

..TITLE

A request by the Board of Commissioners for the adoption of the proposed new Wireless Telecommunications Facilities Ordinance.

..ABSTRACT

Action Requested:

A request by the Board of Commissioners for the adoption of the proposed new Wireless Telecommunications Facilities Ordinance.

Introduction & Background:

Planning Board Information is Noted in BOLD

Stemming from initial discussion of a Telecommunications ordinance rewrite at the May 6th, 2013 meeting, the Board held a preliminary discussion of the new draft ordinance at the September 16th meeting. Two public hearings were held in October and November to collect public input. **The Planning Board reviewed the proposal at the December 3rd meeting and provided a unanimous recommendation for approval of the new draft ordinance.**

Discussion & Analysis:

Below is a summary outlining the key points of distinction between the existing ordinance and the new draft ordinance. **The areas in which changes have been made to the ordinance are provided as red-lined text for reference.**

- The new ordinance excludes the annual search ring process, allowing wireless facilities to site anywhere allowable within the county at any time during the year.
- The heights of wireless facilities would be governed by location in proximity to residential districts and by more stringent setback requirements based on tower height, to allow for taller towers in more rural areas. The “areas” which regulated heights within the county in the old ordinance (section 3-2) have been excluded. The maximum height for towers in residentially zoned or tax-coded (unzoned portions of the county) is 199’. The maximum height for towers otherwise is 300’.

*Staff has asked for specific direction from the Planning Board regarding required setbacks. A proposed change requires setbacks of 50% of the tower height from adjoining property lines and right-of-way. The proposed changes are highlighted in red on pg. 10 of the draft ordinance. **The Planning Board supported the proposed setback regulations.***

- A wider array of administrative approvals for towers is included in the draft ordinance. Towers now eligible for administrative approval are outlined in Section 2-1 of the draft.

- The draft ordinance requires a line of sight diagram for visual representation of a proposed tower subject to conditional use permit approval.

Staff is asking for direction from the Board as to whether include a Balloon Test in addition to the line of sight simulation. The following is an example of a balloon test requirement: "A balloon test shall be required subsequent to the receipt of the photo simulations in order to demonstrate the proposed height of the tower, The applicant shall arrange to raise a colored balloon no less than three feet in diameter at the maximum height of the proposed tower, and within fifty horizontal feet of the tower." **The Board discussed at length the line of sight simulations and balloon tests. Following the discussion, the Board decided to retain the line of sight requirement and not the balloon test, citing the cost to the applicant and that a balloon test could be added if needed as part of a conditional use permit.**

Aspects that were retained from the existing ordinance into the draft ordinance include:

- Landscaping requirements. Including the preference for locating in heavily wooded areas and a continuous 6' tall evergreen opaque screening for locations not located in heavily wooded areas.

Stemming from public comments, staff is requesting discussion of requiring additional screening of cell tower sites along the access driveway and/or the offset of the tower site from the access drive in order to prevent view from public right-of-way. **The Board discussed the landscaping requirements proposed within the draft ordinance and decided not to add additional screening/ buffering requirements.**

- The prohibition of placing wireless facilities within "Major Wildlife Areas". A summary of this item is provided above and a map of these areas county-wide is provided as Attachment 3.
- Enforcement and remedies. See Article 5 of draft ordinance.

The Board also discussed the concern for "speculative towers", or towers built without a wireless tenant readily available to locate on the facility. Staff mentioned that the draft ordinance requires an applicant to provide proof of a wireless tenant ready to locate on the tower in sections 2-2 2. (d) and 2-2 3. (h). Additional language has been added to this requirement, stating said proof must be provided by time of application for building permit and the term "telecommunication service provider" has been changed to "wireless tenant".

- In late January, staff researched further into state law concerning the requirement for providing proof of wireless tenants for proposed cell towers and per NCGS § 153A-349.52 (g) it is clear that the county may

condition a zoning permit to require proof of a wireless tenant at time of building permit, but not deny an zoning permit based on such (or lack of) documentation. Therefore, it is staff's and the County Attorney's recommendation that the proposed ordinance language remain, requiring proof of a wireless tenant at time of building permit rather than at time of zoning permit application submittal.

NCGS § 153A-349.52 (g) "The county may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure. A county shall not deny an initial land-use or zoning permit based on such documentation. A county may condition a permit on a requirement to construct facilities within a reasonable period of time, which shall be no less than 24 months."

The County Attorney has also advised staff to change the proposed language of 2-2 2. (d) and 2-2 3. (h) from requiring "All requests for new towers shall identify at least one wireless tenant that is prepared to *immediately* locate on the proposed tower at time of application for building permit..." to a "All requests for new towers shall identify at least one wireless tenant that *intends* to locate on the proposed tower at time of application for building permit..." The change in terms follows the state statute language above and has been reflected in the draft ordinance.

Finally, staff has included a change in the proposed ordinance which refers to the permit received for towers subject to the conditional use permitting process as "Wireless Telecommunication Permits". This term will be used for towers in the unzoned portions of the county subject to the same process as conditional use permits as well. The intent of this change is to provide the same name to the permit received for both scenarios, but clearly separate the reference for applications subject to zoning processes. A definition has been included for "Wireless Telecommunication Permit" for additional clarity.

Recommendation:

The Planning Board by a unanimous vote recommends adoption of an ordinance repealing the existing Communication Tower Ordinance and replacing it with the new Wireless Telecommunications Facilities Ordinance.