

PLANNING & ZONING REVIEW NOTES

III. C. 1.

---

**SUBJECT:** A public hearing to receive citizen input on proposed text amendments to the Chatham County Communications Tower Ordinance to Section 6-5, Remedies. The purpose of the amendment is to change the civil penalty from a flat fee to a graduated scale.

**ATTACHMENTS:** 1. Text of the proposed amendment is available on the Planning Department website.

2. Public comments are available on the Planning Department website.

**INTRODUCTION / BACKGROUND / PREVIOUS BOARD ACTIONS:**

During the drafting of the 2006-2007 budget the Planning Department requested that the penalty schedule for land use violations be amended. The request was approved by the Board of Commissioners and the attached amendment to the Communications Tower Ordinance is required to make the new penalties effective.

**ISSUES FOR FURTHER DISCUSSION AND ANALYSIS:**

Section 6-5 of the Communications Tower Ordinance currently allows for the Zoning Enforcement Officer to issue a civil penalty for violations in the amount of \$50.00. The revised penalty schedule that was requested by the Planning Department staff and approved by the Board of Commissioners allows for a graduated penalty schedule that ranges from \$50.00 to \$500.00. The county is authorized to issue civil penalties for violations of county ordinances through NC General Statute 153A-123 and the maximum fine is limited to \$500.00 per NC General Statute 14-4.

A public hearing was held on the proposed amendments on January 16, 2007 and 1 person spoke at the public hearing and 1 person provided written comments. The public comments included that the enforcement and penalty language for each ordinance or regulation be standardized and that a reasonable time frame to correct a violation be specified to conform to current practices. In preparing the proposed amendments to the various ordinances and regulations to revise the penalty schedule the Planning Department staff did not include the entire enforcement and penalty section in attachment 1. The attachments only include the portions of the enforcement and penalty sections that are proposed to be amended. Each ordinance or regulation has enforcement provisions that are unique to the circumstances for the regulated activity and consistency between each of them could create problems for correcting violations.

It was also recommended that the language that “each day a violation continues shall be considered a separate violation” be removed to avoid confusion about when the increased penalties apply. Per NC General Statute 153-123(g) “A county ordinance may provide, when appropriate, that each day’s continuing violation is a separate and distinct offense.” The Planning Department thinks that in order to assess penalties on a daily basis this language should remain in the amended text. However, the language used in the proposed amendment for assessing the penalties could be confusing and the wording has been amended for clarification.

*Re: Proposed text amendments to the Chatham County Communications Tower Ordinance*  
**ISSUES FOR FURTHER DISCUSSION AND ANALYSIS** – con't

At the Planning Board meeting on February 6, the Planning Department staff forwarded a concern from the County Attorney about adding a time limit to the use of the graduated penalties schedule. The Planning Board tabled the issue and requested staff to provide a recommendation about adding a time limit. Many of the jurisdictions that use a graduated penalty schedule have the increases occur during the first occurrence of the violation. The City of Durham does allow for an increased penalty to automatically apply for recurring violations, but has set a time limit of two years from the previous violation. The Planning Department staff discussed the issue and recommend a time limit of six years, which would coincide with the time limit required by state law for keeping certain records before they can be purged. The County Attorney has also reviewed the revised text and does not find any problems as it is written.

**RECOMMENDATION:** The Planning Department recommends approval of the revised text of the proposed amendment as shown in attachment 1.