to the Town Board of Supervisors.
- G. Within 21 days of its receipt of notice that the Town Plan Commission has made a recommendation, the Town Board of Supervisors shall act on the recommendation of the Town Plan Commission. No Town Board Supervisor may vote on the application without either attending the public hearing or having submitted a signed affidavit stating that he/she listened to a recording of the public hearing. Section 10.2(A)(1 through 3)³ shall apply to members of the Board when deciding a conditional use permit. After review of the application, recommendation, and file, the Town Board will consider the recommendation under the standards established in this chapter and may approve, approve with modification, or deny the recommendation of the Town Plan Commission. The decision of the Town Board shall be recorded in the minutes and shall be specifically related to the standards of this chapter or of documents related to this chapter.
- H. Within five days of the decision by the Town Board, the Town Clerk shall provide notice by personal service or by first class mail to the applicant, objectors of record, and owners of lots or parcels within 300 feet of the decision and conditions included therein and shall post the decision at the designated Town posting sites. If the Town Board approves the issuance of a conditional use permit, the Town Clerk shall draft a conditional use permit which sets forth each of the conditions approved by the Town Board. The permit is to be signed by the Town Chair and Town Clerk, with acknowledgement of the conditions placed on the property signed by the applicant. After 45 days following the Town Board's decision to issue a conditional use permit, the Town Clerk shall issue the permit. All conditions set forth in the conditional use permit shall be binding upon the property.
- I. Where the Town Board has approved or conditionally approved an application for a conditional use, such approval shall automatically become null and void within 12 months of the date of the issuance of the conditional use permit unless the use is commenced, construction is underway, or the current owner possesses a valid land use permit for each building and/or structure contemplated. Construction under such land use permit(s) shall be commenced within six months of issuance and shall be substantially complete upon permit expiration. If a timetable of developments is approved as a condition under Subsection E of

3. Editor's Note: This refers to Section 10.2(A)(1) through (3) of the Town of La Pointe Zoning Ordinance, which is available in the Town offices.

this section, only those uses, buildings, and/or structures contemplated within this twelve-month time period shall be required. Upon timely application and for justifiable cause, the Town Plan Commission may grant a specific extension of this twelve-month period.

- J. When a conditional use is discontinued for 12 consecutive months, the conditional use permit shall be rendered void and any future use shall conform to this chapter. Upon timely application prior to the expiration of this twelve-month period and for good cause, the Town Plan Commission may grant a specific extension of this twelve-month period.
- K. A conditional use permit application that has been denied by the Town Board shall not be accepted for resubmittal unless there has been a significant change in the proposed use or relevant conditions as determined by the Town Plan Commission.
- L. The Town may disapprove an application if an applicant refuses to evaluate the feasibility of co-location within the applicant's search ring and provide the sworn statement described under § 322-6A(2)(f).
- M. If an applicant provides the Town with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the setback or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the Town provides the applicant with substantial evidence that the engineering certification is flawed.
- N. The decision of the Town Board to approve or deny a conditional use permit is reviewable only by certiorari by the circuit court.

§ 322-7. Class 1 co-location.

A. Application process.

- (1) A Town land use permit and building permit are both required for a Class 1 co-location. A Class 1 co-location is conditional use in the Town obtainable with this permit.
- (2) A written land use permit application and a written building permit application must both be completed by any applicant and submitted to the Town. The applications must contain the following information:
 - (a) The name and business address of, and the contact individual for, the applicant.
 - (b) The location of the proposed or affected support structure.
 - (c) The location of the proposed mobile service facility.
 - (d) If the applications are to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
 - (e) If the applications are to construct a new mobile service support structure, a

construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.

- (f) If the applications are to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose co-location, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that co-location within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
- (3) Permit applications will be provided by the Town upon request to any applicant.
 - (4) If an applicant submits to the Town a land use permit application and a building permit application for permits to engage in an activity described in this chapter, which contains all of the information required under this chapter, the Town shall consider the applications complete. If the Town does not believe that the applications are complete, the Town shall notify the applicant in writing, within 10 days of receiving the applications, that the applications are not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
 - (5) Within 90 days of its receipt of complete applications, the Town shall complete all of the following or the applicant may consider the applications approved, except that the applicant and the Town may agree in writing to an extension of the ninety-day period:
 - (a) Review the applications to determine whether they comply with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.
 - (b) Make a final decision whether to approve or disapprove the applications.
 - (c) Notify the applicant, in writing, of its final decision.
 - (d) If the decision is to disapprove the applications, include with the written notification substantial evidence which supports the decision.
 - (6) The Town may disapprove an application if an applicant refuses to evaluate the feasibility of co-location within the applicant's search ring and provide the sworn statement described under Subsection A(2)(f).
 - (7) If an applicant provides the Town with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the setback or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the Town provides the applicant with substantial evidence that the engineering certification is flawed.

§ 322-8. Class 2 co-location.

A. Application process.

- (1) A Town land use permit and building permit are required for a Class 2 co-location. A Class 2 co-location is a permitted use in the Town but still requires the issuance of the Town permit.
- (2) Written land use and building permit applications must be completed by any applicant and submitted to the Town. The applications must contain the following information:
 - (a) The name and business address of, and the contact individual for, the applicant.
 - (b) The location of the proposed or affected support structure.
 - (c) The location of the proposed mobile service facility.
- (3) Permit applications will be provided by the Town upon request to any applicant.
- (4) A class 2 co-location is subject to the same requirements for the issuance of a land use and building permit to which any other type of commercial development or land use development is subject. [Refer to Town of La Pointe Ordinance Chapter 205, Building Construction, and the Town of La Pointe Zoning Ordinance].
- (5) If an applicant submits to the Town applications for permits to engage in an activity described in this chapter, which contains all of the information required under this chapter, the Town shall consider the applications complete. If any of the required information is not in the applications, the Town shall notify the applicant in writing, within five days of receiving the applications, that the applications are not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit applications as often as necessary until it is complete.
- (6) Within 45 days of its receipt of a complete application, the Town shall complete all of the following or the applicant may consider the applications approved, except that the applicant and the Town may agree in writing to an extension of the forty-five-day period:
 - (a) Make a final decision whether to approve or disapprove the application.
 - (b) Notify the applicant, in writing, of its final decision.
 - (c) If the applications are approved, issue the applicant the relevant permits.
 - (d) If the decision is to disapprove the applications, include with the written notification substantial evidence which supports the decision.
- (7) The fee for the permit is listed in the most recent fee schedule adopted by the Town Board.

§ 322-9. Violations and penalties.

Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this chapter shall, upon conviction, pay a forfeiture of up to \$500 plus court costs plus any applicable fees and assessments. Each day a violation exists or continues shall

constitute a separate offense. In addition to such forfeiture, a violator may also be required to reimburse the Town for the costs of prosecution, including reasonable attorney fees. A person who fails to pay any forfeitures, costs and assessments imposed by the court shall, upon being found in contempt of court, be subject to imprisonment for not to exceed 30 days. In addition, the Town Board may seek injunctive relief from a court of record to enjoin further violations.

§ 322-10. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ 322-11. When effective; publication.

- A. This chapter is effective on the day following publication per § 60.80, Wis. Stats.
- B. The Town Clerk shall properly publish this chapter as required per § 60.80, Wis. Stats.