


Leon County Board of County Commissioners

Cover Sheet for Agenda #28

December 13, 2016

To: Honorable Chairman and Members of the Board

From: Vincent S. Long, County Administrator 

Title: Acceptance of a Status Report on Emerging Wireless Communication Facilities and Adoption of a Resolution Instituting a Six Month Moratorium to Review Communication Antenna Support Structures (CASS) Deployment in the County's Right-of-Ways (ROW)

County Administrator Review and Approval:	Vincent S. Long, County Administrator
Department/ Division Review:	Alan Rosenzweig, Deputy County Administrator Ken Morris, Assistant County Administrator
Lead Staff/ Project Team:	Nicki Paden, Management Intern

Fiscal Impact:

This item does not have a fiscal impact.

Staff Recommendation:

- Option #1: Accept Status Report on Emerging Wireless Communication Facilities.
- Option #2: Adopt the Resolution enacting a six month moratorium on Communication Antenna Support Structures (CASS) deployment in the County's ROW and direct staff to develop regulatory guidelines embracing CASS technology for the Board's consideration (Attachment #1).

Report and Discussion

Background:

This agenda item requests Board consideration of a Resolution instituting a six month moratorium ceasing the consideration of requests submitted by the telecommunications industry to deploy new technology in the form of wireless telecommunication facilities and antennas in Leon County's right-of-ways (ROW). Since the County does not have a regulatory framework for these structures to be placed in the ROW, the proposed resolution would only apply to requests to locate in the County's ROW and would not restrict the siting of communication antennas on privately owned property or public facilities as currently allowed by County Ordinance.

In January of 1997, as cellular technology began to grow, the Board made changes to the County's Land Development Code (LDC) to develop the existing regulatory framework for CASS. Section 10-6.812 of the LDC encourages collocation of CASS on private property, allows for the utilization of public facilities, and provides zoning and height restrictions but access to the County's ROW is reserved for utility services (Attachment #2). Chapter 16, Article IV of County Codes provide guidance on the licensing, authorization of fees, and bonding associated with utilization of the County's ROW for utility services such as water, sewage, or gas, but does not reference CASS (Attachment #3).

New wireless telecommunication technology is emerging across the nation as consumer demand for better connectivity of wireless devices is on the rise. Communication antenna support structures (CASS), such as Distributed Antenna Systems and small cells, are beginning to be deployed across the country in an effort to expand and improve wireless networks. CASS are wireless-signal transmitting facilities that require less power and a smaller footprint compared to larger cell-sites to provide coverage across smaller proximities.

CASS providers seek to deploy their communication devices on existing structures, i.e. utility poles, or develop new structures in the ROW to improve data coverage (Attachment #4). CASS are used to enhance service in highly populated areas and "fill the gaps" in areas where data provided coverage is weak or where it would be infeasible to fit a traditional macro-sized cell tower. CASS providers are pursuing local government's ROW instead of the standard location of large cell towers to enhance wireless service in poorly-connected areas, highly traveled and populated areas, and improve GPS connectivity.

As CASS providers pursue development in the ROW, a review of this new technology and the deployment of structures in the ROW is necessary to develop a regulatory framework that balances industry growth along with resident concerns. Concerns may include the safety of the structures within proximity to the roadway, the proliferation of these antennas, the aesthetic makeup of these structures, and the process to approve the citing of these devices

Analysis:

Leon County is one of many local governments in Florida facing new challenges as the regulators and property managers of the County's ROW. Current statutory provisions governing wireless facility placement do not specifically address the issues arising from the communication antenna support structures. However, during the 2016 legislative session, CS/SB 416 amended Section 125.42, Florida Statutes, expanding the County's authority to grant ROW licenses to providers of communication services. In addition, SB 416 revised Section 337.401, Florida Statutes, shifting the relocation costs of utility facilities located in the ROW to local governments when public works projects are being conducted. SB 416 is believed to have triggered the interest of CASS providers to pursue less-restrictive deployment in local government's ROW.

The Florida Department of Transportation (FDOT) and local governments are authorized to prescribe and enforce reasonable rules or regulations related to the placement of utilities within the ROW. As the industry continues to expand faster than the development of a regulatory framework, there were ambiguities surrounding whether CASS should be considered utilities and whether these facilities are preempted from deployment in the ROW. Despite the lack of authoritative support from FDOT, the CASS industry contends that they should be considered utilities granting their right to deploy in the ROW. As a result, the Florida Association of County Attorneys (FACA) formed the Cell Tower-ROW Task Force to research and analyze the various issues surrounding the deployment of CASS in the ROW. The FACA Task Force consisted of attorneys from seven counties across the state, including Leon County, to deliberate how to interpret these emerging issues.

FDOT, FACA, the Leon County Attorney's Office, and the Public Service Commission (PSC) have independently reached a consensus that CASS are not utilities. FDOT's Rule 14-46, in conjunction with the Utility Accommodation Manual (Attachment #5), indicates that CASS are not utilities and that local governments may reject the issuance of issue utility permits in the ROW to CASS providers. In addition, the structures do not connect to any utility lines and can be much taller, upwards of 120 feet, than traditional utility poles and the wireless devices do not need to occupy a ROW to serve a public need. Further, the PSC exercises regulatory authority over utilities such as electric, natural gas, and telecommunications. The PSC recognizes the emerging technology; however the PSC does not regulate CASS since the facilities are not utilities (Attachment #6). Therefore, without utility status, the Board is not required to allow CASS providers to deploy in the ROW. Should the Board wish to embrace this emerging technology, staff would need time to develop the regulatory framework and Board policy guidance in order to process these requests.

As CASS providers begin to pursue the County's ROW following the revisions of Sections 125.42 and 337.410, lack of regulation puts the County at risk of violating federal and state law. The Federal Communications Commission (FCC) has declared that local authorities must act on requests for authorization to place, construct, or modify a personal wireless service facility within a reasonable period of time. In accordance to the Declaratory Ruling, known as the "Shot Clock Ruling", local authorities must process collocation applications within 90 days and all

other applications in 150 days. The shot clock begins once an application filed, with 30 days for the local government to review the application and request additional information. Any application that is unaddressed or ignored is considered approved after the deadline. In addition, any denial of an application must be in writing and supported by substantial evidence in a written record.

Therefore, the County can deny applications for CASS deployment in the ROW, but risks the chance of providers challenging the County's decision due to lack of substantial evidence, shifting the burden to local governments to prove that the denied request is authorized, reasonable, and non-discriminatory, which will be more difficult without a regulatory framework in place.

Furthermore, if the Board considers permitting CASS in the ROW, immediate action is required due to Shock Clock time limits. Currently, the County lacks the regulatory framework to govern the deployment of the CASS in the ROW. Therefore, staff will need additional time to develop regulations that address potential safety, aesthetic, and environmental concerns before considering any CASS applications for deployment in the ROW to avoid any legal challenges. Should the Board wish to consider CASS deployments in the ROW, CASS deployment throughout Leon County may be inconsistent due to separate road management by the County, City, and State. Additional time would grant staff the opportunity to consider engaging the City and the private wireless communication industry with the regulatory development process. If the Board decides not to pursue the emerging technology, the lack of a regulatory framework is likely not enough to withstand a legal challenge in regards to denied applications. Therefore, an ordinance banning CASS in the ROW would be recommended. FACA and the County Attorney's Office recommend counties enact a moratorium to avoid legal challenges surrounding the federal shot clock ruling. As a result, Board action is necessary in order to adequately process applications for CASS within the ROW.

Numerous counties and cities throughout Florida have also been confronted with CASS applications for deployment in public ROW. In response to the submission of several applications prior to the development of a regulatory framework, Martin County imposed an 18-month moratorium (Attachment #7) in September 2016. A moratorium temporarily halts certain development activities established for the purpose of giving a local government time to plan, consider, review, adopt and/or revise its development regulations. Martin County's staff proposed the moratorium to undertake a study of appropriate distance separation requirements, appropriate locations, and other regulations of wireless communications facilities within the ROW. In addition, Manatee County adopted a resolution (Attachment #8) ceasing the acceptance of applications for ROW permits to deploy CASS in the ROW until their codes are revised to adequately regulate the standards which will apply to such facilities or until February 10, 2017, whichever of these occurs first.

Leon County has previously imposed moratoriums on other emerging technologies such as the siting of television and radio broadcast towers to develop a consensus and regulatory framework for the industry and affected residents (Attachment #9). A moratorium was placed on the

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issuance of permits, development orders, and site and development plan consideration for television and radio broadcast towers from April 30, 2002 until August 31, 2002 which was later extended to October of 2002. The Board believed a moratorium was in the best interest of the citizens and residents of Leon County to allow the necessary research and deliberative time for consideration, and potential enactment of, regulations concerning television and radio broadcast towers and equipment.

Moratoriums are typically utilized to cease development activity to provide time to revise current and existing regulations or, as is the case here, create new regulations for technologies not considered in the Code. Moratoriums can be enacted by either ordinance or resolution. If the proposed moratorium can impact development plans permitted by existing regulations, the moratorium must be enacted by an ordinance and a public hearing must be conducted. However, current County Codes do not address or regulate CASS deployment in the ROW; therefore the County may pursue a moratorium by resolution. The County Attorney's Office has recommended adopting a resolution as it would also authorize the County to cease the consideration of applications of ROW permits for CASS in a more timely manner, allowing staff to develop appropriate regulations while decreasing the County's likelihood of violating the Shock Clock time limit. The County Attorney's Office created a Resolution that authorizes the Board to cease consideration of ROW permits for CASS for six months to develop and adopt regulations pertaining to the deployment of such facilities in the County's ROW (Attachment #1).

The adoption of the Resolution ceasing applications for, and approval of, permits or development orders to deploy the facilities in the ROW, would grant staff sufficient time to develop regulations for the Board's consideration regarding the emerging wireless technology. Since the County does not have a regulatory framework for these structures to be placed in the ROW, the proposed Resolution would only apply to requests to locate in the County's ROW and would not restrict the siting of communication antennas on privately owned property or public facilities as currently allowed by County Ordinance. Further, industry representatives are expected to seek additional authority and guidance from the state during the 2017 legislative session which may govern the final product presented to the Board following the moratorium.

The proposed six month resolution would allow staff to address regulatory considerations such as:

- Safety requirements;
- County, City, and State road management
- Surrounding tree coverage including Canopy Roads;
- Camouflage structures to prevent adverse visual effects;
- Fee schedule creation;
- Height restrictions;
- Feasible collocation requirements;
- Pole interval distance requirements of each service provider; and
- The order in which providers will be permitted to develop.

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Regardless of the Board's position on the deployment of CASS in the ROW, additional time is needed to revise the County's code to reflect the Board's policy guidance and resource priorities to support the Board's decision. Staff recommends Board acceptance of the status report and adoption of the Resolution granting staff six months to review and develop a regulatory framework for the deployment of CASS facilities and antennas in the County's ROW.

Options:

1. Accept the Status Report on Emerging Wireless Communication Facilities
2. Adopt the Resolution enacting a six month moratorium on Communication Antenna Support Structures (CASS) deployment in the County's ROW and direct staff to develop regulatory guidelines embracing CASS technology for the Board's consideration (Attachment #1).
3. Adopt the Resolution enacting a six month moratorium on CASS deployment in the County's ROW and direct the County Attorney's Office to prepare an Ordinance prohibiting CASS deployment in the County's ROW.
4. Do not accept the Status Report on Emerging Wireless Communication Facilities.
5. Board direction.

Recommendation:

Options #1 and #2.

Attachments:

1. Proposed Resolution enacting a six month moratorium on CASS deployment in the County's ROW
2. Leon County Code of Ordinances Division 8, Section 10-6.812
3. Leon County Code of Ordinances Chapter 16, Article IV
4. Photos of communication antenna support structures
5. FDOT's Rule 14-46 and Utility Accommodation Manual
6. Public Service Commission Regulation Chart
7. Martin County Agenda Item Summary
8. Manatee County Resolution 16-147
9. Leon County Moratorium (2002) on the Approval of Applications for Development Orders Approving the Siting and Construction of Radio and Television Broadcast Towers

RESOLUTION NO. R16-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, ESTABLISHING A TEMPORARY CESSATION OF THE ACCEPTANCE OF PERMIT APPLICATIONS FOR THE PLACEMENT, CONSTRUCTION OR INSTALLATION OF WIRELESS COMMUNICATION STRUCTURES AND/OR FACILITIES IN COUNTY RIGHTS-OF-WAY PENDING REVISION OF THE COUNTY'S CODE TO ADDRESS THE PLACEMENT, CONSTRUCTION AND INSTALLATION OF THESE STRUCTURES OR FACILITIES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Leon County owns and/or controls and manages lands designated as rights-of-way; and

WHEREAS, governmental rights-of-way have traditionally been utilized for, among other uses, the placement of public and private utility systems and structures so as to facilitate the delivery of utility services and maintenance of utility systems; and

WHEREAS, Chapter 16 of the Code of Laws of Leon County contains the County's current provisions pertaining to streets, roads and public ways; and

WHEREAS, Section 10-6.812 of the Code of Laws of Leon County provides regulations and requirements pertaining to communication antennas and communication antenna support structures, but does not apply to government-owned property; and

WHEREAS, new technologies in the provision of wireless communications services are emerging, such as Distributed Antenna Systems (DAS) and "small cell" systems, which may entail requests to place smaller and more numerous communication structures and/or facilities in public rights-of-way in order to improve wireless connectivity and coverage; and

WHEREAS, the Code of Laws of Leon County does not contemplate nor address these new technologies that have developed in the rapidly changing telecommunications

industry, as traditionally these types of structures and facilities have not been installed in the County's rights-of-way; and

WHEREAS, the Board of County Commissioners of Leon County hereby finds that the County's rights-of-way are a limited and vital resource which must be properly and safely managed for current, as well as future, utility needs; and

WHEREAS, Section 704(a) of the Telecommunications Act of 1996, codified at 47 U.S.C. § 332(c)(7), preserves state and local authority over decisions concerning the placement, construction, and modification of personal wireless service facilities, provided the regulations do not unreasonably discriminate among providers of functionally equivalent services, and do not prohibit, or have the effect of prohibiting, the provision of personal wireless services; and

WHEREAS, Section 337.401, Florida Statutes grants local governments the authority to prescribe and enforce reasonable, non-discriminatory rules and regulations regarding the placement of telephone, telegraph, or other communication service lines or poles within the rights-of-way; and

WHEREAS, the Board of County Commissions deems it to be in the best interests of the health, public safety, and welfare of the citizens and residents of the County to temporarily cease the acceptance of applications for permits to place, construct or install wireless communication structures and/or facilities in the County's rights-of-way; and

WHEREAS, a temporary cessation of the acceptance of applications for permits to place, construct or install wireless communication structures and/or facilities in the County's rights-of-way will enable the County's staff to properly study the regulatory requirements for such structures and/or facilities;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, that:

1. The County shall cease the acceptance of applications for permits to place, construct or install wireless communication structures and/or facilities in the County's rights-of-way and the County shall not issue any permit or development order for wireless communication structures and/or facilities in the County's rights-of-way until one of the following first occurs:

- (a) The Board of County Commissioners adopts amendments to the Code of Laws of Leon County to provide sufficient regulations and standards for the placement, construction or installation of wireless communication structures and/or facilities in the County's rights-of-way; or
- (b) 12:00 a.m. on Wednesday, June 14, 2017; or
- (c) The Board rescinds this Resolution.

2. The County Administrator, or designee, and the County Attorney, or designee, are hereby directed to develop such ordinances as may be required to ensure that the Code of Laws of Leon County provides sufficient regulations and standards for processing applications to place, construct or install wireless communications structures and/or facilities, such as Distributed Antenna Systems (DAS) and "small cell" systems, in the County's rights-of-way, so as to facilitate the provision of effective wireless communications services to the County's citizens and businesses while also ensuring the safety, aesthetic, financial and infrastructure planning needs of the County.

3. This Resolution shall not restrict or prohibit communication antennas and communication antenna support structures from being constructed on lands not within the

County's rights-of-way, in accordance with Section 10-6.812 of the Code of Laws of Leon County.

4. If any provision or portion of this Resolution is held invalid, same shall be severable, and the remainder of the Resolution shall not be affected by such invalidity, such that any remainder of the Resolution shall withstand any severed provision.

5. This Resolution shall have effect upon adoption.

DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon County, Florida, this 13th day of December, 2016.

LEON COUNTY, FLORIDA

By: _____
John E. Dailey, Chairman
Board of County Commissioners

ATTESTED BY:
Bob Inzer, Clerk of Court & Comptroller
Leon County, Florida

By: _____

APPROVED AS TO FORM:
Leon County Attorney's Office

By: _____
Herbert W. A. Thiele, Esq.
County Attorney

DIVISION 8. - SUPPLEMENTARY REGULATIONS FOR SPECIFIC USES

Sec. 10-6.812. - Communication antennas and communication antenna support structures.

(a) *Purpose and intent.* The regulations and requirements of this section are intended to:

- (1) Promote the public health, safety and general welfare by regulating the siting of wireless communication facilities;
- (2) Accommodate the growing need and demand for wireless communication services;
- (3) Provide for the appropriate location and development of wireless communication facilities within the county and recognize that the provision of wireless services may be an essential service within such land use categories as may be provided for under the Comprehensive Plan, subject to the limitations of this section;
- (4) Minimize adverse visual effects of wireless communication antenna support structures through careful design, siting, landscape screening and innovative camouflaging techniques;
- (5) Encourage the location and collocation of antennas on existing structures thereby minimizing new visual impacts and reducing the need for additional communication antenna support structures; and
- (6) Further the balance between the need to provide for certainty to the communications industry in the placement of wireless communication facilities and the need to provide certainty to the residents and citizens that the aesthetic integrity of the county will be protected from the proliferation of unnecessary communication antenna support structures.

(b) *Definitions.* Unless specifically defined below, words or phrases shall be interpreted so as to give them the meaning they have in common usage and to give this section its most effective application.

Collocation shall mean the mounting or installation of an antenna and associated equipment on an existing communication antenna support structure, building or other structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.

Communication antenna shall mean an antenna, appurtenant to a structure, designed to transmit and/or receive communications authorized by the Federal Communications Commission (FCC). The term, "communication antenna," shall not include antennas utilized by amateur radio operators licensed by the FCC.

Communication antenna support structure shall mean a support structure and/or support equipment at a fixed location or base station that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. This term includes antenna support structures, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small-cell networks). Communication antenna support structures are generally described as either monopole (freestanding), lattice (self-supporting), or guyed (anchored with guy wires or cables).

The term is not intended to include or apply to:

- (1) Radio and television broadcast antenna support structures that are licensed by the FCC and used primarily for broadcast purposes. Broadcast antennas and broadcast antenna support structures shall comply with the requirements of section 10-6.813 of the zoning code.
- (2) Structures utilized by amateur radio operators licensed by the FCC or communication antenna support structures not exceeding 100 feet in height utilized by essential service providers on a site containing an essential service facility, such as but not limited to, fire stations, law enforcement facilities, including jails, electrical substations, wastewater treatment plants, sewer

lift stations, overhead water storage tanks, water wells and utility operation or service centers, for the provision of telemetry data only.

Communication antenna support structure site shall mean a parcel of land smaller than the minimum lot size required in the zoning district completely contained within a lot, but meeting the requirements of the zoning district for the purposes of locating a communication antenna support structure. Also, see the definition of sub-parcel below.

Essential service shall mean the provision, by a public utility, of communication services to the public related to fire safety; law enforcement; weather; provision of electric, natural gas, water, or sanitary sewer service; or other circumstances affecting the health, safety, or welfare of the public.

Existing shall mean, for purposes of this section, a communication antenna support structure that has received final approval in the form of a building permit for an approved site and development plan or where substantial construction has been completed, and shall be considered an existing communication antenna support structure so long as such approval is valid and unexpired as of the effective date of this section.

Feasible collocation shall mean the collocation of antennas where technically and economically feasible, in order to reduce the need for new communication antenna support structure construction. Collocation shall be deemed to be feasible for purposes of this section where all of the following are met:

- (1) The owner or person who otherwise controls the communication antenna support structure or other structure under consideration for collocation will undertake to charge fair and reasonable market rent or other fair and reasonable market compensation for collocation.
- (2) The site on which collocation is being considered, taking into consideration the reasonable replacement of a facility, is able to provide sufficient structural strength to support the proposed communication antenna or related equipment.
- (3) The collocation being considered is technologically reasonable and will not result in unreasonable electromagnetic interference, given appropriate physical adjustments in relation to the structure and antennas.
- (4) The height of the structure necessary for collocation will not be increased beyond a point deemed to be permissible by the county administrator or designee, taking into consideration the standards contained in this section.

Privately-owned electric utility shall mean a business that provides the infrastructure necessary to deliver electricity and/or water services to the public at large.

Public utility shall mean a utility owned or operated by the United States, the State of Florida, Leon County, or the City of Tallahassee.

Residential lot shall mean any parcel of land upon which one or more dwelling units are located, which is designated on the county's official zoning map as a zoning district that allows residential development, upon which a residential subdivision plat (preliminary or final) has been approved, or which has been designated for residential uses by any other unexpired development order (i.e., Planned Unit Development Area, Critical Planning Area, Target Planning Area, or Chapter 163 Development Agreement, with a residential component).

Sub-parcel shall mean a portion of a larger parcel that is used to support the development of a communication antenna support structure. A sub-parcel shall only be created and used for the sole purpose of developing a communication antenna support structure. A sub-parcel is not required to be consistent with the minimum lot size of the zoning district within which it is located. A sub-parcel shall only be created with approval by the county through the appropriate development review and approval process as established by code.

Substantial change shall mean a modification that substantially changes the physical dimensions of a communication antenna, communication antenna support structure or communication antenna support structure site by meeting any of the following criteria:

- (1) Increasing the height of the communication antenna support structure by more than ten percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or
 - (2) Installing equipment to the body of the communication antenna support structure that would protrude from the edge of the structure more than 20 feet, or more than the width of the structure at the level of the equipment, whichever is greater; or
 - (3) Installing more than the standard number of new equipment cabinets required for the technology involved, but not to exceed four cabinets; or
 - (4) Installing equipment or ground cabinets to an existing communication antenna support structure site that would entail any excavation or placement outside the current footprint and/or site, thereby increasing the overall impervious surface area; or
 - (5) Installing equipment that would defeat the concealment elements or camouflage of the communication antenna or communication antenna support structure; or
 - (6) Does not comply with conditions associated with the prior approval of the communication antenna support structure or communication antenna support structure site, unless noncompliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds.
- (c) *Applicability.* All communication antennas and communication antenna support structures in the unincorporated areas of the county shall be subject to these land development regulations and all other applicable building and construction codes. In the event of any conflict between other land development regulations and the regulations contained in this section, the provisions of this section shall override and supersede such other regulations unless otherwise specifically set forth herein.
- (1) *Nonconforming uses and structures.* To the extent set forth herein, the restrictions on nonconforming uses and structures contained in Division 3 of Article VI of the Leon County Code of Laws are modified and supplemented by this section. Bona fide nonconforming communication antenna support structures or communication antennas that are damaged or destroyed may be rebuilt and all such communication antenna support structures or communication antennas may be modified, reconstructed or replaced without meeting the minimum setback requirements specified in subsection (e)(2)(c) hereinafter. The type, height, and location of the communication antenna support structure on the site shall be of the same type and intensity as the original facility approval. Building permits to rebuild the communication antenna support structure shall comply with the applicable county codes and shall be obtained within 180 days from the date the communication antenna support structure is damaged or destroyed. If no permit is applied for or obtained, or if said permit expires, the communication antenna support structure shall be deemed abandoned as specified in subsection (h) hereinafter.
 - (2) *Airport regulations.* All communication antenna support structure or communication antennas proposed in the unincorporated areas of the county shall comply with the requirements of section 10-6.808, "airport regulation," of the zoning code. If there is any conflict between the requirements of this section and section 10-6.808, the requirements in section 10-6.808 shall control. Furthermore, no new communication antenna support structure shall be permitted within 1,000 feet of the landing area of a private airport that has been approved by the county pursuant to the provisions of section 10-6.803(g) of the zoning code.
 - (3) *Exemption for government-owned property.* The provisions of this section shall not apply to communication antenna support structures or communication antennas located on property, rights-of-way or easements owned by the United States, State of Florida, Leon County, or the City of Tallahassee, provided those communication antenna support structures are owned by those public entities and are used for the provision of fire safety, law enforcement, emergency management, emergency medical services telecommunications, and/or a governmental purpose.

- (4) *Broadcast antennas.* The provisions of this section are not intended to apply to the siting of radio and television broadcast antenna support structures licensed by the FCC and used primarily for broadcast purposes which are regulated under section 10-6.813 of the zoning code.
- (d) *Existing structures.* All existing communication antenna support structures shall be allowed to continue to be used as they presently exist, provided that a notice of continuing use is submitted by the communication antenna support structure owner/operator to the department of development support and environmental management once every three years. A notice of continuing use shall certify that the structure continues to be used as a communication antenna support structure and that a security or performance bond has been posted in an amount to be determined by the county to cover the cost of removal plus a reasonable safety factor. Failure to file a notice of continuing use shall constitute abandonment in accordance with subsection (h). Routine maintenance shall be permitted on such existing communication antenna support structures.
- (1) No rezoning or zoning variance shall be required to locate a communication antenna on an existing nonresidential structure or multifamily residential structure 35 feet in height or greater; provided, however, that the communication antenna does not extend more than 20 feet above the existing structure. Such structures may include, but are not limited to, nonresidential buildings, water towers, existing communications antenna support structures, recreational light fixtures and essential service provider facilities.
- (2) A communication antenna support structure may be rebuilt, reconstructed, or replaced in any zoning district, other than residential preservation, provided that it is accomplished in a manner consistent with the following:
- a. *Type.* A communication antenna support structure which is modified or reconstructed to accommodate the collocation of an additional communication antenna shall comply with all the provisions of this section, except subsections (e)(3)a., location and (e)(3)c., setbacks. The communication antenna support structure shall be of the same type as the existing communication antenna support structure, unless reconstructed as a monopole. Furthermore, camouflaged communication antenna support structures may only be replaced with camouflaged structures of like design.
 - b. *Height and distance requirements.* An existing communication antenna support structure may be modified or rebuilt to a taller height, not to exceed 30 feet or 20 percent of the height of the communication antenna support structure, whichever is greater, over the communication antenna support structure's existing height, to accommodate the collocation of an additional communication antenna, but in no case shall the height of the communication antenna support structure and proposed extension be greater than the distance to an existing residential structure. An increase in height to accommodate collocation shall only occur one time per communication antenna support structure.
 - c. *On-site location.* A communication antenna support structure which is being rebuilt to accommodate the collocation of an additional communication antenna may be moved on-site within 50 feet of its existing location, subject to the minimum distance requirements of this section. After the communication antenna support structure is rebuilt to accommodate collocation, the existing communication antenna support structure must be dismantled and removed within 60 days after the rebuilding so only one communication antenna support structure may remain on the site.
 - d. *Development review process.*
 - 1. *Existing, conforming structures.*
 - i. The modification of communication antenna support structures to accommodate the collocation of additional users, not resulting in substantial changes as defined in this section, shall complete a permitted use verification, pursuant to section 10-7.402(1), in support of the proposed project and shall be subject to a project status determination, pursuant to section 10-7.402(2).

- ii. The rebuilding, reconstructing, or replacing of existing communication antenna support structures to accommodate collocation of additional users, resulting in substantial changes, shall be approved through the Type A site and development plan process, as defined in section 10-7.403.
 - 2. *Existing, nonconforming structures.* The rebuilding, reconstructing, replacing or modification of nonconforming communication antenna support structures to accommodate collocation of additional users may only be approved through the Type C site and development plan process, as defined in section 10-7.405.
- (e) *New communication antenna support structures.*
- (1) *Feasibility of collocation.* A permit for a new communication antenna support structure shall not be granted unless and until the applicant demonstrates that a feasible collocation, as defined in this section, is not available for the coverage area and capacity needs. The applicant must demonstrate, to the reasonable satisfaction of the county, the limiting factors that render existing communication antenna support structures or other structures unsuitable. The county shall maintain a list of all communication antenna support structures and shall make such list available to new communication antenna support structure applicants. If a party who owns or otherwise controls a new or existing communication antenna support structure shall fail or refuse to alter a structure so as to accommodate a proposed and otherwise feasible collocation, such facility shall thereupon and thereafter be deemed to be a nonconforming structure and use and shall be subject to the review process set forth in subsection (d)(2)d above.
 - (2) *Use of existing public facilities.* Leon County encourages the use of existing public facilities owned by the county, through lease situations, as sites for communication antenna and communication antenna support structures.
 - (3) *Location and setback requirements.*
 - a. *Zoning districts.* A communication antenna support structure or communication antenna may be located in any zoning district so long as it meets the requirements of this section, except a communication antenna support structure or communication antenna shall not be located in residential preservation, on or within 400 feet of property designed as historic preservation overlay, or in a planned unit development unless it is specifically listed as a principal permitted use. Any application for a communication antenna on or within 400 feet of property designated as historic preservation overlay shall request a certificate of appropriateness from the county's architectural review board pursuant to section 10-2.361 of the land development regulations.
 - b. *Subparcels.* A communication antenna support structure may be located on a subparcel, as defined in this section, used for other principal uses on a parcel smaller than the minimum lot size required in the zoning district. This parcel shall be considered as the "communication antenna support structure site." The communication antenna support structure site, but not the entire lot, shall be subject to all of the requirements of this section, except as specifically provided herein. The subdivision of land to create a subparcel shall be reviewed as part of the communication antenna support structure site plan process outlined in subsection (e)(13).
 - c. *Setbacks from residential lots.*
 - 1. If a communication antenna support structure is located on a residential or multifamily residential structure of 35 feet in height or greater, the communication antenna support structure shall be at least 250 feet, but not less than the height of the proposed communication antenna support structure itself, from the nearest residential lot zoned for or constructed with single-family residences or multifamily residences of less than 35 feet in height.
 - 2. All other communication antenna support structures shall be located at least 300 feet, but not less than the height of the proposed communication antenna support structure

itself, from the nearest residential lot zoned for or constructed with single-family residences or multifamily residences of less than 35 feet in height.

- i. Distances shall be measured from the center of the base of the communication antenna support structure to the residential lot line.
 - ii. Notwithstanding anything to the contrary in the land development regulations, no communication antenna support structure other than a monopole (freestanding) shall be located in any location adjacent to a residential lot.
 - iii. There are no minimum yard requirements for communication antenna support structures.
 - iv. Variances from these setback requirements may be granted consistent with the standards contained in subsection (j) of this section.
- (4) *Maximum height.* Notwithstanding anything to the contrary in the land development regulations, the maximum height of communication antenna support structures shall be 150 feet, except in rural (R), urban fringe (UF), industrial (I), light industrial (M-1) and activity center (AC) districts or in planned unit developments (PUD), critical planning areas (CPA) or target planning areas (TPA) which include community services, light or heavy infrastructure, or light or heavy industrial uses, in which the maximum height shall be 250 feet. Measurements of communication antenna support structure height shall include the base pad and other appurtenances, and shall be measured from the finished grade at the communication antenna support structure base.
- (5) *Illumination.* Communication antenna support structures shall not be artificially lighted except to assure human safety or as required by the Federal Aviation Administration (FAA).
- (6) *Structural design.*
 - a. *Collocation requirements.* All new communication antenna support structures shall be structurally designed to accommodate the collocation of communication antennas as follows:
 1. All communication antenna support structures, except camouflaged structures, over 80 feet and up to and including 125 feet in height shall be structurally designed to accommodate at least two service providers.
 2. All communication antenna support structures, except camouflaged structures, over 125 feet and up to and including 150 feet in height shall be structurally designed to accommodate at least three service providers.
 3. All communication antenna support structures, except camouflaged structures, exceeding 150 feet in height shall be structurally designed to accommodate at least four service providers.
 - b. *Structural integrity.* Communication antenna support structures shall be designed and constructed to ensure that the structural failure or collapse of the communication antenna support structure will not create a safety hazard to adjoining properties. Communication antenna support structures shall be constructed to the TIA 222-G Standards, as published by the Telecommunications Industry Association (TIA), which may be amended from time to time, and all applicable county building codes. Further, any improvements and/or additions (i.e., antenna, satellite dishes, etc.) to existing communication antenna support structures shall require submission of site plans sealed and verified by a professional engineer, which demonstrate compliance with the TIA 222-G Standards in effect at the time of said improvement or addition. Said plans shall be submitted to and reviewed and approved by the department of development support and environmental management at the time building permits are requested.

- (7) *Fencing.* A minimum eight-foot finished masonry wall or fence with no less than 85 percent opacity shall be required around all communication antenna support structure sites. Access to the communication antenna support structure shall be through a locked gate.
- (8) *Ownership marking.* All communication antenna support structures shall be marked at the entry gate with the proper indicia of ownership, including emergency contact information.
- (9) *No advertising.* Neither the communication antenna support structure nor the communication antenna support structure site shall be used for advertising purposes and shall not contain any signs for the purpose of advertising.
- (10) *Landscaping.* The visual impacts of residentially or commercially located communication antenna support structures shall be mitigated through landscaping or other screening materials at the base of the communication antenna support structure and ancillary structures as follows:
 - a. A 15-foot, Type B landscape buffer which meets the landscape requirements of section 10-7.522 of the zoning code shall be required around the perimeter of the communication antenna support structure and any accessory structures located outside the required wall or fence;
 - b. All required landscaping shall be of the evergreen variety;
 - c. All required landscaping shall be xeriscape tolerant or irrigated and properly maintained to ensure good health and vitality;
 - d. Required landscaping shall be installed outside the fence or wall; and
 - e. Existing vegetation shall be preserved to the maximum extent practicable and may be credited as appropriate toward meeting landscaping requirements.
 - f. An applicant may request a deviation to the development standards in this section in accordance with section 10-1.106.
- (11) *Finished color.* Communication antenna support structures not requiring FAA painting/markings shall have either a galvanized finish or painted a dull blue, gray, or black finish.
- (12) *Camouflaged structures.* Upon receipt of a completed site and development plan application where a camouflaged structure is being proposed, the county administrator or designee shall make a determination, based on a recommendation of technical review committee staff, whether the proposed communication antenna support structure qualifies as a camouflaged structure. The determination may be appealed pursuant to the formal proceedings under division 7 of article VII of chapter 10 (planning commission).
 - a. Criteria to be considered in determining whether a communication antenna support structure qualifies as a camouflaged structure:
 - 1. The communication antenna support structure resembles a natural object or a manmade structure (an example of a natural object is a tree; examples of a manmade structure are bell and clock communication antenna support structures, church steeples, detached or attached sign structures or a lookout station); or
 - 2. The communication antenna support structure serves a purpose other than supporting communication antennas (for example, lighting of sports facilities, transmission of electrical and/or telephone lines, flag poles); or
 - 3. The communication antenna support structure is designed to be compatible with the architectural elements, such as bulk, massing, and scale of the surrounding properties or structures; or
 - 4. The communication antenna support structure is designed to complement or to blend with the principal on-site use or structure, if any.
 - b. Camouflaged structures, pursuant to the provisions of this subsection, shall be permitted in all zoning districts. However, no antenna support structure may be located on a residential

property used as single-family attached, single-family detached, two-family (duplex) dwellings, or multifamily units containing four or less dwelling units.

- c. Camouflaged structures, pursuant to the provisions of this subsection, shall be setback a distance equal to the height of the communication antenna support structure from the nearest existing building and/or structure.
- d. Variance requests for camouflaged structures shall be reviewed and approved as appropriate by the entity with the authority to approve the proposed project, and shall not be required to complete the board of adjustment and appeals variance process as established by subsection (j).

(13) *Development review process.* The development review and approval system for new communication antenna support structures and communication antenna support structure sites shall consist of the following elements:

- a. A permitted use verification, pursuant to section 10-7.402(1), shall be required for siting all communication antenna support structures and communication antennas.
- b. All communication antenna support structures and communication antennas shall be approved through the Type B site and development plan process, as defined in section 10-7.404. In addition to the requirements of a Type B application, the applicant shall also submit the following information:
 - 1. A narrative which details the scope of the project and the specific need for a new communication antenna support structure and whether the proposal includes a request to be qualified as a camouflaged structure.
 - 2. A notarized statement by the applicant stating why feasible collocation on an existing communication antenna support structure cannot be achieved. Supporting evidence that demonstrates feasible collocation cannot be achieved shall accompany the applicant's notarized statement. The statement should also include information regarding the number of additional service providers that the proposed communication antenna support structure has been structurally designed to accommodate, as required by this section.
 - 3. The location of all communication antenna support structure and communication antennas within a one mile radius of the location of the proposed structure showing any gaps in coverage area and/or capacity that are proposed to be met by the proposed project.
 - 4. The location and coordinates of the proposed communication antenna support structure in digital format compatible with the county's GIS system.
 - 5. Legal description of the parent tract and subparcel or leased area (if applicable).
 - 6. A scaled site plan that clearly indicates:
 - i. The location, type, and height of the proposed communication antenna support structure;
 - ii. On-site land uses and zoning;
 - iii. Nature of uses on adjacent and nearby properties within 500 feet of the communication antenna support structure site property line (including when adjacent to other municipalities);
 - iv. Zoning classification of the site and all properties within the applicable setback areas;
 - v. Adjacent roadways and all existing and proposed easements, including proposed method of ingress and egress and access for emergency service vehicles;

- vi. Setbacks from the property lines and setback distance between proposed communication antenna support structure and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties;
 - vii. Elevation drawings of the proposed communication antenna support structure and any other structures proposed, including but not limited to, equipment cabinets and sheds;
 - viii. Design of the communication antenna support structure, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness, including camouflaging;
 - ix. Surrounding topography, tree coverage and foliage;
 - x. A landscape plan showing specific landscape materials;
 - xi. Fencing details that include the method of meeting opacity requirements and information regarding required ownership marking on entrance gates; and
 - xii. Finished color and, if applicable, the method of camouflage and illumination.
7. Any other information deemed necessary by the county to assess compliance with this section and all applicable federal, state, or local laws.
- c. In granting a permit, the county shall require the posting of a security or performance bond, in an amount to be determined by the county, not to exceed the cost of removal plus a reasonable safety factor, to ensure removal of such communication antenna support structure(s) if it becomes abandoned as described in subsection (h) of this section. Those entities defined herein as a public utility or a privately-owned electric utility shall be exempt from this requirement.
 - d. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer, as otherwise required by law.
 - e. Any decision to deny an application for siting a communication antenna support structure or communication antenna shall be in writing and supported by substantial evidence contained in a written record. No location for placement, construction or modification of a communication antenna support structure or communication antenna shall be regulated on the basis of the environmental effects of radio frequency emissions to the extent that the communication antenna support structure and communication antennas comply with the FCC regulations concerning such emissions.
- (f) *Deviations.* The county shall consider the following factors in determining whether to issue a permit, although the county may waive or reduce the burden on the applicant of one or more of these criteria if the county concludes that the goals of this section are better served thereby:
- (1) Height of the proposed communication antenna support structure;
 - (2) Proximity of the communication antenna support structure to residential structures and residential district boundaries;
 - (3) Nature of uses on adjacent and nearby properties within 500 feet of the communication antenna support structure site property line;
 - (4) Surrounding topography;
 - (5) Surrounding tree coverage and foliage;
 - (6) Design of the communication antenna support structure, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - (7) Proposed ingress and egress; and
 - (8) Availability of suitable existing communication antenna support structures or other structures.

- (g) *Certification of compliance with FCC NIER standards.* Prior to receiving final inspection, adequate proof shall be submitted to the county documenting that the communication antenna support structure complies with all current FCC regulations for non-ionizing electromagnetic radiation (NIER). The county administrator or designee shall indicate on the site plan approval that this certification has been received.
- (h) *Abandonment.* In the event the use of any communication antenna support structure has been discontinued for a period of 180 consecutive days, the communication antenna support structure shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the county administrator or designee, based upon documentation and/or affidavits from the communication antenna support structure owner/operator regarding the issue of usage. Upon the determination of such abandonment, the owner/operator of the communication antenna support structure shall have an additional 180 days within which to: (1) reactivate the use of the communication antenna support structure or transfer the structure to another owner/operator who makes actual use of the structure, or (2) dismantle and remove the structure. At the earlier of 180 days from the date of abandonment without reactivation or upon completion of dismantling and removal, any exception and/or variance approval for the communication antenna support structure shall automatically expire.
- (i) *Judicial review.* For purposes of seeking judicial review, county action on a permit application shall not be final until the applicant has exhausted its right to formal proceedings under division 7 of article VII of chapter 10. Any person adversely affected by any final action or failure to act on a permit application may, within 30 days after final action or failure to act by the county, file a petition for writ of certiorari in the Leon County Circuit Court.
- (j) *Variances.* Applications for variances under this section shall be submitted to and reviewed by the board of adjustment and appeals, in accordance with the procedures and hardship criteria outlined in division I, subdivision III (board of adjustments and appeals) of article II of chapter 10. A variance application must include all the information required for submission of a site and development plan review as outlined in this section. No variances to height, setbacks, fencing, or buffer requirements shall be granted for communication antenna support structures and communication antennas located in any residential preservation future land use category, except for camouflaged structures determined in compliance with subsection (e)(12). Variance requests for camouflaged structures determined to be in compliance with subsection (e)(12) shall be reviewed and approved as appropriate by the entity with the authority to approve the proposed project, and shall not be required to complete the board of adjustment and appeals variance process as established by this section.

(Ord. No. 07-20, § 2, 7-10-07; Ord. No. 09-22, § 1, 7-14-09; Ord. No. 10-02, § 1, 1-19-10; Ord. No. 14-10, § 21, 6-10-14; [Ord. No. 15-11](#), § 1, 9-15-15)

ARTICLE IV. - UTILITY PLACEMENT LICENSES^[3]

Footnotes:

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Cross reference— Utilities, ch. 18.

Sec. 16-81. - Required.

In accordance with F.S. § 125.42, any person who desires to construct, maintain, repair, operate or remove lines for the transmission of water, sewage, gas, power, telephone, other utilities, and television under, on, over, across and along any county highway or any public road or highway acquired by the county or public by purchase, gift, devise, dedication, or prescription shall be required to obtain a license from the county, or if providing communications services, to register with the county in accordance with the provisions of this article.

(Code 1980, § 20-50; Ord. No. 01-16, § 1, 7-10-01)

Sec. 16-82. - Provisions of license.

Any such license granted by the county or registration filed with the county shall contain adequate provisions:

- (1) To prevent the creation of any obstructions or conditions which are or may become dangerous to the traveling public.
- (2) To require the licensee and/or registrant to repair any damage or injury to the road or highway created during the installation of a utility facility and to repair said road or highway promptly, restoring the same to a condition at least equal to that immediately prior to the infliction of such damage or injury.
- (3) Whereby the licensee and/or registrant shall hold the Board of County Commissioners of Leon County, Florida, members and officers, agents, and employees thereof harmless from the payment of any compensation or damages resulting from the exercise of the privileges granted in any instrument creating such license and/or by being required to register with the county.
- (4) As may be reasonably necessary for the protection of the county and the public.

(Code 1980, § 20-51; Ord. No. 01-16, § 1, 7-10-01)

Sec. 16-83. - When bond may be required.

The Board of County Commissioners may require the licensee and/or registrant to furnish performance bonds, maintenance bonds, and/or cash bonds to ensure compliance with the provisions of this article.

(Code 1980, § 20-52; Ord. No. 01-16, § 1, 7-10-01)

Sec. 16-84. - Fees authorized.

The Board of County Commissioners is hereby authorized to charge reasonable fees for the issuance of licenses hereunder and utility placement permits, such fees to be established in accordance with section 16-87.

(Code 1980, § 20-54; Ord. No. 01-16, § 1, 7-10-01)

Editor's note— Formerly § 16-85.

Sec. 16-85. - Term.

A license under this article may be granted in perpetuity or for a term of years, subject, however, to termination by the county. The renewal of any license granted hereunder may be authorized by the county administrator, or his designee. A utility required to file a registration hereunder, shall be required to update said registration annually.

(Code 1980, § 20-55; Ord. No. 01-16, § 1, 7-10-01)

Editor's note— Formerly § 16-86.

Sec. 16-86. - Moving or removal of utility lines.

In the event of widening or repair or reconstruction of any road, the licensee or registrant shall move or remove any water, gas, sewage, power, telephone, other utility, communications services, and television facilities at no cost to the county.

(Code 1980, § 20-56; Ord. No. 01-16, § 1, 7-10-01)

Editor's note— Formerly § 16-87.

Sec. 16-87. - Authority to implement article.

The Board of County Commissioners is authorized to adopt, modify and repeal rules and regulations to carry out the intent and purposes of this article.

(Code 1980, § 20-57; Ord. No. 01-16, § 1, 7-10-01)

Editor's note— Formerly § 16-88.

Sec. 16-88. - Noncompliance unlawful.

It shall be unlawful for any person to construct, maintain, repair, operate or remove lines for the transmission of water, sewage, gas, power, telephone, other utilities, communications services, and television under, on, over, across, and along any road described in section 16-81 above without fully complying with this article or the rules and regulations promulgated hereunder.

(Code 1980, § 20-58; Ord. No. 01-16, § 1, 7-10-01)

Editor's note— Formerly § 16-89.

Sec. 16-89. - Penalty.

Any person violating this article or the rules and regulations promulgated hereunder shall be punished as provided in section 1-9.

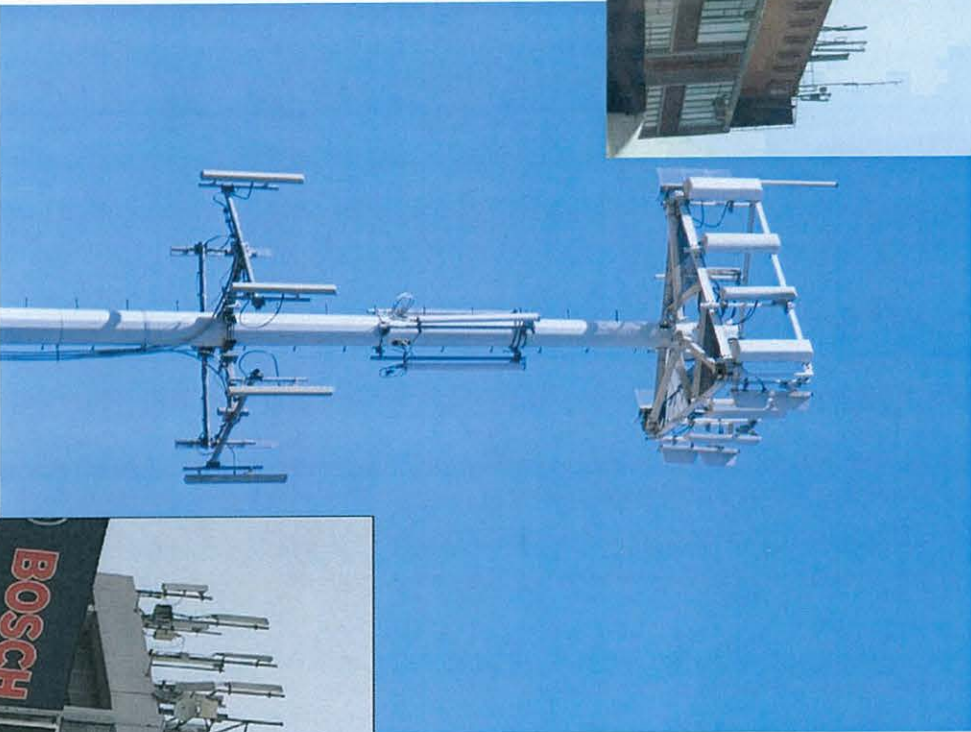
(Code 1980, § 20-59; Ord. No. 01-16, § 1, 7-10-01)

Editor's note— Formerly § 16-90.

Transport Networks



Network Densification - The Carrier Solution







CHAPTER 14-46 UTILITIES INSTALLATION OR ADJUSTMENT

14-46.001 Utilities Installation or Adjustment

14-46.001 Utilities Installation or Adjustment.

(1) Purpose. This rule is established to regulate the location and manner for installation and adjustment of utility facilities on any Florida Department of Transportation (FDOT) right of way, in the interest of safety and the protection, utilization, and future development of such rights of way, with due consideration given to public service afforded by adequate and economical utility installations, and to provide procedures for the issuance of permits.

(2) Permits.

(a) FDOT will issue permits for the construction, alteration, operation, relocation, removal, and maintenance of utilities upon the right of way in conformity with the FDOT *Utility Accommodation Manual* (UAM), August 2010 edition, FDOT Document No. 710-020-001-g, which is hereby incorporated by reference and made part of this rule. The UAM also incorporates by reference additional documents contained in the UAM Section 6.1, Incorporated References. Copies of the UAM are available from the FDOT Maps and Publications Office at 605 Suwannee Street, MS #12, Tallahassee, Florida 32399-0450, or the FDOT Utility Web Site: <http://www.dot.state.fl.us/rddesign/utilities>.

(b) The Utility Permit, FDOT Form 710-010-85, Rev. 08/10, is incorporated herein by reference and available from the FDOT Utility Web Site listed above.

Rulemaking Authority 334.044(2), 337.401 FS. Law Implemented 337.401, 337.403 FS. History—New 5-13-70, Amended 8-10-78, 7-22-82, Formerly 14-46.01, Amended 7-5-90, 6-8-93, 10-15-96, 8-30-99, 11-10-05, 1-24-08, 1-30-11.

FLORIDA DEPARTMENT OF TRANSPORTATION

2010 UAM **Utility Accommodation Manual**

Topic 710-020-001-g
August 2010

2 TERMS AND ACRONYMS

The following definitions of terms and acronyms apply only as used in the **UAM**:

Aboveground Fixed Utilities (AFU): Are utility objects more than four (4) inches above the grade and are not accepted by FDOT as crash worthy (such as strain poles, down guys, telephone load pedestals, temporary supports, etc).

Agreement: Any legally binding instrument between the UAO and FDOT.

Auxiliary Lane: The designated widths of roadway pavement marked to separate speed change, turning, passing and climbing maneuvers from through traffic. They occasionally provide short capacity segments.

AFU: Aboveground fixed utilities.

CFR: Code of Federal Regulations.

Casing: A pipe surrounding a carrier pipe and designed to resist potential impacts and carry imposed loads.

Conduit: An enclosure for protecting a utility (e.g., wires and cables).

Contractor: A legal entity (1) properly licensed in the State of Florida by the state, county or city, and (2) contracting with FDOT or a UAO to work or furnish materials.

District: One of the 7 geographical areas or the Turnpike Enterprise. District Map and Turnpike information are available at: <http://www.dot.state.fl.us/rddesign/utilities/>

F.A.C.: Florida Administrative Code

FDOT: The Florida Department of Transportation:

FDOT Resurfacing Project: An FDOT resurfacing project is any project whose purpose is to resurface existing lanes without adding additional travel lanes.

FHWA: The Federal Highway Administration.

FIHS: Florida's Intrastate Highway System: An interconnected statewide system of limited access facilities and controlled access facilities developed and managed by FDOT to meet standards and criteria established for high-speed and high-volume traffic movements.

F.S.: Florida Statutes.

Highway: A right of way corridor which contains or is to contain a roadway. Generally the highway is R/W line to R/W line.

LA R/W: Limited Access Right of Way.

Local Maintenance Engineer: The engineer in charge of the local maintenance or operation centers throughout the State.

Locates: The practice of identifying the position of an existing utility.

Maintenance Of Traffic: Traffic Control

Manhole: An opening in an underground system, providing access for installations, inspections, repairs, connections and tests.

Median: The portion of a divided highway or street that separates the traveled-ways for traffic moving in opposite directions.

MOT: Maintenance of Traffic or Traffic Control.

Pull Box: An opening in an underground system, providing access for installations, inspections, repairs, connections and tests.

R/W: Right of way

Roadway: The portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

TCP: Plans showing Traffic Control.

Service lines: Lines used by the UAO to carry services from a main line to individual recipients.

Traffic Control: Methods of controlling and maintaining a safe flow of traffic through construction or maintenance work areas. Also referred to as Maintenance of Traffic.

Traveled-Way: Also called traffic lane, is the designated widths of roadway pavement (exclusive of shoulders and marked bicycle lanes) marked to separate opposing traffic or vehicles traveling in the same direction. These lanes include through travel lanes, auxiliary lanes, turn lanes, weaving lanes, passing lanes and climbing lanes. They provide space for licensed motor vehicles and, in some cases, bicycles.

Travel Lane: The designated widths of roadway pavement marked to carry through traffic and to separate it from opposing traffic or traffic occupying other traffic lanes. Generally, traveled-ways or traffic lanes equate to the basic number of lanes for a facility.

UAO: Utility Agency/Owner. The entity that owns the utility.

UAM: This Utility Accommodation Manual

U.S.C.: United States Code.

Utility: All lines such as pipes, wires, pole lines, and appurtenances used to transport or transmit, electricity, steam, gas, water, waste, voice or data communication, radio signals, or storm water not discharged onto the FDOT R/W.

Utility Appurtenances: Features or parts that are part of a utility, whether primary or secondary to its function.



When to Call The Florida Public Service Commission

The Florida Public Service Commission (PSC) regulates the electric, natural gas, water and wastewater, and telecommunications industries in the state. This guide gives specific information about the PSC's responsibilities so that consumers can get help with their utility issues. Contact information is also listed for consumers having problems with non-regulated utilities. For help with solving regulated utility issues, consumers can reach PSC Consumer Assistance at **1-800-342-3552**, by e-mail at contact@psc.state.fl.us, or through the PSC Web site at www.FloridaPSC.com.

Electric

What the PSC Regulates, Contact the PSC

- ☐ Investor-owned electric companies such as Florida Power & Light Company, Florida Public Utilities Company, Gulf Power Company, Duke Energy Florida, and Tampa Electric Company.
- ☐ Rates and charges
- ☐ Meter and billing accuracy
- ☐ Electric lines up to the meter
- ☐ Reliability of the electric service
- ☐ New construction safety code compliance for transmission and distribution
- ☐ Territorial agreements and disputes
- ☐ Need for certain power plants and transmission lines

What the PSC Does Not Regulate

- ☐ Rates and adequacy of services provided by municipally owned and rural cooperative electric utilities, except for safety oversight.⁴
- ☐ Electrical wiring inside the customer's building
- ☐ Taxes on the electric bill⁵
- ☐ Physical placement of transmission and distribution lines³
- ☐ Damage claims
- ☐ Right of way³
- ☐ Physical placement or relocation of utility poles⁹

Natural Gas

What the PSC Regulates, Contact the PSC

- ☐ Investor-owned natural gas companies such as: Florida City Gas; Florida Division of Chesapeake Utilities Corporation; Florida Public Utilities Company (FPUC); FPUC Indiantown Division; FPUC Ft. Meade Division; Peoples Gas System; Sebring Gas System, Inc., and St. Joe Natural Gas Company, Inc.
- ☐ Basic service issues
- ☐ Rates and charges
- ☐ Meter and billing accuracy
- ☐ Pipeline safety issues, including operations and construction
- ☐ Territorial agreements and disputes

What the PSC Does Not Regulate

- ☐ Municipally owned natural gas utilities except for safety oversight³
- ☐ Gas districts and authorities except for safety oversight
- ☐ Liquid Propane (LP) Gas
- ☐ Taxes on the natural gas bill⁵
- ☐ Damage claims
- ☐ Gas pipeline siting³
- ☐ House piping
- ☐ Gas appliances

Water and Wastewater

What the PSC Regulates, Contact the PSC

- ☐ Investor-owned water and wastewater companies in 36 counties⁶
- ☐ Rates and charges
- ☐ Meter and billing accuracy
- ☐ Certification and territory amendments
- ☐ Quality of service

What the PSC Does Not Regulate

- ☐ Municipally owned and county-owned water and wastewater utilities³
- ☐ Water treatment companies
- ☐ Taxes on the water and wastewater bill⁵
- ☐ Damage claims
- ☐ Water clarity or pressure²
- ☐ Bulk sales of water or wastewater treatment
- ☐ Water lines beyond the point of connection

Telecommunications

What the PSC Regulates, Contact the PSC

- ☐ Service quality and reliability of pay telephone providers
- ☐ Relay service
- ☐ PSC can accept complaints related to Link-Up Florida/Lifeline Assistance programs and Telephone Relay Service

What the PSC Does Not Regulate

- ☐ Wireless (cellular) telephone service¹
- ☐ Cable/Satellite television¹
- ☐ Interstate or international telephone service¹
- ☐ Voice over Internet Protocol (VoIP)
- ☐ Telephone wires on the customer's side of the interface box
- ☐ Rates for inside wire maintenance contracts
- ☐ Authorization of taxes on telephone bills⁵
- ☐ Charges for pay-per-call (900 number) calls
- ☐ Yellow Pages[®] advertising
- ☐ Internet service
- ☐ Pay telephone rates for local calls
- ☐ Solicitation calls⁷
- ☐ Harassing, threatening, or obscene calls⁸
- ☐ Damage claims
- ☐ DSL/broadband deployment
- ☐ Service complaints
- ☐ Service quality
- ☐ Rate caps for pay telephone and call aggregator (hotel) locations
- ☐ Rates and charges

1. Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Complaints
445 12th Street, SW
Washington, D.C. 20554
fccinfo@fcc.gov
www.fcc.gov
Toll Free: 1-888-CALL-FCC (1-888-225-5322) voice,
1-888-TELL-FCC (1-888-835-5322) TTY.
Consumer and Mediation Specialists are available Monday
through Friday, 8:00 a.m. to 5:30 p.m. ET
2. Department of Environmental Protection
Citizen Services
3900 Commonwealth Boulevard M.S. 49z
Tallahassee, Florida 32399
850-245-2118 (phone); 850-245-2128 (fax)
<http://www.dep.state.fl.us>
3. Contact your city or county commission about authorized jurisdiction.

4. The PSC reviews the rate structure these utilities use to collect their costs, but has no jurisdiction over what costs are included in rates. Safety jurisdiction is limited to new construction and compliance with the National Electrical Safety Code. Contact the city utilities office or the Board of Directors of the Cooperative.
5. Contact the governmental entity that levied the tax.
6. To determine if you live in a jurisdictional county, check www.FloridaPSC.com or call 1-800-342-3552.
7. Florida Department of Agriculture and Consumer Services
2005 Apalachee Parkway
Tallahassee, FL 32399-6500
1-800-435-7352
www.800helpfla.com
8. Contact your local law enforcement agency.
9. The PSC has the authority to require electric utilities to comply with safety and reliability regulations. Private electric utilities have the power of eminent domain to take property for just compensation to construct their facilities. Recourse for loss of property value as a result of the placement of electric facilities resides with the courts.

6A



BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

PLACEMENT: PUBLIC HEARINGS

PRESET:

TITLE: PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE ESTABLISHING A MORATORIUM ON THE PLACEMENT OF WIRELESS COMMUNICATIONS FACILITIES IN RIGHTS OF WAY

AGENDA ITEM DATES:

MEETING DATE: 9/13/2016	COUNTY ATTORNEY: 8/22/2016
COMPLETED DATE: 9/1/2016	ASSISTANT COUNTY ADMINISTRATOR: 8/29/2016

REQUESTED BY:	DEPARTMENT:	PREPARED BY:
Name: Roger Baltz, Asst. County Administrator	Information Technology Services	Kevin Kryzda
Name:		Chief Information Officer

Procedures: None

EXECUTIVE SUMMARY:

Estimated staff presentation: 10 minutes. Staff requests the Board of County Commissioners consider the adoption of an ordinance establishing a moratorium on placement of wireless communications facilities in rights-of-way.

APPROVAL:

GMD
ENG
GMD
LEG
ACA
CA

BACKGROUND/RELATED STRATEGIC GOAL:

With the proliferation of wireless devices and growing consumer demand for better connectivity comes increased deployment of Distributed Antenna Systems (DAS), small cells, and other equipment in our cities and towns. Industry engineers are saying that as cellular companies move away from the costly placement of large cell towers, they will be requiring the placement of tens of thousands of distributed antennae and small cell systems around communities. From the wireless carrier perspective finding locations to install small cell facilities becomes a challenge due to zoning regulations, technical requirements, and limited real estate options. Because of the cost of site selection and placement on private properties, some of these companies are pursuing their deployments (i.e. construction of towers and placing equipment on them) in public rights of way.

Unfortunately, like other technologies, this industry is moving faster than the regulatory framework to deal with them. These companies are pushing the boundaries of the regulations in many communities where local regulation standards are not up to date. This is a national problem and has become of concern in Florida such that the Florida Association of County Attorneys (FACA) has formed a task force to study this matter and develop a strategy to deal with the situation. Michael Durham, along with 6 other attorneys throughout the state of Florida will begin deliberations shortly.

In the meantime, these companies continue to advance their agendas in communities. One such company has submitted several applications to Martin County to erect 120 foot poles in the right of way. The applications were not approved. This company has submitted applications to other communities in Florida as well.

Staff's opinion, and that of other members of the National Association of Telecommunications Officers and Advisors (NATOA), is that this company and others are papering communities with applications in the hopes that one will be approved and create a precedent for other approvals. Martin County's outside counsel on these matters, Gary Resnick, recently participated in a NATOA online session with other attorneys discussing this specific matter.

A moratorium is a temporary halt to certain development activities established for the purpose of giving a local government time to plan, consider, review, adopt and/or revise its development regulations. The Board of County Commissioners is authorized by Chapter 125, Florida Statutes, to adopt ordinances necessary for the exercise of its powers.

Martin County has imposed moratoriums in the past. The three most recent moratoriums were related to truck stops, modular homes and biofuel facilities. Ordinance 940, adopted on September 24, 2013, established the moratorium on the approval of any final or master site plans for truck stops until adequate standards could be developed and adopted. Ordinance 948, which was adopted on December 17, 2013 established a moratorium on the acceptance of building permit applications and the approval of building permits, for modular homes, on parcels with a residential future land use. In both instances staff developed regulations to address the Land Development Regulations for the County Commission to consider and adopt. Ordinance 973 adopted on June, 23, 2015, established a moratorium on the acceptance of applications for, or the approval of, building permits or site plans for the biofuel facilities.

Mr. Resnick, the County's outside counsel, represents other communities in Florida. Some of them have adopted moratoriums in order to further evaluate these types of applications.

ISSUES:

The purpose of the proposed moratorium is to allow staff time to undertake a study of appropriate distance separation requirements, appropriate locations and other regulations of wireless communications facilities within rights-of-way.

As proposed, the attached ordinance imposes an 18-month moratorium on applications for, or approval of any permits or development orders for wireless communications facilities within rights-of-way.

LEGAL SUFFICIENCY REVIEW:

This is a legislative matter. Legislative decisions are those in which the local government formulates policy rather than applying specific rules to a particular situation. A local government's approval or denial of an issue in its legislative capacity is typically subject to a fairly debatable standard of review. Fairly debatable means that the government's action must be upheld if reasonable minds could differ as to the propriety of the decision reached. Decisions subject to the fairly debatable standard of review need only be rationally related to a legitimate public purpose, such as the health, safety, and welfare of the public, to be valid. Given this broad discretion, only decisions that are arbitrary and capricious or illegal are subject to serious legal challenge.

RECOMMENDED ACTION:

RECOMMENDATION

Move that the Board adopt the attached ordinance establishing a moratorium on the acceptance of applications for, or the approval of, permits or development orders for wireless communication facilities within rights-of-way.

ALTERNATIVE RECOMMENDATIONS

Move that the Board not adopt an ordinance establishing the moratorium and provide staff with other direction.

FISCAL IMPACT:

RECOMMENDATION

Staff time and potential consultant expenses.

Funding Source	County Funds	Non-County Funds	Authorization
Subtotal			

Project Total	
---------------	--

ALTERNATIVE RECOMMENDATIONS

n/a

DOCUMENT(S) REQUIRING ACTION:

<input type="checkbox"/> Budget Transfer / Amendment	<input type="checkbox"/> Chair Letter	<input type="checkbox"/> Contract / Agreement
<input type="checkbox"/> Grant / Application	<input type="checkbox"/> Notice	<input checked="" type="checkbox"/> Ordinance
<input type="checkbox"/> Other:		<input type="checkbox"/> Resolution

ROUTING:

<input type="checkbox"/> ADM	<input type="checkbox"/> BLD	<input type="checkbox"/> CDD	<input type="checkbox"/> COM	<input checked="" type="checkbox"/> ENG	<input type="checkbox"/> FRD	<input checked="" type="checkbox"/> GMD
<input type="checkbox"/> GSD	<input type="checkbox"/> ITS	<input type="checkbox"/> LIB	<input type="checkbox"/> MCA	<input type="checkbox"/> MPO	<input type="checkbox"/> PRD	<input type="checkbox"/> USD
<input checked="" type="checkbox"/> CA	<input checked="" type="checkbox"/> ACA	<input checked="" type="checkbox"/> LEG				

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

ORDINANCE NUMBER _____

AN ORDINANCE OF MARTIN COUNTY, FLORIDA, ESTABLISHING A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR, OR THE APPROVAL OF, PERMITS OR DEVELOPMENT ORDERS FOR WIRELESS COMMUNICATIONS FACILITIES WITHIN RIGHTS-OF-WAY; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 125.01, Florida Statutes, the Board of County Commissioners is authorized to adopt ordinances necessary for the exercise of its powers; and

WHEREAS, the Board of County Commissioners has adopted the Martin County Comprehensive Growth Management Plan within which are included goals, objectives, and policies related to zoning and land development; and

WHEREAS, Chapter 163, Part II, Florida Statutes, requires the implementation of these goals, objectives and policies through the adoption of consistent Land Development Regulations; and

WHEREAS, it is important to provide county staff with time to undertake a study of appropriate distance separation requirements, appropriate locations and other regulations of wireless communications facilities within rights-of-way; and

WHEREAS, a moratorium on applications for, or approval of, any permits or development orders for wireless communications facilities within rights-of-way will maintain the status quo during the course of the study and planning process; and

WHEREAS, the Board of County Commissioners intends to limit the duration of this moratorium to no more than eighteen (18) months; and

WHEREAS, the proposed ordinance has received a public hearing before the Board of County Commissioners; and

WHEREAS, the Board finds it is in the best interest of the citizens of Martin County to adopt the proposed moratorium; and

WHEREAS, the Board of County Commissioners finds the proposed ordinance consistent with the goals, objectives and policies of the Comprehensive Growth Management Plan.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, MARTIN COUNTY, FLORIDA, THAT:

PART 1:

A. For eighteen (18) months following the adoption of this ordinance, or until an amendment to the Land Development Regulations is approved or denied, whichever occurs first, no application for any permit or development order for a wireless communications facility within right-of-way shall be accepted, nor shall any permit or development order be approved for a wireless communications facility within right-of-way. Notwithstanding the above, in the event the Board of County Commissioners approves an amendment to the Land Development Regulations, the moratorium shall remain in effect until such time as the amendment becomes effective, whichever occurs last.

B. This ordinance shall not restrict, prohibit or otherwise prevent a property owner from the reasonable use of their land or from developing their land in accordance with the General Ordinances, Land Development Regulations and Comprehensive Growth Management Plan.

C. The adoption of this ordinance is undertaken by the County in good faith and is intended to further the goals of the Martin County Comprehensive Growth Management Plan and Chapter 163, Florida Statutes, and is not intended to discriminate against those landowners which may be subject to this ordinance.

D. The limited duration of this moratorium has been established in order to accomplish appropriate planning for future development through the Martin County Land Development Regulation amendment process as described in Chapter 163, Part II, Florida Statutes, and the Comprehensive Growth Management Plan.

PART 2: CONFLICTING PROVISIONS.

Special acts of the Florida Legislature applicable only to unincorporated areas of Martin County, County ordinances, County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict.

PART 3: SEVERABILITY.

If any portion of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Ordinance. If this Ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances by a court of competent jurisdiction, such holding shall not affect its applicability to any other person, property or circumstances.

PART 4: APPLICABILITY OF ORDINANCE.

This Ordinance shall be applicable to the unincorporated areas of Martin County.

PART 5: FILING WITH THE DEPARTMENT OF STATE.

The Clerk be and hereby is directed forthwith to scan this ordinance in accordance with Rule 1B-26.003, Florida Administrative Code, and file same with the Florida Department of State via electronic transmission.

PART 6: EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Department of State.

PASSED AND DULY ADOPTED THIS 13th DAY OF SEPTEMBER, 2016.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

**CAROLYN TIMMANN, CLERK
OF THE CIRCUIT COURT AND
COMPTROLLER**

ANNE SCOTT, CHAIR

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

**MICHAEL D. DURHAM
COUNTY ATTORNEY**

RESOLUTION 16-147

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, ESTABLISHING A TEMPORARY CESSATION OF ACCEPTANCE OF RIGHT-OF-WAY PERMIT APPLICATIONS FOR INSTALLATION OF SMALL CELL AND DISTRIBUTED ANTENNA SYSTEM (DAS) STRUCTURES PENDING REVISION OF THE COUNTY'S CODE TO PROPERLY ADDRESS THE SITING AND INSTALLATION OF THESE STRUCTURES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Manatee County owns and/or controls, and manages lands designated as rights-of-way; and

WHEREAS, traditionally governmental rights-of-way have been utilized for, among other uses, the placement of public and private utility systems and structures so as to facilitate the delivery of utility services and maintenance of utility systems; and

WHEREAS, Manatee County Code § 2-28-21 et seq. contains the County's current Rights-of-Way Management Code; and

WHEREAS, this regulatory structure has not been revised since its adoption in 2008, a period where wireless communications services were provided to consumers via large cell towers; and

WHEREAS, since that time, industry and technological changes and advances have resulted in an alternative method of delivery of wireless communications services generally known as "small cell" and "distributed antennae systems" (DAS) which involve the placement of much shorter, but more numerous poles and related infrastructure, to provide such services to residential and other areas where tower placement is not feasible due to regulatory or other restrictions; and

WHEREAS, the Board of County Commissioners for Manatee County (the Commission) finds that the County's rights-of-way are a limited resource, already facing crowding in certain areas, and that this vital resource must be properly managed both for current utility needs and for planned or expected future utility expansion, maintenance and safety needs; and

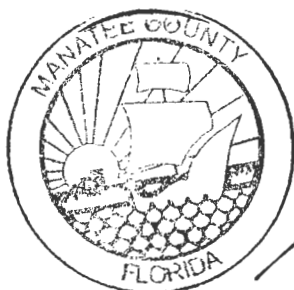
WHEREAS, the Commission finds that its current Rights-of-Way Management Code does not sufficiently address this new technology and that until the Code is revised so as to properly create regulations and standards to address applications to utilize the

County's rights-of-way for the installation of small cell and DAS facilities, the County should not accept right-of-way applications for such uses.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Manatee County, Florida:

1. The County's Rights-of-Way Management Division shall cease acceptance of applications for right-of-way permits to construct or install in the County's rights-of-way any wireless small cell or DAS communications system until the County Commission adopts amendments to the County Code to adequately regulate the standards which will apply to such facilities, or until midnight Friday, February 10, 2017, or until the Commission otherwise rescinds this Resolution, whichever of these earliest occurs.
2. The County Administrator and County Attorney are hereby directed to work diligently to develop such ordinances as may be required to ensure that the Manatee County Code properly regulates small cell and DAS facilities, including application, installation, maintenance and removal requirements, so as to facilitate the provision of effective wireless communications services to the County's citizens and businesses, while also ensuring the safety, aesthetic, financial and infrastructure planning needs of the County.
3. If any section, subsection, sentence, clause or provision of this Resolution is held invalid, same shall be severable and the remainder of this Resolution shall not be affected by such invalidity, such that any remainder of the Resolution shall withstand any severed provision.
4. This Resolution shall take effect immediately upon its adoption.

DULY ADOPTED with a quorum present and voting this 13th day of September, 2016.



**BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA**

By: _____

Chairperson

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____

Deputy Clerk

9/13/16

REVISED September 13, 2016 - Regular Meeting
Agenda Item #41

Subject

Temporary Cessation of Receipt of Certain Right-of-Way Permit Applications

Briefings

All

Contact and/or Presenter Information

Robert Eschenfelder, Chief Assistant County Attorney, ext. 3750
Sia Mollanazar, Deputy Public Works Director, ext. 7487

Action Requested

Motion to adopt Resolution 16-147

Enabling/Regulating Authority

Florida Statutes 125.01 and 337.401

Background Discussion

Manatee County owns and/or controls, and manages lands designated as rights-of-way. Traditionally, governmental rights-of-way have been utilized for, among other uses, the placement of public and private utility systems and structures so as to facilitate the delivery of utility services and maintenance of utility systems.

Manatee County Code § 2-28-21 et seq. contains the County's current Rights-of-Way Management Code. This regulatory structure has not been revised since its adoption in 2008, a period where wireless communications services were provided to consumers via large cell towers.

Since that time, industry and technological changes and advances have resulted in an alternative method of delivery of wireless communications services generally known as "small cell" and "distributed antennae systems" (DAS) which involve the placement of much shorter, but more numerous poles and related infrastructure, to provide such services to residential and other areas where tower placement is not feasible due to regulatory or other restrictions.

It is undisputed that the County's rights-of-way are a limited resource, already facing crowding in certain areas, and that this vital resource must be properly managed both for current utility needs and for planned or expected future utility expansion, maintenance and safety needs.

Upon examination of the current County Code in light of recent permitting activity around the State and inquiries within the County, the County's Public Works staff and County Attorney's Office have found that the current Rights-of-Way Management Code does not sufficiently address this new technology and that until the Code is revised so as to properly create regulations and standards to address applications to utilize the County's rights-of-way for the installation of small cell and DAS facilities, the County should not accept right-of-way applications for such uses.

Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - September 13, 2016

Therefore, a brief (no more than six months) suspension of acceptance of new permit applications for these kinds of systems is recommended until the County, working with the industry and experts, can develop regulatory changes to present to the Board.

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

Chief Assistant County Attorney Eschenfelder has assisted with this matter pursuant to CAO Matter No. 2016-558.

Reviewing Attorney

Eschenfelder

Emailed 9/14/16

Instructions to Board Records

If adopted, please provide an executed copy of the resolution to Chief Assistant County Attorney Robert Eschenfelder and to Public Works Deputy Director Sia Mollanazar.

Cost and Funds Source Account Number and Name

n/a

Amount and Frequency of Recurring Costs

n/a

Attachment: Right of Way DAS Permit App Suspend Resolution.pdf



Bob Inzer

Clerk of the Circuit and County Courts

Leon County, P. O. Box 726, Tallahassee, Florida 32302

Home of Florida's Capital Finance Department TEL 850-577-4027 FAX 850-488-8257 sandy@clerk.leon.fl.us

June 7, 2002

RECEIVED
02 JUN - 7 PM 4:05
CLERK OF THE CIRCUIT COURT
BOB INZER
TALLAHASSEE, FLORIDA

This is to certify that the below person received true copies of Leon County Ordinance Numbers 02-07, 02-08, and 02-09.

Date Received: 6-7-02

Time Received: _____

Person Received: Mary Pearson

FILED
2002 JUN - 7 PM 3:43
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

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FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State
DIVISION OF ELECTIONS

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Historic Florida Keys Preservation Board
Historic Palm Beach County Preservation Board
Historic Pensacola Preservation Board
Historic St. Augustine Preservation Board
Historic Tallahassee Preservation Board
Historic Tampa/Hillsborough County
Preservation Board
RINGLING MUSEUM OF ART

June 7, 2002

Honorable Bob Inzer
Clerk of the Circuit and County Courts
Leon County
Post Office Box 726
Tallahassee, Florida 32302

RECEIVED
02 JUN -7 PM 4:05
CLERK DIVISION
BOB INZER
CLERK OF CIRCUIT COURT

Dear Mr. Inzer:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated June 7, 2001, and certified copies of Leon County Ordinance Nos. 2002-07 through 2002-09, which were filed in this office on June 7, 2002.

Sincerely,

Liz Cloud
Liz Cloud, Chief
Bureau of Administrative Code

LC/mp

COUNTY ORDINANCE NO. 02- 09

1 **AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF**
2 **LEON COUNTY, FLORIDA, ENACTING A FOUR-MONTH**
3 **MORATORIUM ON THE APPROVAL BY LEON COUNTY OF ANY**
4 **DEVELOPMENT ORDER APPLICATIONS OR SITE AND DEVELOPMENT**
5 **PLAN APPROVAL APPLICATIONS TO ALLOW SUFFICIENT TIME FOR**
6 **LEON COUNTY TO CONSIDER THE ENACTMENT OF FURTHER**
7 **REGULATORY MEASURES CONCERNING TELEVISION AND RADIO**
8 **BROADCAST TOWERS AND THE SITING THEREOF; PROVIDING FOR**
9 **CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN**
10 **EFFECTIVE DATE.**

11
12
13 **WHEREAS**, Leon County has recently received applications for the siting of radio broadcast
14 towers within Leon County, ranging from 330 feet to 500 feet in height; and

15 **WHEREAS**, the Board of County Commissioners believes that a short-term suspension of
16 the issuance of permits and development order approvals, while the County gathers information for
17 the study, deliberation, and enactment of all appropriate regulations is in the County's best interest;
18 and

19 **WHEREAS**, the safety and welfare of the citizens of Leon County demand that deliberative
20 consideration be made concerning the enactment of more severe restrictions on the location and
21 siting of television and radio broadcast towers within Leon County; and

22 **WHEREAS**, the Board of County Commissioners of Leon County, Florida, hereby finds and
23 declares that it is necessary and required that a temporary moratorium be imposed on the issuance
24 of any development orders or site and development plan approvals from April 30, 2002, through
25 August 31, 2002, to allow sufficient time for the study and enactment of all appropriate regulations.

26 **BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON**
27 **COUNTY, FLORIDA:**

1 **Section 1.**

2 There is hereby enacted and imposed a temporary moratorium prohibiting the approval and
3 issuance of any further permits, development orders or site and development plan approvals by Leon
4 County for television and radio broadcast tower applications, which are not complete and on file,
5 having been received by Leon County on or before April 30, 2002. This moratorium on the issuance
6 of permits, development orders, and site and development plan approvals, shall continue through
7 11:59 p.m. local time on August 31, 2002.

8 **Section 2.**

9 The Board of County Commissioners of Leon County, Florida, finds that a temporary
10 moratorium is in the best interests of the citizens and residents of Leon County and shall serve to
11 protect the safety, health, and welfare of said citizens and residents to allow the necessary research
12 and deliberative time for the consideration, and potential enactment of, regulations concerning
13 television and radio broadcast towers and equipment.

14 **Section 3. Conflicts.**

15 All ordinances or parts of ordinances in conflict with the provisions of this ordinance are
16 hereby repealed to the extent of such conflict, except to the extent of any conflicts with the
17 Tallahassee-Leon County 2010 Comprehensive Plan as amended, which provisions shall prevail over
18 any parts of this ordinance which are inconsistent, either in whole or in part, with the said
19 Comprehensive Plan.

20 **Section 4. Severability.**

21 If any word, phrase, clause, section or portion of this ordinance shall be held invalid or
22 unconstitutional by a court of competent jurisdiction, such portion or words shall be deemed a

separate and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 5. Effective Date.

This ordinance shall become effective upon receipt of official acknowledgment from the Secretary of State that said ordinance has been duly filed.

DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County,
Florida, this 28th day of May, 2002.



ATTESTED BY:
BOB INZER, CLERK OF THE COURT

BY: [Signature]
CLERK

LEON COUNTY, FLORIDA
BY: [Signature]
DAN WINCHESTER, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS

APPROVED AS TO FORM:

COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

BY: [Signature]
HERBERT W.A. THIELE, ESQ.
COUNTY ATTORNEY

G:\ORDINANCE\Broadcast Towers Moratorium.wpd



Bob Inzer

Clerk of the Circuit and County Courts
Leon County, P. O. Box 726, Tallahassee, Florida 32302

Home of Florida's Capital Finance Department TEL 850-577-4027 FAX 850-488-8257 sandyo@mail.co.leon.fl.us

June 7, 2002

Department of State
Bureau of Administrative Code
The Collins Building
107 West Gaines Street, Suite L43
Tallahassee, Florida 32399-0250
ATT: Misty Pearson

Dear Ms. Pearson,

Pursuant to the provisions of Section 125.66 Florida Statutes, enclosed are true copies of Leon County Ordinance Numbers 02-07, 02-08, and 02-09 as adopted by the Board of County Commissioners of Leon County at their regular meeting of May 28, 2002.

Thank you for your assistance.

Bob Inzer
Clerk of the Circuit Court

Sandra C. O'Neal

By: Sandra C. O'Neal
Deputy Clerk

Attachment - 3

Visit the Clerk Website at www.clerk.leon.fl.us

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Bob Inzer

Clerk of the Circuit and County Courts
Leon County, P. O. Box 726, Tallahassee, Florida 32302

Home of Florida's Capital Finance Department TEL 850-577-4027 FAX 850-488-8257 sandyo@mail.co.leon.fl.us

September 19, 2002

This is to certify that the below person received a true copy of Leon County Ordinance Number 02-18 and 02-19.

Date Received: 9/20/2002

Time Received: _____

Person Received: Misty Pearson

RECEIVED
02 SEP 20 AM 9:46
FINANCE DIVISION
BOB INZER
CLERK CIRCUIT COURT

FILED
2002 SEP 20 AM 9:30
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

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Office of the Secretary
Office of International Relations
Division of Elections
Division of Corporations
Division of Cultural Affairs
Division of Historical Resources
Division of Library and Information Services
Division of Licensing
Division of Administrative Services



FLORIDA DEPARTMENT OF STATE
Jim Smith
Secretary of State
DIVISION OF ELECTIONS

MEMBER OF THE FLORIDA CABINET

State Board of Education
Trustees of the Internal Improvement Trust Fund
Administration Commission
Florida Land and Water Adjudicatory Commission
Siting Board
Division of Bond Finance
Department of Revenue
Department of Law Enforcement
Department of Highway Safety and Motor Vehicles
Department of Veterans' Affairs

Attachment #9
Page 8 of 20

September 20, 2002

Honorable Bob Inzer
Clerk of the Circuit and County Courts
Leon County
Post Office Box 726
Tallahassee, Florida 32302

Dear Mr. Inzer:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated September 20, 2002, and certified copies of Leon County Ordinance Nos. 2002-18 and 2002-19, which were filed in this office on September 20, 2002.

RECEIVED
02 SEP 20 AM 11
FINANCE DIVISION
BOB INZER
CLERK CIRCUIT COURT

Sincerely,

Liz Cloud ^{ak}

Liz Cloud, Chief
Bureau of Administrative Code

LC/mp

BUREAU OF ADMINISTRATIVE CODE

The Collins Building • 107 West Gaines Street • Tallahassee, Florida 32399-0250 • (850) 245-6270
FAX: (850) 245-6282 • WWW Address: <http://www.dos.state.fl.us> • E-Mail: election@mail.dos.state.fl.us



Bob Inzer

Clerk of the Circuit and County Courts
Leon County, P. O. Box 726, Tallahassee, Florida 32302

Home of Florida's Capital Finance Department TEL 850-577-4027 FAX 850-488-8257 sandyo@mail.co.leon.fl.us

September 20, 2002

Department of State
Bureau of Administrative Code
The Collins Building
107 West Gaines Street, Suite L43
Tallahassee, Florida 32399-0250
ATT: Misty Pearson

Dear Ms. Pearson,

Pursuant to the provisions of Section 125.66 Florida Statutes, enclosed are true copies of Leon County Ordinance Numbers 02-18 and 02-19 as adopted by the Board of County Commissioners of Leon County at their regular meeting of September 17, 2002.

Thank you for your assistance.

Bob Inzer
Clerk of the Circuit Court

Sandra C. O'Neal

By: Sandra C. O'Neal
Deputy Clerk

Attachment - 2

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COUNTY ORDINANCE NO. 02- 19

1 **AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF**
2 **LEON COUNTY, FLORIDA, EXTENDING THE FOUR-MONTH**
3 **MORATORIUM ON THE APPROVAL BY LEON COUNTY OF ANY**
4 **DEVELOPMENT ORDER APPLICATIONS OR SITE AND DEVELOPMENT**
5 **PLAN APPROVAL APPLICATIONS TO ALLOW SUFFICIENT TIME FOR**
6 **LEON COUNTY TO CONSIDER THE ENACTMENT OF FURTHER**
7 **REGULATORY MEASURES CONCERNING TELEVISION AND RADIO**
8 **BROADCAST TOWERS AND THE SITING THEREOF; PROVIDING FOR**
9 **CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN**
10 **EFFECTIVE DATE.**

11
12
13 **WHEREAS**, Leon County has recently received applications for the siting of radio broadcast
14 towers within Leon County, ranging from 330 feet to 500 feet in height; and

15 **WHEREAS** , the Board of County Commissioners believes that a short-term suspension of
16 the issuance of permits and development orders, while the County gathers information for the study,
17 deliberation, and enactment of appropriate regulations is in the County's best interest; and

18 **WHEREAS**, the safety and welfare of the citizens of Leon County demand that deliberative
19 consideration be made concerning the enactment of more severe restrictions on the location and
20 siting of television and radio broadcast towers within Leon County; and

21 **WHEREAS**, the Board of County Commissioners of Leon County, Florida, found and
22 declared that it was necessary and required that a temporary moratorium be imposed on the issuance
23 of any development orders or site and development plan approvals from April 30, 2002, through
24 August 31, 2002, to allow sufficient time for the study and enactment of all appropriate regulations;
25 and

1 **WHEREAS**, the Board of County Commissioners of Leon County, Florida, finds and
2 declares that it is necessary and required to extend the temporary moratorium until October 31, 2002,
3 to allow additional time for the study and enactment of appropriate regulatory measures.

4 **BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON**
5 **COUNTY, FLORIDA:**

6 **Section 1.**

7 There is hereby enacted and imposed an extension of the temporary moratorium prohibiting
8 the approval and issuance of any further permits, development orders or site and development plan
9 approvals by Leon County for television and radio broadcast tower applications, which are not
10 complete and on file, having been received by Leon County on or before April 30, 2002. This
11 extension of the moratorium on the issuance of permits, development orders, and site and
12 development plan approvals, shall continue through October 31, 2002.

13 **Section 2.**

14 The Board of County Commissioners of Leon County, Florida, finds that a temporary
15 moratorium is in the best interests of the citizens and residents of Leon County and shall serve to
16 protect the safety, health, and welfare of said citizens and residents to allow the necessary research
17 and deliberative time for the consideration, and potential enactment of, regulations concerning
18 television and radio broadcast towers and equipment.

19 **Section 3.** The provisions of this ordinance shall not apply to broadcast antenna support
20 structures or broadcast antennas located on property owned by the United States, State of Florida,
21 Leon County, or the City of Tallahassee, provided those broadcast antenna support structures are
22 owned by those public entities and are used primarily for broadcast purposes and/or a governmental
23 purpose.

Section 4. Conflicts.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, except to the extent of any conflicts with the Tallahassee-Leon County 2010 Comprehensive Plan as amended, which provisions shall prevail over any parts of this ordinance which are inconsistent, either in whole or in part, with the said Comprehensive Plan.

Section 5. Severability.


If any word, phrase, clause, section or portion of this ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such portion or words shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 6. Effective Date.

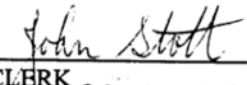
This ordinance shall become effective upon receipt of official acknowledgment from the Secretary of State that said ordinance has been duly filed.


DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County, Florida, this 17th day of September, 2002.

LEON COUNTY, FLORIDA

BY: 
DAN WINCHESTER, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS

ATTESTED BY:
BOB INZER, CLERK OF THE COURT

BY: 
CLERK


John Stott, Chief Deputy Clerk

1
2 APPROVED AS TO FORM:
3

4 COUNTY ATTORNEY'S OFFICE
5 LEON COUNTY, FLORIDA
6

7
8 BY: 

9 HERBERT W.A. THIELE, ESQ.
10 COUNTY ATTORNEY
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Board of County Commissioners Agenda Request 29

Date of Meeting: May 14, 2002

Date Submitted: May 9, 2002

To: Honorable Chairman and Members of the Board

From: Herbert W.A. Thiele, Esq. County Attorney

Subject: Proposed Enactment of a Four-Month Moratorium on the Approval of Applications for Development Orders Approving the Siting and Construction of Radio and Television Broadcast Towers

STATEMENT OF THE ISSUE

To conduct the first of two public hearings on a proposed ordinance enacting a four-month moratorium on the approval by Leon County of any development order applications or site and development plan approval applications concerning television and radio broadcast towers and the siting thereof.

BACKGROUND

At the regularly scheduled Board of County Commissioners` meeting held on April 30, 2002, the Board directed staff to draft a proposed ordinance creating a moratorium on the construction and approval of applications for construction of broadcast towers so that the Board could consider the enactment of further regulatory measures concerning the siting of television and radio broadcast towers.

ANALYSIS

The County has advertised for the first of two public hearings on a proposed ordinance, imposing a moratorium on the approval by Leon County of any development order applications or site and development plan approval applications, to allow the Board sufficient time to consider further regulatory measures concerning the siting of radio and television broadcast towers (Attachment #1). Such an ordinance requires two public hearings, pursuant to Section 125.66(4), Florida Statutes (2001).

The enactment of a four-month moratorium would provide a limited period of time for staff to conduct the necessary research and for the Board of County Commissioners to consider and discuss proposed siting measures in greater detail. The temporary moratorium would not have a prohibitory effect, but rather a temporary limitation on the ability to site and construct television and radio broadcast towers in the unincorporated areas of Leon County. This limited period of time would also allow the Board the needed time to develop and implement significant revisions to its Land Development Regulations and better plan for the future permitting of television and radio broadcast towers in an effort to preserve the public health, welfare, and aesthetics of the community.

OPTIONS

1. Conduct the first of two public hearings on the proposed ordinance enacting a four-month moratorium on the approval of development order applications and site and development plan approval applications.
2. Notify the public that the second and final public hearing on the proposed four-month moratorium ordinance is to be scheduled for May 28, 2002, at 6 p.m.
3. Conduct the first of two public hearings on the proposed ordinance enacting a four-month moratorium on the approval of development order applications and site and development plan approval applications, and direct staff to revise the proposed ordinance prior to the second public hearing.
4. Board direction.

RECOMMENDATION

Options 1 and 2.

Attachment

1. Proposed Ordinance.
2. Notice Advertising Public Hearing.

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Board of County Commissioners Agenda Request 38

Date of Meeting: May 28, 2002

Date Submitted: May 23, 2002

To: Honorable Chairman and Members of the Board

From: Herbert W.A. Thiele, Esq. County Attorney

Subject: Proposed Enactment of Four-Month Moratorium on the Approval of Applications for Development Orders Approving the Siting and Construction of Radio and Television Broadcast Antennas and Towers

STATEMENT OF THE ISSUE

To conduct the second of two public hearings on the proposed ordinance enacting a four-month moratorium on the approval by Leon County of any development order applications or site and development plan approval applications concerning television and radio broadcast towers and the siting thereof.

BACKGROUND

At the regularly scheduled Board of County Commissioners' meeting held on April 30, 2002, the Board directed staff to draft a proposed ordinance creating a moratorium on the construction, and the approval of applications for construction of broadcast towers, so that the Board could consider the enactment of further regulatory measures concerning television and radio broadcast towers. The Board conducted the first of two public hearings on May 14, 2002, and voted to set the second public hearing for May 28, 2002.

ANALYSIS

The County has advertised for the second of two public hearings on the proposed ordinance, imposing a moratorium on the approval by Leon County of any development order applications or site and development plan approval applications to allow the Board sufficient time to consider further regulatory measures concerning such towers and the siting thereof. A copy of the proposed ordinance is attached as Attachment #1. Such an ordinance would require two public hearings, pursuant to Section 125.66(4), Florida Statutes (2001).

The enactment of a four-month moratorium would allow a limited period of time to allow staff to conduct the necessary research and for the Board of County Commissioners to consider and discuss proposed measures in greater detail. The temporary moratorium would not have a prohibitory effect,

but rather a temporary limitation on the ability to site and construct television and radio broadcast towers in the unincorporated areas of Leon County. This limited period of time would allow the Board the needed time to develop and implement significant revisions to its Land Development Regulations and better plan for the future permitting of television and radio broadcast towers and antennas, in an effort to preserve and effectuate the public health, welfare, and aesthetics of the community.

OPTIONS

1: Conduct the second of two public hearings on the proposed ordinance enacting a four-month moratorium on the approval of development order applications and site and development plan approval applications, and adopt the proposed ordinance.

2: Conduct the second of two public hearings on the proposed ordinance enacting a four-month moratorium on the approval of development order applications and site and development plan approval applications, and adopt the proposed ordinance as amended by the Board of County Commissioners.

3: Board direction.

RECOMMENDATION

Options 1

Attachment

1 Proposed Ordinance.

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Board of County Commissioners Agenda Request 32

Date of Meeting: July 23, 2002

Date Submitted: July 18, 2002

To: Honorable Chairman and Members of the Board

From: Herbert W.A. Thiele, Esq. County Attorney

Subject: Proposed Extension of the Moratorium Ordinance Presently in Effect for the Approval of Applications for Development Orders Regarding the Siting and Construction of Radio and Television Broadcast Antennas and Towers

STATEMENT OF THE ISSUE:

To conduct the first of two public hearings on the proposed ordinance extending a moratorium on the approval by Leon County of any development order applications or site and development plan approval applications concerning television and radio broadcast towers and the siting thereof.

BACKGROUND:

On May 28, 2002, the Board of County Commissioners enacted an ordinance creating a four-month moratorium on the construction and approval of applications for construction of broadcast towers, so that the Board could consider the enactment of further regulatory measures concerning television and radio broadcast towers. The ordinance was retroactive to April 30, 2002, and set to naturally expire on August 31, 2002. On June 18, 2002, the Board of County Commissioners considered a proposed ordinance, imposing regulatory requirements on the proposed siting and construction of broadcast antennas and broadcast antenna support structures in the unincorporated areas of Leon County. A public hearing was held and the Board voted to continue the matter so that a citizens advisory committee could be established, to further review the proposed regulatory ordinance and provide comments and recommendations back to the Board of County Commissioners. The Board has yet to make appointments to the advisory committee.

ANALYSIS:

The County has advertised for the first of two public hearings on the proposed ordinance, extending the moratorium on the approval by Leon County for any development order applications or site and development plan applications to allow the Board sufficient time to consider regulatory measures concerning such towers and the siting thereof, in light of the Board's decision on June 18, 2002, to create and appoint an advisory board to review a regulatory ordinance. A copy of the proposed ordinance is attached as Attachment # 1. Such an ordinance would require two public hearings, pursuant to Section 125.66(4) Florida Statutes (2002).

The enactment of an ordinance extending the moratorium for a two month period of time should permit staff and the advisory committee to conduct the necessary research and review for the Board of County Commissioners to consider and discuss regulatory measures in greater detail.

OPTIONS:

1. Conduct the first of two public hearings on the proposed ordinance enacting a two-month extension of the moratorium on the approval of development order applications and site and development plan approval applications, and authorize staff to schedule the second public hearing to be held on September 17, 2002 at 6:00 p.m.
2. Each Commissioner to appoint one individual to become a member of a citizens advisory committee to review and report back to the Board of County Commissioners its recommendations on the proposed regulatory measures related to broadcast tower siting issues.
3. Conduct the first of two public hearings on the proposed ordinance enacting a two-month extension of the

moratorium on the approval of development order applications and site and development plan approval applications and do not approve the request to schedule a second public hearing on September 17, 2002.

4. Board direction.

RECOMMENDATION:

Options # 1 and 2

ATTACHMENTS:

#1: [Proposed Ordinance](#)

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