



Application for Conditional Use Permit

- 1. Applicant's Name INDUSTRIAL TOWER WEST, LLC
2. Applicant's Address 2825 E. Beaver Avenue, Fort Morgan, CO 80701
3. Applicant's Telephone Number (970) 467-3199
4. Owner's Name MOUNTAIN TOWER & LAND, LLC
5. Owner's Address 1224 W. Platte Avenue, Fort Morgan, CO 80701
6. Owner's Telephone Number (970) 867-6767
7. Purpose of Conditional Use Permit 80-FT Monopole for VIAERO WIRELESS
8. Present Zoning C-3
9. Within City Limits Yes Within Zoning Jurisdiction Yes
10. Legal Description Lot 2, Scooter's Coffee Addition, Dawson County, Nebraska
11. Street Address of Property or Approximate Location Frontier Street & U.S. Hwy. 283
12. Site Plan (if applicable) *See enclosed Exhibits.

I/We the undersigned do hereby acknowledge that I/We do fully understand and agree to comply with the provisions and requirements for an application for a special use permit as described above. I/We the undersigned do hereby agree to allow City of Lexington employees or agents working for the City of Lexington, to enter the above referenced property as it pertains to this application.

INDUSTRIAL TOWER WEST, LLC.
by Chris R. Riha, Site Acquisition
1811 W. 2nd Street, Suite 455
Grand Island, NE 68803
(308) 370-0383 chris.riha@induswest.com

Signature of Owner

Signature of Applicant

Administrative Use Only

Date Submitted Case Number
Filing Fee \$100.00 Accepted By
Cert. Of Ownership Date Advertised
Date Sign Posted Date of Public Hearing

City of Lexington Conditional Use Permit

Conditional Use Permit for a Wireless Communication Tower

This Conditional Use Permit issued this _____ day of _____, 2024, by the City of Lexington, a municipal corporation in the County of Dawson County, Nebraska (“City”) to Mountain Tower & Land, LLC, a Colorado Corporation (“Owner”), pursuant to the Lexington Zoning Ordinance.

WHEREAS, Owner wishes to develop a retail store along with a wireless communication tower upon the following tract of land within the City of Lexington zoning jurisdiction:

Lot 2, Scooter’s Addition to the City of Lexington, Dawson County, Nebraska.

WHEREAS, Owner has applied for a conditional use permit for the purpose of developing said retail store and 80-foot wireless communications tower pursuant to an Application for Conditional Use Permit filed with the City of Lexington; and

WHEREAS, Owner has complied and/or agreed to comply with all the requirements of Section 7.07 of the Lexington Zoning Ordinance dated February 11, 2014, and amended December 8, 2015; and

WHEREAS, the Mayor and City Council of the City of Lexington make the following findings of fact in regards to the issuance of a conditional use permit: the location and characteristics of the use will not be detrimental to the health, safety, morals, and general welfare of the area, and such use is not in violation of any the standards set forth in Section 6.08 of the Lexington Zoning Ordinance dated February 11, 2014, and amended December 8, 2015; and

WHEREAS, the Mayor and City Council of the City of Lexington, based on the above findings of fact, are agreeable to the issuance of a conditional use permit to Owner for such purposes, subject to the appropriate conditions, safeguards, and time limits hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to Owner to use the area designated on the Conditional Use Permit Application for a wireless communication tower, said use hereinafter being referred to as “Permitted Use or Use”.

Conditions of Permit

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the proposed Use:
 - a. A building permit must be applied for and issued per Section 4.28 of the Lexington City Code.
 - b. All landscaping requirements must be met; Section 7.07.10 of the Lexington City Code.
 - c. Owner will be responsible for maintenance of the tower; Section 7.07.11 of the Lexington City Code.

- d. Owner shall install said tower pursuant to the Application for Conditional Use Permit filed with the City of Lexington, Nebraska.
3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
 - a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
 - b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the applicant has fully complied with the terms of approval.
 - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the conditional use.
4. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
 - a. If any tower shall cease to be used for a period of one year, the Building Official shall notify the tower owner that the site will be subject to determination of abandonment. Upon issuance of written notice to show cause by the Building Official, the tower owner shall have 30 days to show that the tower has been in use or under repair during the period of apparent abandonment. In the event the tower owner fails to show that the tower has been in use or under repair during the relevant period, the Building Official shall issue a final determination of abandonment of the site and the tower owner shall have 75 days thereafter to dismantle and move the tower. In the event the tower is not dismantled and removed, the tower shall be declared a public nuisance by the Building Official, and the City will abate said public nuisance pursuant to authority of the Revised Nebraska State Statutes and City of Lexington codes, and charge the costs thereof against the real estate on which the tower is located or the owner of record of the said real estate. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
 - b. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.
5. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.
6. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

Miscellaneous

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City’s right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
3. The Parties agree and acknowledge the City of Lexington may file this Conditional Use Permit with the Dawson County Register of Deeds or otherwise file a Memorandum of said Conditional Use Permit with the Register of Deeds. The filing of such shall be paid by the City of Lexington.
4. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

Contact Name and Address:

Mountain Tower & Land, LLC
1224 West Platte Ave
Fort Morgan, CO 80701

Effective Date:

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LEXINGTON

By _____
John Fagot, Mayor

Attest:

Pam Baruth
City Clerk

CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner:

By: _____

Title: _____

Date: _____

Owner:

By: _____

Title: _____

Date: _____

DRAFT

Section 6.08 Standards

No conditional use permit shall be granted unless that Planning Commission or City Council has found:

- 6.08.01 That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, moral, comfort or general welfare of the community.
- 6.08.02 That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood.
- 6.08.03 That the establishment of the conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.
- 6.08.04 Adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
- 6.08.05 Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- 6.08.06 The use shall not include noise which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
- 6.08.07 The use shall not involve any pollution of the air by fly-ash, dust, vapors or other substance which is harmful to health, animals, vegetation or other property or which can cause soiling, discomfort, or irritation.
- 6.08.08 The use shall not involve any malodorous gas or matter which is discernible on any adjoining lot or property.
- 6.08.09 The use shall not involve any direct or reflected glare which is visible from any adjoining property or from any public street, road, or highway.
- 6.08.010 The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.
- 6.08.011 The use shall not involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.

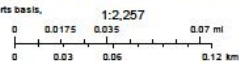
Location of Property Map



May 3, 2024
09:43 AM

DISCLAIMER: This map is not intended for conveyances, nor is it a legal survey. The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments.

- Parcels
- <all other values>
 - Sections

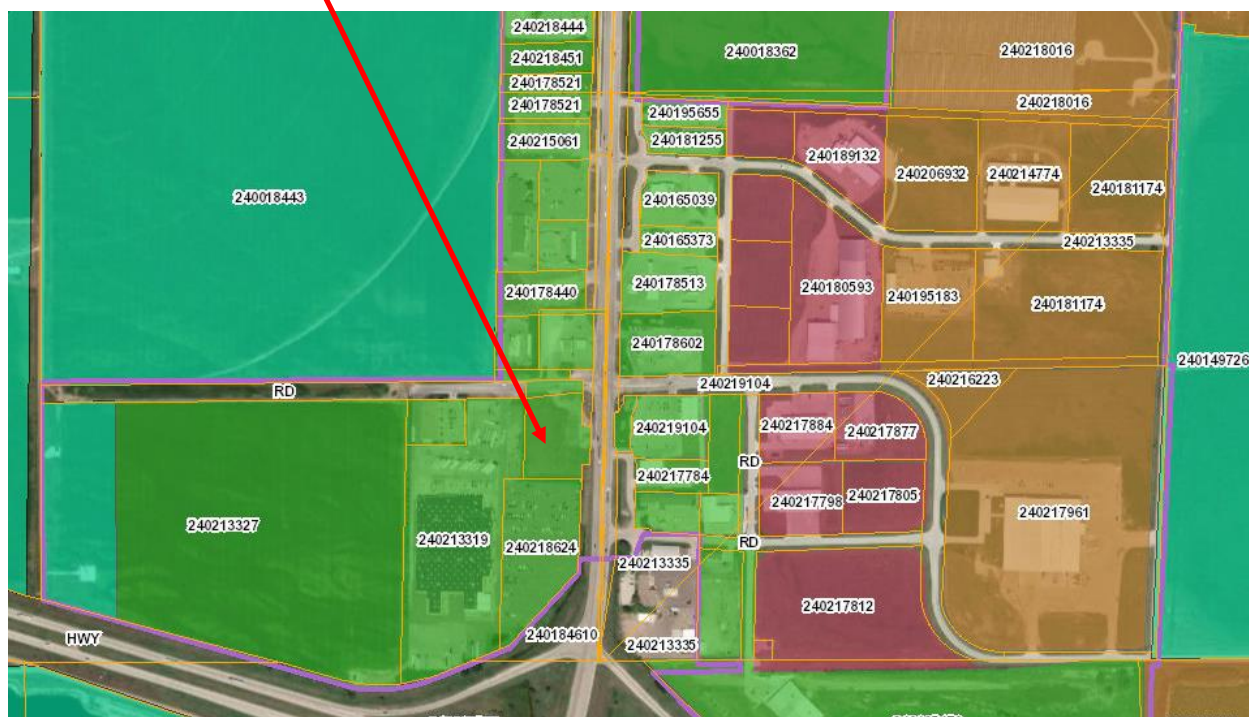


Dewson County
gWorks

Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

Proposed Site

C-3 Zoning District Map



Southwest looking Northeast



Southeast looking Northwest



Northwest looking Southeast



Northeast looking Southwest



**Simulation Picture looking West
Typical Retail Store with a Monopole**



**Picture of a Typical Retail Store with a
Monopole's Fenced Area**





Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177

Aeronautical Study No.
2023-ACE-1890-OE
Prior Study No.
2021-ACE-7982-OE

Issued Date: 04/27/2023

Skylyn Bellender
Industrial Tower West, LLC
1224 West Platte Avenue
Fort Morgan, CO 80654

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Antenna Tower Lexington I-80, NE
Location: Lexington, NE
Latitude: 40-44-45.19N NAD 83
Longitude: 99-44-28.26W
Heights: 2388 feet site elevation (SE)
87 feet above ground level (AGL)
2475 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)
- Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 .

This determination expires on 10/27/2024 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition: Antenna System Co-Location: Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact Nathan Shelly, at (817) 222-4037, or nathan.d-clr.shelly@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2023-ACE-1890-OE.

Signature Control No: 578418934-583056732

(DNE)

Mike Helvey
Manager, Obstruction Evaluation Group

Attachment(s)
Frequency Data
Map(s)

cc: FCC

Frequency Data for ASN 2023-ACE-1890-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
6	7	GHz	55	dBW
10	11.7	GHz	55	dBW
17.7	19.7	GHz	55	dBW
21.2	23.6	GHz	55	dBW
614	698	MHz	2000	W
698	806	MHz	1000	W
806	901	MHz	500	W
824	849	MHz	500	W
869	894	MHz	500	W
1670	1675	MHz	500	W
1710	1755	MHz	500	W
1850	1990	MHz	1640	W
1850	1910	MHz	1640	W
1930	1990	MHz	1640	W
1990	2025	MHz	500	W
2110	2200	MHz	500	W
2305	2310	MHz	2000	W
2305	2360	MHz	2000	W
2345	2360	MHz	2000	W
2496	2690	MHz	500	W

Verified Map for ASN 2023-ACE-1890-OE



April 1, 2020

Bill Brecks, Development Services Director
City of Lexington
406 E. 7th Street
P.O. Box 70
Lexington, NE 68850
(308) 324-2341

RE: Viaero Conditional Use Permit – Lexington I-80 Cell Site, NE

Dear Mr. Breck,

In regards to VIAERO WIRELESS's Conditional Use Permit Application for their proposed Lexington I-80, NE Site, we respectfully submit the following Statement to comply with the referenced City Of Lexington Supplemental Regulations 7.07.04 Application to Develop a Tower:

7.07.04. Application To Develop A Tower

Prior to commencement of development or construction of a tower, an application shall be submitted to the Building Official for a Tower Development Permit and shall include the following:

3. The names, addresses and telephone numbers of all owners of other towers or useable antenna support structures within a one (1) mile radius of the location of the proposed tower, including publicly and privately owned towers or structures.

Using the Federal Communications Commission's Antenna Structure Registration database, we have conducted a search for all registered tower structures which are required to be registered according to the Code of Federal Regulations (CFR) 47 Part 17.7 and 14 CFR 77.13 within a 1 mile radius of the proposed site. This search resulted in one (1) structure which fall within the 1 mile criteria. This information is included at the end of this Exhibit.

4. An affidavit attesting to the fact that the applicant has made diligent but unsuccessful efforts to obtain permission to install or collocate the applicant's telecommunications facilities on a tower or useable antenna support structure within a one (1) mile radius of the proposed tower location or written technical evidence from an engineer that the applicant's telecommunications facilities cannot be installed or collocated on another tower or useable antenna support structure within a one (1) mile radius of the proposed tower location.

Structure Number 1 with FCC Antenna Registration 1292556 is a 150+ Foot self-supporting tower located at 40-44-40.3N & 99-44-54.9W and owned by Horvath Towers III, LLC. This site will not provide access to Viaero's fiber route.

Structure Number 2 is not registered with FCC. It is a 50+/- Foot self-supporting tower located at 40-44-38.75N & 99-44-21.45W and owned by a Government Agency. At .16 miles from our proposed 80 Foot Monopole, this site does not have sufficient capacity to support the required PCS and microwave antenna loading.

5. Written technical evidence from an engineer that the proposed tower will meet the established Building Code, and all other construction standards set forth by the City Council and federal and state and applicable ANSI standards.

Viaero Wireless will comply with all Universal Building Code, City, State and Federal laws and applicable American National Standards Institute (ANSI) standards.



(Signature)

For NE COLORADO CELLULAR, INC., d/b/a VIAERO WIRELESS
Thomas W. Burnett,
Title: CTO Viaero Wireless

Exhibit 1

Map Showing Towers Within a 1 Mile Radius Of Proposed Structure



Exhibit 2

FCC Registered Structures Search Result

4/1/2020

ASR Registration Search Results

ASR Registration Search

Registration Search Results

Displayed Results

PA = Pending Application(s)

Specified Search

Latitude='40-44-45.2 N', Longitude='99-44-28.3 W', Radius=1.6 Kilometers

Registration Number	Status	File Number	Owner Name	Latitude/Longitude	Structure City/State	Overall Height Above Ground (AGL)
1 1292556	Constructed	A0931106	Horvath Towers III, LLC	40-44-40.3N 099-44-54.9W	Lexington, NE	50.3

CLOSE WINDOW

**PLANNING COMMISSION
CITY OF LEXINGTON**

DETERMINATION FORM

On **June 5, 2024**, the Lexington, Nebraska Planning Commission, at its regular meeting, recommended **Approval** (Approval/Disapproval) of a **Conditional Use Permit for 80' Monopole Communications Tower** for property located at **Southwest Corner of Frontier Street and Plum Creek Parkway** (Location) for **Industrial Tower West LLC** (Name).

The Lexington Planning Commission made the following motion:

Motion by: Kristi Moyer

Seconded by: Roque Gonzalez

Motion: Moved by Moyer, seconded by Gonzalez, to recommend approval to the City Council of the CUP application as presented.

Roll Call: Voting "aye" were Kaiser, Jacob, Gonzalez, Moyer, Smith. Motion carried.

Based on the facts set forth at the Public Meeting, the Planning Commission hereby makes the following findings of fact: *

_____ 6.08.01 That the establishment, maintenance, or operation of the conditional use will be detrimental to or endanger the public health, safety, moral, comfort or general welfare of the community.

_____ 6.08.02 That the conditional use will be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood.

_____ 6.08.03 That the establishment of the conditional use will impede the normal and orderly development of the surrounding property for uses permitted in the district.

- _____ 6.08.04 Adequate utilities, access roads, drainage, and/or necessary facilities have been or are not being provided.
- _____ 6.08.05 Adequate measures have not been or will not be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- _____ 6.08.06 The use shall include noise which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
- _____ 6.08.07 The use shall involve any pollution of the air by fly-ash, dust, vapors or other substance which is harmful to health, animals, vegetation or other property or which can cause soiling, discomfort, or irritation.
- _____ 6.08.08 The use shall involve any malodorous gas or matter which is discernible on any adjoining lot or property.
- _____ 6.08.09 The use shall involve any direct or reflected glare which is visible from any adjoining property or from any public street, road, or highway.
- _____ 6.08.010 The use shall involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.
- _____ 6.08.011 The use shall involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.

*If no standards are checked, then the Planning Commission has made findings of fact that the application complies with Section 6.08 of the Lexington Zoning Ordinance.



Planning Secretary

