



EXHIBITS

from HEX hearing

CASE #: SE72005-00017

CASE NAME: Verizon Wireless -
Three Oaks

Attach a copy of this form to the top of packet of the exhibits & place exhibits in case file.

ARE THERE ANY BOARD EXHIBITS? YES NO

LOCATION OF BOARDS:

If there are any board exhibits, attach another copy of this form to boards for identification purposes.

Verizon Wireless – Three Oaks
SEZ 2005-00012

Stealth Wireless Communications Facility
Rather Than
Antenna Supporting Structure

The Lee County Land Development Regulations define, in part, an antenna supporting structure as: “a vertically projecting structure, including any foundation, designed and primarily used to support one (1) or more antennas or which constitutes an antenna itself. Antenna-supporting structures do not include stealth wireless communications facilities ...” Section 34-1442, Lee County Land Development Regulations. Therefore, by its definition, an antenna supporting structure is not the same as a stealth wireless communications facility.” The Land Development Regulations define a stealth wireless communications facility as

a wireless communications facility, ancillary appurtenance, or equipment enclosure that is not readily identifiable as such, and that is aesthetically compatible with nearby uses. A stealth facility must have, or appear to have, a separate function including, but not limited to, the following: church steeple, bell tower, spire, clock tower, cupola, light standard, flagpole with a flag, etc., and a stealth facility may be an approved secondary use of other structures concealing the stealth facility.

Id.

Although both facilities are related to wireless facilities, they are subject to different requirements under the County’s wireless facilities regulations. Antenna supporting structures are considered less desirable and they must meet stricter requirements and more extensive submittal requirements. Stealth facilities, on the other hand, are the first priority under the ordinance.

Subsection 34-1447(b)(2) of the Lee County Land Development regulations requires that before an antenna-supporting structure can be built, it must be demonstrated that all of the alternatives in a hierarchal list are not reasonably possible. The first preference in the County’s list is the stealth wireless communication facility - before collocation and before placing an antenna on an existing structure. Therefore, an antenna supporting structure cannot be approved unless it can be proven that it is not reasonable, compatible or feasible to build a stealth wireless communications facility.

There are, however, review criteria for stealth facilities that are not applicable to antenna supporting structures. Specifically, there are the requirements of subsection of 34-1447(b)(3), which provide that

- a. “No stealth facility may have antennas or ancillary equipment that are readily identifiable as wireless communications equipment.” and

- b. “Stealth facilities must be designed so they are reasonably consistent with the surrounding built or natural environment. ...”

Staff has consistently made a very conservative interpretation of these review criteria, especially the second one; basically taking the position that a stealth facility cannot be significantly different from or taller than the other uses around it. Just as consistently, the Hearing Examiners have found that a flagpole tower, such as the one proposed in this matter, even up to 149 feet in height, is a stealth wireless communications facility.

Specifically, in a decision on the most recent hearing known to Verizon Wireless, Hearing Examiner Richard Gescheidt, in his review of the Verizon Wireless – Honc site (SEZ2005-00003), acknowledged two previous decisions, stating, on page 8 of the decision:

The Hearing Examiner, however, cannot concur with Staff regarding their application of Lee County Land Development Code Section 34-1442 to the tower proposed by the Applicant. This office has, in at least two prior cases, concluded that similar or identical towers of the same height constituted a ‘stealth wireless communications facility,’ as defined in LDC Section 34-14442. [Footnote reference to SEZ 2004-00027 and SEZ 2004-00029]

The Hearing Examiner went on to evaluate the staff’s objections to the application, which objections were very similar to the subject case, stating, on pages 9 and 10:

The Applicant proposed construction of a 149-foot stealth tower to resemble a ‘flagpole.’ ... The proposed tower will be 149 feet tall, with a diameter of 24 inches at the top and 36 inches at the base and will be manufactured out of steel and fiberglass. The actual antennas and all wiring will be located within the tower structure and will not be visible from the outside [of] the structure. This is substantially the same as the two towers that were the subject of the above cited cases that came before this office. Finally, it actually flies a flag. The Hearing Examiner knows of no county ordinance that specifically defines or describes a ‘flagpole.’ It must be presumed that, at the time the Board of County Commissioners implemented Section 34-144, that the Board understood that, in order for a flag pole to include antennas and wiring within it, the pole had to be wider than a flagpole without that equipment.

...

The Applicant has designed a tower that can, in fact, fly a flag. The Hearing Examiner must, therefore, conclude that it is an actual ‘flagpole,’ and not just a replication. Since no portion of the antennas, wiring or other equipment will be visible, this Hearing Examiner can only conclude that the same is not identifiable as a wireless communications facility.

The Hearing Examiner concluded, on page 10 of the decision, that:

The Applicant has sustained its burden by establishing that the subject tower is a 'stealth wireless communications facility,' as that term is defined in LDC Section 34-1442. In applying the test set forth in Section 34-1447(c)(3)(a), the Hearing Examiner finds that the antennas, and all other equipment, on the facility are not readily identifiable as wireless communications equipment. All such equipment is located within the interior of the tower body.

The decisions of the Hearing Examiners in the three other requests for a flagpole stealth wireless facility have been the same; all three requests were approved as stealth wireless communication facilities. The lines of reasoning in these other cases are similar to the decision in the Verizon Wireless – Honc application. See the attached Hearing Examiner Decisions (SEZ2004-00027, Sunshine Towers, Inc., Decision of Hearing Examiner Diana M. Parker, SEZ2004-00033, Verizon Wireless – N. Ft. Myers Utility site, Decision of Hearing Examiner Diana Parker, and SEZ 2004-00029, Verizon Wireless – Civic Center site, Decision of Hearing Examiner Diana Parker).

For these reasons and based on the arguments presented at those other hearings, it is Verizon Wireless position that the issue of whether a flagpole tower, up to at least 149 feet in height, is a stealth wireless facility has been decided and is not up for re-evaluation in this hearing. The question of whether this proposed stealth wireless communications facility is appropriate in the subject location, under the terms of the ordinance, is to be decided by the Hearing Examiner, but the question of whether the facility being reviewed qualifies as a stealth wireless communications facility has already be decided in the affirmative.

**Verizon Wireless – Three Oaks
SEZ 2005-00012**

**Stealth Wireless Communications Facility
Statement of Compliance**

The proposed flagpole communication tower complies with the review criteria of Section 34-1447(c)(3) of the Land Development Code, as evidenced below:

- a. No stealth facility may have antennas or ancillary equipment that are readily identifiable as wireless communications equipment.**

The antennas and the ancillary cabling that will be associated with the proposed stealth facility will be located inside the pole and will not be visible. Therefore they will not be readily identifiable. Similarly, the wireless communications equipment will be located behind a landscape buffer. It is not likely the equipment will be visible from off-site and, even if portions are visible, will not be readily identifiable as wireless communications equipment.

- b. Stealth facilities must be designed so they are reasonably consistent with the surrounding built or natural environment. In order to determine compliance with this requirement, the County will consider the following criteria:**

1. overall height;

The requested stealth facility is proposed to be a 135-foot tall flagpole. This is the height needed for the facility to accomplish its designed function as part of Verizon Wireless' network. This height is reasonably consistent with the surrounding built and natural environment for several reasons.

First, the Lee County Land Development Code does not limit the heights of flagpoles (§34-2173) nor require extraordinary reviews for their placements. With no height limitations or special review processes on traditional flagpoles, the proposed stealth facility, at the proposed height, is consistent with what could be built in the area.

Secondly, the proposed facility is set back so far from the parent tract boundaries that it meets the requirements for a building of the same height, under the provisions of section 34-2174 (A 135-foot structure exceeds the zoning district height limitation of 45 feet by 90 feet, requiring an additional 45-foot setback. This equals a 70-foot setback from the west property boundary and a 60-foot setback from the north, east, and south boundaries) many times over. As is discussed below, under scale, the stealth facility is in compliance with all the height requirements for a much bulkier structure, which could be built with just building permit review.

The staff report indicates that staff's only objection to the height is that no features, either natural or man-made, in the area are over approximately 70 feet. This is based

on staff's position that a stealth wireless communication facility cannot be taller than a typical structure of the type it is designed to replicate. The staff does not object to the height, however, if the facility is called an antenna supporting structure. As is discussed in the discussion of antenna supporting structures versus stealth wireless communications facility, the issue has already be settled that a flagpole tower, such as the one proposed, even up to 149 feet, is a stealth wireless communications facility. The only question is whether a facility of 135 feet is appropriate for this location and staff has indicated that they support 135 feet.

Therefore, for any or all of these reasons, the height of the flagpole is reasonably consistent with the surrounding environment.

2. the compatibility of the proposed facility with surrounding built and natural features;

The proposed facility is a flagpole, with equipment at its base that is screened from outside view. This facility will generate next to no traffic, will not be lighted, except as appropriate as a flagpole, will not produce smoke, odor, noise, or vibration, does not create demands on the public facilities and services and even provides a significant public service through E911. In contrast, the shopping center in which the facility will be located generates significant traffic, involves lighting, and produces odor and noise. It creates demands on police services, water and sewer services.

There are no residential properties within 800 feet of the proposed facility. The existing and future commercial development of the shopping center and Three Oaks Blvd. are located between the proposed facility and the closest residential neighborhood. I-75, with the noise and impacts it creates, is located immediately east of the proposed tower site and a County water treatment facility is located north of the shopping center property. There is little question that the residential properties in the area are much more impacted by these uses than they will ever be by the proposed facility.

Staff's only objection to the compatibility of the facility is that it will have a flag. Verizon Wireless has no objection to not flying a flag on the pole, if such is found to make the site more compatible.

For any or all of these reasons, the proposed facility is the quietest, least intrusive activity in the area and is compatible with the surrounding built and natural features.

3. scale;

Staff's objection to the facility is that it is over 3.5 times the height of any building in the surrounding area. Height is but one factor in evaluating scale. Scale is a matter of proportions and an analysis of scale involves a review of all of the proportions, width

and depth, as well as height.

The proposed stealth facility will be 135 feet tall and, at the widest point at the base, at the very most, no more than four feet wide and four feet deep. Although the pole will be tapered, for simpler figuring, if it is assumed that the four foot width and depth (a circle radius of two feet) was to be maintained for the entire 135 foot height, the result would be 1,695 cubic feet. The parent parcel allows building coverage of up to 40 percent (based on the lot coverage requirements for commercial districts) and heights of 45 feet. Just using the lease area for the stealth facility (1,600 square feet in size), the Land Development Code would allow a building of 640 square feet in this same area, 45 feet tall. This would equal 28,800 cubic feet, or a structure almost 17 times the size of the proposed stealth facility. The property development regulations of the Land Development Code provide the limits within which a use is permitted without variances or extraordinary review and within which, it is reasonable to presume, a structure would be considered to be of a reasonable scale. Therefore, the proposed stealth facility, at a mere fraction of the allowed area of any other structure, is of a scale consistent with what can be built in the area. Therefore, without question, the proposed stealth facility is consistent with the scale of the surrounding built environment.

4. color;

The stealth facility is proposed to be a light gray, which experience has shown, is a very unobtrusive color.

5. extent to which the proposed facility blends with the surrounding environment;

The proposed facility is located a significant distance from Three Oaks Blvd (733 feet), on a shopping center property, so it will not be particularly visible from Three Oaks Blvd. It is located near I-75, but near a long straight stretch of highway, where it will not readily catch the eye of the traveling public. Additionally, the pole is not that dissimilar from the interchange light poles along the interstate.

There is no existing residential development in the immediate area around the parent tract. The closest residentially developed property is more than 800 feet away. The location, with trees and vegetation in the foreground of most off-site viewers, significantly limits the view of the facility from most off-site uses or roadways.

Although it is taller than other uses in the area, it is to scale and will not be particularly visible from off-site. Therefore, the proposed facility will blend with the surrounding built and natural environment.

6. extent to which the proposed facility has been designed to reasonably replicate a non-wireless facility (e.g., a silo, flagpole, or tree); and

The proposed facility is designed to be, not just replicate, a flagpole which, if so approved by the County, can fly a flag. Staff position that it is taller or wider than other flagpole one might see does not negate the fact that the facility is a flagpole. As the Hearing Examiner found in SEZ2005-00003, a copy of which has been made part of the record,

It must be presumed that, at the time the Board of County Commissioners implemented Section 34-144, that the Board understood that, in order for a flag pole to include antennas and wiring within it, the pole had to be wider than a flagpole without that equipment. ... The Applicant has designed a tower that can, in fact, fly a flag. The Hearing Examiner must, therefore, conclude that it is an actual 'flagpole,' and not just a replication.

Hearing Examiners Decision in SEZ2005-00003, pages 9 and 10.

7. extent to which the proposed facility is not readily identifiable as a wireless communications facility.

No portion of the antennas, cabling or equipment, which might identify the facility as a wireless communications facility, will be visible from off-site. Only the height of the facility might suggest it is other than any other flagpole, but experience in other jurisdictions have indicated that, unless they are specifically told, most people do not recognize flagpole type wireless facilities as wireless facilities.

Local Government Guide
to the
Application of the Florida E911 Statute to
Wireless Site Development

Provided to local governments by:

Sprint-Nextel and Verizon Wireless

Through

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Local Government Guide to the Application of the Florida E911 Statute to Wireless Site Development

The provisions of section 365.172(11), Florida Statutes, were significantly revised in the 2005 legislative session. The following is an analysis of how the new statute provisions will apply to the local government review and permitting of wireless sites. The analysis is grouped by the types of site development activities, with a general applicability introduction. The major sections of the statute at issue are subsections 365.172(11) and the applicable definitions in subsection 365.172(3). References to "the statute" in this analysis will be to these two subsections. A copy of both subsections, in full, is attached as Attachment "A."

Applicability

Which Wireless Facilities Are Addressed By the Statute

The statute addresses the regulation of the placement, construction, or modification of all wireless communications facilities. Under the statute, a wireless communications facility¹ is any equipment or facility used to provide commercial mobile radio service,² including antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. In this analysis, these facilities are referred to as "wireless facilities."

The statute also addresses activities of wireless "providers." Under the statute, a "wireless provider"³ is a person or entity that provides "service" and either is subject to the requirements of a FCC order⁴ to provide wireless 911⁵ or E911⁶ services or who elects to provide wireless 911 or E911 services in this state.⁷

Although the statute is under the E911 section of the statutes, there does not have to be proof that the specific wireless communications facility provides E911 service. The statute recognizes that wireless facilities are part of a network and that E911 services are provided through the whole network, rather than individual parts. The intent statement of the statute makes

¹ §365.172(3)(dd).

² (z) "Service" means "commercial mobile radio service" as provided under ss. 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C., ss. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term "service" includes the term "wireless" and service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations."

³ §365.172(3)(v).

⁴ §365.172(3)(t).

⁵ §365.172(3)(ee).

⁶ §365.172(3)(i).

⁷ The statute addresses all entities that place, construct or modify the wireless facilities used to provide commercial mobile radio services, but those entities that provides "service," but not E911 services, do not qualify for the statutory provisions addressing "providers." This may be a distinction without a material difference, however, because the federal requirements of the Telecommunication Act of 1996 (47 C.F.R. 332(c)(7)(B)(i)(I)) prevent local governments from discriminating against functionally equivalent providers of personal wireless services.

clear that E911 and the wireless network are tied together; a reliable E911 system can only exist if there are reliable wireless systems.⁸

What Government Entities and What Actions of Those Entities Must Meet the Statute

The statute applies to the actions of “local governments.” Although the term “local government” has a broad meaning for section 365.172, as a whole⁹, for the wireless placement section, the definition is narrower. In this section “local government” only means municipalities or counties and any department or agency of a municipality or county.¹⁰ The term “local government” does not, however, include any airport authority or other entity that controls an airport¹¹, even if it is owned or controlled by a municipality or county.¹²

The statute only controls the regulatory activities of a local government, such as zoning, building permit reviews, and other permitting activities. It does not control a local government's actions as the owner of any property or structure on which a wireless facility is, or is proposed to be, located. A local government may not, however, use its regulatory authority to promote or force the use of the property it owns to avoid compliance with or in a way that is inconsistent with the statute.¹³

Collocations

The statute takes the position that collocations are encouraged.¹⁴ Under the statute, a “collocation” is “when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae.”¹⁵

One change from the previous wording of the statute clarifies that a collocation on a tower, or other structure, does not mean that all parts of the collocation have to be located on the structure; the equipment may be located on the ground and still be a collocation under the statute.¹⁶ Additionally, the tower or other structure may be nonconforming to the local government's current regulations (as long as it met the applicable requirements when it was built) and still accept collocations.¹⁷ If the collocation meets the criteria of the statute, and is not

⁸ “To balance the public need for reliable E911 services through reliable wireless systems and the public interest served by governmental zoning and land development regulations ...” §365.172(11) introductory paragraph.

⁹ §365.172(3)(p) “‘Local government’ means any municipality, county, or political subdivision or agency of a municipality, county, or political subdivision.”

¹⁰ §365.172(11), introductory paragraph.

¹¹ §330.27(2) “‘Airport’ means an area of land or water used for, or intended to be used for, landing and takeoff of aircraft, including appurtenant areas, buildings, facilities, or rights-of-way necessary to facilitate such use or intended use.”

¹² §365.172(11), introductory paragraph.

¹³ Id.

¹⁴ “Collocation among wireless providers is encouraged by the state.” §365.172(11)(a).

¹⁵ §365.172(3)(g).

¹⁶ The definition of collocation states that the term includes the “ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antennae.” §365.172(3)(g).

¹⁷ §§365.172(11)(a)1.a. and (11)(a)3.

Guide to the E911 Statute

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in the “all other collocations” category discussed below, it is not considered a “modification” to an existing structure¹⁸

Collocations are divided, in the statute, into four groups: collocations on existing towers that meet certain criteria, collocations on non-tower structures that meet certain criteria, collocations that meet some, but not all, of the criteria, and all other collocations.

Collocation on existing towers

Collocations on towers are supposed to be quickly and easily achieved. To clarify the provisions of section 365.172(11)(a) adopted in 2003 and as part of a compromise with the representatives of the Florida League of Cities and Florida Association of Counties, it was agreed that towers¹⁹ are approved for the supporting of antennas and they should, therefore, be allowed to be fully utilized for that purpose. Therefore, if a collocation request to place antennas on a tower meets all of the three listed criteria, it is to be reviewed through no more than a building permit review and on a more expedited schedule.

The three listed criteria²⁰ are

- 1) the collocation does not increase the height of the tower, measured to the highest point of any part of the tower or any existing antenna attached to the tower;
- 2) the collocation does not increase the ground equipment compound area approved in the latest applicable site plan; and
- 3) all parts of the collocation meet whatever design and configuration requirements were applicable to the first antenna approved on the tower, and, if relevant, those applied to the tower itself.

The first two criteria are fairly straight forward. The third may require investigation to see what conditions were put on the tower approval and/or what the regulations (land development code) in place at the time the tower was approved required.

Only the design and configuration requirements of the time apply.²¹ This means that conditions that require collocations to go through more involved reviews or regulations that limit the number of collocations²² do not apply.

If these three criteria are met, the collocation application is only subject to a building permit review.²³ Under the statute, a “building permit review” is defined as “a review for compliance with building construction standards adopted by the local government under chapter

¹⁸ §365.172(11)(a)3.

¹⁹ “Tower” is defined in the statute to mean “any structure designed primarily to support a wireless provider's antennae.” §365.172(3)(cc).

²⁰ §365.172(11)(a)1.a..

²¹ “Such regulations may include the design and aesthetic requirements, but not procedural requirements ... of the local government's land development regulations in effect at the time the initial antennae placement was approved.”

§365.172(11)(a)1.a.(III).

²² §365.172(11)(a)1.c.

²³ §365.172(11)(a)1.a.

553 [Florida Statutes] and does not include a review for compliance with [the local government's] land development regulations.”²⁴ The regulations of the local governments that typically regulate wireless facilities are considered land development regulations²⁵ under the statute, whether they are adopted as part of the local land development code or as a free-standing ordinance.

Therefore, a collocation on an existing tower that meets the three criteria bypasses any site plan or zoning review process and goes straight to building permit review. The only zoning type review allowed is a review to determine compliance with the three criteria, which must be done as part of the building permit review, not as a separate process. The local government cannot bring in the land development regulation provisions into the building permit review. The building permit review cannot be subjected to any procedural requirements, or any other provisions, of the land development regulations or to a public hearing.²⁶

In summary, collocations on towers that do not increase the existing height, do not increase the approved compound, and are of a design and configuration consistent with the design and aesthetic requirements that applied when the first antenna on the tower was approved are to be reviewed through no more than a building permit review.

Collocations that meet these criteria are also to be reviewed on an expedited schedule. The statute provides that properly completed applications for collocations that meet these criteria are to be granted or denied within the normal timeframes for building permit reviews, but in no case longer than 45 business days.²⁷ If the application is not granted or denied in that timeframe, the application is deemed to be automatically approved.²⁸

There are limitations and qualifications on the timeframe and the automatic approval, but the intention is that collocations are not to be held up in review. The full process, timeframes and waivers are described below in “Review Timeframes” under “Ordinance Requirements and Review Limitations.”

Collocations on existing non-tower structures that are not “historic.”

Collocations on existing structures that are not towers and are not “historic”²⁹ are also supposed to be quickly and easily achieved, but are subject to slightly more review. The basic difference from those on towers is that collocations on non-historic, non-tower structures must also meet the current land development regulations design and location requirements that are in

²⁴ §365.172(3)(f).

²⁵ “‘Land development regulations’ means any ordinance enacted by a local government for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, the local government's comprehensive plan, or any other ordinance concerning any aspect of the development of land. The term does not include any building construction standard adopted under and in compliance with chapter 553.” §365.172(3)(n).

²⁶ §365.172(11)(a)1.a.

²⁷ §365.172(11)(d)1.

²⁸ §365.172(11)(d)3.b.

²⁹ Structures that have not been “officially designated as a historic building, historic structure, historic site, historic object, or historic district through a federal, state, or local designation program.” §365.172(3)(m).

the local government's land development regulations at the time of the collocation application³⁰ and they are subject to an administrative review for compliance with those requirements.³¹

For these collocations there are four applicable criteria:³²

- 1) the collocation does not increase the height of the existing structure, measured to the highest point of any part of the structure or any existing antenna attached to the structure;
- 2) the collocation does not increase the ground equipment compound area, if any, approved in the latest applicable site plan;
- 3) all parts of the collocation are of a design and configuration consistent with whatever structural, locational, or aesthetic design requirements are in the local government's land development regulations at the time of the application; and
- 4) all parts of the collocation meet whatever design and configuration requirements were applicable to the first antenna approved on the tower, that do not conflict with 3), and, if relevant, those applied to the tower itself.

Provisions 1) and 2) are the same as for collocations on towers. Provisions 3) and 4) are a bit more involved. Provision 3) says that the collocation must be consistent with any applicable structural, aesthetic or location-on-the-structure requirements in the local government's current land development regulations. Provision 4) says that all parts of the collocation must meet whatever requirements were applicable to the first antenna approved on the tower, and, if relevant, those applied to the tower itself, unless they conflict with the provisions under 3). In other words, the collocation must be consistent with the current code requirements (provision 3) and be consistent with requirements on first the antenna that do no conflict with current code requirements (provision 4). This will usually mean that the more restrictive requirement will control, but not always.

Collocations on non-tower structures that meet the criteria are subject to no more than a building permit review and a minimal administrative review as is necessary to confirm compliance with these provisions. The administrative review should be minimal and cannot include a public hearing.³³

The same definitions of "building permit review" and "land development regulations" discussed above for collocations on towers also apply to these collocations. The provision prohibiting conditions that require collocations to go through more involved reviews or regulations that limit the number of collocations³⁴ also applies to these collocations. Collocations on non-historic, non-tower structures that meet the criteria are also to be heard on the same expedited schedule as those on towers – no more than 45 business days, but, as discussed below in "Review Timeframes," if the review process requires two distinct application steps, each application has a separate 45 day timeframe.

³⁰ §365.172(11)(a)1.b.(III).

³¹ §365.172(11)(a)1.b.

³² §365.172(11)(a)1.b.(I) – (IV).

³³ §365.172(11)(a)1.b.

³⁴ §365.172(11)(a)1.c.

In summary, collocations on non-historic, non-tower structures that do not increase the existing height, do not increase the approved ground compound, and are of a design and configuration consistent with the design and aesthetic requirements of the current code and the requirements in place at the time of the first antenna placement on the structure, are to be reviewed through no more than a simple administrative process, to confirm the requirements are met, and a building permit review.

Collocations That Only Meet Some of the Criteria

If a collocation on a tower or a non-historic structure meets some of the applicable criteria, but not all, the part of the collocation that meets the requirements are to be reviewed in accordance with the requirements summarized above and the part that does not is to be reviewed through whatever requirements and process would apply to a first antenna placement on that type of structure.³⁵ By way of example, if a collocated antenna to be placed on a tower will be taller than the existing antenna or tower height, but all other parts of the collocation meet the applicable criteria, then only a building permit review is required to place the equipment shelter, run the cable and authorize the placement of a new antenna on the tower. The fact that the antenna will be taller, however, is subject to whatever review and whatever standards the local government requires for increases in height, including, potentially, a public hearing review. Only the implications of the height increase can be reviewed, however, not whether the antenna needs to be there, whether landscaping would now be required around the compound, or anything else that is not related to the increase in height. The shorter collocation timeframes would also not apply to the height increase evaluation.

The exception to the potential of a public hearing review for not meeting the criteria is for an expansion of a ground compound. A collocation that meets all of the other applicable criteria, but requires an increase in the compound size by no more than the greater of 400 cumulative square feet or 50 percent of the original compound size, must meet the current design, aesthetic and locational standards, but cannot trigger more than an administrative and building permit review.³⁶ Such a compound increase cannot trigger a public hearing review.

All Other Collocations

“Historic” collocations or any other collocation that does not fall into the other groups must meet whatever the current requirements are under the local government’s land development regulations for a first antenna placement.³⁷

Modifications To Or Replacement Of Towers

The statute³⁸ provides that no more than an administrative review and building permit review is required for structural modifications to an existing tower to allow collocation or for

³⁵ §365.172(11)(a)1.d.

³⁶ Id.

³⁷ §365.172(11)(a)2.

replacement of the tower, even if the tower is nonconforming, as long as the following parameters are met:

- 1) the overall height of the tower is not increased; and
- 2) if the change involves the replacement of the existing tower, the replacement tower is a monopole tower or, if the existing tower is a camouflaged tower, the replacement tower is a like-camouflaged tower.

Raw Land Sites And First Antenna Placements Under The Statute

Wireless Service/Wireless Facilities in Residential Areas

One provision of the statute addresses a major concern in some areas – providing service to residential areas. The statute³⁹ provides that a local government may draft or implement its regulations to exclude wireless facilities from a residential area or residential zoning district, but only if such exclusion does not constitute an actual or effective prohibition of an applicant's provision of service in that residential area or zoning district. This means that a local government can draft its regulations to prohibit wireless facilities in residential zoning districts or to make placing a wireless facility in residential areas very difficult, but such restrictions cannot actually prohibit or have the end effective of prohibiting the particular provider from providing its service to those areas. It is important to note that what cannot be prohibited is that provider's service, not just any service. This means that even if other providers are able to reach a residential area with their services, if the applicant provider cannot, it constitutes a prohibition of service for that provider.

If the provider can prove to the local government that the provider cannot reasonably provide its service to a residential area from outside that area, such as from surrounding commercial or industrial areas, the statute provides that the municipality or county and the provider must work together to find an appropriate location for a wireless facility of an appropriate design within the residential area or zone.⁴⁰ The local government may required the provider pay for reasonable costs incurred in the cooperative effort and the statutory review timeframes do not apply to the cooperative effort.

Setbacks and Separations

The statute provides that setbacks or distance separations required for a tower, such as setback distances from residential zoning or tower to tower separations, may not exceed the minimum necessary to satisfy the structural or aesthetic reason the requirement was created.⁴¹ This provision is intended to, first, require that a local government have a reason for the setbacks and separations they impose; something they are trying to achieve in applying the restriction. Secondly, the restriction cannot be more than the minimum necessary to achieve the objective of the restriction.

³⁸ §365.172(11)(a)5

³⁹ §365.172(11)(b)3.

⁴⁰ Id.

⁴¹ §365.172(11)(b)2.

Ordinance Requirements and Review Limitations

No Proof of Compliance With Federal Regulations

One provision that has been law since 2003, is the restriction⁴² that a local government may not require providers to prove that their facilities comply with federal regulations. The only exception, which was added in 2005, is that the local government can require evidence of compliance with the applicable FAA air navigation hazard requirements.⁴³ The local government can also require the provider to provide evidence that they have an FCC license or other spectrum authorization for the area. If the local government has any concern that federal requirements are not being met, they may ask the FCC for information of the provider's compliance, but cannot require the information from the provider.

This provision recognizes that the local governments have no role in ensuring compliance with federal requirements and cannot make their local decisions or take action based on whether they feel the wireless facility meets those requirements. This provision, coupled with the requirement that all reviews must be based on land development and zoning issues, discussed below, means that local governments must focus their review on the relevant local issues and not on issues outside of their authority.

Regulations and Reviews Limited To Land Development and Zoning Issues

The statute crystallized a concept that has likely been the case since the amendment of the federal Telecommunications Act in 1996, but is now formalized – local governments' authority in reviewing wireless facilities is limited to addressing only land development and zoning issues.⁴⁴ The statute provides that a local government's land development regulations and construction regulations, as well as the local government's review of specific applications for the placement, construction or modification of wireless facilities, cannot address a wireless provider's business decisions about when and where to provide its service, cannot require proof of customers' complaints or dropped calls, evidence of capacity or interference issues or other service need or quality issues. The provider can volunteer the information in making its case, but the local government cannot demand the information and cannot deny an application because it was not provided.

The only time that information about the provider's designed service⁴⁵ can be requested is when it is relevant to a land development or zoning issue. The statute provides three examples of when this information might be requested: 1) as evidence that no existing structure can reasonably be used for the antennae placement, instead of the construction of a new tower 2) as evidence that residential area cannot be served from outside the residential area and 3) as

⁴² §365.172(11)(c).

⁴³ This does not mean that an FAA approval is required for each site; a qualified expert's statement of the facility's compliance with the FAA regulations would be sufficient.

⁴⁴ §365.172(11)(b)1.

⁴⁵ "'Designed service' means the configuration and manner of deployment of service the wireless provider has designed for an area as part of its network." §365.172(3)(h).

evidence that the proposed height of a new tower or initial antennae placement or a proposed height increase of a modified tower, replacement tower, or collocation is necessary to provide the provider's designed service.⁴⁶ There may be other land development or zoning issues that could justify the provision of information about the provider's service design, but the local government must make the connection between the information and such an issue before it can be part of the review.

This provision is based on a similar concept as the prohibition of proof of compliance with federal regulations discussed above – the federal government has pre-emptive authority over almost all aspects of wireless facilities, leaving the local governments only with their traditional zoning authority over wireless facilities – coupled with the concept that businesses should not have to justify their business decisions. This provision does not limit the land development and zoning issues local government's may consider, including aesthetics, but requires that the local government's ordinances for, and reviews of, wireless facilities only be limited to those issues.⁴⁷

Building Code Type Regulations

A portion of the statute that most often will be addressed in ordinance drafting, but may have application on a site by site basis, is a provision⁴⁸ that prevents local governments from imposing building code type requirements on wireless facilities that are not adopted in the local government's building code and are not applicable to all other similar structures. This does not mean that the local government cannot impose design requirements such as designing the tower for collocation or as a camouflaged structure, but they may not hold wireless facilities to higher construction standards than other similar structures. This provision means that, by way of an example, a local government cannot require through its land development code that a wireless facility meet higher wind load requirements than are adopted in that local's government's building code or that commercial wireless facilities must meet EIA/TIA requirements that are not adopted as part of the building code. Under the statute, if a structural or construction building code type provision is not adopted in the local government's building code and is not applicable to all such structures (e.g. government owned as well as private towers), it cannot be applied to wireless facilities.

Expert Review

The statute does not prevent local governments from hiring consultants or experts to assist the local government in the review of applications for wireless facilities, and charging the applicant for such reviews, but does place limits. The first is that the review has to be tied to land

⁴⁶ §365.172(11)(b)1.

⁴⁷ This provision also has significant relevance in jurisdictions whose regulations favor property owned by the local government, or other governments, over privately owned properties, such as only allowing towers or other wireless facilities on government properties or putting government owned property as a "priority" site whose non-use must be justified. Designating priorities or appropriateness of sites by ownership is not basing decisions on land development or zoning issues, and, therefore, cannot be sustained. This point is substantiated by the list of some of the applicable land development or zoning issues in the statute, which includes "land use based location priorities," not ownership based location priorities.

⁴⁸ §365.172(11)(b)5.

development or zoning issues, as discussed above; a consultant cannot do on behalf of the local government what the local government cannot do itself. Secondly, unless the local government is willing to shoulder the cost of the consultant itself, the consultant or expert retained must be one that “conduct[s] code compliance review[s] for the local government.”⁴⁹ This means that the consultant’s or expert’s review must be only to evaluate whether the application complies with the terms of the adopted code.

Reasonable Fees

The statute also addresses fees. The statute provides⁵⁰ that a local government can charge a fee for the review of an application for a wireless facility, but 1) the fee must be reasonable and 2) the fee must be similar to what is charged to other applicants seeking similar types of review for other uses. By way of an example, if a local government charges an application fee of \$500 for the review of all other uses that require a special exception, the fee for a special exception for a wireless facility must be similar, i.e. not significantly different. The local government can also charge a fee for an expert’s or consultant’s review, as discussed above, but the fee is limited to specifically identified, reasonable, expenses actually incurred in the review.⁵¹ The application fee must be consistent with other fees in the jurisdiction and the consultant’s fee must be tied to actual costs of the review and be reasonable.

The statute does allow local governments to require a reasonable surety for the removal of abandoned wireless facilities.⁵² The surety can only be for the removal of abandoned facilities and is not a general bond, such as is imposed by some local governments to ensure general compliance with its ordinance. By implication, local governments are not authorized by the statute to require other forms of surety or insurance, not connected with ensuring removal of abandoned facilities.

Review Timeframes

The version of the statute passed in 2003 had significant review timeframes, which have been further clarified in the 2005 version. Simply stated, the statute requires local governments to review and act on collocations that meet the specified criteria within no more than 45 business days after the application has been found to be complete and ready for review or the application is considered approved.⁵³ For all other types of wireless facilities, the timeframe is no more than 90 business days; after which the application is considered approved.⁵⁴

The statute provides⁵⁵ that, starting the day an application for review of a wireless facility is received by the local government, the local government has up to 20 business days to determine if the application submitted is complete for review, in compliance with the local

⁴⁹ §365.172(11)(b)4.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ §§365.172(11)(d)1. and 3.b.

⁵⁴ §§365.172(11)(d)2. and 3.b.

⁵⁵ §365.172(11)(d)3.a.

government's regulations. If the application is not complete, the local government must, within the 20 business days, so advise the applicant, in writing, indicating with specificity any deficiencies that need to be cured to make the application complete. If the local government does not notify the applicant in writing of such deficiencies, the application is deemed complete and ready for review.

If the local government advises the applicant that the application is not complete, the applicant may resubmit additional or revised materials to make the application complete. There is no timeframe established in the statute within which the applicant has to resubmit the materials, but the statute recognizes that the local government may establish reasonable timeframes for the resubmissions or the application will be considered withdrawn or closed.⁵⁶ When the curative materials are resubmitted, the review for completeness timeframe of 20 business days begins again. This notice of incompleteness and re-submittals may continue until the application is deemed complete or the locally adopted re-submittal timeframes have been exhausted.

If the respective review and action timeframes of 45 or 90 business days are not met by the local government, the application is deemed automatically approved and the applicant may proceed with the placing of the facility. It should be noted that the timeframes run independently for each application filed.⁵⁷ Therefore, if the subject review process takes multiple sequential steps involving a separate application in each step, each application has a separate review timeframe. By way of example, if a new tower requires a special exception review, an administrative site plan review and then a building permit review, each of those three steps are independent in both achieving application completeness and in the time the local government has to review the application. This point should not be relevant to collocations on towers reviewed under the 45 day timeframe because there should be only one application – for a building permit review – for these facilities, thereby preserving the expedited process for collocations.

Given that each review timeframe is independent, the failure of a local government to meet one timeframes, such as the special exception timeframe in the above example, does not mean that the following steps can be omitted and the facility placed immediately. The statute provides that “the applicant may proceed with placement of the facilities” For multiple step review processes, this should probably be read to mean the applicant may proceed with the remainder of the process necessary to place the facility.

There are two specific exceptions to the review timeframes, one of which applies to the 90 day timeframe and one of which applies to both timeframes. For the 90 day timeframe, the time may be extended to the extent necessary if the normal review process for all similar types of reviews puts a review by the jurisdiction's governing body (e.g. Board of County Commissioners or City Council) outside of the timeframe.⁵⁸ In such a case, the governing body must hear the application at its next regularly scheduled meeting or the application is considered automatically approved. By way of an example, if a county's Special Exception process for all uses, not just

⁵⁶ Id.

⁵⁷ §§365.172(11)(d)1. and 2. provide that the “local government shall grant or deny each properly completed application” within the respective timeframes. (emphasis added)

⁵⁸ §365.172(11)(d)3.b.

wireless facilities, takes more than 90 business days for the final hearing before the Board of County Commissioners, an application for a Special Exception for a wireless facility can similarly extend beyond the 90 day limit. Unlike what may be the case for other uses, however, the Board of County Commissioners must hear the application for the wireless facility at the next scheduled Board meeting after the 90 business day timeframe or the application is considered approved. This exception only applies to review processes ultimately heard by the governing body at the end of the normal review process.

The second specific exception to the review timeframes is a waiver, either voluntary or because of a declared emergency.⁵⁹ A local government can request, but not require, a waiver of the timeframes by the applicant. To be effective, such a waiver must be voluntarily agreed to by the applicant and the local government. The local government can also require a one-time waiver per application in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government. This required waiver should be viewed more as a tolling of the review timeframes during the time of a declared emergency that suspends all permitting activities than a waiver of the timeframe.

It would also be reasonable to construe the statute as allowing, after a finding that the application is complete and is in the review process, a tolling of the review timeframe during the time after the local government has provided comments to the applicant, on changes that are needed to make an application consistent with all the applicable regulations or are suggested as appropriate to receive a favorable recommendation or decision, and the time when the applicant responds to the comments. This would be consistent with the process for findings of completeness and would prevent the requirement of a “new” application every time the local government has comments on an application.

Maintenance and Repair

The statute⁶⁰ provides that non-tower wireless facilities may be replaced or modified through no more than a building permit review if the replacement or modification results in a wireless facility that, if visible from the ground level of surrounding properties, cannot be readily discerned as different in size, type or appearance or is not visible from surrounding properties. This would allow antenna change-outs and equipment upgrades with no extraordinary review. If such a change does not trigger the local government’s requirements of a building permit, even that cannot be required. Whether the change is visible and readily discerned is up to the local government, but must be a decision reasonably made.

If the replacement or modification is visible and is discernibly different, the change may be able to be classified as a collocation and be subject to only the reviews allowed for collocations. If the change does not qualify as a collocation, it will probably be subject to whatever applicable review process the local government indicates in its regulations.

⁵⁹ §365.172(11)(d)3.c.

⁶⁰ §365.172(11)(e).

As to towers, it should be noted that almost all collocations cannot be considered a modification to an existing tower or an impermissible modification of a nonconforming tower.⁶¹ Additionally, towers, including nonconforming towers, may be structurally modified to permit collocation, or even replaced, whether for collocation or not, through no more than an administrative and building permit review, if certain requirements are met.⁶²

Use of State Owned Lands For Wireless Facilities

The 2003 version of the statute provided for the development of a process to make state owned lands, other than those controlled by the Florida Department of Transportation, available for wireless facilities. The language is virtually unchanged in the 2005 version of the statute.⁶³ The Florida Division of Management Services has prepared rules to implement this provision, which went into effect April of 2005. The rules can be found at Chapter 60H-9, Florida Administrative Code.

Expedited Review of Appeals

Any appeals on decisions by local governments on wireless facilities, beyond the administrative appeals within the local government, and any action filed based on an action or failure to act under the statute are to be heard on an expedited basis.⁶⁴ This brings the provision for expedited review found for federal actions on wireless facilities to a state level.

Effective Date

The statute went into effect July 1, 2005.

⁶¹ §365.172(11)(a)3.

⁶² “[I]f the overall height of the tower is not increased and, if a replacement, the replacement tower is a monopole tower or, if the existing tower is a camouflaged tower, the replacement tower is a like-camouflaged tower.” §365.172(11)(a)5.

⁶³ §365.172(11)(e).

⁶⁴ §365.172(11)(g).

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL EXCEPTION: SEZ2005-00003 & VAR2005-00017
APPLICANT: VERIZON WIRELESS, in reference to
HONC PROPERTY STEALTH COMMUNICATION FACILITY
HEARING DATE: JUNE 23, 2005

I. APPLICATION:

Filed by VERIZON WIRELESS, 777 Yamato Road, Suite 600, Boca Raton, Florida 33431(Applicant); LAURA B. BELFLOWER, P.A., 16002 Wyndover Road, Tampa, Florida 33647; SBA NETWORK SERVICES, INC., c/o JASON LASKEY, 5900 Broken Sound Parkway NW, Boca Raton, Florida 33487 (Agents);and JOHN P. HONC, SR. and LILLIAN F. HONC, as CO-TRUSTEES of the JOHN P. HONC, SR. TRUST AGREEMENT, P.O. Box 265, Bokeelia, Florida 33922; VINCENT E. HONC, 1246 SW 4th Avenue, Cape Coral, Florida 33991 (Owners).

Request is for a Special Exception in the Light Industrial (IL) zoning district to allow a 149-foot-tall stealth (flagpole) wireless communication facility per Division 11 of the Land Development Code Division; and a Variance from Section 34-2175(5) of the Lee County Land Development Code, which limits the height of structures on Greater Pine Island to 45 feet above sea level, to allow the construction of 149-foot-tall stealth wireless communication facility.

The subject property is located at 6900 Tropical Lane, Bokeelia, Florida 33922, in Section 32, Township 43 South, Range 22 East, Lee County, Florida (District #1).

The Strap # as furnished by the Applicant is: 32-43-22-00-00001.0000

II. STAFF RECOMMENDATION: DENIAL

The Department of Community Development Staff Report was prepared by Josh Philpott. The Staff Report is incorporated herein by this reference.

III. HEARING EXAMINER DECISION:

The undersigned Lee County Hearing Examiner **APPROVES** the Applicant's request for a Special Exception & Variance to allow the construction of a 149-foot-tall stealth (flagpole) wireless communication facility on the real estate described in Section VIII. Legal Description WITH THE FOLLOWING CONDITIONS:

1. The development must be in substantial compliance with the seven-page Zoning Approval Plan produced by Kimley-Horn and Associates, Inc., dated September 2004, date stamped "Received on January 12, 2005 by Permit Counter," (see attached **Exhibit B**), except as modified by the following conditions.

2. A 10-foot-wide buffer must be installed around the perimeter of the proposed facility consisting of a double row hedge maintained at a height of eight feet and with Sabal palms planted 10 feet on-center, as per the LDC Section 34-1447(c). A watering plan, acceptable to Lee County Environmental Sciences, must be submitted prior to Local Development Order approval.

3. The stealth wireless communication facility must be installed and maintained to appear flat white in color.

4. The overall height of the stealth wireless communication facility must not exceed 149 feet above ground level and must have all the antennas and cables hidden within the tower.

5. Any request for building permits for future collocations of additional wireless communications facilities on the property must be reviewed and approved under the requirements of the Lee County Land Development Code (LDC).

6. If the structure that is the subject of this decision is ever voluntarily removed by the property owner, or is otherwise totally destroyed then the variance(s) granted herein will become null and void, and new structure must meet all of the applicable provisions of the Lee County Land Development Code.

IV. HEARING EXAMINER DISCUSSION:

The Applicant is requesting a Special Exception to permit the construction of a 149-foot-tall Stealth Wireless Communication Facility (Flagpole) with related ancillary wireless communication facilities on the southeast corner of a parcel located in Bokeelia on Pine Island. The property is approximately 19.0± acres, zoned Light Industrial (IL) and is developed with two structures located along the western portion of the property. The eastern portion of the subject property has been cleared and has large piles of vegetative debris. The Applicant has proposed to lease a 2,500-square-foot area on the southeast corner of the property, with the placement of the tower in the middle of the leased area. The owner of the property testified that he intended to devote the remainder of the parcel to raise palm trees.

Staff is not opposed to the erection of a cell tower in Bokeelia, rather, their concerns deal with the proper designation of the tower and its location on the subject property. They conceded that a tower is not a use specifically identified in the Coastal Rural Land Use¹ category of the Lee Plan, but is a use that will provide a public purpose for the residents on Pine Island, especially in the Bokeelia area. Staff found the request consistent with Lee Plan

¹ Lee Plan Policy 14.1.8:

The county reclassified all uplands on Pine Island previously designated as Rural to a new Coastal Rural designation on the Future Land Use Map. The purposes of this redesignation was to provide a clearer separation between rural and urban uses on Pine Island, to discourage the unnecessary destruction of native upland habitats, and to avoid placing more dwelling units on Pine Island that can be served by the limited road capacity to the mainland. The Coastal Rural designation is designed to provide land owners with maximum flexibility while accomplishing these public purposes.

Policy 5.1.5.² Staff believes the proposed location of the tower will be potentially destructive to the adjacent residences to the south of the subject property. To mitigate the impacts of the proposed facility, Staff recommended relocating the tower to the northwestern portion of the subject property.

Staff also concluded that the wireless communication facility would be constructed without the use of guyed-wires and would not have a detrimental impact to the woodstork population of the area. Staff found the request consistent with Policy 77.10.5 of the Lee Plan.³

One of the issues under consideration by Staff was the nature of the tower. They contended that although the proposed wireless communication facility would be constructed to resemble a flagpole, the design of the tower did not allow it to be considered a "stealth wireless communication facility."

Their position was that the proposed flagpole will not be constructed to resemble a flag pole, with a secondary use as a wireless communication, as intended by the definition in LDC Section 34-1442.⁴ Instead, it will be constructed as a wireless communication facility, with a secondary use as a flagpole.

The definition of stealth wireless communication facilities intends for true stealth facilities to resemble the structure or object that they imitate. The proposed stealth wireless communication facility will be readily identifiable as a cell tower.

Therefore, the proposed stealth wireless communication facility does not meet the intent of the stealth definition. Further, the 145-foot-tall wireless communication facility will not be aesthetically compatible with the residential use to the south.

² **Lee Plan Policy 5.1.5:**

Protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment. Requests for conventional rezonings will be denied in the event that the buffers provided in Chapter 10 of the Land Development Code are not adequate to address potentially incompatible uses in a satisfactory manner. If such uses are proposed in the form of a planned development or special exception and generally applicable development regulations are deemed to be inadequate, conditions will be attached to minimize or eliminate the potential impacts or, where no adequate conditions can be devised, the application will be denied altogether. The Land Development Code will continue to require appropriate buffers for new developments.

³ **Lee Plan Policy 77.10.5:**

The county will continue to permit communication towers in excess of 100 feet only by special exception. The impacts of such towers on woodstorks must be considered in the review these applications.

⁴ **Lee County Land Development Code Section 34-1442, definition of *Stealth Wireless Communications Facility*:**

Stealth wireless communications facility means a wireless communications facility, ancillary appurtenance, or equipment enclosure that is not readily identifiable as such, and that is aesthetically compatible with nearby uses. A stealth facility must have, or appear to have, a separate function including, but not limited to, the following: church steeple, bell tower, spire, clock tower, cupola, light standard, flagpole with a flag, etc., and a stealth facility may be an approved secondary use of other structures concealing the stealth facility.

Staff maintains that the communications facility must also be reviewed in accordance with LDC § Section 34-1447(c)(3).⁵ Subsection (A) thereof has been complied with because the proposed tower will have internal antennas.

They maintain that Subsection (B)(1) has not, however, been complied with because the proposed wireless communication facility will be approximately 149 feet tall. On Pine Island, no features, either natural or man-made, are more than approximately 80 feet tall. However, Staff agreed that the proposed height would allow for the location of the communication facility to serve a larger area with the proposed height, and therefore, would reduce the proliferation of towers in Lee County.

The Staff went on to conclude that the proposed flagpole wireless communication facility would not be compatible with the surrounding area. They believed the proposed facility, with a flag, would create a greater impact on the surrounding area. Staff determined that a wireless communication facility, with internal antennas and no flag, would be more compatible with the area. Therefore, they recommended approval of a monopole antenna supporting structure, with internally mounted antennas, and contended that this would comply with subsection (B)(2).

Staff also concluded that subsection (B)(3) was not complied with because the proposed facility would not be in scale with the surrounding area. It would be more than three and one-half times the height of any building on Pine Island. The overall massing of the communication facility would not be in scale with the surrounding area.

Staff also determined that the color grey would be the least intrusive color available and, therefore, in compliance with (B)(4).

Noting that the surrounding area to the south and west was developed with scattered 1- and 2-story residences; that no building on the north end of Pine Island was more than 40 feet tall; there were undeveloped and overgrown parcels that consist mainly of wetland type vegetation to the east; and that the largest trees in the area are approximately 65-foot-tall pine trees; Staff found that the proposed 149-foot-tall wireless communication facility did not blend with the surrounding environment. It (tower) would be approximately twice as tall as the tallest vegetation and more than three and one-half times the height of the tallest

⁵ **Lee County Land Development Code Section 34-1447 (c)(3):**

- a. No stealth facility may have antennas or ancillary equipment that are readily identifiable as wireless communications equipment.
- b. Stealth facilities must be designed so they are reasonably consistent with the surrounding built or natural environment. In order to determine compliance with this requirement, the county will consider the following criteria:
 - 1. Overall height;
 - 2. The compatibility of the proposed facility with surrounding built and natural features;
 - 3. Scale;
 - 4. Color;
 - 5. Extent to which the proposed facility blends with the surrounding environment;
 - 6. Extent to which the proposed facility has been designed to reasonably replicate a non-wireless facility (e.g., a silo, flagpole, or tree); and
 - 7. Extent to which the proposed facility is not readily identifiable as a wireless communications facility.

structures in Bokeelia. Therefore, Staff determined that the request did not meet the criteria of subsection (B)(5) of blending with the surrounding environment.

Staff concluded that the proposed tower did not reasonably replicate a flagpole. Not only would the tower be 149 feet tall, taller than any known flagpole in Lee County, it would also be approximately three feet wide at the apex. The tower will be designed to support the internal antennas. If a flag was hung, at a reasonable scale, from the proposed tower, the flag would be enormous. In conclusion, based on the requirements of LDC Section 34-1447(c)(3), Staff determined that the requested stealth wireless communication facility did not meet the criteria.

Staff then recommended reclassifying the proposed facility as a monopole antenna supporting structure, which is defined in LDC Section 34-1442.⁶ The proposed wireless communication facility will be constructed as a single hollow shaft with the capability of mounting the antennas internally. No guyed-wires or stabilization devices would be used to support the facility. They asserted that the proposed wireless communication facility met the definition of a "monopole antenna supporting structure."

Staff then considered approval of a monopole antenna supporting structure (the same structure proposed by the Applicant) for compliance with the requirements of Section 34-1445(b)(3).⁷ That review determined that the Applicant had submitted propagation maps showing the coverage they were currently providing to the area. The maps indicated a lack of coverage in the Bokeelia community of Pine Island.

⁶ **Lee County Land Development Code Section 34-1442:**

Antenna-supporting structure, monopole means a style of stand-alone antenna-supporting structure that is composed of a single shaft attached to a foundation. This type of antenna-supporting structure is designed to support itself without the use of guy wires or other stabilization devices.

⁷ **Lee County Land Development Code Section 34-1445(b)(3)(a) :**

Approval. For administrative approvals and in addition to the findings required by section 34-145 for special exceptions and variances, the County must make all of the following findings (or conclude that a finding is not applicable) before granting approval of the application.

1. The Applicant is not already providing adequate coverage or adequate capacity in the geographic search area; and
2. The Applicant is not able to use existing wireless communications facility sites either with or without repeaters to provide adequate coverage or adequate capacity in the geographic search area; and
3. The Applicant has agreed to rent or lease available space on the antenna-supporting structure, under the terms of a fair-market lease, without discrimination to other wireless communications service providers; and
4. The proposed wireless communications facility or antenna-supporting structure will not be injurious to historical resources, obstruct scenic views, diminish residential property values, or reduce the quality and function of natural or man-made resources; and
5. The Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the structures and facilities; and
6. The proposal will comply with FCC Reg 96-326 regarding emissions of electromagnetic radiation.

Second, there are no wireless communication facilities located on the north end of Pine Island. The closest wireless communication facility is located at 5400 Easy Street, which is approximately four (4) miles south of the subject property. The Easy Street facility cannot provide adequate coverage to the Bokeelia area. The proposed wireless communication facility will provide sufficient coverage to the Bokeelia area.

Third, the Applicant has agreed to lease available space on the antenna-supporting structure, under the terms of a fair-market lease and without discrimination, to other wireless communication service providers.

Fourth, no historical resources are known to be located on the subject property. The proposed wireless communication facility will be located on vacant land that is currently stripped of all vegetation and will not reduce the quality or function of natural or man-made resources.

Fifth, the proposed wireless communication facility will be required to install a 10-foot-wide landscape buffer, as outlined in Section 34-1447(c) of the Lee County Land Development Code.

The main distinction in classifying the tower as a "stealth wireless communication facility" or a "monopole antenna supporting structure" was that, should the proposed facility be reclassified and approved as a "monopole antenna supporting structure," at the location shown on the attached site plan, the Applicant would be required to obtain a variance due to the difference in setback requirements for stealth wireless communications and monopole antenna supporting structures. Stealth wireless communication facilities are required to meet the minimum setbacks required for the zoning districts in which they are located. Monopole antenna supporting structures are required to setback a distance equal to their overall height. The proposed facility is approximately 85 feet from the southern and eastern property lines. With the proposed height of 149 feet, the stealth wireless communication facility, if approved as a monopole antenna supporting structure, would not meet the required setbacks.

The second matter considered by Staff was the variance request from the Applicant. See Section 34-145(b)(3) of the Lee County Land Development Code.⁸ The Applicant requested

⁸ **Lee County Land Development Code Section 34-145(b)(3):**

First, that there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question.

Second, that the exceptional or extraordinary conditions or circumstances are not the result of actions of the Applicant taken subsequent to the adoption of the ordinance. [Actions lawfully taken by the applicant preceding the adoption of the ordinance will not be considered self-created].

Third, that the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.

Fourth, that the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Fifth, that the condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of a general or recurrent nature so as to make it more reasonable and practical to amend the ordinance.

a variance from Section 34-2175(5) of the Lee County Land Development Code,⁹ which limits the height of buildings or structures on Greater Pine Island to a maximum height of 38 feet above the average grade of the lot or 45 feet above mean sea level, whichever is less. That distance is measured to the peak of the roof. That restriction was drafted to minimize the effect of new single-family residences in older residential areas from towering over the older residences. During the drafting of the ordinance, the effect of the regulation was not contemplated. Therefore, Staff found that, due to the intent of the regulation, the limitation on the height of towers was an extraordinary condition that was not intended.

Staff concluded that the application of Section 34-2175(5) of the Lee County Land Development Code to wireless communication facilities was not the result of the Applicant taken subsequent to the adoption of the ordinance.

They also found that, due to Section 34-1441 *et. al.* of the Lee County Land Development Code, which attempts to limit the proliferation of towers in Lee County, the requested variance was the minimum variance that would enable the use of wireless communication facilities on Pine Island and further the intent of preventing proliferation of towers in Lee County.

Staff concluded that the proposed location of the wireless communication facility would be injurious to the single-family residences to the south of the subject property. The proposed facility will be approximately 450 feet from the adjacent residences. Staff found that relocating the facility to the northwest corner of the subject property would mitigate the impacts. That would increase the separation distance from the adjacent residences.

Due to the function of wireless communication facilities needing to be located higher than the surrounding environment and serving a wide area, Staff found that the request would not be of a recurrent nature, so as to make it more reasonable to amend the ordinance.

In addition to the variance criteria, as outlined in Section 34-145 of the Lee County Land Development Code, variances for wireless communication facilities are also subject to Section 34-1453, especially subsection (a)(1) thereof.¹⁰ Staff found that the height requirements, as outlined in Section 34-2175(5) of the Lee County Land Development Code, would effectively prohibit the use of wireless communication facilities on Pine Island. One of the main objectives of 34-1441 *et al* of the Lee County Land Development Code was to limit the proliferation of towers in Lee County. With the height limitation of 38 feet above ground level, wireless communication facilities would be required to build several towers close together to serve the area. That would not be consistent with the intent of the wireless communication facility section of the Lee County Land Development Code.

⁹ **Lee County Land Development Code Section 34-2175(5):**

Greater Pine Island. No building or structure may be erected or altered so that the peak of the roof exceeds 38 feet above the average grade of the lot in question or four feet above mean sea level, whichever is lower. The term "building or structure," as used in this subsection, does not include a building or structure used for an industrial purpose.

¹⁰ **Lee County Land Development Code Section 34-1453(a)(1):**

Variances of deviations to this division must be in accordance with Section 34-145. In addition to the considerations and finding required under section 34-145, the hearing examiner must also make at least one of the following findings of fact:

(1) Failure to grant the variance or deviation would prohibit or have the effect of prohibiting the provision of personal wireless services;

Staff's position was that Lee County encouraged stealth wireless communication facilities in place of an antenna supporting structure, however, the visual impacts to the surrounding properties had to be considered. Staff believes it was not compatible because a 149-foot-tall stealth flagpole wireless communication facility was not compatible with the surrounding developed and natural features. This is compounded by locating the proposed facility close to the residence to the south of the subject property. The most appropriate area to locate the proposed facility is on the northeastern corner of the property as far away from the adjacent residence as possible.

Staff's conclusion was that the Applicant had requested a Special Exception to permit the construction of a stealth wireless communication facility. There was a great difference between a stealth wireless communication facility, as proposed, and an antenna supporting structure. The review criteria for each are vastly different. Stealth criteria relate to how the facility will blend with the surrounding area and how it will appear as something it is not. Staff determined that the proposed facility did not meet the requirements for a stealth facility, as outlined in Section 34-1447(c)(3) of the LDC. The review for antenna supporting structures is based on the need for the facility, as well as, mitigating the potential impacts of the facility. Staff recommended classifying the proposed facility as a "monopole antenna supporting structure" instead of the proposed stealth facility. The design of the tower did not meet the requirements that stealth must first be seen to have another purpose and would not be constructed to reasonably resemble a flagpole. Instead it was a wireless communication facility with a flag, which would be out of scale with the facility, hanging from the side. Hanging a flag off the side of a building did not make a building a flagpole, and neither would a large pole with a small flag be classified as a flagpole.

Staff would support a monopole antenna supporting structure if it were relocated to the northeast corner of the subject property. That would allow the monopole antenna supporting structure to be located on the subject property at the greatest distance away from any residential uses in the area. With the current site plan, the stealth facility will be constructed on the corner of the property that is closest to the residential uses. Also, if approved as a monopole antenna supporting structure, at the location shown on the site plan, the Applicant would be required to get a variance from setbacks as required for antennas supporting structures. Staff was concerned that, if approved at the current location, the variance would simply be a formality and would be granted without a full review. Staff would recommend denial of a setback variance due to the size of the subject property and the availability of land to reposition the monopole antennas supporting structure to meet the setback requirements.

This Hearing Examiner agrees with the Staff's findings concerning Lee Plan Policies 14.1.8, 14.4.2, and 77.10.5 and finds that further discussion of the same is not required. The Hearing Examiner, however, cannot concur with Staff regarding their application of Lee County Land Development Code Section 34-1442 to the tower proposed by the Applicant. This office has, in at least two prior cases, concluded that similar or identical towers of the same height constituted a "stealth wireless communications facility," as defined in LDC Section 34-1442.¹¹

There has been a large response from the public with regard to this application. All of these responses favor the placement of a cell antenna site located in northern Pine Island. The

¹¹ See *Sunshine Towers, Inc. In ref. to Lehigh Auditorium Flagpole*, SEZ2004-00027, VAR2004-00036, Decision dated November 18, 2004 and *Verizon Wireless, In ref. to 68943 Civic Center*, SEZ2004-00029, Decision dated March 23, 2005.

residents currently have little or no cellular telephone service in that area. Following the 2004 hurricanes, they were without telephone service (both land line and cellular) for upwards of 10 days. The residents recite their ability to use cell phones for emergency purposes as the primary basis for their request. Likewise, boaters in the area would be able to have cell phone service, should this request be approved. This Hearing Examiner fully agrees with the assertions of the public regarding the need to place a cellular tower in this vicinity.

The County Staff did not deny that this service is needed in the Bokeelia area. The issue is what kind of tower is being proposed by the Applicant, and exactly where should it be located. The Applicant proposed construction of a 149-foot-tall stealth tower to resemble a "flagpole." That tower is generally described on Page 3 of 7 of Attachment F to the Staff Report and in The Lee County Tall Structures Application, Attachment B to the Staff Report. The proposed tower will be 149 feet tall, with a diameter of 24 inches at the top and 36 inches at the base, and will be manufactured out of steel and fiberglass. The actual antennas and all wiring will be located within the tower structure and will not be visible from the outside the structure. This is substantially the same as the two towers that were the subject of the above cited cases that came before this office. Finally, it actually flies a flag. The Hearing Examiner knows of no county ordinance that specifically defines or describes a "flagpole." It must be presumed that, at the time the Board of County Commissioners implemented Section 34-144, that the Board understood that, in order for a flag pole to include antennas and wiring within it, the pole had to be wider than a flagpole without that equipment.

The Applicant has sustained its burden by establishing that the subject tower is a "stealth wireless communications facility," as that term is defined in LDC Section 34-1442. In applying the test set forth in Section 34-1447(c)(3)(a), the Hearing Examiner finds that the antennas, and all other equipment, on the facility are not readily identifiable as wireless communications equipment. All such equipment is located within the interior of the tower body.

The testimony reflects that the overall height (149 feet) of the antenna is the minimal height required to provide cellular telephone service to the Bokeelia and north Pine Island areas, as well as, to boaters in the water off of those venues. The same would also prevent the proliferation of shorter towers throughout that area, which would be trying to provide partial cellular telephone services to different parts of the total coverage area that is covered by the larger tower.

The proposed location of the subject tower is more than 1,000 feet from any roadway. There are limited developments in the area and significant amounts of trees and vegetation that, from this distance, will obscure the viewing of the facility from most off-site locations. There is one residence located across an unpaved access drive from the site. The owners/residents of that residence have produced written consent to the construction of the subject tower near their home. The proposed facility is therefore compatible with the surrounding developed and natural environment.

The proposed tower will be 149 feet tall and no more than eight feet wide. Its bulk will be rather small when compared to a building or other facility that could be constructed on the same property. The scale of the tower is smaller than most other approved uses for the subject real property.

The proposed color of the tower is white. This is one of the least obtrusive colors that it could be painted and it will blend with the clouds in the sky.

There is little existing development surrounding the subject site. This remote location is coupled by a significant distance from the closest roadway and with large trees and vegetation that will significantly limit the view of the site from off premises viewing.

The Applicant has designed a tower that can, in fact, fly a flag. The Hearing Examiner must, therefore, conclude that it is an actual "flagpole," and not just a replication.

Since no portion of the antennas, wiring or other equipment will be visible, this Hearing Examiner can only conclude that the same is not identifiable as a wireless communications facility.

Based on all of the foregoing, this Hearing Examiner has determined that the Applicant's proposed tower is a "Stealth Wireless Communications Facility," as defined in Section 34-1442 of the Lee County Land Development Code and that it properly complies with the additional requirements of Section 34-1447(c)(3)(b) of the LDC.

Finally, with respect to the authority of the undersigned to grant a Special Exception pursuant to LDC Section 34-145,¹² the Hearing Examiner makes the following findings:

That the Special Exception is not contrary to the public interest, rather the same provides access to police, fire and other emergency services to the citizens located in the north Pine Island area; and

That the request is consistent with the applicable provision of The Lee Plan, Chapter 31 of the Lee County Land Development Code, and all other applicable Lee County Ordinances and Codes.

The Applicant is not currently providing adequate coverage or adequate capacity in the geographic search area. The Applicant is not able to use existing wireless communications facility sites, either, with or without, repeaters to provide adequate coverage or adequate capacity in the geographic search area. The Applicant has agreed to rent or lease available space on the antenna-supporting structure, under the terms of a fair-market lease, without discrimination to other wireless communications service providers. The proposed wireless communications facility or antenna-supporting structure will not be injurious to historical

¹² **Lee County Land Development Code Section 34-145 - Provisions with regard to the Special Exception Authority of Hearing Examiner:**

Section 34-145 (c)(4)(a.): The Hearing Examiner must grant the special exception unless he finds the request is contrary to the public interest and the health, safety, comfort, convenience and welfare of the citizens of the County, or that the request is in conflict with subsection (c)(3) of this section.

Section 34-145 (c)(4)(b.): In reaching his decision, the Hearing Examiner has the authority to attach conditions and requirements necessary for the protection of the health, safety, comfort, convenience or welfare of the general public. The conditions and requirements must be reasonably related to the Special Exception requested.

Section 31-145 (c)(3): Before granting any Special Exceptions, the hearing examiner must find that the Applicant has proved entitlement to the Special Exception by demonstrating compliance with:

- a. The Lee Plan;
- b. This Chapter;
- c. Any other applicable County ordinances or codes; and
- d. In the case of wireless communication facilities the hearing examiner must also make findings required by LDC Section 34-1445(b).

resources, obstruct scenic views, diminish residential property values, or reduce the quality and function of natural or man-made resources. The Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the structures and facilities. Finally, the proposed request complies with FCC Reg 96-326 regarding emissions of electromagnetic radiation.

Accordingly, this Hearing Examiner finds the Applicant is full compliance with LDC Section 34-1445(b), and grants the proposed Special Exception request to allow a 149-foot-tall stealth wireless communications facility; to wit, a flagpole, to be constructed on the real property identified in Exhibit "A" attached hereto.

Second, as to the variance requested by the Applicant. The Hearing Examiner finds that there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, specifically, that this is an appropriate site for the construction of a cellular tower to service north Pine Island and the adjoining marine area.

Additionally, that the exceptional or extraordinary conditions or circumstances are not the result of actions of the Applicant taken subsequent to the adoption of the ordinance; that the variance requested is the minimum variance that will relieve the Applicant of an unreasonable burden to his property caused by the application of the regulation in question; and that the granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Finally, this Hearing Examiner also finds that the condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of a general or recurrent nature so as to make it more reasonable and practical to amend the ordinance.

The undersigned Hearing Examiner therefore approves the Applicant's request for a Variance from Section 34-2175(5) of the Lee County Development Code and authorizes the construction of a 149-foot-tall stealth wireless communications facility on the real property identified in Exhibit A attached hereto.

In compliance with Section 3.1 of Lee County Administrative Code AC-2-6, the undersigned Hearing Examiner conducted a site visit to the subject real property prior to issuing this decision.

V. FINDINGS AND CONCLUSIONS:

Based upon the Staff Report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

A. The requested Special Exception:

- 1) is inconsistent with the goals, objectives, policies and intent of the Lee Plan;
- 2) does meet or exceed all performance and locational standards set forth for the proposed use;
- 3) will be compatible with existing or planned uses;

- 4) will not cause damage, hazard, nuisance or other detriment to persons or property; and

Based upon an analysis of the application and the standards for a variance, the Hearing Examiner makes the following findings and conclusions:

- A. There are exceptional or extraordinary conditions or circumstances inherent to the property in question.
- B. The exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of the ordinance.
- C. The variance, if granted, is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.
- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of a general or recurrent nature so as to make it more reasonable and practical to amend the ordinance.

VI. LIST OF EXHIBITS:

STAFF'S EXHIBITS

- 1 2002 Aerial Photograph [color]
- 2 Honc Property Site Plan and Setbacks (Page 4 of 6), prepared by Kimley-Horn and Associates, Inc., dated June 2005, date stamped June 20, 2005
- 3 Composite of emails from area residents

Résumés of Lee County Staff are on file with the Hearing Examiner's Office and are incorporated herein.

APPLICANT'S EXHIBITS

- 1 Letter from Erik S. Goldring supporting the tower, date stamped June 23, 2005
- 2 Two-page exhibit of Depictions of Coverage Area
- 3 Honc Property Stealth Communications Facility Statement of Hardship and Statement of Compliance

OTHER EXHIBITS

Honc

- 1 Composite consisting of four (4) aerial photographs of Honc Site looking north, east, south and west, dated June 8, 2005, taken by Aero Photo

Résumés of Applicant's consultants are on file with the Hearing Examiner's Office and are incorporated herein.

VII. PRESENTATION SUMMARY:

The Hearing Examiner explained the hearing process and placed all the participants under oath. Laura Belflower, introduced herself, noting she was the land planner and attorney representing Verizon Wireless, the Applicant.

The proposed request was for a 149-foot-tall [sic 145-foot-tall] stealth wireless communication facility that would be disguised as a flagpole, and would be located on a property that was zoned Light Industrial (IL). The request was to provide Verizon wireless services to greater Pine Island.

Ms. Belflower thought that Staff was in agreement with their application in large. They had agreed with the demonstration of the need for the facility, and with the concept of having the wireless facility. The issue was basically semantics, including some details on the location of the facility on the subject property.

She spoke of the ordinance that had been passed a couple of years ago. It had proven to be a rather problematic ordinance to deal with, in that wireless facilities needed to be a stealth facility first, and then prove that they could no longer be functional as a stealth facility before putting in a more traditional antenna supporting structure. There was no height limitation on the stealth wireless facility, but there were criteria as to the appropriateness of the facility to the area.

Ms. Belflower understood it was Staff's position that the larger issue was dealing with the ordinances. The ordinances said there could not be a stealth facility more than 100 feet in height that would meet the criteria for being compatible. She advised that they disagreed with that position. She had represented or participated in three hearings now with towers being disguised as flagpoles.

She stated she typically requested that they not have a flag on the pole. The only reason the flags were proposed was because that was the way the ordinance had been written. Most people found that the flag drew more attention, and it was more obtrusive. So far, the other Hearing Examiner had agreed that those facilities were appropriate and had approved them as stealth facilities.

The site plan showed the facility in the southeastern corner with the tower being approximately 80 feet away from the property line, and the fence line being 60 to 65 feet from the property line. Staff had asked three weeks ago if the Applicant would be willing to move the facility up into the northeastern corner of the property. They had met with the property owner, but they were not on the same page as much as they thought when they talked about moving it up into that area.

Staff's concern was about a house (the two structures that could be seen on the south of the southeastern corner), which was actually an unoccupied caretaker's house. People in the area had informed them that it had not been occupied for approximately 10 years. The owner of that caretaker's house had a house that was further to the south. She submitted a letter from him in support of the request (Applicant's Exhibit 1). Staff's concern was the residential character of the property, with the need to move the tower away from the

southeast area. The neighbor was in support of their plan, and all the engineering work had been done with the tower being built in the southeast corner.

Because Verizon needed to have a facility to service the area, they were willing to consider moving the tower to the northern quadrant of the property. They had drawn a box on the plan as to where the tower could be built. They had not finished the engineering for that area, and they did not know what the issues would be. The property owner expressed concern about moving the tower into that area because the tower had to meet the traditional tower setbacks equal to the height of the tower, as requested by Staff. That would push the tower into the Honc property, and they would not be able to make use of their property around the tower.

Ms. Belflower emphasized that the request was to locate the tower in the southeastern corner. Verizon Wireless' position was that if it was absolutely necessary to move the tower to the north, and if the neighbor would support that, perhaps it was not as necessary to build in the southeastern corner. In that case, they would agree to locate the tower somewhere in the northern area.

The property owner had requested that they leave it in the southeast corner, but if it had to be moved to the north she requested that Verizon be allowed to keep the stealth tower setbacks, and move it more to the east and to the north. She did not know if it was possible to do that from an engineering standpoint. She stated they did not know what the land was like in that area. However, they would want to move it as close to the property line as possible, so that the owner would have full use of his property.

Continuing, she stated she did not believe there was much dispute about whether it was appropriate to have the facility in the area or whether the tower was needed. The request was for the variance, and all those types of issues. She thought there was still the unresolved question as to where to place the tower on the property. There were experts present to testify to the points about the radio frequency issues and why the tower needed to be located in the area. If Staff was in agreement on those points, then she did not know whether that testimony was necessary.

The Hearing Examiner said he may need some short testimony, but they did not need to go into all the technical issues. He felt he had to have a factual basis to determine his decision. Unless anybody had any objection, he would allow introduction of the letter from Erik S. Goldring, dated June 22, 2005, into the record. There was a discussion about the concerns of the neighbor, and after several meetings with the property owner to discuss the proposal, it had resulted in the letter. There being no objections, the Hearing Examiner entered the letter into the record and labeled it Applicant's Exhibit 1. Ms. Belflower said they believed the neighbor did have some concerns, and he had several meetings with the property owner to discuss the proposal, which resulted in the letter.

As to the variance criteria, the Staff Report indicated the criteria and addressed the different points as to why the additional height was needed. As to the height that the Applicant was proposing, Ms. Belflower stated they could provide some technical information about why that height was necessary. It was very clear that the height limitation of 35 [sic-45] feet would not allow the facility to work. As the Staff Report indicated, they would have to cover the whole area with 35-foot-tall towers to provide the signal that was needed for the area. She inquired whether the Hearing Examiner would like to hear testimony from their RF Engineer. The Hearing Examiner said he needed a factual statement to support the request.

As the representative was coming forward, Ms. Belflower pointed out several places in the Staff Report that talked about moving the tower to the northwest. She thought those were in error. She believed they were talking about the northeast.

The Hearing Examiner asked the representative to state her name and address, and indicate if she had taken the oath. Marie Kiltoman, of 4931 NW 89th Terrace, Coral Springs, Florida, introduced herself, noting she had taken the oath. Ms. Belflower requested Ms. Kiltoman explain the need for the tower to be 149-foot-tall [sic-145-foot-tall] in the subject area, and what the effect would be if the variance was not granted and the height limitation was left at 35 feet.

Joan Henry, Assistant County Attorney, inquired if the Hearing Examiner wanted the testimony to be taken as an expert in Radio Frequency Engineering. Ms. Belflower asked Ms. Kiltoman to describe her background and experience. The Hearing Examiner told her to describe her educational background. Ms. Kiltoman noted she had earned her B.S. in Electrical Engineering. She had been working in this field as a telecom, and in CDMA, PCS, such as Verizon, since 1996. She noted she had designed markets in Dallas, Ft. Worth, Austin, Duluth, MN, Jacksonville, Tampa, Orlando, and now South Florida. The Hearing Examiner inquired where she earned her degree. She said she earned her degree at the University of Alabama, with a speciality in Electrical Magnetic Effects. Hearing no objections, she was accepted as an expert witness in Radio Frequency Engineering.

Ms. Kiltoman spoke about the question of why they needed a height of 149 [sic-145] feet in this particular location. She stated that in order to give adequate coverage to the targeted area on the end of Pine Island, a tower at the subject location, according to their propagation analysis tool, needed to be approximately 145 feet to cover the targeted area. If they tried to fit in towers at 35 feet, they would need multiple sites to cover the same targeted area and to provide the same quality of service to the residents on the island.

Josh Philpott, Senior Planner, inquired if the 149-foot-tall tower [sic-145-foot-tall] would serve more than one carrier. Ms. Kiltoman said it would. She said she believed they were constructing the tower for a minimum of three carriers. The Hearing Examiner queried what was the target area. Ms. Belflower noted there were two maps that had been included in the documents and application that showed the coverage area. She said the first map showed the area without any coverage (Northern Pine Island), which was Attachment D to the Staff Report. The second map showed the site of the tower and the coverage coming down to meet the existing coverage to the south. The different colors represented the different levels of coverage, and the overlap in the area to the south. She demonstrated by the map that their tower would cover basically the northern one-third of Pine Island, and a portion of the coverage would go out into the water.

The Hearing Examiner inquired if these maps were part of the Staff Report. Mr. Philpott said they were. The Hearing Examiner wondered if there was any current cell phone coverage on that portion of Pine Island. Ms. Kiltoman said their coverage was very poor. Inside of vehicles they may or may not receive their call. In a building, she would be surprised if service existed at all. He inquired if there were other carriers out there, and Ms. Kiltoman said she did not know. Ms. Belflower noted there were no other towers out in that area, so it was doubtful that there were other carriers.

The Hearing Examiner noted the reason they needed 149 [sic - 145] feet was to make the coverage extend as shown on the second page of Attachment D. He wondered if they went to smaller towers, how many towers would they need to meet that same coverage. Ms. Kiltoman said it would depend on the height and the locations of the towers. She said she did look at a scenario if the towers were at 35 feet, to provide the coverage of the targeted area, it would take about seven towers. Ms. Belflower noted the practical reality would be that there would not be coverage out there because it was not economically feasible.

Ms. Kiltoman also added that, if it was low like it was out there, there were also trees that had to be taken into account. The trees would interrupt their signal a great deal, and the quality would not be as clear. Mr. Philpott questioned if there were seven 35-foot towers, how many carriers would be carried on those towers. Ms. Kiltoman said only one. Ms. Belflower expanded the answer to say each carrier would have to have seven or more towers. The Hearing Examiner said he would enter the two colored maps into the record that were previously attached to the Staff Report, and he labeled them Applicant's Composite Exhibit 2, consisting of two pages.

As to the other criteria, Ms. Belflower noted that going through the Staff Report, Staff had been very careful in walking the balancing point that none of them had quite found at this point in terms of the ordinance in trying to address the situation. She felt they were in agreement with the Staff Report in that the facility was necessary and appropriate. As to the setback criteria and those types of issues in the request as originally proposed, it was in keeping with the criteria. It was a question of the appropriateness of a flagpole structure in the southeastern corner vs. a flagpole structure, called an antenna support structure, in the northeastern corner. She believed that the issues came down to the placement.

They were in agreement with the conditions that Staff had proposed, except for Condition 6, which she had indicated to Mr. Philpott in an e-mail the day before. Condition 6 stated

Any request for building permits for future collocations of additional wireless communications facilities on the property must be reviewed and approved under the requirements of the Lee County Land Development Code (LDC), Chapter 6.

She expressed appreciation that Staff had adjusted the condition to indicate that it was a building permit review as opposed other types of review. There was a new statute that would go into effect next week that made requests for collocations on towers requiring a building permit only, with no review under the LDC requirements. It was her understanding that Lee County's Building Code was in their LDC, so to the degree that they were talking about the Building Permit review portion of the LDC, they did not have a problem with Condition 6. She suggested it was unnecessary and unnecessarily confusing. The current process the County had required that collocated ground facilities go through the Local Development Order (LDO) and ADD review processes. That was much more involved than what the Statute indicated was necessary. She requested that Condition be deleted.

Other than that, Ms. Belflower said they were in agreement with the conditions relative to it being flat gray in color, the hidden cables inside the tower, the antennas being installed inside the tower, and the landscaping buffering, etc. She felt the property owner would want to talk about the 149-foot [sic-145-foot] setbacks from the boundary line that would be required for the antenna supporting structure, which was not required for a stealth wireless facility.

The Hearing Examiner inquired if it would be correct to say that from an engineering standpoint the tower could be constructed anyplace on the property. Ms. Belflower stated that was correct - - from the RF configuration, yes. The Hearing Examiner said they could eliminate the concern of where to place the tower. She agreed from an engineering standpoint, but noted that there were obviously design engineering issues. The Hearing Examiner understood that point.

Jason Laskey, representing Verizon Wireless, introduced himself. He explained he was a Site Acquisition Consultant for Verizon on the subject project. He stated his address was 5900 Broken Sound Parkway NW, Boca Raton, FL 33487 and said he had been sworn in. He noted this request had been reviewed by the FAA, and had been noted to be a no-hazard location. Additionally, the project had also been reviewed by the Airport Authority through Bill Horner's office, and had been approved. It had also been reviewed by the Mosquito District and the Lee County's Sheriff's Department, as well.

Ms. Belflower mentioned another point she wanted to stress was the fact that this was Light Industrially zoned, and it was recognized by the County as an area that was going to have more intensive activity or had the potential of having more intensive activities on the property. It was not quite the same situation that would be encountered in a Residential Zoning District.

Ms. Henry noted the County must comply with whatever regulations are in place, so again she agreed with Ms. Belflower that permits were issued in the form of LDC regulations, so she did not see a problem leaving Condition 6 in the Staff Report as part of the approval in this case. Ms. Belflower noted the problem was the State Law that said collocations for towers were exempt from the LDC regulations, and the Law provided a definition for that. By using the term, the Land Development Code, it would seem to suggest that it was pulling back into zoning requirements, which were also found in the LDC. If it was approved under the requirements of Chapter 11, or whatever the Building Code Chapter that was in the LDC, then they would not object to that. However, to make a general reference to the LDC she thought was confusing, and would suggest to Staff and to others that it was possible to pull back in the zoning regulations by that condition.

Continuing, she stated that collocations had to meet the conditions that were placed on the tower, as long as those conditions were consistent with the Statute. This produced the opportunity for confusion. If they knew what the number of the Chapter was in the Building Code of the LDC regulations, they would not object to adding it. Henry noted that would be Chapter 6 of the LDC. The Hearing Examiner inquired if there were any objections to the requirements of Chapter 6 of LDC. Ms. Henry said she had no objection, and neither did Mr. Philpott.

Josh Philpott introduced himself, noting his resume was on file in the Hearing Examiner's Office. He requested to be tendered as an expert witness in planning and zoning. Hearing no objections, the Hearing Examiner accepted him as an expert witness in planning and zoning matters.

Mr. Philpott noted the subject of the hearing was a request for a Special Exception in the IL zoning district to allow a 149-foot-tall [sic-145-foot-tall] stealth flagpole wireless communication facility per Land Development Code, Division 11, and a Variance from Section 34-2175(5) of the Lee County LDC, which limited the height of structures on Greater Pine Island to 45 feet above mean sea level or 38 feet above grade, whichever was less.

The subject property was located in Northern Pine Island, at the end of Tropical Lane, which was highlighted in red on the posted aerial photograph. It was in the IL zoning district, and in the Coastal Rural future land use category of the Lee Plan, which was outlined in Policy 14.1.8. To the north, east, and west of the subject property there was vacant, undeveloped land zoned AG-2. To the south was a single-family residence located approximately in the center of a ten-acre parcel, with an ancillary caretaker's residence located on the northern portion and the southern boundary of the subject property that was also zoned AG-2. The Hearing Examiner inquired if that was the residence of Erik Goldring. Mr. Philpott said that was correct.

South and west of Mr. Goldring's property there was another single-family residence. It was noted that Lee County had reclassified all uplands on Pine Island previously designated as rural to a new Coastal Rural designation of the Future Lane Use. The purpose was to provide a clear separation between rural and urban uses on Pine Island, to discourage the unnecessary destruction of native upland habitats, and to avoid placing more dwelling units on Pine Island than could be served by the limited road capacity to the mainland.

Also Policy 14.4.2 stated that partial developments at other locations on Pine Island should be limited to marinas, fish houses, minor commercial uses to serve local residents, and uses to service island visitors. These developments must be sited and designed to minimize disruptive influences to the greatest degree possible.

Addressing some of the background that Ms. Belltower had discussed, Mr. Philpott noted the original request was for a stealth wireless communications facility located on the subject property, and the site plan for that was attached to the Staff Report. It would locate it closer to the residence that exists in the area. Again, to the north and east of the property there were wetlands and overgrown vegetation, with some agricultural operations to the south, along with two adjacent residences to the south.

After discussions with the Applicant, Staff had recommended relocating the tower to the northwest. Mr. Philpott noted that whenever it said northwest that was an error and should be changed to the northeast portion of the property. Due to engineering constraints and time frames that they had been working with, Staff and the Applicant agreed that a site plan that showed the general location of the tower in the northeast portion of the property would be acceptable. The "bubble" basically showed an area where it could be located, but because of engineering time frames to get the specifics in place, the Applicant had been unable to determine and show the exact location.

Now entering into the hearing, they had discussed the possibility of preferring to keep it in the southeastern portion of the property, per the owners' request. Staff recommended denial of locating the tower closer to the residences, subject to all the policies in the Lee Plan, as outlined in the Staff Report, as well as the sections of the LDC that he had sited.

The Hearing Examiner entered the Aerial Photograph into the record, and labeled it Staff's Exhibit 1, and the Site Plan was entered as Staff's Exhibit 2. Mr. Philpott mentioned the policy he had just referenced, Policy 14.4.2, that the last sentence discussed commercial development, of which a tower would be considered a commercial operation. Such development must be sited and designed to minimize disruptive influences to the greatest degree possible. By locating the tower in the northeast portion of the property that would minimize, as much as possible, the adverse impacts of the facility. That portion of the island

had very few residences located in that area, and that was the reasoning of Staff to recommend the northeast portion of the property.

The Hearing Examiner inquired about the size of the parcel. Mr. Philpott believed the subject property was approximately 19 acres in size. The Hearing Examiner wondered how long the easterly boundary extended. Mr. Philpott said from the dimensions, they were looking at 662 feet. Continuing the discussion around the Lee Plan, Mr. Philpott cited Policy 77.10.5, which dealt with woodstorks, and the permitting of towers in Lee County. It stated,

The County will continue to permit communication towers in excess of 100 feet only by Special Exception. The impacts of such towers on woodstorks must be considered in the review of these applications.

Through the review process, Staff had determined that the proposed tower would not have an impact on the woodstork population in the area. One of the main differences that Staff and the Applicant had was the classification of the tower. The Applicant was requesting a stealth wireless communications facility as a flagpole. There was certain criteria and definitions that must be met for stealth wireless communication facilities. Staff did not believe the request had met that criteria or the definition. Staff classified the proposed tower as an antenna supporting structure. There were two classifications with very broad differences for the criteria for approving a request, as well as development standards that go along with that.

On Page 5 of 11 of the Staff Report, Mr. Philpott read the definition of a stealth wireless communications facility:

Stealth wireless communications facility means a wireless communications facility, ancillary appurtenance, or equipment enclosure that is not readily identifiable as such, and that is aesthetically compatible with nearby uses. A stealth facility must have, or appear to have, a separate function including, but not limited to, the following: church steeple, bell tower, spire, clock tower, cupola, light standard, flagpole with a flag, etc. and a stealth facility may be an approved secondary use of other structures concealing the stealth facility.

The intent of this definition was to provide wireless communication facilities to appear as something they were not. To provide a primary use to appear as a primary structure, such as a church steeple or a bell tower, it would not be determined as a stealth tower. The proposed flagpole in the Verizon Wireless drawings, was approximately 149 [sic -145] feet high when scaling the dimensions. It was approximately three feet wide at the top, and could range up to eight feet wide at the bottom. Staff did not find that the flagpole would appear as a flagpole at all. Also, the representation of the size of the flag on the flagpole was enormous (Page 3 of Attachment F in the Staff Report).

LDC Section 34-1447(c) Visual impacts minimized, Subsection (3) outlined the criteria needed for stealth facilities to be approved. Mr. Philpott noted the following:

(a.) No stealth facility may have antennas or ancillary equipment that is readily identifiable as wireless communications equipment.

With the proposed project, Staff found that since the antennas would be internal to the tower, it would not be readily identifiable as wireless communication tower. Continuing,

(b.) Stealth facilities must be designed so they are reasonably consistent with the surrounding built or natural environment. In order to determine compliance with this requirement, the county will consider the following criteria:

Overall height, the compatibility of the proposed facility with the surrounding developed and natural features, the scale, the color, the extent to which the proposed facility blends with the surrounding environment, the extent to which the proposed facility has been designed to reasonably replicate another type of facility (e.g., a silo, flagpole, or tree), and to the extent to which the proposed facility was not readily identifiable as a wireless communications facility, was discussed by Mr. Philpott.

As to the overall height, Mr. Philpott noted there were no structures in the subject area that reached that height. The tallest structure in the area was a single-family residence, two-story over parking, which was approximately 35-38 feet tall.

As to compatibility of the proposed facility with surrounding built and natural features, again there were no structures that tall or close to that height in that portion of Bokeelia, so the application did not meet that criteria. Also a 149-foot [sic 145-foot] communication facility was oversized for the surrounding area, both environmentally as well as the built environment. The Applicant had proposed to maintain the structure in a flat grey color, and that was acceptable to Staff.

As to blending with the surrounding environment, the structure was way too tall. He also noted that a 149-foot-tall [sic- 145-foot-tall] flagpole would not appear as a flagpole at all. A 3-foot-wide flagpole may exist, but it may be 200 feet tall. There was no way the proposed structure would appear to be just a flagpole, and Staff did not feel it would replicate a flagpole. The tallest flagpole found in Lee County was about 60 feet tall.

Mr. Philpott readdressed the difference between a stealth wireless communications facility and an antenna supporting structure, noting there was two totally different criteria. A stealth blends in with the environment and does not appear to be a wireless communication facility. An antenna supporting structure's criteria were created to minimize impacts that were known to happen with wireless communication facilities.

Staff recommended approval of an antenna supporting structure. In this case, the proposed facility as originally proposed, if approved as an antenna supporting structure and not a stealth wireless communication facility, would not meet setback requirements. If classified as an antenna supporting structure, the setback requirements would be equal to the distance of the height of the tower. So a 149-foot-tall [sic -145-foot-tall] tower would need a 149-foot [sic -145-foot] setback. As indicated on the Site Plan, Attachment F of the Staff Report, the tower was approximately 84 feet from the eastern property line, and 85 feet from the southern property line, which did not meet the setback requirements for antenna supporting structures.

Stealth tower communication facilities must meet setbacks as outlined in the zoning category, which it would meet, if classified as such. An antenna supporting structure, a monopole in this situation, meant a stand-alone antenna supporting structure that was composed of a

single shaft attached to a foundation. This type of antenna supporting structure was designed to support itself without the use of guyed-wires or other stabilizing devices.

Mr. Philpott indicated the Applicant testified it was basically semantics. Staff was recommending approval of a similar structure. It basically came down to how it would be classified. With the classification of an antenna supporting structure, with this proposed Site Plan, the minimum tower setback was 150 feet, which would meet the criteria of an antenna supporting structure.

Some of the issues that were required to be met as part of an antenna supporting structure were discussed. These were found in the LDC Section 34-1445(b)(3).

1. The Applicant is not already providing adequate coverage or adequate capacity in the geographic search area; and
2. The Applicant is not able to use existing wireless communications facility sites either with or without repeaters to provide adequate coverage or adequate capacity in the geographic search area; and
3. The Applicant has agreed to rent or lease available space on the antenna-supporting structure, under the terms of a fair-market lease, without discrimination to other wireless communications service providers; and
4. The proposed wireless communications facility or antenna-supporting structure will not be injurious to historical resources, obstruct scenic views, diminish residential property values, or reduce the quality and function of natural or man-made resources; and
5. The Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the structures and facilities; and
6. The proposal will comply with FCC Regulation 96-326 regarding emissions of electromagnetic radiation.

Staff recommended approval of the variance, as outlined in the Staff Report. One of the criteria stated that "the variance granted was the minimum variance that would relieve the Applicant of an unreasonable burden caused by the application of the regulation in question to his property." With the height of 149 [sic -145] feet, the Applicant could provide service to the northern third of Pine Island, as well as provide opportunities for collocation for additional carriers on Pine Island. It would also reduce the need for additional towers on Pine Island, and further the intent of the elimination or proliferation of antennas or towers in Lee County.

Mr. Philpott noted the granting of the variance would not be injurious to the neighborhood or otherwise detrimental to the public welfare. By relocating the tower to the northeastern portion of the property, Staff found that the Applicant would meet that criteria. He noted wireless communication facilities (stealth or antenna supporting structures) must request a variance, and Section 34-1453 outlined additional criteria that must be met. Failure to grant

the variance or deviation would prohibit or have the effect of prohibiting the provision of personal wireless services to the area. With the height restriction of 35 feet, and the need for many towers at that height to provide adequate service, Staff found that without the variance it would have the effect of a wireless communication facility being prohibited on the northern end of Pine Island.

Continuing, Mr. Philpott stated Staff was not opposed to a tower. A tower was needed on the northern end of Pine Island. It was about definitions and criteria that must be found. Staff found that the proposed stealth wireless communication facility was not stealth at all. It was a large pole with a flag mounted on it, although Staff did not want a flag on it. Staff found that an antenna supporting structure was more appropriate.

Locating it in the northeast portion of the property was the ideal situation to mitigate the impacts. That would place the structure at the greatest distance away from any residential uses in the area. The current plan would place the stealth facility in an area that would be closest to the residential uses. Instead, Staff recommended denial of a setback variance request due to the size of the subject property, and the availability of land to reposition the monopole antennas supporting structure to meet the setback requirements.

The Hearing Examiner inquired if the County had knowledge of any other 149-foot-tall [sic 145-foot-tall] stealth towers available. Mr. Philpott said that in this area of Pine Island, with the amount of vegetation and the height restriction of vegetation, there were other options of stealth. They could "build" palm trees or pine trees, or church steeples. The Hearing Examiner wondered about a 140-foot-tall palm tree. Mr. Philpott noted the Hearing Examiner was understanding the intent of what Staff was trying to say. In this case, with the surrounding environment stealth would not work because it would not meet the criteria of stealth. That was why Staff recommended approval of the antenna supporting structure, with the height of 149 [sic- 145] feet tall to allow the location of the tower, while minimizing the impacts and acknowledging the difference between the two. At 149 [sic-145] feet tall, a stealth facility would not work. The Hearing Examiner said, in other words, he was saying to his knowledge there was not any other 149-foot-tall [sic -145-foot-tall] stealth tower available that would be stealthy in that location. Mr. Philpott said that was correct.

Ms. Belflower queried Mr. Philpott if there was a stealth design at 149 [sic -145] feet tall that would be appropriate in that area. Staff was saying they would support an antenna supporting structure, and did that mean that Staff would support it as a typical, traditional monopole with external antennas. Mr. Philpott said no, and that went back to the difference between an antenna supporting structure and minimizing the impacts. Allowing for internal antennas does minimize the impact of a pole without all the "things" hanging off it. With the external antennas it does attract more attention than having internal antennas.

Ms. Belflower replied that they had to stealth it, but they could not call it stealth. Mr. Philpott said if she wanted to call a 149-foot-tall [sic -145-foot-tall] flagpole "stealth," she was welcome to do that. Ms. Belflower said what she was saying was that the antennas had to be internal or hidden so they are not discernable as antennas. She inquired if it was Staff's position that the antennas have to be internal, and it had to meet all the requirements as if it was a traditional tower.

Mr. Philpott said Staff saw this as an antenna supporting tower or in a supporting structure, which he guessed she would classify as a traditional tower. The 149-foot-tall [sic -145-foot-tall] flagpole was not stealth from Staff's review. What the industry views as stealth was

totally independent of the Lee County LDC. Staff found, with the criteria they had, all reasonable measures had to be taken to reduce the impact that the antenna supporting structure would have. Staff found that was one of those reasonable measures.

Ms. Belflower inquired if the entire application that they made was provided to the Hearing Examiner. She had the impression that there were several documents that were not included in the Hearing Examiner's package. They were called "Honc Property Stealth Communications Facility Statement of Hardship," "Statement of Compliance," and "Honc Property Statement of Non-Impact on Surrounding Properties." Ms. Henry, Assistant County Attorney, noted there was a list of attachments on Page 11 of the Staff Report. It was determined that the documents Ms. Belflower mentioned were not included, so she submitted them into the record and the Hearing Examiner labeled them as Applicant's Composite Exhibit 3.

Mr. Philpott noted another issue that he had not addressed. He stated that Staff had letters of opinion from property owners. They were both in email and letter form, and he provided a copy of those to the Hearing Examiner. They were labeled Staff's Exhibit 3.

Ms. Belflower stated that the owner of the property was present at the hearing. She had not included him as part of her testimony, as she thought he wanted to testify. She also noted the owner had flown some aerial that may be helpful, and she gave a set of "Aero Photo" colored pictures of the property looking from the west, east, north, and south.

At this time, the Hearing Examiner opened the floor for public comments. Edward G. Asbury introduced himself, noting he lived at 7439 Cares Away Park Circle, Bokeelia, Florida. He stated he was an ex-Navy electronics technician, an armature radio operator for the last 50 years, an advanced class armature radio operator for more than 35 years, noting he was quite familiar with wave propagation, and he saw the need for the height of the tower for UHF communications. As far as he was concerned, 149 [sic-145] feet was not too high for a tower. If he was building a tower, he would like to build one even higher. He stated they needed that height to get the proper range - the proper distance.

During Hurricane Charley, he had one instance where he had a 9-1-1 situation, and there was no telephone service in Bokeelia for more than one week. He had to travel seven miles to the fire station to contact someone at the fire station to ask how he could get ahold of 9-1-1. He noted he had a heart condition, and has had four heart attacks, and there were a number of people out there that needed to have good, reliable communications. They had none during Hurricane Charley. A cellular telephone was the only thing that would work. His cell phone would work at the Center of Pine Island, but it would not work in Bokeelia.

He stated they needed the height for that type of antenna, so that they can reach out into the water. There were a lot of boaters and boating activity, and it was not just reaching the residents of Pine Island, but it was also the need for reaching the people that were out in boats in the water. This was not only in Charlotte Harbor, but out on Cayo Costa, Captiva, and further out. There was no cellular telephone communication, and the Marine VHF was not even that good out there because of a very limited range. Height was the key.

Mr. Asbury noted that the thing that disturbed him about the hearing today was the subject of a safety issue. It concerned peoples' lives and people who may need emergency communications. The hearing had been about semantics and definitions, with no concern about people's welfare. They definitely needed cell phone communication out there. He

noted he had tried AT&T, Nextel, and Verizon, and none of those have worked in that area. The Hearing Examiner inquired about where he lived in relation to the tower. Mr. Asbury said he lived about a half a mile directly west of where the tower would be located.

The Hearing Examiner questioned him if he had any concerns or issues on what part of the property that cell tower would be located. Mr. Asbury said only from a logical standpoint, and in thinking about the owner of the property who was giving up a certain portion of his property for the tower. If the tower was put in the middle of the property, which would make the property a lot less useable. The Hearing Examiner said he was interested in his concern visually. Mr. Asbury said the location did not make any difference to him. He said the tower would not be seen unless one was right up close to it. There were trees around the area that were high enough that unless someone was close to the tower they would never see it.

Marilyn Porthouse, of 16232 Buccaneer Street in Bokeelia, introduced herself. She indicated that she was the past president and secretary of the Bokeelia Civic Association, which was initiated in July 2004. She noted they had all been severely hit by Hurricane Charley. People in Bokeelia have known for a long time that there was a need for a cell phone tower, because they did not have coverage. They were made more aware of that since Hurricane Charley. The subject of this stealth tower had been discussed at three of their meetings. There were 290 members in the Bokeelia Civic Association, and she had 120 of those people on an e-mail list. Notice of this hearing had been sent out those 120 families, and in all of their discussions at the meetings, and the e-mails that she had sent out, she had received no objections to this tower. In fact to the contrary, people in Bokeelia have welcomed it.

Continuing, Ms. Porthouse said there had been another cell phone tower proposed a couple of years ago to be built on Stringfellow Road, and that was objected to by a large percentage of the people in Bokeelia. This tower, as it was being discussed, the people had said because it was going to be placed way in the back in a remote area, that if it could serve the Bokeelia area, and it would be an ideal location.

She noted that Lee County had purchased the Harbor Hideaway Marina, which was fairly close to the subject property. Ms. Porthouse thought with all the fishermen that were going out from that marina, it was a safety issue for people who do not have marine radios. She stated that they had received distress phone calls from people who were out on the water, and they had to go out and recover them. They had called to their home phone, not on a cell phone.

There was also the Matlacha-Pine Island Fire Control District, who had recently contacted the County about the possibility of putting a temporary fire station at Harbor Hideaway. The use of a cell phone tower for that purpose would also be helpful. Ms. Porthouse did not think the people in Bokeelia would have any objection to the location either north or south on the subject property, but she thought the southeastern location of the tower would be a better location because she imagined that there were probably electrical provisions, should the tower need to be lighted at a later date.

Bette M. Asbury introduced herself, noting she lived at 7439 Cares Away Park Circle, Bokeelia. She said that Mr. Asbury and Ms. Porthouse had covered almost everything she had to say regarding the cell phone tower. She stated she had also sent emails to many people that she did business with on and off the island. Her thoughts along those lines were the trades people with whom she had dealt that did business on the island, especially during the Hurricane Charley, and those who needed to get in touch with their dispatchers. Most

were carrying cell phones that were not useable. To that end, she felt the cellular tower was an absolute must. With regards to safety, they were attempting to put in some form of fire department, whether temporary or permanent. The cell tower would help people from that department in any emergency. She said either area of the site would be suitable for the tower, as far as she was concerned.

Tracy Wells introduced herself, and stated she lived at 7963 Gabion Court, Bokeelia. She said she had received the notice from the County about the hearing because they had purchased property about a year ago, and they were within 500 feet of the Honc property. She pointed out their property on the aerial, which was five acres in size and vacant. She noted they intend to build a house on the property. She had concerns about the placement of the tower. She would like to see the tower placed on the northeast corner of the subject property. She felt it would minimize the visual impact that they would have.

Mr. Philpott noted from the location of Ms. Wells' property, in his mind's eye he thought that if they were going to build a two or three story home, their view would actually be better to have the tower in the southeast corner of the property. He noted the Goldring property was between their property and the corner, and he thought there was more wooded acreage in the Goldring property to buffer them, if the tower was placed in the southeast corner. Ms. Wells noted the tower would be approximately 400 feet further away, if it was placed in the northeast corner.

Ms. Belflower noted there was much more vegetation between the southeast corner and Ms. Wells' proposed home site, so, although there was more distance, a good portion of that had no trees on it. Ms. Wells understood what she was saying, and she thought it was a valid point. She noted she had looked at a tower the day before that was approximately the same size as what they were proposing to build, and she said it had not been too objectionable when she was close to it. However, it was very visible further away. She felt the trees would certainly provide a buffer, but 300 feet was 300 feet, and she would like it 300 feet farther away from her home.

Vincent Honc introduced himself and indicated that he lived at 1246 SW 4th Avenue in Cape Coral, Florida. Although he lived in Cape Coral, he wanted to introduce how he fitted into the property. He was born and raised on the subject property, which did not necessarily mean that they had to have a tower.

He pointed out the 20-acre parcel on the map, which included a 1-acre parcel where his aunt had lived for 50 years, that his Father owned. So, the 20 acres has been in the family since 1918, when his Grandfather bought it. Now the house was his father's house and shop. For 20+ years he ran his construction company out of this location. Hence, they had the IL zoning. They used to pour concrete slabs for seawall construction, process dirt, and cleared debris, etc.

Currently, Honc Construction, the family's construction company, was still processing fill and top soil on the property, with the anticipation of a future use. The back ten acres was being passed on to him, so he would soon be the owner of the 10-acre parcel in question. He pointed out a parcel that his uncle owned up until five years ago, and Mr. Honc noted he currently owned that parcel along with an additional 10-acre parcel. His point was that he would be the most affected landowner in that area, with all the acreage he owned right now.

With that said, he introduced the Hearing Examiner to some aerial photographs that were taken within the past two weeks, in order to provide an updated view of the property. There were no objections to the introduction of the four photographs into the record and the Hearing Examiner labeled them as Honc Composite Exhibit 1.

Mr. Honc placed the view looking north on the board. He pointed out the Goldring property that had been discussed. He noted they had several conversations with Mr. Goldring. At this time, they did have his support, as noted in his letter. He pointed out Mr. Goldring's residence, his barn, and a building that was the caretaker's residence. He demonstrated that Mr. Goldring's residence was quite a distance from the original proposed location for the tower, and he believed that was why Mr. Goldring supported the project. Mr. Honc noted he would prefer the tower in the southeast corner. He said his reasoning was that they needed the stealth tower, and not so much as to whether it blended in or not, but the offsets and functionality of the remaining property was what was important to him.

He pointed out the shell-grade road that Mr. Goldring used to enter his residence. That road was eight inches thick of shell rock, which had been maintained over the years by Mr. Honc's family. The tower site was the end of the road. There were power poles running down the same line all the way to the end of the road. From a construction standpoint, there was the availability of road access and the power lines. If the tower site was located adjacent to that, it would have a very minimal effect on his property, as compared to the northeast corner.

Mr. Honc pointed out his property, which he said was bedded and furrowed for a palm field. It was partially planted at this time. It was the same for another parcel he pointed out. His intention for the subject property where they want the tower, was to raise ornamental palm trees. Even though it was zoned IL, which they had used over the years in an industrial sense, their plan was to turn the subject 10-acre parcel into 10 acres of planted ornamental palm trees within a year. He pointed out the other parcel he owned, and it was currently to its capacity with approximately 7,500 palm trees located on that parcel. They would be able to plant approximately 7,000 to 8,000 baby palm trees on the 10 acres next year.

He said that was his history as to how he fitted into the property. The Hearing Examiner asked him about another residence on the photograph. It was determined it was owned by Wayne Sterling, and Mr. Honc noted that property was currently for sale. The Hearing Examiner inquired if that was a residence or a residence and something else. Mr. Honc said he believed it was about a 3,000-square-foot residence. There was a detached garage, and maybe a workshop. They also had a small pond in the front. He also pointed out Ms. Wells property.

Mr. Honc said he preferred the tower be placed in the southeast corner because of the utility of the existing road and the existing power lines. Beyond that, what was most important to him was the 25-foot setback, which he believed was needed to offset the stealth tower. Mr. Philpott said the rear setback would be 15 feet, and the side setback would be 20 feet. Mr. Honc said, in that case, the south property line and the east property line would be the side, and to assume that in the IL zoning typically the stealth tower would be acceptable with a 25-foot offset. He said if the tower went in the northeast corner, as the alternative that was shown, the height of the tower was 149 [sic -145] feet, which would require approximately a 150-foot from the side, and the tower compound itself was 50 feet wide by 50 feet deep.

If that was located in any corner, and if they were to go to the 150-foot offsets from the side property lines, and the 50-foot by 50-foot compound for the tower equipment, they would

have approximately a 200-foot by 200-foot space which equaled 40,000 square feet in round numbers. It would be very difficult even to plant trees, which would be the most minimal use that could go on the remaining property, which meant approximately an acre would become unuseable. Therefore, if they stuck to the larger offsets, they would lose approximately 1 acre of the property for tower use.

If they stuck with the stealth tower concept and could be limited to a 25-foot offset, and the 50-foot by 50-foot compound, in round numbers, Mr. Honc said that was an area that was only 75 feet by 75 feet, if they could tuck it into the corner. That was approximately 5,625 square feet, which may not sound like a lot, but the other way increased it by seven times (40,000 feet versus 5,625 square feet). Therefore, it would effectively use up seven times the amount of the property for effectively the same purpose.

With that said, Mr. Honc suggested an alternative. He noted he had heard a lot about this being a flagpole or not being aesthetically compatible or appear to have a separate function which included a flagpole. As far as, being aesthetically compatible, he had said before, the uses previously on the property were not really aesthetically pleasing. In his opinion, the proposed tower would look much better. As proposed, it had an 8-foot-high fence encompassing the site, and the property was heavily landscaped. It was aesthetically pleasing in his mind's eye vs. heavy construction equipment, screening fill dirt, and that type of activity. Therefore, the tower could be aesthetically compatible.

Another thing regarding aesthetically compatible, until Hurricane Charley arrived, the sliver of land that Mr. Honc pointed out had been heavily vegetated with Mangroves and Australian Pine Trees. Most of the Australian Pine Trees were either downed or broken halfway up during the storm, and now they were basically mangled along with the Mangroves. Prior to Hurricane Charley, that area, along with the other mangroves in low-lying areas, it was heavily vegetated with 80- to 100-foot-tall Australian Pine Trees. He was thinking that the aesthetics of a 149-foot-tall [sic -145-foot-tall] flagpole design did not look that much different from an Australian pine tree with its leaves stripped off. It would not be mangled and bent like the trees were now, but eventually the trees would grow back.

Mr. Honc offered one other potential use. In farm fields in Bokeelia, there were multiple windmills that were monopoles. When they had mentioned a flagpole, he could see a flagpole in the tower. What he really saw was a windmill, and on his property he saw windmills when his crops mature. The windmills were monopoles with two blades. They had a small equipment package at the bottom, which he believed was a propane tank. If they did not like the idea of a flagpole, he offered the alternative of a windmill. Basically, they looked the same. The Hearing Examiner questioned the height of those windmills. Mr. Honc said to his knowledge they were in the 40- to 50-foot range. He stated those were the aesthetic views that he wanted to point out.

From personal experience, Mr. Honc stated cellular service in Bokeelia was horrible. Once past the center of Pine Island, where the Easy Street tower was located, and then traveling one mile north, the cellular phone service becomes very sporadic. He noted he had gone to great lengths in the last couple of weeks to speak with Mr. Goldring, the property owner to the south. Mr. Honc said it was his opinion that Mr. Goldring's property and his property would be the most affected by the subject tower. He was willing to go forward and put a piece of his property into the use. It was not all selfish reasons, as there was public need in the area he was familiar with. His family had been in the community for a long period of time.

He noted he had brothers and sisters that lived in the community, his parents lived on-site, and his uncle lived next door.

There was a public need for cellular service, so that was goal Number 1. Goal Number 2 was this was the best site available for the tower. He knew that two other projects had been shot down in the past. He would like to see this one move forward, as he thought there was a real need for it. With that said, he was willing to put his property there for this use. There were financial benefits, and he would not ignore that completely; however, he had another financial use for the property, which was a palm tree field.

Mr. Honc requested that they get the tower, but put it in a fashion that affected his property in the least way possible. That would be to go to the minimum offsets of the 25 feet, and if it being named a stealth tower was semantics, and if the County's ordinance says they have to have a stealth tower to meet those offset requirements, he would lobby for a stealth tower in that case. He wanted to use a minimal amount of the property in the southeast corner with good road and good power, and existing access easements to accomplish that goal.

Mr. Philpott had questions regarding the discussions of 25-foot setbacks and to propose the Site Plan as originally submitted by the Applicant. That was Attachment F in the Staff Report, which had been submitted by the Applicant. It was determined the setback was 85 feet from the property line to the tower. Mr. Philpott said Mr. Honc had mentioned a 25-foot setback, and the Site Plan that was submitted did not show 25 feet.

Ms. Belflower said the stealth facility setbacks were only subject to the zoning district setbacks. There was a provision in the LDC that was not in the tower section, but was in an entire other section, that had never been clear, as to whether it had any application to stealth or traditional tower facility that required they take the District's setbacks, and that for every two feet over the minimum district height, they had to set back one additional foot. So that was where the 80-foot setback came from, in not knowing whether that had or would have ever been applied, rather than to complicate the issue with debating whether that needed a variance. She believed the strict reading of the requirement was that stealth facilities have to meet the District's setbacks.

Mr. Honc said he had referred to the original plan, but he had not personally been in receipt of the new one. The plan he was referring to was proposed three years ago, and he had referred to that plan as the original plan. He wondered if Staff was recommending approval of the Site Plan that had just been shown. The answer was no. The Hearing Examiner said those setbacks were 65 feet to the fence line. Mr. Philpott said that was the compound line. The Hearing Examiner said the 85 feet was to the outside of the stealth tower itself. Ms. Belflower said that was correct. The Hearing Examiner noted Staff was recommending that structure with those setbacks up in the northeast corner. Mr. Philpott said no, and that Staff was recommending denial of this Site Plan, including the setbacks, because those plans related to the interpretation of it being a stealth tower communication facility.

The Hearing Examiner clarified that it was Staff's position that this was not a stealth tower. Mr. Philpott said that was correct, and in approving an antenna supporting structure in this location would preempt a variance that would be needed. Staff had objected to that prior to going through a variance proceeding that would approve an antenna supporting structure in this location. The Hearing Examiner questioned if Staff was opposed to an antenna supporting structure in this location, or did they want the antenna supporting structure in the northeast. Staff preferred the northeast portion, with the appropriate setbacks. Mr. Philpott

noted if it were approved in that location, meeting the 150-foot setback was appropriate for a 149-foot [sic-145-foot] antenna supporting structure.

Mr. Honc said he would make a concession. As he understood the process, the Hearing Examiner would take some time and review the request and then render a decision. The Hearing Examiner said that was correct. He said he would actually go out and look at the property too. Mr. Honc said he would be willing to support a tower in the northeast corner, if they could do something about the setbacks. He said he was more concerned about the usability of the property than he was the location. If they could have 25-foot offsets off the property line like the IL zoning would allow, then the northeast corner would be fine, if that was necessary. Northeast or Southeast with minimum setbacks was okay with him.

Mr. Philpott asked Mr. Honc if he was familiar with the Easy Street location. Mr. Honc said he was there about 10 years ago. Mr. Philpott thought the tower was there at that time. Mr. Honc wondered if it was a monopole now, noting it used to be an old tower about 150 feet high with guyed-wires. Mr. Philpott said it was still the same. Mr. Philpott inquired if he was familiar with the operation around the tower. Mr. Honc said he was not. He questioned Mr. Honc if he would be surprised to know that there was a palm tree farm around it. Mr. Honc replied it would not surprise him.

The Hearing Examiner asked about the road out by the property. Mr. Honc pointed out the area that was asphalt, and then a very well-maintained shell area, the area further along had less shell, and then there was another very well-maintained shell area. The Hearing Examiner said the reason he was asking was he needed to know what kind of vehicle he needed to get in there. Mr. Honc said he could drive his Cadillac out there, but he would not advise driving a Corvette. Ms. Belflower said he could drive about halfway down on the northern side.

At this time, the Hearing Examiner opened the floor for rebuttal. Ms. Belflower said that from the testimony one could tell this was a very unusual situation, and she loved to have people in support of the tower. She did not think there was any question of the appropriateness of having a facility in the area. The need of the facility and the desire of the people to have a facility, without a great deal of concern from them as to the appearance or the exact location of the tower, was a strong indicator.

There had been testimony presented with regard to the trees that were in the area and the inability to see the tower from most of the areas surrounding it. That would be the same whether the tower was in the southeastern corner or the northeastern corner. There was extensive vegetation in that area. The character of the area, relative to the visual impact, needed to be taken into consideration.

The crux of the matter was the question of whether or not the facility should be a stealth facility, which was more than mere semantics and had triggered a lot of larger issues. The history of the ordinance and why it was so confusing was because it was an extremely contentious ordinance. It had taken two years to get through the process and to come up with the actual ordinance. As a person who participated in that process on behalf of Verizon Wireless and Nextel, Ms. Belflower noted they had basically ended the discussions when they were told that they could build a stealth facility without having to meet all the requirements that an antenna support structure had to meet. They were told that they wanted them to build stealth facilities, and if they built a stealth facility, they would be able to go forward and not have to be worried about all the other requirements.

Continuing, Ms. Belflower said that some of the requirements had caused them to almost give up at that point because they understood that they were going to use stealth. A 100 percent setback requirement was a very restrictive setback for towers. It had almost caused them to give up at that point because they understood that they were going to use stealth. What they had perceived and what they expected to get was perhaps not relevant because the Staff member who had said that was no longer with the County. However, she felt it was important to note that the ordinance said that they must use stealth. They had to prove that they could not use stealth before they could go forward with anything else.

Historically in the last four applications, Staff had taken the position that they could not have a stealth facility more than 100 feet in height. Staff's interpretation was that it was not stealth if it was more than 100 feet. She said they were in a Catch-22. They could not build to the height that was needed. Staff had told them that they would support a structure less than 100 feet, but 100 feet would not work. That meant they should not have to go forward with a stealth facility, however, if they did not go forward with the stealth facility, they would be subject to all the requirements of an antenna supporting structure. Therefore, Ms. Belflower said she would like to respond to the points raised by Staff in terms of the specifics of what constitutes stealth.

In the definition Mr. Philpott read, it did indicate that the facility was not readily identifiable as a wireless communication facility, and that it was aesthetically compatible with nearby uses. Whether something was readily identifiable as a communications facility, most people would just think that was a very tall flagpole. That would not mean that they would identify it as a tower with a flag on it. Therefore, in terms of it being readily identifiable as a wireless facility, this facility would not be as the antennas would be inside.

In looking at all the uses listed as examples of a wireless facility, they were all tall, and they were all taller than what one would typically find, such as church steeples, bell towers, spires, clock towers, cupolas, light standards, but those were all typically taller than the other structures or vegetation in the area. So being taller than what may be in the area was not necessarily indicative of it being incompatible with the nearby uses.

In terms of talking about the criteria that were listed under the stealth facility, there was the discussion about the mass of the tower suggested that it was a tower. The dimensions were not exact, but they were not so far off in terms of the size of the base. If they were talking about a structure that was three feet wide at the top and even as much as eight feet wide at the base, and they add up the square footage, that was a very small mass. She emphasized they were not talking about a massive structure, and there was nothing about that, which indicated that it was a tower just because it was tall.

The scale of the facility was another criterion, and consistently Staff had held because it was tall it was out of scale. Being certified as an expert in planning in the past, Ms. Belflower noted a planner evaluated not only the height of the structure, but also the width and the depth of it when looking at the scale and the relationship of it to other things. When there was a tall, thin pole relative to a short, fat building, those were necessarily of a consistent scale. Therefore, looking at just one aspect of the height of the structure was not correct as to whether it was a stealth facility.

It had been indicated that the facility, as categorized as a stealth facility, would violate Policy 14.4.2, which talked about commercial developments on Pine Island being sited and designed to minimize disruptive influences to the greatest degree possible. Ms. Belflower

noted she did not hear any testimony from Staff as to what the disruptive influences would be in calling it a stealth facility with stealth setbacks in the southeast corner of the property verses calling it an antenna support structure and meeting the one to one setback in the northeast corner. She said there would be no disruptive influences from this facility. It would not create traffic, it would not create noise, it was not lighted, and it was certainly much less intensive than anything one would typically expect to find on an IL piece of property. She had not heard any evidence to support a finding that it would violate that policy.

Similarly, there were criteria in the variance that it would not be injurious to the area. However, being labeled as a "stealth" facility made it injurious, but not being labeled as a "stealth" facility made it acceptable. She did not see how changing the label on the tower and moving it some distance was really going to make any difference as to whether it was injurious to the community. It got down to the question and what became important was whether it was called a stealth facility. Ms. Belflower said she did not care whether it was called a stealth facility except for the impacts. The largest impact was the setback. She thought the Site Plan with the bubble plan where the tower could go, was quite clear in meeting the setbacks and provided some flexibility of engineering. If they add a 50-foot by 50-foot compound somewhere within that area, and it was going to be in the middle, it would impact the Honc's property. They would have to work around the facility. She did not see anything that would be gained from that.

From Verizon's perspective, as long as it worked from a civil and structural engineering standpoint, was possible to get utilities to the facility, and have proper access, they did not particularly care where it was located. They wanted to keep the property owner happy, and they did not want to recede from the position that they believed this was a stealth wireless facility. The Hearing Examiner in the prior three cases found that to be the fact, and all those were 149-foot-tall stealth wireless facilities. A stipulation was added that a flag was not to be flown. It was Verizon's preference not to fly a flag because it needed to be lighted from the bottom or else taken down every day to properly honor the flag. There were also visibility issues and maintenance issues, but if Staff's position was that it was to be a flagpole with a flag, then they would fly the flag.

As to the setback issue, she noted she had indicated why they had proposed 80 feet away in the southeast corner. She felt it was beyond what was absolutely necessary, and she would be interested to hear Mr. Philpott's testimony about the setbacks for stealth. It was her understanding that as long as the facility met the District's setbacks as a stealth wireless facility, it would meet the LDC requirements. In either corner, they would prefer the stealth setback requirements because that was what the property owner preferred.

Mr. Philpott said Staff stood by the recommendation that was made in the Staff Report and the other testimony that had been provided during the hearing. It simply did not meet the criteria for stealth, as outlined in the LDC. It was oversized for the area, it would not blend in with the surrounding area, and it did not appear as a separate use, as the definition intended. Staff was willing to support an antenna supporting structure. Ms. Belflower was correct in stating that the tower section of the LDC does prioritize that stealth be used prior to approval of an antenna supporting structure.

In this case, with the height that was needed to provide for not only the service of the area, but also the limitation of additional towers in the area, Staff found that a stealth facility simply would not work, and supported the 149-foot [sic- 145-foot] antenna supporting structure in the northeast corner of the property to minimize the impacts that it would have on Mr.

Goldring and the neighbors to the south, as well. Mr. Philpott noted there had been testimony from those neighbors, and their preference was to locate the tower to the northeast to reduce those impacts.

As to the discussion involving the reduction of use of the property by the location, Staff urged the Hearing Examiner to stop by the Easy Street tower when he went on his site visit. It was located in the middle of a property, a large property similar in size, with a palm farm all around it, thus showing that the subject property would still be viable for a palm farm.

Mr. Philpott stated that Staff recommended approval for the antenna supporting structure based on the criteria in Section 34-1442 of the Lee County LDC, and recommended denial of the stealth wireless communication facility.

The Hearing Examiner questioned Ms. Belflower whether they had considered anything other than a stealth tower. He was specifically speaking about a tree. She said trees had been considered at other sites, but whether it was specifically looked at on this site, she did not know. However, she told the Hearing Examiner that Verizon Wireless was not generally fond of building trees because of concerns of how they may respond in hurricanes. Basically, it was a pole with artificial limbs that were bolted to the pole, and there was not enough history with that type of facility, and they were difficult to maintain. People objected to them because they created more face or profile. They would put a tree on this site, if that was what the Hearing Examiner requested. It was not preferred, but if that was what it would take to make it a more appropriate design, they would accept that.

The Hearing Examiner said he was familiar with the tree, as they had one in Boca Raton. Mr. Lackey said that one was 145 feet tall. He noted he was just curious, as he had seen stealth towers, and he had seen stealth facilities built in Boca Raton where they used church spires that were a lot larger than one would normally think. He thought that Lee County did not have as many alternatives because it was not built up as much and did not have buildings to adapt to stealth purposes.

Ms. Belflower noted there was also a design that was a palm tree. The first antennas were a full array at the top, up in amongst the branches, and then other collocation opportunities were available in the branches, and other collocations were inside the trunk. This option really had the most narrow profile of having the flagpole types. The Hearing Examiner said he had never seen a 150-foot-tall palm tree. She agreed with that statement, and she felt there was more opportunity for flagpoles. She noted there was a 150-foot-tall flagpole in Sarasota County where she had tried to do a different site, and they had suggested having the flagpole like the one at the car dealership. She noted it happened to be a camouflaged flagpole tower. The Board of County Commissioners, who had suggested it, thought it was just a flagpole. Granted that was located in a more urban area, but she noted the subject property was zoned IL and it carried no height limits.

Mr. Philpott said that statement was incorrect. The Pine Island Plan did have height limitations that applied to industrial zoning. He noted that was part of the newly adopted Pine Island Plan that took the restriction out.

The Hearing Examiner questioned the height of the stealth tower on I-75 at Bonita Springs. Mr. Philpott said it was 111 feet tall, and he thought it had a 18-foot-high antenna on top of it. He thought it was 131 feet at the tip of that antenna. They also discussed another facility just south of the Brooks.

The Hearing Examiner had no further questions, however, noted that this was the first stealth tower case that he was involved with where nobody had any objections to the tower. He indicated that a site visit would be conducted prior to rendering his decision and the hearing was then closed.

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Marie Kiltoman, 4931 NW 89th Terrace, Coral Springs, Florida

ADDITIONAL COUNTY STAFF:

1. Joan Henry, Assistant County Attorney, P. O. Box 398, Ft. Myers, Florida 33902

PUBLIC PARTICIPATION:

A. THE FOLLOWING PERSONS TESTIFIED OR SUBMITTED EVIDENCE FOR THE RECORD AT THE HEARING (SEE SECTION VI.):

For:

1. Edward G. and Bette Asbury, 7439 Cares Away Park Circle, Bokeelia, Florida 33922
2. Marilyn Porthouse, 16232 Buccaneer Street, Bokeelia, Florida 33922

Against: NONE

General:

1. Tracy Wells, 7963 Gabion Court, Bokeelia, Florida 22922

B. THE FOLLOWING PERSONS SUBMITTED A LETTER/COMMENT CARD, OR OTHERWISE REQUESTED A COPY OF THE HEARING EXAMINER DECISION:

For:

1. Glen and Meredith Higgins, 15720 Quail Trail, Bokeelia, Florida 33922

Against: NONE

IX. LEGAL DESCRIPTION:

See Exhibit A (scanned legal description).

X. UNAUTHORIZED COMMUNICATIONS:

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or

pending matter relating to appeals, variances, rezonings, special exceptions, or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation. . . . [Administrative Code AC-2-5]

No person shall knowingly have or attempt to initiate an unauthorized communication with the hearing examiner or any county commissioner [or their staff]. . . . [LDC Section 34-52(a)(1), emphasis added]

Any person who knowingly makes or attempts to initiate an unauthorized communication . . . [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]

Revocation, suspension or amendment of any permit variance, special exception or rezoning granted as a result of the hearing examiner action which is the subject of the unauthorized communication. [LDC Section 34-52(b)(1)b.2.]; OR

A fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. [LDC Section 1-5(c)]

XI. APPEALS:

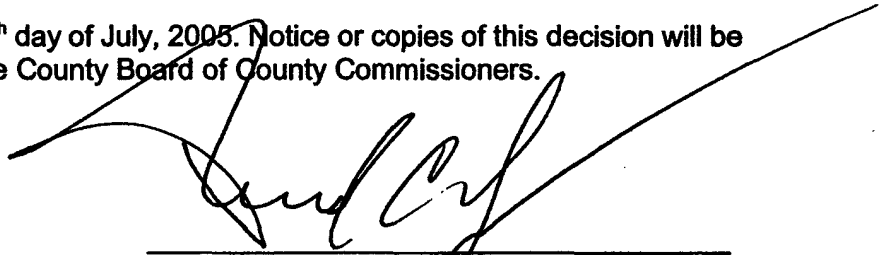
This Decision becomes final on the date rendered. A Hearing Examiner Decision may be appealed to the Circuit Court in Lee County. Appeals must be filed within thirty (30) days of the date the Hearing Examiner Decision is rendered. Appeal is by Petition for Writ of Certiorari in accordance with Lee County Land Development Code Section 34-146.

XII. COPIES OF TESTIMONY AND TRANSCRIPTS:

A. A complete verbatim transcript of the testimony presented at the hearing can be purchased from the court reporting service under contract to the Hearing Examiner's Office. The original documents and file in connection with this matter are located at the Lee County Department of Community Development, 1500 Monroe Street, Fort Myers, Florida.

B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

This decision is rendered this 19th day of July, 2005. Notice or copies of this decision will be delivered to the offices of the Lee County Board of County Commissioners.



RICHARD A. GESCHEIDT
LEE COUNTY HEARING EXAMINER
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 239/479-8100
Facsimile: 239/479-8106

EXHIBIT PH-3.C.1.

WSP Consultants, Inc.**SURVEYORS & MAPPERS**

3306 PLEASANT LAKE DRIVE, TAMPA, FL 33618

PHONE (813) 908-7978 FAX (813) 964-8760

PROFESSIONAL SURVEYING & MAPPING CERTIFICATE OF AUTHORIZATION:
LB 7188, STATE OF FLORIDA

SEZ 2005 00003

VERIZON WIRELESS
HONC PROPERTY - 68902**RECEIVED**
JAN 12 2005**PARENT TRACT DESCRIPTION****PERMIT COUNTER**

THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA; LESS THE WEST 300 FEET OF THE NORTH 100 FEET OF THE SOUTH 320 FEET; LESS THE WEST 25 FEET FOR ROAD RIGHT-OF-WAY.

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID NORTHWEST ONE-QUARTER (1/4) OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 22 EAST;

THENCE ON A GRID BEARING OF S00°28'49"E ALONG THE WEST LINE OF SAID NORTHWEST ONE-QUARTER (1/4) A DISTANCE OF 662.48 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SAID SECTION 32;

THENCE N89°32'29"E ALONG SAID NORTH LINE A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE N89°32'29"E CONTINUING ALONG SAID NORTH LINE A DISTANCE OF 1292.88 FEET TO A POINT ON THE EAST LINE OF THE SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SAID SECTION 32;

THENCE S00°28'49"E ALONG SAID EAST LINE A DISTANCE OF 662.48 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SAID SECTION 32;

THENCE S89°32'29"W ALONG SAID SOUTH LINE A DISTANCE OF 1292.88 FEET TO A POINT ON A LINE 25.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SAID SECTION 32;

THENCE N00°28'49"W ALONG SAID PARALLEL LINE A DISTANCE OF 220.00 FEET TO A POINT ON A LINE 220.00 NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SAID SECTION 32;

THENCE N89°32'29"E ALONG SAID PARALLEL LINE A DISTANCE OF 275.00 FEET TO A POINT ON A LINE 300.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SAID SECTION 32;

THENCE N00°28'49"W ALONG SAID PARALLEL LINE A DISTANCE OF 100.00 FEET TO A POINT ON A LINE 320.00 NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SAID SECTION 32;

THENCE S89°32'29"W ALONG SAID PARALLEL LINE A DISTANCE OF 275.00 FEET TO A POINT ON A LINE 25.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SAID SECTION 32;

THENCE N00°28'49"W ALONG SAID PARALLEL LINE A DISTANCE OF 342.48 FEET TO THE POINT OF BEGINNING;

SAID PARCEL OF LAND SITUATE WITHIN LEE COUNTY, FLORIDA CONTAINING 19.0 ACRES MORE OR LESS.

Applicant's Legal Checkedby AS 1/19/2005

SURVEY DATE: 08/27/04

DRAWN: WSP

CHECKED: WSP

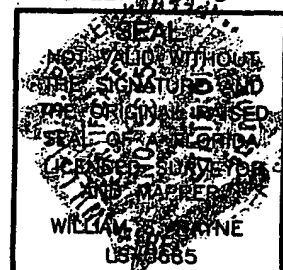
MANAGER: WSP

DWS FILE: 04-1057.DWG

PROJ NO.:

WSPay
WILLIAM S. PAYNE
PROFESSIONAL SURVEYOR AND MAPPER #LS 5685
WSP CONSULTANTS, INC. #LB 7188
STATE OF FLORIDA

SHEET 1 OF 3

**EXHIBIT A**

DESCRIPTION OF VERIZON LEASE PARCEL

A PARCEL OF LAND BEING A PORTION OF THE SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 22 EAST;

THENCE ON A GRID BEARING OF S89°32'29"W ALONG THE SOUTH LINE OF SAID SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 22 EAST, A DISTANCE OF 59.61 FEET;

THENCE N00°27'31"W A DISTANCE OF 60.37 FEET TO THE POINT OF BEGINNING;

THENCE N89°58'54"W A DISTANCE OF 50.00 FEET;

THENCE N00°01'06"E A DISTANCE OF 50.00 FEET;

THENCE S89°58'54"E A DISTANCE OF 50.00 FEET;

THENCE S00°01'06"W A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING;

SAID PARCEL OF LAND SITUATE WITHIN LEE COUNTY, FLORIDA CONTAINING 2,500.0 SQUARE FEET MORE OR LESS.

Applicant's Legal Checked

by 62 1/19/2005

SEZ 2005-00003

DESCRIPTION OF VERIZON ACCESS EASEMENT

A PARCEL OF LAND BEING A PORTION OF THE SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 22 EAST;

THENCE ON A GRID BEARING OF S89°32'29"W ALONG THE SOUTH LINE OF SAID SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 22 EAST, A DISTANCE OF 85.12 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE S89°32'29"W CONTINUING ALONG THE SOUTH LINE OF SAID SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 22 EAST, A DISTANCE OF 1207.76 FEET TO A POINT ON A LINE 25.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 22 EAST;

THENCE N00°28'49"W ALONG SAID PARALLEL LINE A DISTANCE OF 25.00 FEET TO A POINT ON A LINE 25.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 22 EAST;

THENCE N89°32'29"E ALONG SAID PARALLEL LINE A DISTANCE OF 1182.98 FEET;

THENCE N00°01'06"E A DISTANCE OF 35.79 FEET;

THENCE S89°58'54"E A DISTANCE OF 25.00 FEET;

THENCE S00°01'06"W A DISTANCE OF 60.58 FEET TO THE POINT OF BEGINNING;

SAID PARCEL OF LAND SITUATE WITHIN LEE COUNTY, FLORIDA CONTAINING 31,088.92 SQUARE FEET (0.71 ACRES) MORE OR LESS.

Applicant's Legal Checked
by 82 1/19/2005

WSP Consultants, Inc.

SURVEYORS, MAPPERS & CIVIL ENGINEERS

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PROFESSIONAL SURVEYING & MAPPING CERTIFICATE OF AUTHORIZATION:
LB 7188, STATE OF FLORIDA

SEZ 2005-00003

veri on

717 YAMATO ROAD - SUITE 600
BOCA RATON, FLORIDA 33431
PHONE (561) 995-5500

SITE DATA

NAME: HONG PROPERTY

SITE NUMBER: 68902

ADDRESS: 6900 TROPICAL LANE
BOKEELIA, FL 33922
JURISDICTION: LEE COUNTY

CONTACTS

PROPERTY OWNER:
JOHN P. HONG SR.
1246 SW 4TH AVE
CAPE CORAL, FL 33991
CONTACT: MR. VINCENT HONG
PHONE: (239) 458-3335

CIVIL AND STRUCTURAL ENGINEER
KIMLEY-HORN AND ASSOCIATES, INC.
CONTACT: OSCAR TAZOS
4431 EMBARCADERO DRIVE
WEST PALM BEACH, FL 33407
PHONE: (561) 845-0861

INSPECTIONS DEPARTMENT
LEE COUNTY
TELEPHONE COMPANY
SPRINT
POWER COMPANY
LEE COUNTY ELECTRIC COOPERATIVE

ELECTRICAL ENGINEER
C&W ENGINEERING
CONTACT: DALE WALKER
2526 S. CONGRESS AVE. SUITE 1E
WEST PALM BEACH, FL 33406
PHONE: (561) 842-5313



VICINITY MAP - NOT TO SCALE

SHEET No. INDEX OF DRAWINGS

- | | |
|--------|--------------------------|
| 1 OF 7 | COVER SHEET |
| 2 OF 7 | SITE PLAN |
| 3 OF 7 | TOWER ELEVATION |
| 4 OF 7 | EQUIPMENT DETAIL |
| 5 OF 7 | SITE PLAN AND SETBACKS |
| 6 OF 7 | LANDSCAPE PLAN |
| 7 OF 7 | LANDSCAPE SPECIFICATIONS |
| 7 OF 7 | IRRIGATION PLAN |

PROJECT INFORMATION: HONG PROPERTY SITE No 68902 6900 TROPICAL LANE BOKEELIA, FL 33922 LEE COUNTY		ISSUED FOR: SEPTEMBER 2004		ZONING DRAWINGS	
CURRENT ISSUE DATE:		REV./DATE/DESCRIPTION:		FOR INSPECTION COMMENTS:	
SEAL		DATE: 11-1-04		DATE: 11-1-04	
PLANS PREPARED BY: Kimley-Horn and Associates, Inc. 4431 EMBARCADERO DRIVE WEST PALM BEACH, FL 33407 (561) 845-0861		PROJECT DATA: SHEET NO. 7 SHEET TOTAL 7		SHEET TITLE: COVER SHEET	
CHECKED BY: DATE: 11-1-04		DATE: 11-1-04		DATE: 11-1-04	
DATE: 11-1-04		DATE: 11-1-04		DATE: 11-1-04	

HONC PROPERTY
SITE No 68902
 9900 HUNTER LANE
 BOCA RATON, FL 33432
 Dade County

PROJECT INFORMATION

ISSUED FOR: **SEPTEMBER 2004**

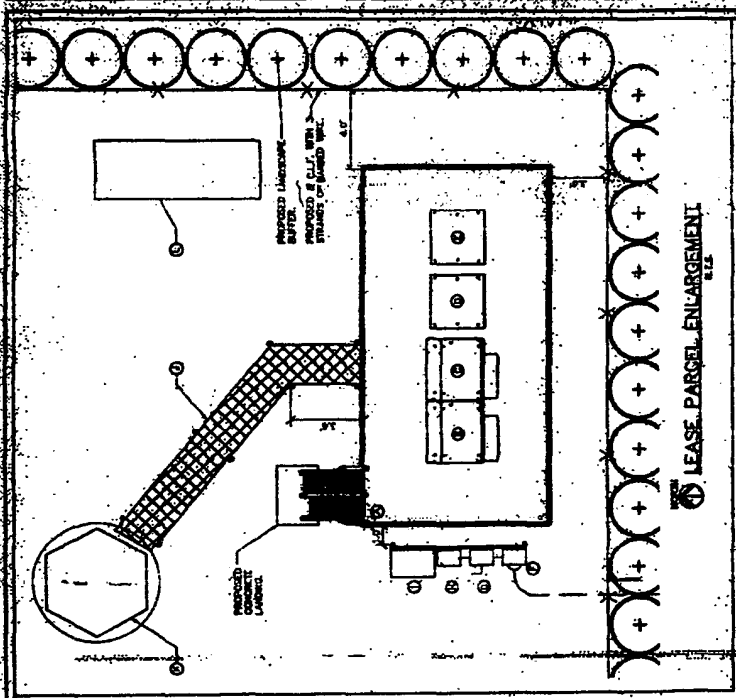
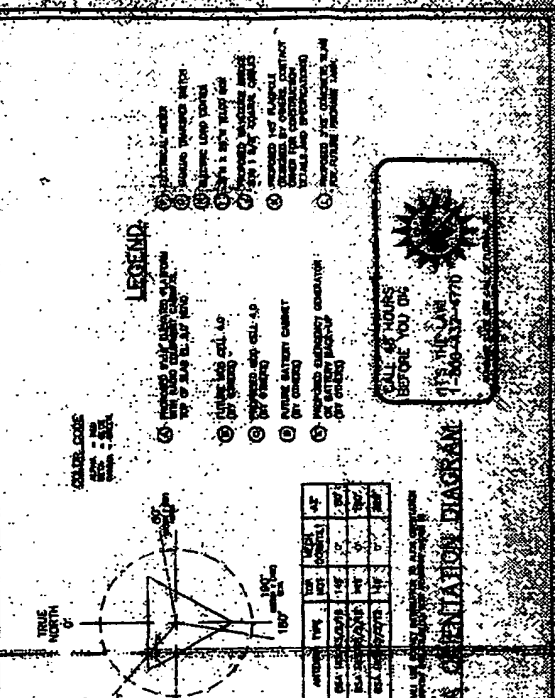
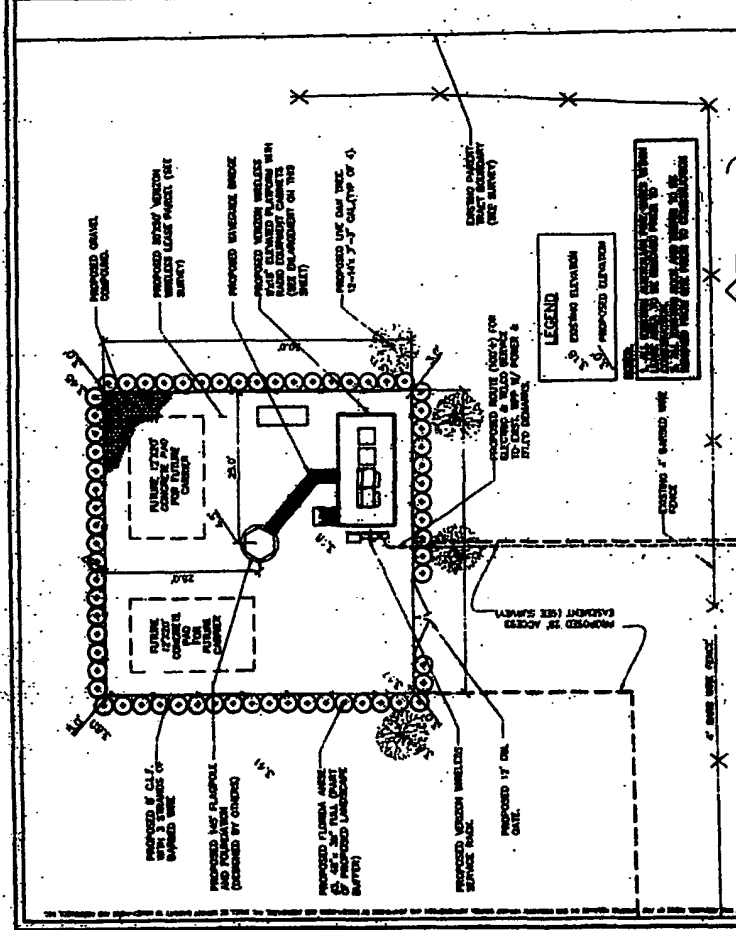
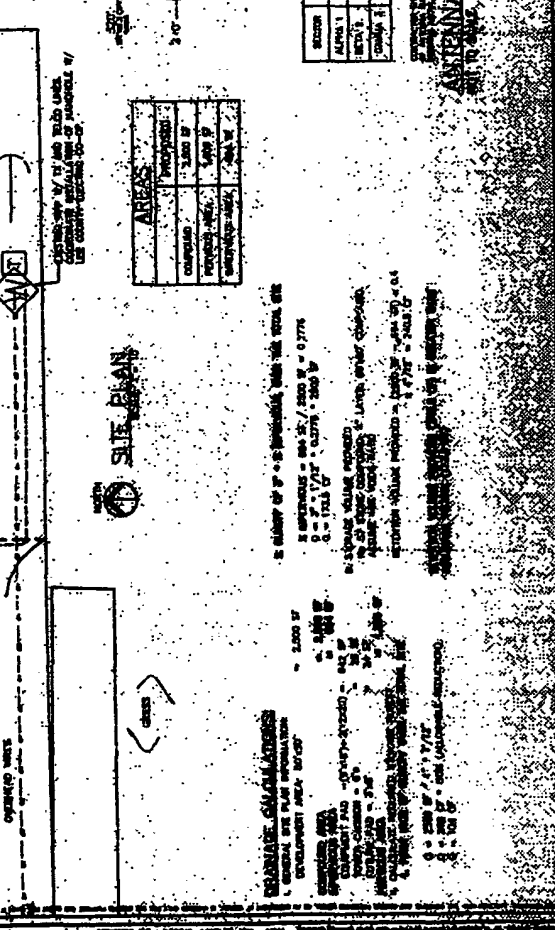
PROJECT NAME: **ZONING DRAWINGS**

DATE: **SEPTEMBER 2004**

PROJECT NO: **2 OF 7**

PROJECT TITLE: **2 OF 7**

DESIGNED BY: **Grady-Horn and Associates, Inc.**
 4400 UNIVERSITY BLVD.
 SUITE 200
 BOCA RATON, FL 33433
 (561) 365-1100



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL EXCEPTION: SEZ2004-00027
VARIANCE: VAR2004-00036
APPLICANT: SUNSHINE TOWERS, INC., in reference to
LEHIGH AUDITORIUM FLAGPOLE
HEARING DATE: OCTOBER 28, 2004
WRITTEN SUBMISSIONS: NOVEMBER 12, 2004 & NOVEMBER 17, 2004

I. APPLICATION:

Filed by DAVID FELTON, % SUNSHINE TOWERS, INC., 224 Datura Street, Suite 1008, West Palm Beach, Florida 33401 (Applicant/Agent); HOM PING CHOO, 618 SW El Dorado Parkway, Cape Coral, Florida 33914 and YOKE HUA SIM-CHOO, 618 SW El Dorado Parkway, Cape Coral, Florida 33914 (Owners).

The requests are for:

a) A Special Exception in the Community Commercial (CC) zoning district to allow a 149-foot-high wireless communication stealth (flagpole) facility per Land Development Code, Division 11;

b) A Variance from the landscaped buffer requirement per Land Development Code, Section 34-1447(c)(4), to allow no buffer - **WITHDRAWN AT PUBLIC HEARING**; and

c) A Variance from the setback requirement per Land Development Code, Section 34-2174, to allow the stealth facility to exceed the height requirement - **WITHDRAWN AT PUBLIC HEARING**.

The subject property is located at 235 Joel Boulevard, Lehigh Acres (take Colonial Boulevard east until it intersects with Joel Boulevard, turn left continuing east), in Section 34, Township 44 South, Range 27 East, Lee County, Florida (District #5).

The Strap # as furnished by the Applicant is: 34-44-27-00-00001.1000

II. STAFF RECOMMENDATION: DENY

The Department of Community Development Staff Report was prepared by Nettie Richardson. The Staff Report is incorporated herein by this reference.

III. HEARING EXAMINER DECISION:

The undersigned Lee County Hearing Examiner **APPROVES** the Applicant's request for a Special Exception in the Community Commercial (CC) zoning district to allow a 149-foot-high wireless communication stealth (flagpole) facility for the real estate described in Section VIII. Legal Description with the following conditions:

1. The development must be in compliance with the 6-page site plan prepared by KCI Technologies, Inc., for STI Sunshine Towers, Inc., dated stamped received November 10, 2004 by the Permit Counter.

2. DELETED.

3. The overall height of the flagpole, including all antennas, must not exceed 149 feet above ground level.

4. Future collocation of additional wireless communications facilities on the property must file an application for administrative review and local development order.

5. The flagpole facility may not be illuminated or lit, except as required for standard flag protocol and any aviation or other regulatory authority (FAA, Airport, LCSO/EMS, Mosquito Control, etcetera).

6. No flags or flag-like items are allowed on the tower/flagpole.

IV. HEARING EXAMINER DISCUSSION:

This is a request for a Special Exception to allow the construction of a 149-foot-tall stealth communication tower, with associated communications equipment, on the 2.85-acre subject property located on the north side of Joel Boulevard, west of Country Club Way, in Lehigh Acres (The two Variance requests were withdrawn at the public hearing). The subject property is zoned Community Commercial, and is developed with the Lehigh Auditorium, which is being remodeled to include retail stores and other commercial uses. The property is abutted on the north by a golf course and multi-family development, on the east by a car wash on a commercially zoned parcel, on the south by Joel Boulevard and then RM-2 zoning and multi-family development, and on the west by a convenience food and beverage store and other commercial uses on commercially zoned parcels. It is designated Central Urban in the Lee Plan, which allows a mixture of commercial and residential uses.

Applicant is the construction contractor for the proposed tower, representing two of the four wireless service providers that will collocate on the tower. A 1,500-square-foot area has been leased on the west side of the auditorium, near the north boundary, which will contain the tower and the associated communications equipment of the four service providers.

Applicant advised that the 149-foot height is necessary to elevate the antennas and equipment of the four service providers above the intervening tree line and structural interferences. Testimony was offered at the public hearing that indicated a 15-foot separation was required between the antennas and other sensitive electronic equipment of each service provider. Thus, with the first provider being located at the top of the tower, the fourth provider's electronics will be located at about the 85-foot mark on the tower, or about 20 to 25 feet above the surrounding tree tops.

Citing to the current Lee County regulations, Applicant designed the tower to resemble a tall flag pole (aka stealth tower) - to help camouflage its true use from the residents of the area. In a stealth tower, the antennas and cables are hidden within the structure, instead of being located, and clearly visible, on the outside of the structure. The associated communications machinery and equipment would be hidden behind the concrete block wall encircling the 1,500-square-foot lease parcel on which the tower will be located.

The wireless providers explained they need to locate their equipment in this area of Lehigh Acres because there is currently a large gap in their service area. Their closest tower to the west of the subject property is over two miles away, while the closest tower to the east is about 12 miles away. In order to provide "seamless" (overlapping) service coverage, they need to site their towers within a radius of two-and-a-half miles of each other. Given the distance between their current towers, these providers have been unable to provide seamless service coverage to their customers residing in or traveling through the Lehigh area.

As is the customary practice in tower siting, the providers compiled search rings to determine the extent of the gap and the appropriate "hub" area in which to locate the tower(s) so that they would provide the necessary overlapping coverage. They then reviewed and investigated the existing towers in that specific area of Lehigh to determine if they could collocate on any of them. However, they found there were either no available towers or that the existing towers did not meet their structural or locational needs. Hence, their decision to construct a tower that would enable them to provide the overlapping coverage necessary to ensure continued service for their customers in that geographical area.

They pointed out that the Land Development Code discouraged the location of towers in or abutting residential areas, and that this limitation seriously hampered their ability to site towers in Lehigh Acres, given the predominant amount of residential development there. Thus, it was not a matter of simply choosing another location to put the tower; they were constrained by their need for an optimum location for the tower, and by the zoning and land uses in the possible locational areas.

Given that blocks of commercial or industrial uses or zoning districts were very scarce in Lehigh, they believed their proposal to locate the tower on the commercial auditorium site was a reasonable and acceptable location. They noted that their tower would be abutting, for the most part, other commercial type uses and would only be visible from the time-share/multi-family/condominium uses to the south and north. In both those cases, the front doors and parking lots of those residential uses would be facing the tower, while the patio and backyard gathering areas would be facing away from the tower. They did not believe their proposed tower would have any adverse impacts on those residents because the tower would only be visible to the residents when they were coming to or leaving the dwelling units.

They understood Staff's preference for a reduced height of 100 feet for their tower, but stressed that a shorter tower would not fulfill their needs, nor would it meet the County's goals of collocation and fewer tower structures. They advised that the height of the tower was as important as its location, because taller towers have wider coverage areas, which results in more service providers on each tower and fewer towers covering the countryside. In this instance, they would have to build at least two 100-foot tall towers to achieve the same coverage as they could get with the 149-foot tall tower. Furthermore, if they kept their tower at 100 feet, only two service providers, not four, could occupy the tower. This would require the construction of additional towers to accommodate those other two providers. Thus, the shorter tower height would directly increase the number ("proliferation") of towers in the Lehigh area.

Given all the factors and limitations associated with locating a communications tower in Lehigh Acres, Applicant argued that their tower, at this proposed location, was consistent with the intent of the Lee Plan and would comply with the criteria set out in LDC Section 34-1441, et. seq. They also stressed that the tower would protect the public health, safety and

welfare by enabling the expedited response of the police and emergency service personnel to 911 calls from cell phones. Their equipment is now equipped with the means of pinpointing the location of the cell phone user in such emergency situations, and their service would be available when the local telephones were out of service. In addition, their equipment also provided wireless computer internet services. Therefore, their tower, by enabling the wireless communications services, would be a significant public benefit to the residents of Lehigh Acres, particularly in times of natural disasters like the recent hurricanes. They strongly believed the benefit to the thousands of residents in Lehigh Acres outweighed the visual impacts to those few residents living to the south of the site.

Applicant also argued that Staff was incorrectly applying provisions of the Land Development Code to this stealth tower when the provisions were expressly applicable only to antenna-supporting structures, like monopoles, lattice towers, or guyed towers. The very definition of the antenna-supporting structure in the Land Development Code exempted stealth towers. Thus, they believed that Staff's application and interpretation of those provisions was incorrect and was inconsistent with the provisions' stated intent and purposes. They asserted that, if Staff's interpretation and application of, particularly, the height provisions was accepted by the Hearing Examiner, the result would be a proliferation of shorter, more closely spaced towers throughout the County.

Staff recommended denial of the requested Special Exception, finding that it did not comply with the criteria for approval set out in LDC Section 34-1447, and would be inconsistent with Lee Plan Policy 5.1.5, protection of residential neighborhoods. They found that the height and scale of the structure was inconsistent and incompatible with the height and scale of surrounding structures, that it would not blend with the surrounding environment, and would be readily identifiable as a communication tower. They argued that this tower would be more than twice the height of the tallest flag poles in Lee County, which were only about 60 or so feet high. They felt that the height alone would identify the tower as a communications tower, regardless of whether or not it resembled a flag pole.

Staff believed that the tower would be too intrusive at 149 feet, and suggested that it might be acceptable at 100 feet in height. They did not dispute Applicant's arguments that shorter towers would mean more towers, and that those towers would be much closer together than the taller towers. In their opinion, a proliferation of shorter towers would be more compatible with the existing development in Lehigh Acres than would be fewer taller towers.

Applicant objected to Staff's recommendation, arguing that Staff's reasoning and interpretation of the new wireless tower provisions was creating an impossible situation for them, as well as any other wireless service provider that needed towers or tower space in Lehigh Acres. They stressed that the recently adopted LDC provisions ranked stealth towers above all other tower structures in order of preference and desirability, and required that the other tower types only be approved where stealth towers were not feasible. In this instance, Staff was recommending denial of the preferred tower, freely acknowledging that the other tower types were clearly not acceptable nor appropriate at this location either. Thus, Staff's denial was also inconsistent with the provisions of the Federal Telecommunications Act of 1996, which prohibits local government actions that would have the effect of prohibiting personal wireless service in the County.

One adjacent property owner attended the public hearing to express her objections to the location and height of the tower. She owned one of the condominiums on the south side of Joel Boulevard and feared that the tower would adversely affect her property value and would

be visually detrimental to the neighborhood. She understood the need for a tower in this area of Lehigh, noting that she had dropped one of the wireless services because she could not get a signal in this area. Nevertheless, she did not want a wireless communication tower across the street from her condominium.

After re-review of the recently adopted wireless communication provisions and careful consideration of the ultimate effect of this decision, the undersigned Hearing Examiner finds that she cannot agree with Staff's reasoning and recommendation of denial of the requested Special Exception. She finds that Staff's interpretation and application would result in situations that were clearly contrary to the purposes and intent of the wireless communication ordinance and would be contrary to the public good. The Hearing Examiner notes that the testimony received from Applicant and the service providers in this case mirrors testimony she has received from other communications experts in numerous other tower requests, and clearly supports the plain meaning of the purposes and intent of the newly adopted provisions.

Although Applicant argued against Staff's requirement that they obtain a Special Exception, the Hearing Examiner concurs with Staff's requirement, based not on the Land Development Code but on the Lee Plan. Lee Plan Policy 77.10.5 specifically mandates that "The county will continue to permit communication towers in excess of 100 feet only by special exception. . . ." and that the towers' impacts on woodstorks had to be considered as part of the approval process. She acknowledges that, when this Policy was adopted in 1994, the majority of the tower requests were for guyed towers, which were known to cause injury and death to flying woodstorks and other birds. However, that Policy was revised in 2000, but the requirement was never changed to apply only to guyed towers. It is the opinion of the Hearing Examiner that the requirement, therefore, applies to any tower over 100 feet in height.

The Hearing Examiner understands Staff's concerns about the visual compatibility of the 149-foot tall tower, but finds that the taller tower is consistent with and furthers the intent and purposes of the wireless communications provisions. She concedes that a taller tower may be more noticeable at first, but believes that the residents will soon become accustomed to seeing it and will soon stop "noticing" it. While the tower might become a "landmark" for the auditorium, she does not believe it will be more intrusive or as obnoxious as a skyline and neighborhoods dotted with lots of shorter towers. Interpreting the regulations to restrict all towers in Lehigh to 100 feet, when combined with the prohibition of towers in residential areas, will have the ultimate effect of greatly restricting or prohibiting personal wireless service in Lehigh Acres, which would be contrary to the Federal Act.

It is the opinion of the Hearing Examiner that the taller tower furthers the following purposes of the newly adopted regulations, in that the taller tower will:

- 1) prevent the proliferation of shorter towers throughout the Lehigh Acres country-side, particularly in residential areas; and
- 2) accommodate the growing need for wireless service in the Lehigh Acres areas; and
- 3) encourage the coordination of services and enable the collocation of more service providers on a single tower, instead of having fewer providers on more towers; and

- 4) protect the public health, safety and welfare by pinpointing the location of the cell phone user, thereby enabling an expedited response of the police and emergency service personnel to 911 calls made on cell phones, and providing an additional means of communication in times of natural disasters or emergencies; and
- 5) minimize the effect of communications towers on surrounding areas by having only one tall tower resembling a flag pole, instead of numerous, more closely spaced shorter towers.

Although Staff indicated their concern that the tower would obstruct scenic views, they conceded that the flag pole tower itself would not block the skyline as would a 149-foot tall building. The tower would be quite narrow at ground level, and would grow narrower as it gains height. Applicant performed the "balloon (visibility) test" as required in the Land Development Code, and provided photographs demonstrating that the tower was most visible in the immediate vicinity, but that it was not clearly visible nor intrusive at distances beyond one-half mile from the site.

Upon conducting a site visit, the Hearing Examiner found that the time-share condominium units to the north will not have a clear view of the tower, because of the existing, extensive tree coverage around those buildings. That tree coverage will screen the lower half of the tower from those units and their parking lots. She also found that the tower would be partially screened from the front doors and parking lot of the easternmost time-share hotel/motel building to the northwest. However, the tower would not be screened from the condominium units on the south side of Joel Boulevard, a 4-laned arterial, but, as noted by Applicant, was visible only from the front doors and parking areas of those units.

The Hearing Examiner understands that Staff is attempting to protect the sensibilities of the residents and occupants in the area around the proposed 149-foot tall tower by their recommendation of denial for incompatibility. However, the Hearing Examiner finds that the need for the wireless communication services and the benefits provided by those services to the public good, and health, safety and welfare outweigh the temporary "visual assault" of the tall tower.

Staff submitted a list of conditions that should be imposed on the tower's development, in the event the Hearing Examiner determined the Special Exception request should be approved. The Hearing Examiner finds that those conditions are reasonably related to the impacts anticipated from the proposed tower, and, with other regulations, will safeguard the public's interests.

The Hearing Examiner is also modifying Staff's condition regarding the use of the flag to prohibit Applicant from putting a flag at the top of the tower. Given Staff's concerns about the "visibility" of the tower, the Hearing Examiner finds that putting the flag at the top will simply call attention to the tower and its height. If the tower is left bare, it is more likely to blend with the sky color and virtually "disappear" from view. The Hearing Examiner points out that the Section 34-1442 definition and description of a "stealth wireless communications facility" includes the following provision: ". . . . A stealth facility must have, or appear to have, a separate function including, but not limited to, the following: church steeple, bell tower, spire, clock tower, cupola, light standard, flagpole with flag, etc.," (Emphasis added) Thus, it is the Hearing Examiner's opinion that a flag is not required at the top of the tower, so long as the tower clearly resembles a flagpole.

V. FINDINGS AND CONCLUSIONS:

Based upon the Staff Report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

- A. That the Applicant has proved entitlement to the Special Exception, as conditioned, by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes and regulations.
- B. That the request, as conditioned, will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request.
- C. That the request, as conditioned, is consistent with the densities, intensities and general uses set forth in the Lee Plan.
- D. That the request, as conditioned, is compatible with existing or planned uses in the surrounding area.
- E. That approval of the request, as conditioned, will not place an undue burden upon existing transportation or planned infrastructure facilities, and the development will be served by streets with the capacity to carry traffic it generates.
- F. That the request, as conditioned, will not adversely affect environmentally critical areas and natural resources.
- G. That urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.
- H. That the conditions imposed herein are reasonably related to the impacts anticipated from the proposed uses and, with other regulations, will safeguard the public's interests.
- I. That the Applicant is not already providing adequate wireless service coverage in the geographic search area, and is unable to use or collocate on any existing wireless communications facilities in the geographic search area.
- J. That two service providers have already entered into an agreement to collocate on the proposed tower, and the height of the tower will accommodate two additional providers for a total of four wireless service providers.
- K. That the proposed stealth tower will not be injurious to historical resources, will not obstruct scenic views, will not diminish property values, and will not reduce the quality and function of natural or man-made resources.
- L. That the Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the structures and facilities.
- M. That the proposed tower will have to comply with the FCC Reg. 96-236 regarding emissions of electromagnetic radiation.

N. That the need for the wireless communication services and the benefits it will provide to the public health, safety and welfare outweigh the minor adverse impacts that might be experienced by the residents in the immediate area.

VI. LIST OF EXHIBITS:

STAFF'S EXHIBITS

- 1 Proposed Conditions should Hearing Examiner approved Special Exception and Variance requests
- 2 Memorandum from Mary Gibbs to Community Development Staff, dated April 30, 2004, re: Collocations of Wireless Communication Facilities [4-pages]
- 3 Aerial photograph [color] (18"x24")
- 4 Aerial photograph [color] (24" x 36")
- 5 Memorandum from Nettie Richardson to Diana Parker, dated November 16, 2004, Revised Legal Description and Revised Site Plan dated November 10, 2004 [post hearing submittal]

Résumés of Lee County Staff are on file with the Hearing Examiner's Office and are incorporated herein.

APPLICANT'S EXHIBITS

- 1 David C. Felton Résumé
- 2 John D. Vetter, Jr. Résumé
- 3 Mitchell K. Baum Résumé
- 4 Craig P. McDonald Résumé
- 5 Laura Belflower Résumé
- 6 Photocopy of LDC Section 34-1441 (Wireless Communication Facilities)
- 7 Composite Exhibit consisting of map with Metro search ring and Spring search ring depicted
- 8 Copy of three (3) photographs (color) (8½ " x 11")
- 9 Copy of two (2) photographs (color) (8½" x 11")
- 10 Post Construction Photo Simulations of 235 Joel Boulevard in Lehigh Acres, Florida [bound document]

- 11 Letter from Joseph A. Creavalle, Metro PCS Florida Region, to Lee County Building Department, dated October 26, 2004, re: Justification for a new tower at Lehigh Auditorium [3-page document]
- 12 Memorandum from Mitchell K. Baum, Sprint PCS, to Lee County Zoning Board, dated October 26, 2004, re: Technical Details for Proposed Zoning Approval of SPRINT PCS Site M162XC101-A [5-page document]
- 13 Composite exhibit consisting of one copy of Public Hearing Application and Supplement A for Sunshine Towers, Inc.
- 14 Wireless Communications Facility Shared Use Plan Agreement between Lee County and Sunshine Towers, Inc.
- 15 Letter from James T. Fennell and Darryl J. Kfoesze, KCI Technologies, to Nettie Richardson, Department of Community Development, dated October 12, 2004, re: Response to request for green space information

Résumés of Applicant's consultants are on file with the Hearing Examiner's Office and are incorporated herein.

VII. PRESENTATION SUMMARY:

See Official Court Reporter Transcript

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Mitchell Baum, c/o Sprint PCS, 1580 Sawgrass Group Parkway, Sunrise, Florida 33323
2. Laura Belflower, Esquire, P. O. Box 47451, Tampa, Florida 33647
3. Joseph Creavalle, c/o Metro PCS, 1401 NW 136th Avenue, Sunrise, Florida 33323
4. Samuel Dinger, 4035 S.W. 2nd Avenue, Cape Coral, Florida 33914
5. Craig McDonald, c/o Corporate Property Services, 600 Fairway Drive, Suite 104, Deerfield Beach Florida 33441
6. Robert D. Pritt, c/o Roetzel & Andress Law Firm, 2320 First Street, Fort Myers, Florida 33901
7. John Vetter, c/o Metro PCS, 1401 NW 136th, Sunrise, Florida 33323

ADDITIONAL COUNTY STAFF:

1. Joan Henry, Assistant County Attorney, P. O. Box 398, Ft. Myers, Florida 33902-0398

PUBLIC PARTICIPATION:

A. THE FOLLOWING PERSONS TESTIFIED OR SUBMITTED EVIDENCE FOR THE RECORD AT THE HEARING (SEE SECTION VI.):

For: NONE

Against:

1. Pamela Scudder, 259 Bethany Home Drive, Lehigh Acres, Florida 33936

B. THE FOLLOWING PERSONS SUBMITTED A LETTER/COMMENT CARD, OR OTHERWISE REQUESTED A COPY OF THE HEARING EXAMINER DECISION:

For: NONE

Against: NONE

IX. LEGAL DESCRIPTION:

See Exhibit A (scanned legal description).

X. UNAUTHORIZED COMMUNICATIONS:

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or pending matter relating to appeals, variances, rezonings, special exceptions, or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation. . . . [Administrative Code AC-2-5]

No person shall knowingly have or attempt to initiate an unauthorized communication with the hearing examiner or any county commissioner [or their staff]. . . . [LDC Section 34-52(a)(1), emphasis added]

Any person who knowingly makes or attempts to initiate an unauthorized communication . . . [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]

Revocation, suspension or amendment of any permit variance, special exception or rezoning granted as a result of the hearing examiner action which is the subject of the unauthorized communication. [LDC Section 34-52(b)(1)b.2.]; OR

A fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. [LDC Section 1-5(c)]

XI. APPEALS:

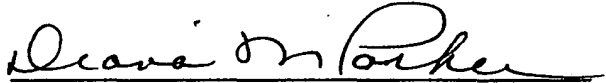
This Decision becomes final on the date rendered. A Hearing Examiner Decision may be appealed to the Circuit Court in Lee County. Appeals must be filed within thirty (30) days of the date the Hearing Examiner Decision is rendered. Appeal is by Petition for Writ of Certiorari in accordance with Lee County Land Development Code Section 34-146.

XII. COPIES OF TESTIMONY AND TRANSCRIPTS:

A. A complete verbatim transcript of the testimony presented at the hearing can be purchased from the court reporting service under contract to the Hearing Examiner's Office. The original documents and file in connection with this matter are located at the Lee County Department of Community Development, 1500 Monroe Street, Fort Myers, Florida.

B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

This decision is rendered this 18th day of November, 2004. Notice or copies of this decision will be delivered to the offices of the Lee County Board of County Commissioners.



DIANA M. PARKER
LEE COUNTY HEARING EXAMINER
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 239/479-8100
Facsimile: 239/479-8106

DESCRIPTION PARENT TRACT (PER O.R. BOOK 03930, PG. 4876) (AS PROVIDED BY CLIENT)
PARCEL #1

A PARCEL OF LAND IN THE NORTH HALF OF SECTION 34, TOWNSHIP 44 SOUTH, RANGE 27 EAST,
LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 44 SOUTH, RANGE 27 EAST,
LEE COUNTY, FLORIDA; THENCE NORTH 00°06'48" WEST ALONG THE WEST SECTION LINE OF SAID
SECTION 34, A DISTANCE OF 1,405.40 FEET, TO THE NORTHERLY RIGHT-OF-WAY LINE OF
JOEL BLVD.; THENCE NORTH 88°58'52" EAST, ALONG SAID RIGHT-OF-WAY LINE OF JOEL BOULEVARD,
A DISTANCE OF 15.80 FEET, TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A
RADIUS OF 676.78 FEET, AND A DELTA ANGLE OF 33°52'54"; THENCE ALONG SAID CURVE AN ARC
DISTANCE OF 400.21 FEET, TO THE POINT OF TANGENCY; THENCE NORTH 55°05'58" EAST, ALONG
THE NORTHWESTERLY RIGHT-OF-WAY LINE OF JOEL BOULEVARD, A DISTANCE OF 3,122.03 FEET,
TO THE POINT OF BEGINNING OF A PARCEL OF LAND HEREIN DESCRIBED; THENCE NORTH 34°54'02"
WEST, A DISTANCE OF 150.00 FEET; THENCE SOUTH 55°05'58" WEST, A DISTANCE OF 39.43 FEET;
THENCE NORTH 00°32'47" EAST, A DISTANCE OF 232.61 FEET; THENCE NORTH 55°05'53" EAST, A
DISTANCE OF 289.15 FEET; THENCE SOUTH 34°54'05" EAST, A DISTANCE OF 339.50 FEET, TO THE
NORTHWESTERLY LINE OF JOEL BOULEVARD; THENCE SOUTH 55°05'58" WEST ALONG SAID
RIGHT-OF-WAY LINE OF JOEL BOULEVARD, A DISTANCE OF 384.63 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.85 ACRES OF LAND MORE OR LESS

SUBJECT TO EASEMENTS AND RESERVATIONS OF RECORD.

SEZ 2004-00027

VAR 2004-00036

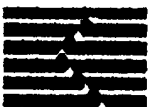
Applicant's Legal Checked

by AJ NOV 16, 2004

RECEIVED

NOV 10 2004

COMMUNITY DEVELOPMENT

 KCI TECHNOLOGIES, INC. 1000 HIGHLAND AVENUE, SUITE 120 TALLAHASSEE, FL 32304 TEL: 904-222-1100 FLORIDA LICENSE NO.: 200000000	PREPARED FOR: STI Sunshine Towers, Inc. 211 Westminster Road West Palm Beach, FL 33405 (561) 514-4061	DRAWING TITLE: LEGAL DESCRIPTIONS	REVISION NO. 0	DRAWN BY: MD
		PROJECT NAME: LEHIGH AUDITORIUM	DATE ISSUED: 11-08-04	CHECKED BY: DE
			SCALE: NOT TO SCALE	APPROVED BY: DE
			SHEET NO. 1 OF 5	
			A/E PROJECT NO: 10042756	

DESCRIPTION

PROPOSED INGRESS/EGRESS AND UTILITY EASEMENT
(AS REQUESTED BY CLIENT)(SKETCH ONLY)

A PARCEL OF LAND IN THE NORTH HALF OF SECTION 34, TOWNSHIP 44 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 44 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA; THENCE NORTH $00^{\circ}06'48''$ WEST ALONG THE WEST SECTION LINE OF SAID SECTION 34, A DISTANCE OF 1,405.40 FEET, TO THE NORTHERLY RIGHT-OF-WAY LINE OF JOEL BLVD.; THENCE NORTH $88^{\circ}58'52''$ EAST, ALONG SAID RIGHT-OF-WAY LINE OF JOEL BOULEVARD, A DISTANCE OF 15.80 FEET, TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 676.78 FEET, AND A DELTA ANGLE OF $33^{\circ}52'54''$; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 400.21 FEET, TO THE POINT OF TANGENCY; THENCE NORTH $55^{\circ}05'58''$ EAST, ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF JOEL BOULEVARD, A DISTANCE OF 3,122.03 FEET, THENCE NORTH $34^{\circ}54'02''$ WEST, A DISTANCE OF 150.00 FEET; THENCE SOUTH $55^{\circ}05'58''$ WEST, A DISTANCE OF 39.43 FEET; THENCE NORTH $00^{\circ}32'47''$ EAST, A DISTANCE OF 194.02 FEET; THENCE S $89^{\circ}27'13''$ E, A DISTANCE OF 46.91 FEET; THENCE N $54^{\circ}29'52''$ E, A DISTANCE OF 30.00 FEET; THENCE S $35^{\circ}30'08''$ E, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING; THENCE N $54^{\circ}29'52''$ E, A DISTANCE OF 10.00 FEET; THENCE S $35^{\circ}30'08''$ E, A DISTANCE OF 43.25 FEET; THENCE S $00^{\circ}32'47''$ W, A DISTANCE OF 96.75 FEET; THENCE N $89^{\circ}27'13''$ W, A DISTANCE OF 116.48 FEET; TO A POINT ON THE WESTERLY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3930, PAGE 4876 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, THENCE N $00^{\circ}32'47''$ E, ALONG SAID WESTERLY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3930, PAGE 4876, A DISTANCE OF 10.00 FEET; THENCE S $89^{\circ}27'13''$ E, A DISTANCE OF 106.48 FEET; THENCE N $00^{\circ}32'47''$ E, A DISTANCE OF 83.50 FEET; THENCE N $35^{\circ}30'08''$ W, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

SAID PROPOSED INGRESS/EGRESS AND UTILITY EASEMENT CONTAINING 2432.28
SQUARE FEET OF LAND, MORE OR LESS

Applicant's Legal Checked

by [Signature] Nov 14, 2004

SEZ 2004-00027

VAR 2004-00036

RECEIVED

NOV 10 2004

COMMUNITY DEVELOPMENT

 KCI Technologies, Inc. 10150 MONROE AVENUE, SUITE 120 TAMPA, FL 33613 (813) 740-2300 FLORIDA LICENSE NO.: ER0000000	PREPARED FOR: STI Sunshine Towers, Inc. 211 Westminster Road West Palm Beach, FL 33411 (561) 514-4061	DRAWING TITLE: LEGAL DESCRIPTIONS	REVISION NO. 0 DATE ISSUED: 11-08-04 SCALE: NOT TO SCALE SHEET NO. 2 OF 5 A/E PROJECT NO: 10042756	DRAWN BY: MB CHECKED BY: BK APPROVED BY: BK
	PROJECT NAME: LEHIGH AUDITORIUM			

DESCRIPTION PROPOSED STI LEASE AREA (AS REQUESTED BY CLIENT)

A PARCEL OF LAND IN THE NORTH HALF OF SECTION 34, TOWNSHIP 44 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 44 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA; THENCE NORTH 00°06'48" WEST ALONG THE WEST SECTION LINE OF SAID SECTION 34, A DISTANCE OF 1,405.40 FEET, TO THE NORTHERLY RIGHT-OF-WAY LINE OF JOEL BLVD.; THENCE NORTH 88°58'52" EAST, ALONG SAID RIGHT-OF-WAY LINE OF JOEL BOULEVARD, A DISTANCE OF 15.80 FEET, TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 676.78 FEET, AND A DELTA ANGLE OF 33°52'54"; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 400.21 FEET, TO THE POINT OF TANGENCY; THENCE NORTH 55°05'58" EAST, ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF JOEL BOULEVARD, A DISTANCE OF 3,122.03 FEET, THENCE NORTH 34°54'02" WEST, A DISTANCE OF 150.00 FEET; THENCE SOUTH 55°05'58" WEST, A DISTANCE OF 39.43 FEET; THENCE NORTH 00°32'47" EAST, A DISTANCE OF 194.02 FEET; THENCE N89°27'13"E, A DISTANCE OF 46.91 FEET TO THE POINT OF BEGINNING; THENCE N54°29'52"E, A DISTANCE OF 30.00 FEET; THENCE S35°30'08"E, A DISTANCE OF 50.00 FEET; THENCE S54°29'52"W, A DISTANCE OF 30.00 FEET; THENCE N35°30'08"W, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

SAID PROPOSED STI LEASE AREA CONTAINING 1500 SQUARE FEET, MORE OR LESS

SEZ 2004-00027

VAR 2004-00036

Applicant's Legal Checked
by ES Nov 16, 2004

RECEIVED
NOV 10 2004

COMMUNITY DEVELOPMENT

 KCI TECHNOLOGIES, Inc. 1050 HIGHLAND AVENUE, SUITE 120 TALLAHASSEE, FL 32301 TEL: 904-241-1200 FLORIDA LICENSE NO.: ER0004800	PREPARED FOR: STI Sunshine Towers, Inc. 211 Westchester Road West Palm Beach, FL 33405 (561) 514-4061	DRAWING TITLE: LEGAL DESCRIPTIONS	REVISION NO. 0 DATE ISSUED: 11-08-04 SCALE: NOT TO SCALE SHEET NO. 3 OF 5 A/E PROJECT NO: 10042756	DRAWN BY: MB CHECKED BY: DK APPROVED BY: DK
	PROJECT NAME: LEHIGH AUDITORIUM			

DESCRIPTION PROPOSED SPRINT PCS LEASE AREA (AS REQUESTED BY CLIENT)
(SKETCH ONLY)

A PARCEL OF LAND IN THE NORTH HALF OF SECTION 34, TOWNSHIP 44 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 44 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA; THENCE NORTH 00°06'48" WEST ALONG THE WEST SECTION LINE OF SAID SECTION 34, A DISTANCE OF 1,405.40 FEET, TO THE NORTHERLY RIGHT-OF-WAY LINE OF JOEL BLVD.; THENCE NORTH 88°58'52" EAST, ALONG SAID RIGHT-OF-WAY LINE OF JOEL BOULEVARD, A DISTANCE OF 15.80 FEET, TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 676.78 FEET, AND A DELTA ANGLE OF 33°52'54"; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 400.21 FEET, TO THE POINT OF TANGENCY; THENCE NORTH 55°05'58" EAST, ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF JOEL BOULEVARD, A DISTANCE OF 3,122.03 FEET, THENCE NORTH 34°54'02" WEST, A DISTANCE OF 150.00 FEET; THENCE SOUTH 55°05'58" WEST, A DISTANCE OF 39.43 FEET; THENCE NORTH 00°32'47" EAST, A DISTANCE OF 194.02 FEET; THENCE N89°27'13"E, A DISTANCE OF 46.91 FEET TO THE POINT OF BEGINNING; THENCE N54°29'52"E, A DISTANCE OF 15.00 FEET; THENCE S35°30'08"E, A DISTANCE OF 20.00 FEET; THENCE S54°29'52"W, A DISTANCE OF 15.00 FEET; THENCE N35°30'08"W, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SAID PROPOSED SPRINT PCS LEASE AREA CONTAINING 300 SQUARE FEET, MORE OR LESS

SEZ 2004-00027

VAR 2004-00036

Applicant's Legal Checked

by TSJ NOV 16, 2004

RECEIVED

NOV 10 2004

COMMUNITY DEVELOPMENT

 KCI Technologies, Inc. 1750 MIDLAND AVENUE, SUITE 120 TAMPA, FL 33605 TEL: 740-2200 FLORIDA LICENSE NO.: K20000008	PREPARED FOR: STI Sunshine Towers, Inc. 211 Westminster Road West Palm Beach, FL 33415 (561) 514-4061	DRAWING TITLE: LEGAL DESCRIPTIONS	REVISION NO. 0 DRAWN BY: MB
			CHECKED BY: DC
			DATE ISSUED: 11-08-04
			APPROVED BY: DC
		PROJECT NAME: LEHIGH AUDITORIUM	SCALE: NOT TO SCALE
			SHEET NO. 4 OF 5
			A/E PROJECT NO: 10042756

DESCRIPTION PROPOSED METRO PCS LEASE AREA (AS REQUESTED BY CLIENT)
(SKETCH ONLY)

A PARCEL OF LAND IN THE NORTH HALF OF SECTION 34, TOWNSHIP 44 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 44 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA; THENCE NORTH 00°06'48" WEST ALONG THE WEST SECTION LINE OF SAID SECTION 34, A DISTANCE OF 1,405.40 FEET, TO THE NORTHERLY RIGHT-OF-WAY LINE OF JOEL BLVD.; THENCE NORTH 88°58'52" EAST, ALONG SAID RIGHT-OF-WAY LINE OF JOEL BOULEVARD, A DISTANCE OF 15.80 FEET, TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 676.78 FEET, AND A DELTA ANGLE OF 33°52'54"; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 400.21 FEET, TO THE POINT OF TANGENCY; THENCE NORTH 55°05'58" EAST, ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF JOEL BOULEVARD, A DISTANCE OF 3,122.03 FEET, THENCE NORTH 34°54'02" WEST, A DISTANCE OF 150.00 FEET; THENCE SOUTH 55°05'58" WEST, A DISTANCE OF 39.43 FEET; THENCE NORTH 00°32'47" EAST, A DISTANCE OF 194.02 FEET; THENCE S89°27'13"E, A DISTANCE OF 46.91 FEET; THENCE S35°30'08"E A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING; THENCE N35°30'08"W, A DISTANCE OF 20.00 FEET; THENCE N54°19'40"E, A DISTANCE OF 15.00 FEET; THENCE S35°30'08"E, A DISTANCE OF 20.00 FEET; THENCE S54°19'40"W, A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING.

SAID PROPOSED METRO LEASE AREA CONTAINING 300 SQUARE FEET, MORE OR LESS

SEIZ 2004-00027

VAR 2004-00036

Applicant's Legal Checked

by [Signature] Nov 16, 2004

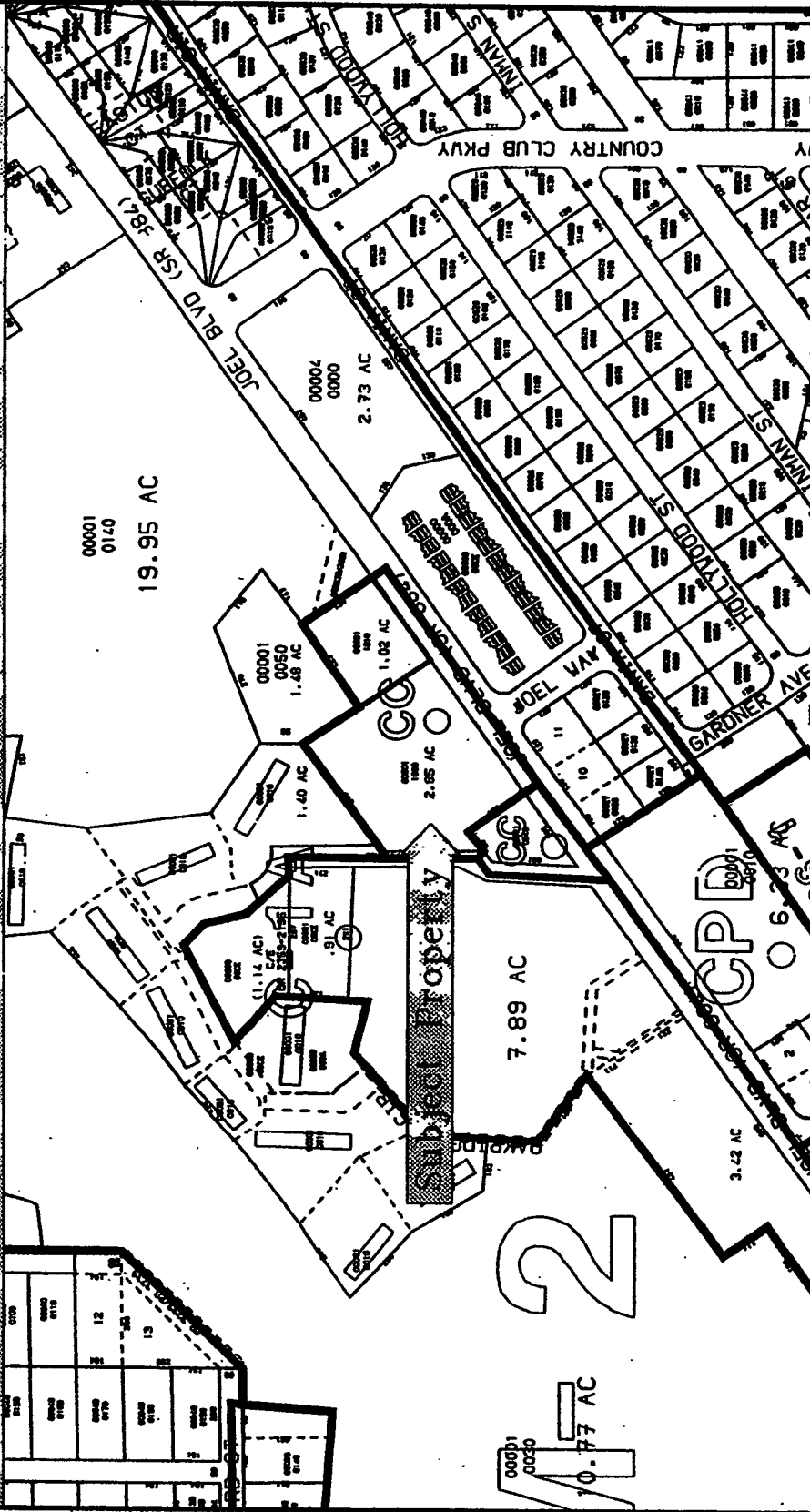
RECEIVED

NOV 10 2004

COMMUNITY DEVELOPMENT

 KCI TECHNOLOGIES, INC. PLANNING	PREPARED FOR: STI Sunshine Towers, Inc.	DRAWING TITLE: LEGAL DESCRIPTIONS	REVISION NO. 0	DRAWN BY: 00
	211 Westminister Road West Palm Beach, FL 33405 (561) 514-4061	PROJECT NAME: LEHIGH AUDITORIUM	DATE ISSUED: 11-08-04	CHECKED BY: 01 APPROVED BY: 01
KCI Technologies, Inc. 17150 MIDLAND AVENUE, SUITE 120 TAMPA, FL 33613 FLORIDA LICENSE NO.: ES0000000			SCALE: NOT TO SCALE	
			SHEET NO. 3 OF 3	
			A/E PROJECT NO: 10042758	

Zoning Map



Attachment A

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL EXCEPTION: SEZ2004-00033
APPLICANT: VERIZON WIRELESS, in reference to
N. FT. MYERS UTILITY STEALTH COMMUNICATIONS FACILITY
HEARING DATE: MAY 5, 2005

I. APPLICATION:

Filed by VERIZON WIRELESS, c/o JOSEPHINE CONDE, 777 Yamato Road, Suite 600, Boca Raton, Florida 33431 (Applicant); LAURA B. BELFLOWER, P.A., 16002, Wyndover Road, Tampa, Florida 33647 (Agent); NORTH FORT MYERS UTILITY, INC., c/o A.A. REEVES, 4000 Del Prado Boulevard, North Fort Myers, Florida 33917 (Owner).

Request is for a Special Exception in the Agriculture (AG-2) zoning district to allow a 149-foot-high stealth (flagpole) wireless communication facility per Land Development Code Division 11.

The subject property is located at 4000 Del Prado Blvd North, in Section 14, Township 43 South, Range 24 East, Lee County, Florida (District #4).

The Strap # as furnished by the Applicant is: 14-43-24-00-00005.0010

II. STAFF RECOMMENDATION: APPROVE WITH CONDITIONS

The Department of Community Development Staff Report was prepared by Nettie M. Richardson. The Staff Report is incorporated herein by this reference.

III. HEARING EXAMINER DECISION:

The undersigned Lee County Hearing Examiner **APPROVES** the Applicant's request for a Special Exception in the Agriculture (AG-2) zoning district to allow a 149-foot-high stealth wireless communication facility for the real estate described in Section VIII. Legal Description WITH THE FOLLOWING CONDITIONS:

1. The development must be in substantial compliance with the Zoning Approval Plan prepared by Kimley-Horn and Associates, Inc., date stamped "Received December 28, 2004," except as modified by the Condition 4 below and the tower designed as a flagpole - without the flag.

2. A 10-foot-wide buffer must be installed around the perimeter of the proposed facility consisting of a double row hedge maintained at a height of eight feet and with 12 Sabal palms planted 10 feet on center as per the LDC Section 34-1447(c).

3. The stealth tower (flagpole) must be installed and maintained to appear flat grey in color.

4. The overall height of the stealth tower must not exceed 149 feet above ground level, and a warning light, operational 24 hours per day, must be located at the top of the tower to provide advance notice of the tower's location to all pilots utilizing the Pine Shadow Airpark.

5. Any request for building permits for future collocation of additional wireless communications facilities on the property must be reviewed and approved under the requirements of the Lee County Land Development Code (LDC), and the requirements of Section 365.172(11)(a), Florida Statutes.

IV. HEARING EXAMINER DISCUSSION:

This is a request for a Special Exception to allow a 149-foot-high stealth communications tower on the AG-2 zoned wastewater treatment plant facility on Del Prado North in North Fort Myers. Applicant herein will be leasing a 2,000±-square-foot parcel in the northwest corner of that facility for the tower and its associated equipment enclosure. The 35.5-acre facility is surrounded by heavily wooded 2020 conservation lands on the north and east, by vacant AG-2 zoned lands directly south across Del Prado, and residential zoning and uses to the southeast and southwest, and a vacant PUD on the west. The utilities property is designated Public Facilities in the Lee Plan.

Applicant explained that they have been experiencing a lack of service along U.S. 41 and around the Del Prado Road areas on both sides of U.S. 41. They were able to provide service to a portion of that area by collocating on another tower, but could not provide coverage to the entire target area. After extensive searching and investigation, they approached the North Fort Myers Utilities regarding leasing a small parcel on the plant site on which they could erect the tower.

The leased parcel is located in the northwest corner of the plant site, and will be accessed through the entry and spine road serving the plant. It is set back about 285 feet from the north property line, 299 feet from the west property line, 855 feet from the east property line and 1,115 feet from the south property line. It will be shielded on the south and east by the buildings and structures of the treatment plant, and will have a fenced, buffered enclosure as required by the Land Development Code.

Given the denseness of the large trees and understory surrounding the subject property, the base of the tower and the enclosure will not be visible from the surrounding properties. However, the top part of the tower will be visible to the surrounding area, as it will extend above the tree line.

As was noted in the Staff Report, the closest existing dwelling units are the mixed mobile and conventional home uses in the Suncoast Estates neighborhood to the southeast - which are more than 1,400 feet away. The next closest existing dwelling units are in the mobile home park to the northwest, which is located over 3,000 feet from the leased area. Applicant noted that the property to the west is zoned PUD and is vacant at this time. It is possible that it could be developed with residential uses.

Applicant had initially requested a flagpole style stealth tower, but changed their request to a monopole tower with modified external antennas, which was depicted in their Exhibit 2 notebook. They indicated their agreement with Staff that the tower could be a monopole, but wanted to have the antennas on the outside, instead of within the tower. First, they reasoned

that, given its extreme distances from existing residential units, the monopole tower - with external antennas - would not be visually detrimental to the surrounding resident, and would not have other detrimental effects on the surrounding uses.

They stressed that having the external antennas would provide several benefits to Applicant's customers as well as to potential co-locators on the tower. One important factor is that the antennas function much more efficiently when located on the outside of the tower, which will enable them to provide stronger and more consistent coverage throughout this area. In addition, externally located towers allow Applicant to have more co-locators on the tower. Co-location of antennas requires specific spacing between the sets of antennas to ensure that each set of antennas will operate without interference to and from the adjacent antenna sets. When the co-locators have to fit their antennas inside the narrow structure, it sometimes requires them to take up two spaces, thereby reducing the number of co-locators that can use the tower.

Applicant pointed out that an issue that had arisen with regard to the proximity of the tower to the runway of the Pine Shadow Airpark, which is located approximately one mile to the north and west of the subject property. The mid-line runway extension, for purposes of take-off, is more than 4,400 feet north of the tower. Two of the residents of the Pine Shadow community had sent in letters objecting to the tower's location and height, stating that it will impact the flight path of aircraft landing and taking off from their private runway. They asked that the tower be denied.

Applicant had submitted their plans and request to the Sheriff's Department, Lee County Mosquito Control, and the Lee County Port Authority. Each department sent back letters of no objection to the location and the height of the tower, noting that it would not have any adverse effects on their operations. In addition, the Port Authority determined that the tower would not require notice to or approval by the Federal Aviation Administration (FAA) as it did not exceed their minimum height restrictions, and issued the Tall Structure Permit, with conditions.

Applicant employed an expert to determine if the proposed tower, as located, will be an obstacle to the safety of the Pine Shadow Airpark operation. The expert noted that the airpark operation is privately owned, and would not be evaluated by the FAA. Nevertheless, he performed the obstacle evaluation as if the airpark was a public airport, utilizing the FAA criteria that would apply for a public airport. In that evaluation, he found that the location and height of the tower would not interfere with the approach or take-off lanes, nor the turning patterns of that airport. Thus, he found that the proposed tower did not create a safety threat to the air traffic utilizing that private runway. (Applicant's Exhibit #3)

The expert also disputed the claim by the residents that the FAA would not approve this tower in this location. He asserted that the FAA consistently approved towers of this height on and in close proximity to public airports, merely requiring that a warning notice be issued to all potential and current users of the airport. The FAA flight information maps and other documents will specifically list the tower and its proximity to the Pine Shadow airpark, as well as other airports in the area.

Staff recommended approval of the Special Exception, with conditions, finding that the request, as conditioned, was consistent with the Lee Plan and the Land Development Code. They also found that the tower, as conditioned, would be compatible with the surrounding uses, and would not be detrimental to the public health, safety and welfare. Lee County's

Environmental Staff determined that no wood storks or other listed bird species would be threatened by this tower as it will have not guyed wires to support the tower and interfere with bird flight patterns.

However, Staff objected to Applicant's proposal to construct a 149-foot-tall flagpole tower, finding that nothing in that area was that tall, and the flagpole - with flag- could not be camouflaged and would not blend in with the natural elements in the area. For that reason, they recommended that Applicant construct a "monopole" tower, with the antennas and cables placed inside.

The Hearing Examiner's record contains the two letters from the residents of Pine Shadow Airpark, but no other letters, comment cards or other correspondences regarding the tower approval. No members of the public attended the public hearing.

The undersigned Hearing Examiner concurs with Staff's analysis, findings and recommendation of approval, as conditioned herein, finding that the request met the criteria for approval set out in Chapter 34 of the Land Development Code. She also found that the request, as conditioned, was consistent with the intent of the Lee Plan and the Land Development Code, and would be compatible with the surrounding mixture of uses and zoning districts.

Although Staff recommended a "monopole" tower, and Applicant was requesting that the antenna be allowed on the outside, the Hearing Examiner is approving a 149-foot-tall flagpole - without flag - stealth communications tower for several reasons. First, the Hearing Examiner points out that the monopole with cables and antenna inside is like a flagless flagpole - it is just larger in circumference, which makes the tower more easily visible to the surrounding residents. Second, the Hearing Examiner understands Applicant's statement and reliance on the industry-wide understanding of the terms "monopole" and "stealth" towers, which understanding provided the basis for the local, state and federal regulations governing the use and location. Third, the Hearing Examiner points out the probability of residential development on the PUD properties lying within 300 feet of the west boundary of the subject property. It is her opinion that the monopole tower with external antennas will have a visual impact on that residential community, and that a flagless flagpole will have less of a visual impact and effect on those nearby residents.

While the Hearing Examiner understands the concerns raised by the Pine Shadow residents, she must rely on the findings and information provided by the Lee County Port Authority and Applicant's expert witness. However, she is requiring Applicant to put a light on the top of the tower - which is not usually required as the tower is below 200 feet tall - to ensure that any air traffic arriving during at the air park during inclement weather or in late afternoon will have visual notice of the tower's location and height.

It is the opinion of the Hearing Examiner that the conditions imposed herein are reasonably related to the impacts anticipated from the proposed tower use, and, with other regulations, will safeguard the public health, safety and welfare.

V. FINDINGS AND CONCLUSIONS:

Based upon the Staff Report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

A. That the Applicant has proved entitlement to the Special Exception, as conditioned, by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes and regulations.

B. That the requested use, as conditioned, will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request.

C. That the tower use, as conditioned, is consistent with the densities, intensities and general uses set forth in the Lee Plan.

D. That the tower use, as conditioned, is compatible with existing or planned uses in the surrounding area.

E. That approval of the Special Exception, as conditioned, will not place an undue burden upon existing transportation or planned infrastructure facilities, and the development will be served by streets with the capacity to carry traffic it generates.

F. That the tower use, as conditioned, will not adversely affect environmentally critical areas, natural resources or wood storks.

G. That the conditions imposed herein are reasonably related to the impacts anticipated from the proposed uses and, with other regulations, will safeguard the public's interests.

H. That Applicant:

- 1) Is not already providing adequate coverage in the geographic search area; and
- 2) Is unable to use existing wireless communications facility sites to provide adequate coverage in the geographical area; and
- 3) Has agreed to lease or rent available space on or in the tower, under the terms of a fair-market lease, without discrimination to other wireless communications service providers; and
- 4) Has agreed to implement all reasonable measures necessary to mitigate potential adverse impacts of the structures and facilities.

I. That the wireless communications facility or antenna-supporting structure will not be injurious to historical resources, obstruct scenic views, diminish residential property values, or reduce the quality and function of natural or man-made resources.

J. That the proposal will comply with FCC Regulation 96-326 regarding emissions of electromagnetic radiation.

VI. LIST OF EXHIBITS:

STAFF'S EXHIBITS

- 1 Large aerial photograph with tower area shown inside blue lines, and surrounding zoning and smaller aerial photograph showing wider view of surrounding area

- 2 Small aerial photograph showing wider view of subject area

Résumés of Lee County Staff are on file with the Hearing Examiner's Office and are incorporated herein.

APPLICANT'S EXHIBITS

- 1 North Fort Myers Utility Stealth Communications Facility Statement of Non-Impact on Surrounding Properties (2 pages)
- 2 Photo Simulations for Antenna Installation at North Fort Myers Utility Site # 68956, prepared by Kimley-Horn and Associates, Inc., dated April 2004 (spiral booklet)
- 3 SBA Obstruction Evaluation Report, dated May 3, 2005, by Clinton T. Papenfuss, including his resume
- 4 Site Ring and Two Graphics depicting coverage area, with narrative regarding the graphics and two letters supporting the project
- 5 Coverage rings map, and two colored aerials depicting inadequate coverage
- 6 Zoning Approval Plans, North Fort Myers Utility Water Reclamation Facility, prepared by Kimley-Horn and Associates, Inc., (three pages), dated May 5, 2004

Résumés of Applicant's consultants are on file with the Hearing Examiner's Office and are incorporated herein.

VII. PRESENTATION SUMMARY:

The Hearing Examiner explained the hearing process and placed all the participants under oath. Laura Belflower introduced herself, noting she was representing Verizon Wireless, and their current application. The request was for a 149-foot-high stealth wireless facility, described as a flagpole. She noted that, in the documents, there should be a statement called "North Fort Myers Utility Stealth Communications Facility Statement of Non-Impact on Surrounding Properties," which was part of their application. It was basically a statement of why they believed it would not impact the surrounding properties. It was labeled Applicant's Exhibit 1.

Ms. Belflower felt the Staff Report had gone through the various issues, and also had mentioned some of the history of problems that they have had with the Lee County Land Development Ordinance. She indicated that she had received authorization from two of her clients to work with the County to amend the communications tower ordinance, given the problems with its interpretation.

The Code required them to look first at a stealth facility, which is what they had done. Their facility needed to be a particular height, in this case 149 feet, to provide Verizon's service to the area; however, Staff had taken the position that a 149-foot flagpole was not compatible. Therefore, she said they were being caught between two types of towers, as Staff has now taken the position, after reviewing the history of ordinance, that they could approve, with conditions, what they called a "monopole" for the Applicant's communication facility.

Ms. Belflower expressed some concern about that decision and the use of the term "monopole" to describe the tower. Although she thought it was more semantics than anything else regarding the term "monopole," a monopole meant a particular type of communications structure in the industry. It was not possible to have internal antennas on a monopole as it was known and called by the industry.

When this tower was originally proposed, but, before it was submitted, the plans had been prepared for a traditional monopole with external antennas. Ms. Belflower submitted a booklet called "Photo Simulations for Antenna Installation at North Fort Myers Utility Site # 68956", which contained the site plans and photos as this facility would appear with a traditional monopole structure. They would be happy to do that type of tower; she felt the site was well suited to a traditional monopole because of the distance from residences. This booklet was labeled as Applicant's Exhibit 2.

Therefore, if it made sense to the Hearing Examiner, from a design standpoint, that the Applicant comply with the Staff's recommendation for a monopole, they could do that with modified external antennas. The pictures showed what that would look like, and that would be their current proposal.

That configuration would function better from many perspectives. For example, it was a more efficient co-location situation because it would not be as limiting on space as would having to have internal antennas. Sometimes, a carrier has to take up two spaces within the pole to accommodate their antennas, and some carriers cannot use a flagpole tower because their antennas are too large to fit inside the tower. Therefore, they would be limiting their co-location opportunities with internal antennas. In addition, the antennas, by being outside, would function more efficiently.

In this case, Ms. Belflower felt the tower was far enough away from developed areas that there was not a whole lot of justification for requiring the internal antennas. They had proposed the tower as a flagpole, because they felt that was the only way they could get it approved under the ordinance, but the Staff's recommendation had changed that. She asked the Hearing Examiner to take all that into consideration when she was deciding what would be most appropriate for this location.

As to Staff's conditions relative to that question, it would just involve amending Condition 4 to read, "The overall height of the tower must not exceed 149 feet above ground level and must be a monopole tower with the cables hidden within the tower." The Hearing Examiner noted she would let Staff address that situation in their presentation. Ms. Belflower said that the engineers and other members of the team were present and could speak to larger issues or questions. She noted that they went along with the Staff Report.

The only change she would request had to do with Condition 5, which was about co-locations. A bill had been pending before the Legislature that required only a building permit for co-location, and that bill had been passed on May 4, 2005. The compound of this particular site was very small, and there might be a need, in the future, to have additional co-locators expand the compound. The expansion of the compound was also addressed in the May 4, 2005 bill, and only required the expansion to be permitted through an administrative process. Unless the expansion became too large, it would not come back before the Hearing Examiner, but would still be under the LDC. Therefore, she would rather not see Condition 5 because she believed it violated the Statute, and they did not want a condition that would be inconsistent with the Statute.

Jason Laskey introduced himself, noting he was with SBA Network Services and was an agent for Verizon Wireless. He stated the subject area had problematic coverage that went back to the year 2000, which was when an initial search ring was issued by Verizon. They had identified coverage problems in the general area of U.S. 41 near Del Prado Boulevard, and had spent about two years evaluating available sites. One site was a fire station, but, because of concerns from the surrounding residents, Verizon went back to the drawing board and looked for other ways to solve their coverage problem.

During that time, they shifted the search ring to the north and were able to co-locate on a tower owned by American Tower. That solved some of the problems, but they still had a gap along Del Prado Boulevard. A new search ring was issued, and, at that time, they found that the North Fort Myers Utility site was the best option as it has numerous benefits. First, there was good buffering, the tower site was not visible locally, and the location minimized the impacts on the adjacent properties. Most importantly, that location covered the gaps that Verizon needed to cover. They had tried to accommodate everyone in choosing this site, and they felt it was a suitable location that met Verizon's requirements and minimized any impacts to the adjacent property owners.

There had been concerns, and Mr. Laskey noted they were in the record, via letters, from the Airpark nearby. This project had been reviewed and approved by Lee County Mosquito Control, and the Sheriff's Department. They had also received approval from Bill Horner, with Lee County Airport Authority. Basically, this tower does not require a notice to the FAA. At 149 feet high, it met the requirements that the FAA had established and the report detailed that information. If the Airpark were a public use airport, Verizon would still be able to construct the tower, because the FAA would determine that it was allowable at the height they were requesting. The report also addressed those issues. He said a lot of work had gone into choosing the site and getting to where they were at this point.

The Hearing Examiner said she understood that the tower was just less than a mile from the Pine Shadows Airpark. Ms. Belflower said they had a study of that, as Jason had indicated. She noted that SBA had an expert working with them that had reviewed their plan against the FAA requirements as if Pine Shadows Airpark were public airport, instead of a private one. She advised that the FAA did not cover private airports. However, it was determined that the tower would meet the requirements for a public airport, if Pine Shadows Airpark had been a public airport. She submitted a document called Obstruction Evaluation Report, which was the study done by Clinton T. Papenfuss, SBA's Air Space Analyst, for the subject tower. Along with the study, there was a copy of Mr. Papenfuss' resume (Applicant's Exhibit 3).

Ms. Belflower also submitted two maps, one showing the air traffic pattern around Pine Shadows Airpark, and the other showing the approach surfaces and the horizontal surfaces which were referenced in the report, along with notes explaining what the maps meant (Applicant's Exhibit 4). Ms. Belflower noted that Mr. Papenfuss was available by telephone, if the Hearing Examiner had any questions, as he had not been able to be at today's hearing.

Mr. Laskey noted that one of the comments that was addressed to Mr. Horner was a generic statement that towers should not be allowed within two miles of an airport, regardless of whether if it was a public or private airport. He said that was not the case. In many airports across the country, there were towers either on the airport property or on the perimeter of the airport. At the present time, a 125-foot-high monopole tower was being replaced at Page Field, where it was located in the center of the property. He believed, even if Pine Shadows

Airpark was a public use airport, the Applicant would still be well within the FAA requirements.

Ms. Belflower said it was important to note that, although the FAA regulations did not apply to private airports, Lee County does evaluate and review the tall structure permits for the impacts they would have to small and private airports. The Port Authority had approved the subject tower, and she felt all necessary safety precautions had been taken into consideration for this request.

As to the provisions that the Hearing Examiner needed to go through in making a final decision, Ms. Belflower stated she believed they had submitted sufficient information to show there was inadequate coverage in the geographic search area documentation, as shown on the colored maps (Applicant's Exhibit 5). That was the first criteria of concern.

The second criterion was that the Applicant had not been able to use the existing sites in the area, which had been addressed by Mr. Laskey. There were no other adequate structures/towers in the area. The Applicant had agreed to rent or lease available space, to other wireless companies, on the antenna supporting structure. The tower was designed to allow for co-location, and they were willing for others to co-locate on it. However, if they are required to put the antennas inside the structure, it would limit their co-location potential. This would, then, increase the likelihood for the need of another tower somewhere in the area for the other carriers.

Ms. Belflower continued by discussing the provision that said, the proposed facility would not be injurious to historic resources or obstruct scenic views, diminish residential property values, or reduce the quality and function of natural or man-made resources. There were no historic resources or designated scenic views in the area, nor would the tower diminish residential property value, as any residential use was more than 1,400 feet from the site

Regarding reducing the quality and function of natural or man-made resources, there was an environmental preserve area to the north and east that had been evaluated by Staff in terms of wood storks and other migratory birds. Because this was a single pole structure with no guy wires and because of its height, there was no evidence that it would have any negative impacts on the migratory birds or wood storks.

As to all reasonable measures to mitigate the potential adverse impacts of the structures or facilities, the tower was designed to mitigate any adverse impacts. If it was a traditional monopole with external antennas, she still thought it had been mitigated to a great extent because of the significant setbacks from property lines, as well as from any surrounding residential areas. In her analysis of non-impacts, there was a review of the tower's visibility from roadways in the area, and the lack of impact the pole would create. Even though the monopole would be partially visible, that did not, in and of itself, create an impact, and in most cases, it would not even be visible. No emissions, such as a magnetic radiation, would come from the facility. They would meet or exceed all FCC requirements for emissions

The Hearing Examiner noted that, with the backup documentation, the Applicant's presentation supported Staff's findings, so her record was complete. She requested that Staff address the proposal regarding switching this to a monopole tower, and also asked the Assistant County Attorney to address any effect the adoption of the legislative bill would have on the County's regulations; whether any of the County's regulations were inconsistent with that Bill.

Nettie Richardson, Principal Planner with the Division of Zoning, introduced herself. She noted her resume was on file in the Hearing Examiner's Office, and requested to be accepted as an expert in zoning and land use issues. Hearing no objections from the Applicant, she was accepted as such.

Ms. Richardson noted they were looking at a site that was in the North Fort Myers area off Del Prado Boulevard North. It was the site of North Fort Myers Utilities, a wastewater treatment utility site, that was already existing and developed with all the different tanks and structures the utility needed to operate the wastewater facility. She directed attention to the exhibit posted on the board, which depicted the overall site plan with the existing development, noting that it was Attachment B to the Staff Report. When coming off Del Prado Boulevard North, there was an access easement with a gate that was open during working hours. There was a small operations office where visitors had to check in, and an internal driveway that went around the entire site.

The tower would be erected on a 2,000-square-foot area located in the northwest corner, which she pointed out on the 3-page Zoning Approval Plan (Applicant's Exhibit 5). The entire site was fenced in, and was surrounded by a large undeveloped area known as Prairie Pines Preserve, which she pointed out on the large aerial map (Staff's Exhibit 1). Ms. Richardson noted that the Preserve area would never be developed.

The closest residences were to the southeast, and were conventional single-family or mobile home units. Directly across the street, to the south, was a vacant AG-2 zoned parcel and, to the southwest, there was the vacant, but recently approved Crane's Landing RPD. Further to the west was the 78-acre vacant property that was part of the Heritage Mobile Home Park. Ms. Richardson also pointed out an old railroad right-of-way, adding there were no tracks.

The Applicants were requesting a Special Exception for the 149-foot high tower, which they had proposed to do as a flagpole stealth tower. Staff had taken the position, based on the regulations for a stealth tower, that it had to blend in with the natural environment, be compatible, and designed so that it cannot be seen. However, a flagpole at 149 feet did not blend in. She noted Staff had been through two other cases and had taken the position in those cases that a stealth tower was incompatible at that height. They had recommended denial in both of those cases; however, the Hearing Examiner did not agree with Staff, and recommended approval of those towers, without the flags.

Ms. Richardson related that every case was different due to the surroundings. The closest residential home was about 1,400 feet from this leased area, and it was the Suncoast Estates area. The Heritage Mobile Home Park was well over 3,000 feet away. Therefore, there were no residential units in close proximity to the proposed tower. However, the residents would be able to see the top part of the tower, but not its base. The Applicant proposed a landscape buffer, as required by the LDC, and would be in compliance with that requirement. The leased area was hidden from the road, so none of the nearby residents would see the base of the tower, but the tip of the tower would be visible over the tops of the trees. Therefore, a flag would stand out, so Staff had recommended a regular monopole tower without the flag.

The subject property was located in a Public Facilities land use category of the Lee Plan, which is described in Lee Plan Policy 1.1.8. Policy 77.10.5 sets out that "the County will continue to permit communication towers in excess of 100 feet only by special exception. The impacts of such towers on wood storks must be considered in the review of these applications." The Environmental Sciences Division did review the request, and found that the tower was not going to be a guy wire tower, and, therefore, would not have any impact on the wood storks. There were some wetlands in the area that could be used for foraging, but, because it was not a guy wire tower, it would not have an effect on the birds. Based on this information, Ms. Richardson stated the request was consistent with both Policy 1.1.8 and Policy 77.10.5.

Further, there was Policy 5.1.5, which protected existing and future residential areas from any encroachment of uses that would be potentially destructive to the character and integrity of the residential environment. Again, the Applicant had proposed to plant a landscape buffer around the base of the tower. The nearest residential properties were more than 1,400± feet from the leased area, so the tower would be consistent with that policy.

As to the one point that was brought up concerning the Pine Shadows Airpark, Ms. Richardson noted she had an aerial photograph just for reference, because the other aerial did not show the Airpark (Staff's Exhibit 2). She pointed out the subject property, Del Prado Boulevard North, I-75, and the roadway for Pine Shadows. She defined the runway, and as Ms. Belflower noted, it was a privately owned airpark for the residents who lived there. It was about a mile from where the stealth tower would be located. These residents did not get notification of the hearing, as they did not fall within the 500-foot area. However, they were notified by the Port Authority, and they did have concerns, which she felt had been addressed. The Port Authority approved the proposed tower with no specific conditions other than the need for the Tall Structure's Permit, if they were going to use a crane in the construction of the tower.

Ms. Richardson noted those were the only concerns from surrounding property owners. She had received no other phone calls from anyone else in the area. Therefore, Staff recommended approval of the special exception. However, Staff denied the special exception for the stealth flagpole facility, but they approved what they were calling a monopole facility, with the conditions as contained in the Staff Report, dated April 26, 2005.

In addressing Condition 4, it stated the overall height of the tower must not exceed 149 feet above ground level, and must be a monopole tower as described in the LDC. The Hearing Examiner noted that changed Condition 1, because Condition 1 had the different plan.

Ms. Belflower said because she could not commit that there was nothing different on that plan except the antenna style, she suggested that they agree to be bound by the requirements of the Plan that Staff had listed, except that the tower design, as indicated on the other Plan, would be the controlling Plan. She thought they were probably the same, but she could not testify that they were exactly the same except for the design requirement. The Hearing Examiner agreed, and said she would make the change to Condition 1.

Based on that, Ms. Richardson said she believed that the Applicant had met the criteria for the Special Exception. They were consistent with all the goals, policies, and objectives of the Lee Plan. They would meet the performance and locational standards. There would be adequate buffering around the base of the proposed tower, and there were no environmental concerns regarding the wood storks, as it was a monopole tower. It would be compatible

with all the surrounding areas, and it would not cause any hazard, damage, or detriment to persons or property within the area. Based on that, Staff had recommended approval.

The Hearing Examiner requested that Ms. Collins, Assistant County Attorney, address Condition 5. Ms. Collins noted she was not familiar with the adoption of the act, the day before, pertaining to the co-location of wireless facilities. She felt they could maintain Condition 5 by adding some language at the end, as they did have to comply with the LDC to get a building permit, specifically Chapter 6, governing the issuance of building permits. She suggested adding "and consistent with Florida Statute Chapter 383.172(11)(a)(1.) (a)." That language set forth the parameters regarding conditioning on the co-location towers and how far the County could go. The language limited it to not going back to a public hearing, unless they were expanding square footage of the supporting ground structure, etc. She felt they would be all right if they added that language.

Ms. Belflower said she did not have a problem with that. She suggested that they limit it to 383.172(11)(a). She felt just the co-location paragraph would cover it. Ms. Collins stated that Staff would entertain the proposed amendment. There was a question about the requirement for a Building Permit. The Hearing Examiner said they would put the limiting language in the document, and the County Attorney's office would notify them after they have had a chance delve into this issue.

The Hearing Examiner did not have a particular problem with the request. She understood Staff's recommendation of going to a monopole, which was basically a flagpole without the flag. She indicated that a site visit would be conducted prior to rendering her decision and the hearing was closed.

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Jason Laskey, SBA Network Services, 5900 Broken Sound Parkway, Boca Raton, Florida 33305

ADDITIONAL COUNTY STAFF:

1. Donna Marie Collins, Assistant County Attorney, P. O. Box 398, Ft. Myers, Florida 33902

PUBLIC PARTICIPATION:

A. THE FOLLOWING PERSONS TESTIFIED OR SUBMITTED EVIDENCE FOR THE RECORD AT THE HEARING (SEE SECTION VI.):

For: NONE

Against: NONE

B. THE FOLLOWING PERSONS SUBMITTED A LETTER/COMMENT CARD, OR OTHERWISE REQUESTED A COPY OF THE HEARING EXAMINER DECISION:

For: NONE

Against: NONE

IX. LEGAL DESCRIPTION:

See Exhibit A (scanned legal description).

X. UNAUTHORIZED COMMUNICATIONS:

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or pending matter relating to appeals, variances, rezonings, special exceptions, or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation. . . . [Administrative Code AC-2-5]

No person shall knowingly have or attempt to initiate an unauthorized communication with the hearing examiner or any county commissioner [or their staff]. . . . [LDC Section 34-52(a)(1), emphasis added]

Any person who knowingly makes or attempts to initiate an unauthorized communication . . . [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]

Revocation, suspension or amendment of any permit variance, special exception or rezoning granted as a result of the hearing examiner action which is the subject of the unauthorized communication. [LDC Section 34-52(b)(1)b.2.]; OR

A fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. [LDC Section 1-5(c)]

XI. APPEALS:

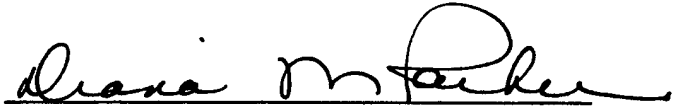
This Decision becomes final on the date rendered. A Hearing Examiner Decision may be appealed to the Circuit Court in Lee County. Appeals must be filed within thirty (30) days of the date the Hearing Examiner Decision is rendered. Appeal is by Petition for Writ of Certiorari in accordance with Lee County Land Development Code Section 34-146.

XII. COPIES OF TESTIMONY AND TRANSCRIPTS:

A. A complete verbatim transcript of the testimony presented at the hearing can be purchased from the court reporting service under contract to the Hearing Examiner's Office. The original documents and file in connection with this matter are located at the Lee County Department of Community Development, 1500 Monroe Street, Fort Myers, Florida.

B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

This decision is rendered this 25th day of July, 2005. Notice or copies of this decision will be delivered to the offices of the Lee County Board of County Commissioners.

A handwritten signature in black ink, appearing to read "Diana M. Parker", is written over a horizontal line.

DIANA M. PARKER
LEE COUNTY CHIEF HEARING EXAMINER
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 239/479-8100
Facsimile: 239/479-8106

WSP Consultants, Inc.
SURVEYORS, MAPPERS & CIVIL ENGINEERS
3306 PLEASANT LAKE DRIVE, TAMPA, FL 33618
PHONE (813) 908-7978 FAX (813) 964-8760
PROFESSIONAL SURVEYING & MAPPING CERTIFICATE OF AUTHORIZATION:
LB 7188, STATE OF FLORIDA

VERIZON WIRELESS

NORTH FORT MYERS UTILITY WATER RECLAMATION FACILITY - 68956

PARENT TRACT DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THE SOUTH ONE-HALF (1/2) OF SECTION 14, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 14, TOWNSHIP 43 SOUTH, RANGE 24 EAST;
THENCE ON A GRID BEARING OF S89°55'28"W ALONG THE SOUTH LINE OF SAID SOUTHEAST ONE-QUARTER (1/4) OF SECTION 14 A DISTANCE OF 1396.82 FEET;
THENCE N00°14'48"W A DISTANCE OF 200.00 FEET TO A POINT ON A LINE 200.00 FEET NORTH OF AND PARALLEL WITH SAID SOUTH LINE OF THE SOUTHEAST ONE-QUARTER (1/4) OF SECTION 14, SAID POINT BEING THE POINT OF BEGINNING;
THENCE S89°55'28"W ALONG SAID PARALLEL LINE A DISTANCE OF 969.19 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF THE FORMER SEABOARD COAST LINE RAILROAD;
THENCE N11°11'05"W ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 1426.73 FEET;
THENCE N89°55'28"E A DISTANCE OF 1239.91 FEET;
THENCE S00°14'48"E A DISTANCE OF 1400.00 FEET TO THE POINT OF BEGINNING;
SAID PARCEL OF LAND SITUATE WITHIN LEE COUNTY, FLORIDA CONTAINING 35.5 ACRES MORE OR LESS.

Applicant's Legal Checked

by Lgm 3/2/2005
(PP. 1 of 3)

SEZ 2004-00033

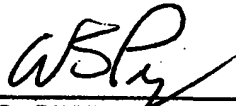
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SHEET 1 OF 3

DATE:	08/04/04
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MANAGER:	WSP
DWG FILE:	03-1029.DWG
PROJ NO.:	03-1029


WILLIAM S. PAYNE
PROFESSIONAL SURVEYOR AND MAPPER #LS 5685
WSP CONSULTANTS, INC. #LB 7188
STATE OF FLORIDA

SEAL
NOT VALID WITHOUT
THE SIGNATURE AND
THE ORIGINAL RAISED
SEAL OF A FLORIDA
LICENSED SURVEYOR
AND MAPPER
WILLIAM S. PAYNE
LS#5685

EXHIBIT A

EXHIBIT A
Page 1 of 2

DESCRIPTION OF LESSOR'S PROPERTY

(PER OFFICIAL RECORD BOOK 1820, PAGE 3899, LEE COUNTY RECORDS)

A PARCEL OR TRACT OF LAND SITUATED IN THE SOUTH HALF (S 1/2) OF SECTION 14, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST (SW) CORNER OF SAID SECTION 14; THENCE RUN S89°58'37"E, ALONG THE SOUTH LINE OF SECTION FOR 3940.15 FEET TO A CONCRETE MONUMENT MARKING THE EAST LINE OF THE FORMER SEABOARD COAST LINE (SCL) RAILROAD RIGHT OF WAY AND THE POINT OF BEGINNING; THENCE RUN N 1°21'24"W, ALONG SAID EAST LINE OF RIGHT OF WAY FOR 1832.08 FEET; THENCE RUN S89°58'37"E, PARALLEL WITH THE SOUTH LINE OF SAID SECTION 14 FOR 1247.78 FEET; THENCE RUN S00°08'33"E, ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID SECTION 14 FOR 1600.00 FEET TO THE SOUTH LINE OF SAID SECTION; THENCE RUN N89°58'37"W, ALONG SAID SOUTH LINE FOR 930.51 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THEREFROM THOSE PORTIONS THEREOF CONVEYED TO LEE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, BY WARRANTY DEED FROM NORTH FORT MYERS UTILITY, INC., DATED APRIL 11, 2001, RECORDED APRIL 24, 2001, IN OFFICIAL RECORDS BOOK 3400, PAGE 1548, AND BY OUI CLAIM DEED FROM NORTH FORT MYERS UTILITY, INC., DATED APRIL 11, 2001, RECORDED APRIL 24, 2001, IN OFFICIAL RECORDS 3400, PAGE 1550, BOTH OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

DESCRIPTION OF LESSEE'S PREMISES

A PARCEL OF LAND BEING A PORTION OF THE SOUTHEAST ONE-QUARTER (1/4) OF SECTION 14, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 14, TOWNSHIP 43 SOUTH, RANGE 24 EAST; THENCE ON A GRID BEARING OF S89°55'28"W ALONG THE SOUTH LINE OF SAID SOUTHEAST ONE-QUARTER (1/4) OF SECTION 14 A DISTANCE OF 1396.82 FEET; THENCE N00°14'48"W A DISTANCE OF 200.00 FEET TO A POINT ON A LINE 200.00 FEET NORTH OF AND PARALLEL WITH SAID SOUTH LINE OF THE SOUTHEAST ONE-QUARTER (1/4) OF SECTION 14; THENCE S89°35'28"W ALONG SAID PARALLEL LINE A DISTANCE OF 870.83 FEET; THENCE N00°00'00"E A DISTANCE OF 1089.68 FEET TO THE POINT OF BEGINNING; THENCE S90°00'00"W A DISTANCE OF 40.00 FEET; THENCE N00°00'00"E A DISTANCE OF 50.00 FEET; THENCE N80°00'00"E A DISTANCE OF 40.00 FEET; THENCE S00°00'00"E A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING; SAID PARCEL OF LAND SITUATE WITHIN LEE COUNTY, FLORIDA CONTAINING 2000.0 SQUARE FEET MORE OR LESS.

Applicant's Legal Checked

by Lgm 3/2/2005.
(PR 2 of 3)

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PERMIT COUNTER

SEZ2004-00033

DESCRIPTION OF INGRESS-EGRESS EASEMENT

A 20 FOOT WIDE STRIP OF LAND BEING A PORTION OF THE SOUTHEAST ONE-QUARTER (1/4) OF SECTION 14, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 14, TOWNSHIP 43 SOUTH, RANGE 24 EAST;
 THENCE ON A GRID BEARING OF S89°55'28"W ALONG THE SOUTH LINE OF SAID SOUTHEAST ONE-QUARTER (1/4) OF SECTION 14 A DISTANCE OF 1396.82 FEET;
 THENCE N00°14'48"W A DISTANCE OF 200.00 FEET TO A POINT ON A LINE 200.00 FEET NORTH OF AND PARALLEL WITH SAID SOUTH LINE OF THE SOUTHEAST ONE-QUARTER (1/4) OF SECTION 14;
 THENCE S89°55'28"W ALONG SAID PARALLEL LINE A DISTANCE OF 172.22 FEET TO THE POINT OF BEGINNING;
 THENCE N44°44'44"W A DISTANCE OF 153.95 FEET TO A POINT OF CURVATURE OF A TANGENT CURVE CONCAVE TO THE NORTHEAST;
 THENCE NORTHWESTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 46°12'20" AND RADIUS OF 415.00 FEET FOR AN ARC DISTANCE OF 334.67 FEET TO A POINT OF TANGENCY;
 THENCE N01°27'36"E A DISTANCE OF 510.28 FEET TO A POINT OF CURVATURE OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST;
 THENCE NORTHERLY, NORTHWESTERLY AND EASTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 93°29'29" AND RADIUS OF 100.00 FEET FOR AN ARC DISTANCE OF 163.17 FEET TO A POINT OF TANGENCY;
 THENCE S87°58'07"W A DISTANCE OF 249.61 FEET TO A POINT OF CURVATURE OF A TANGENT CURVE CONCAVE TO THE NORTHEAST;
 THENCE EASTERLY, NORTHWESTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 92°01'53" AND RADIUS OF 65.00 FEET FOR AN ARC DISTANCE OF 104.41 FEET TO A POINT OF TANGENCY;
 THENCE N00°00'00"E A DISTANCE OF 58.00 FEET;
 THENCE S90°00'00"W A DISTANCE OF 62.68 FEET;
 THENCE S00°00'00"E A DISTANCE OF 20.00 FEET;
 THENCE N90°00'00"E A DISTANCE OF 42.68 FEET;
 THENCE S00°00'00"E A DISTANCE OF 38.00 FEET TO A POINT OF CURVATURE OF A TANGENT CURVE CONCAVE TO THE NORTHEAST;
 THENCE SOUTHERLY, SOUTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 92°01'53" AND RADIUS OF 85.00 FEET FOR AN ARC DISTANCE OF 136.53 FEET TO A POINT OF TANGENCY;
 THENCE N87°58'07"E A DISTANCE OF 249.61 FEET TO A POINT OF CURVATURE OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST;
 THENCE EASTERLY, SOUTHEASTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 93°29'29" AND RADIUS OF 80.00 FEET FOR AN ARC DISTANCE OF 130.54 FEET TO A POINT OF TANGENCY;
 THENCE S01°27'36"W A DISTANCE OF 510.28 FEET TO A POINT OF CURVATURE OF A TANGENT CURVE CONCAVE TO THE NORTHEAST;
 THENCE SOUTHERLY, SOUTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 46°12'20" AND RADIUS OF 435.00 FEET FOR AN ARC DISTANCE OF 350.60 FEET TO A POINT OF TANGENCY;
 THENCE S44°44'44"E A DISTANCE OF 134.17 FEET TO A POINT ON A LINE 200.00 FEET NORTH OF AND PARALLEL WITH SAID SOUTH LINE OF THE SOUTHEAST ONE-QUARTER (1/4) OF SECTION 14;
 THENCE N89°55'28"E ALONG SAID PARALLEL LINE A DISTANCE OF 28.12 FEET TO THE POINT OF BEGINNING;
 SAID PARCEL OF LAND SITUATE WITHIN LEE COUNTY, FLORIDA CONTAINING 32,293.7 SQUARE FEET (0.74 ACRES) MORE OR LESS.

Applicant's Legal Checked

by Lcm 3/2/2005

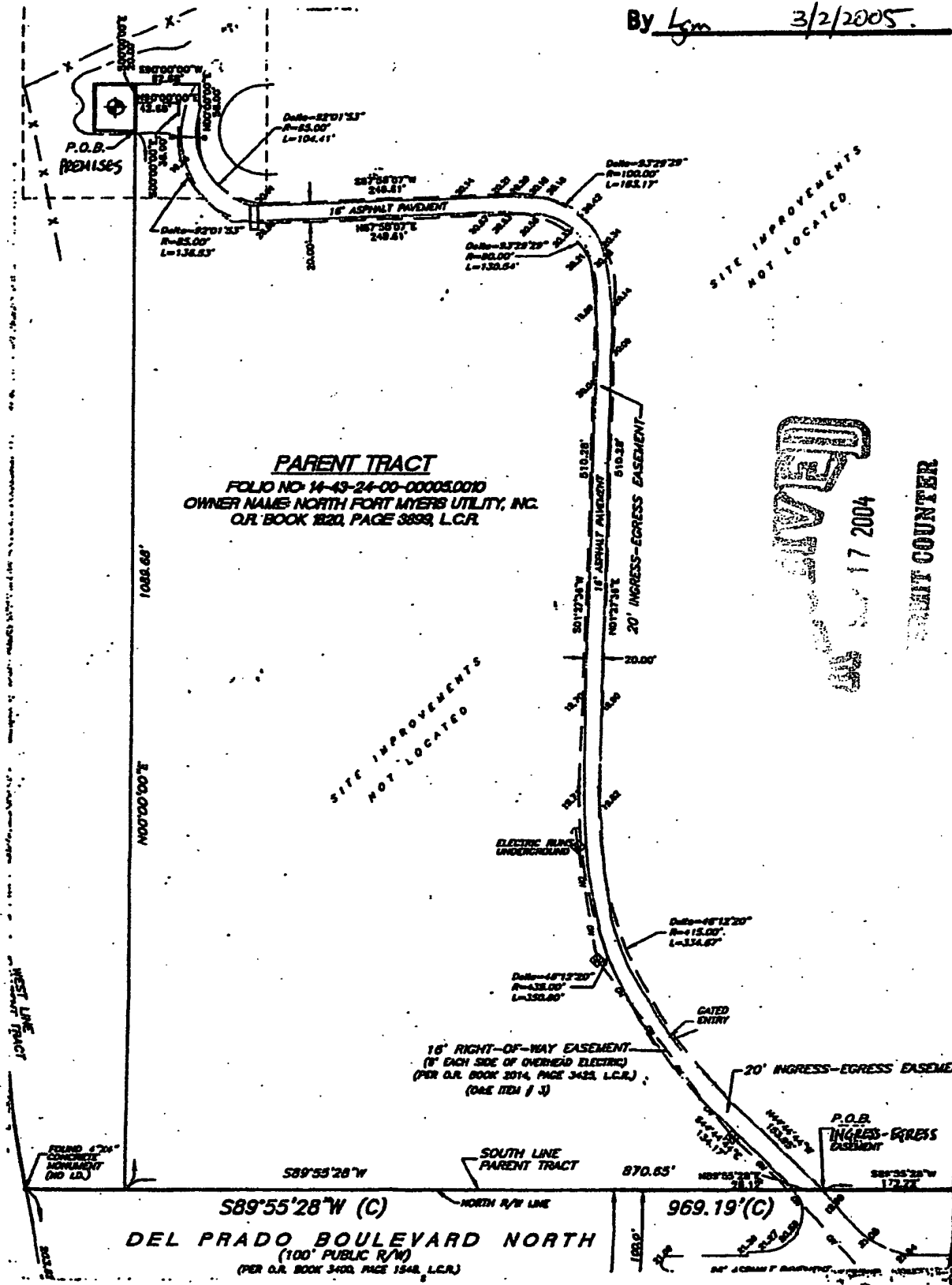
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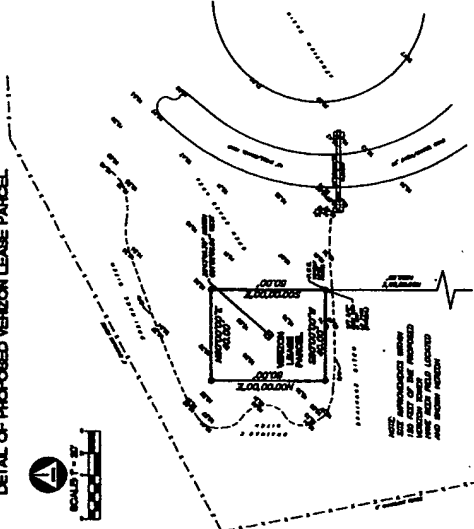
SE2004-00033

Applicant's Survey Checked
By Lgm 3/2/2005.



SKETCH OF PARENT TRACT BOUNDARY
PORTION OF SECTION 16, TOWNSHIP 43 SOUTH, RANGE 28 EAST
4000 OIL, PUBLIC SCHOOLLAND NORTH, NORTH PORT ARTHUR, FL 32067
NORTH PORT ARTHUR UTILITY WATER RECLAMATION FACILITY - 080539

DETAIL OF PROPOSED VERIZON LEASE PARCEL

[illegible][illegible]

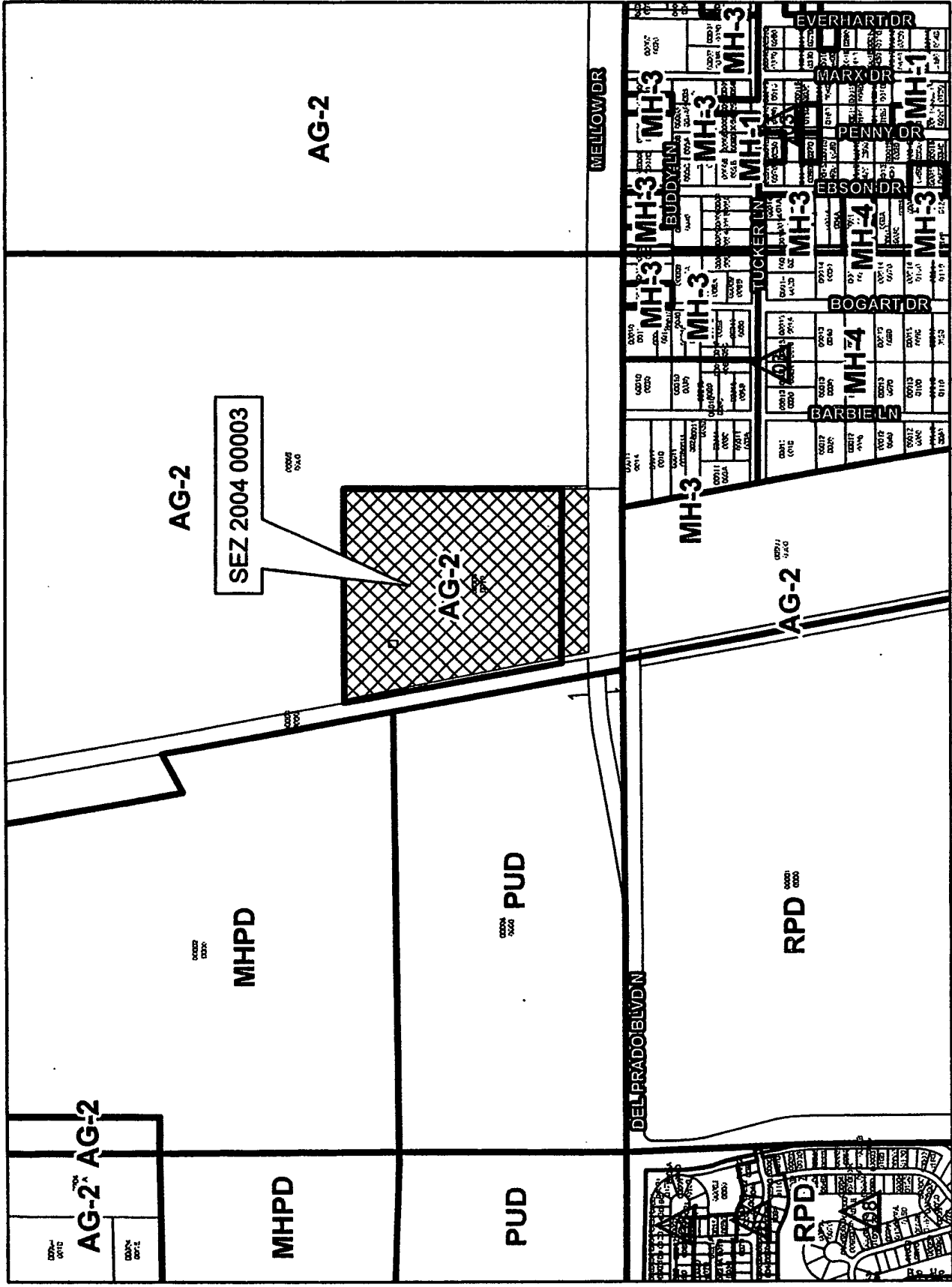
1. NAME OF FIRM 2. ADDRESS 3. CITY 4. STATE 5. ZIP		6. TYPE OF FIRM 7. TYPE OF SERVICE		8. NAME OF PROJECT 9. ADDRESS 10. CITY 11. STATE 12. ZIP		13. NAME OF AGENCY 14. ADDRESS 15. CITY 16. STATE 17. ZIP		18. NAME OF MAP 19. ADDRESS 20. CITY 21. STATE 22. ZIP	
23. NAME OF FIRM 24. ADDRESS 25. CITY 26. STATE 27. ZIP		28. NAME OF PROJECT 29. ADDRESS 30. CITY 31. STATE 32. ZIP		33. NAME OF AGENCY 34. ADDRESS 35. CITY 36. STATE 37. ZIP		38. NAME OF MAP 39. ADDRESS 40. CITY 41. STATE 42. ZIP		43. NAME OF FIRM 44. ADDRESS 45. CITY 46. STATE 47. ZIP	

[illegible]

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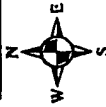
ZONING INTAKE MAP

4/25/2005



Attachment A

970 485 0 970 Feet



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL EXCEPTION: SEZ2004-00029
APPLICANT: VERIZON WIRELESS, in reference to 68943 CIVIC CENTER
HEARING DATE: FEBRUARY 10, 2005

I. APPLICATION:

Filed by VERIZON WIRELESS, 777 Yamato Road, Suite 600, Boca Raton, Florida 33431 (Applicant); CDS, INC. % KAREN CUNNINGHAM, 1019 Hollyberry Court, Brandon, Florida 33511 (Agent); LEE COUNTY GOVERNMENT, % DONALD D. STILWELL, COUNTY MANAGER, P.O. Box 398, Fort Myers, Florida 33902 (Owner).

Request is for a Special Exception in the Community Facilities (CF-3) zoning district to allow a 149-foot-tall stealth wireless communication facility (Flagpole) and ancillary equipment located at the Lee County Civic Center.

The subject property is located at 11831 Bayshore Road, N. Fort Myers, Florida 33917, in Section 24, Township 43 South, Range 25 East, Lee County, Florida (District #4).

The Strap # as furnished by the Applicant is: 24-43-25-00-00007.0000

II. STAFF RECOMMENDATION: DENIAL

The Department of Community Development Staff Report was prepared by Josh Philpott. The Staff Report is incorporated herein by this reference.

III. HEARING EXAMINER DECISION:

The undersigned Lee County Hearing Examiner **APPROVES** the Applicant's request for a Special Exception in the Community Facilities (CF-3) zoning district to allow a 149-foot-tall stealth wireless communication facility (Flagpole) and ancillary equipment for the real estate described in Section VIII. Legal Description, with the following conditions:

1. The development must be in substantial compliance with the Zoning Approval Plan produced by Kimley-Horn and Associates, Inc., date stamped "Received July 29, 2004," except as modified by the conditions below.

2. A 10-foot-wide buffer must be installed around the perimeter of the proposed facility consisting of a double-row hedge maintained at a height of eight feet with Sabal palms planted 10 feet on-center, as per LDC Section 34-1447(c).

3. The flag pole must be installed and maintained to appear flat gray in color. No flag is required to be installed on the flagpole.

4. The overall height of the flagpole must not exceed 149 feet above ground level.

5. Any request for building permits for co-location of additional wireless communications facilities on the property must be reviewed and approved under the co-location requirements of the Lee County Land Development Code (LDC) at the time of the request.

6. Any replacement of wireless communication facilities on the subject property must be reviewed and approved under the wireless communications tower provisions of the Land Development Code in effect at the time of the replacement.

IV. HEARING EXAMINER DISCUSSION:

This is a request for a Special Exception to locate a 149-foot-tall stealth communication tower at the CF-3 zoned Lee County Civic Center site in North Fort Myers. The Civic Center is located at the intersection of State Road 31 and State Road 78, and the leased 2,000-square-foot tower parcel is situated in the center of the northeasterly portion of the Civic Center (parent tract) property. The tower site is immediately surrounded by the lands and structures of the parent tract, which, in turn, is surrounded by lands zoned AG-2 and developed with agricultural and scattered residential uses to the north, east and west. There are commercially and residentially zoned parcels south of the parent tract - across State Road 78. The parent tract is designated Public Facilities in the Lee Plan, as it is owned by Lee County, but is leased to a management company to operate the Civic Center use.

Applicant explained that the area surrounding the State Road 78/State Road 31 intersection and a portion of the Ft. Myers Shores area of eastern Fort Myers lacked adequate cell phone coverage. They established the pre-requisite geographical search area and determined that a tower needed to be located in the vicinity of the Civic Center to provide the optimum service for cell phone users in those areas. They then studied the properties within and surrounding the geographic search area to find if there were any existing towers on which they could co-locate. Their study revealed several towers in the North Fort Myers area, but they were all at least one mile outside Applicant's search ring. Applicant's engineers determined that they could not co-locate on those existing towers because they were too far removed from the designated coverage area to enable Applicant to provide the necessary service. They also found that, if they were required to co-locate on one of those existing towers, they would still need to build a tower somewhere in the area of the Civic Center to achieve the same coverage that the proposed 149-foot-tall tower would provide.

Applicant stated that there should be no adverse impacts associated with the proposed tower use. The tower is designed to resemble a large flagpole, with a small building at its base to house its mechanical equipment, and will be located internally on the Civic Center site. The tower will be about 585 feet from the north property line, about 619 feet from the south property line, 395 feet from its west property line, and about 768 feet from the east property line. Although the 2,000-square-foot leased parcel on which the tower will be located is part of the Civic Center's parking system, the base of the tower and the mechanical equipment building will be shielded from view by a fence and 10-foot-wide vegetative buffer. Access will be via a specific 20-foot-wide access easement across the northeastern portion of the Civic Center property.

They explained that the 149-foot-tall tower will not attract much attention because of the extensive setbacks from the tract's perimeter, and the tower's decreasing size as it approaches its full height. The tower will be between six and eight feet wide at the base, which will narrow to about a 2- to 3-foot width at the top. The tower's silhouette will not be

easily visible because the tower will be painted a flat gray color, which will facilitate the visual "disappearance" of the tower into the sky and clouds above the treetops.

Applicant described the area in which the Civic Center is located as being quite rural, with lots of agricultural type uses and sparsely scattered dwelling units. They did not believe that their proposed tower would be incompatible with or injurious to any of the existing uses in the area, since it would be located on the Civic Center site; not immediately adjacent to an agricultural or residential use. It would not attract nor generate lots of traffic, as it would only be monitored on a regular basis by one or two of Applicant's employees. They conceded that it would be visible at and above the base to about the height of the surrounding tree coverage, but that it would not be an eyesore, especially if they were not required to place a flag at the top to attract everybody's attention.

The Land Development Code does not place height limitations on a stealth tower, as it does on guyed and other towers. Thus, the 149-foot height of the tower is consistent with the Land Development Code. However, Lee Plan Policy 77.10.5 mandates that all towers exceeding 100 feet in height go through the Special Exception approval process. Hence, Applicant's request herein for the Special Exception.

Applicant pointed out that Lee Plan Policy 77.10.5 was adopted, at the time when most of the tall towers were guyed structures, as a means of protecting and preserving wood storks and their habitat. That Policy has never been updated to recognize that monopole or the stealth type towers are not supported by guy wires extending from various heights to the ground, and do not pose the same threat to the wood storks as do the guyed towers. They believed that stealth towers should be exempt from that Policy; however, since the Policy states that "communications towers in excess of 100 feet" will be permitted "only by special exception," Staff has required them to come forward with this request. If Staff had agreed with Applicant's assertions that stealth towers should be exempt from Policy 77.10.5, the 149-foot height would not have been an issue under either the Land Development Code or the Lee Plan.

Staff recommended denial of the requested Special Exception, finding that the height of the tower was excessive and was, thus, incompatible with the surrounding rural community. They agreed that the Lee Plan Policy 77.10.5 brought the request into the Special Exception process, but disagreed that the 149-foot height would not have been a problem for them, even without that Policy.

They found that the tower use was inconsistent with Lee Plan Policy 5.1.5, which requires the protection of residential communities from the intrusion of incompatible uses. Staff conceded that the majority of the property in the vicinity of the Civic Center is agriculturally zoned and used, and that there were only a scattering of single-family residences in the area. They did not disagree with Applicant's statement that the nearest dwelling unit was about 1,000 feet from the tower parcel; they just argued that the tower would be seen for miles, thereby "intruding" into the "scenic" view of all residents in the area.

Staff found that the Civic Center was the tallest structure in the vicinity of the leased parcel, and that it was only 60 feet high - less than one-half the proposed height of the tower. They asserted that the proposed height of this tower was an "urban use" and, therefore, was more appropriate in a more urbanized area with taller buildings and structures, where it would not be as readily visible.

Staff also argued that Applicant had not proven to their satisfaction that they could not co-locate on one of the two nearest towers to the proposed site. They believed Applicant could co-locate on one of those towers, and then could build a shorter tower on the Civic Center site, whereby they would achieve the same coverage for the desired geographical area. They noted that, if the new tower was less than 100 feet in height, Applicant could by-pass the Special Exception/public hearing process altogether, and just obtain a permit for the tower.

There were no adjacent property owners or members of the public in attendance at the public hearing, and the Hearing Examiner's files do not contain any correspondence or documentation from members of the public regarding this matter.

The undersigned Hearing Examiner does not concur with Staff's analysis, findings or recommendation of denial, finding that Staff erred in their interpretation and application of certain provisions of Lee Plan Policy 1.4.1 and Land Development Code Section 34-1441, et seq., to this stealth tower. She agrees with Applicant's arguments that the proposed tower constitutes "the minimal non-residential land use" "needed to serve the rural community," in accordance with the intent of Lee Plan Policy 1.4.1. The proposed tower will provide the needed cell phone coverage for the residents and travelers within the geographical coverage area, and will not require more than the most basic public services, as it will generate minimal lighting, traffic, and demand for public utilities.

The Hearing Examiner finds that the request, as conditioned herein, meets the criteria for approval set out in LDC Sections 34-145(c) and 34-1445(b)(3). It is her opinion that the changing conditions with regard to the growing demand and use of cell phones makes approval of the request appropriate for this area. She also finds that request, as conditioned herein, is consistent with the intent of the Lee Plan and the Land Development Code, and will not be injurious to the neighborhood or public health, safety and welfare. She finds that Applicant proved that it is not providing adequate service in the geographic search area, and that they are unable to co-locate on other towers in the North Fort Myers area to provide the necessary coverage. In close proximity, the tower may be visible, because it will be located on flat, open land, and may obstruct skyline visibility to a degree, but it is the Hearing Examiner's finding that the public benefit provided by this tower outweighs any minimal visual intrusion that might be caused by the tower.

The Hearing Examiner also concurs with Applicant's arguments that a communications tower use cannot be deemed to be urban or rural in nature, simply because of the proposed height. The functions, service and potential impacts of the communications tower remain the same whether the tower is located in a rural area or in a highly developed urban setting.

The Hearing Examiner also finds that the conditions imposed herein are reasonably related to the impacts anticipated from the proposed use, and, with other regulations, will safeguard the public's interests.

V. FINDINGS AND CONCLUSIONS:

Based upon the Staff Report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

A. That the Applicant has proved entitlement to the Special Exception, as conditioned, by demonstrating compliance with the Lee Plan and the Land Development Code, including the provisions of Section 34-1445(b)(3), as Applicant proved that:

- 1) They are not already providing adequate coverage or adequate capacity in the geographic search area described in this case.
- 2) They are not able to use existing wireless communications facilities already existing in the area, as they are located outside the geographic search area and will not provide the necessary coverage or capacity.
- 3) They have agreed to rent or lease available space on the tower to other wireless communications service providers.
- 4) The 149-foot-high tower will not be injurious to historical resources, diminish residential property values, or reduce the quality of function of natural or man-made resources, and that, even though it might minimally obstruct the skyline views, the public benefit resulting from the tower outweighs any minimal obstruction of the skyline.
- 5) They have agreed to implement all reasonable measures to mitigate the potential adverse impact of the structures and facilities by screening and buffering the base of the tower, and painting the tower gray to facilitate its visual "disappearance" into the clouds and sky.

B. That the tower, as conditioned, will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request.

C. That the tower, as conditioned, is consistent with the densities, intensities and general uses set forth in the Lee Plan.

D. That the tower, as conditioned, is compatible with existing or planned uses in the surrounding area.

E. That approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities, and the development will be served by streets with the capacity to carry traffic it generates.

F. That the tower, as conditioned, will not adversely affect environmentally critical areas and natural resources.

G. That urban services, as defined in the Lee Plan, are available and adequate to serve the minimal demands of the tower use.

H. That the conditions imposed herein are reasonably related to the impacts anticipated from the proposed tower use and, with other regulations, will safeguard the public's interests.

VI. LIST OF EXHIBITS:

STAFF'S EXHIBITS

- 1 Cell Sites, Active & Planned, dated July 29, 2004, at Permit Counter
- 2 Composite (2-page document) Before and After - 8943 [Color]

- 3 Conditions
- 4 Civic Center, Cell 68943
- 5 Non-Disturbance Agreement (9-page document)
- 6 Memorandum from Mary Gibbs, Director, entitled "Collocations of Wireless Communication Facilities."

Résumés of Lee County Staff are on file with the Hearing Examiner's Office and are incorporated herein.

APPLICANT'S EXHIBITS

- 1 Site Plan, prepared by Kimley-Horn and Associates, dated July 2004 (Sheet 1)
- 2 Aerial photograph, Prepared by Photogrammetric Technologies, Inc., dated January 2002.
- 3 Statement of Non-Impact on Surrounding Properties (2 pages)
- 4 Lee County Civic Center Stealth Communication Facility, Statement of Compliance, (4 pages)
- 5 Spiral-bound Book containing Line of Sight Photos [colored]
- 6 Spiral-bound Book containing Post Construction Photo Simulations [colored]
- 7 Staff Report for SEZ2004-00029, Verizon Wireless in ref. to 68943 Civic Center, dated September 22, 2004

Résumés of Applicant's consultants are on file with the Hearing Examiner's Office and are incorporated herein.

VII. PRESENTATION SUMMARY:

See Official Court Reporter Transcript

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Laura Bellflower, P.O. Box 47451, Tampa, FL 33647
2. David Felton, 224 Datura Street, # 1008, West Palm Beach, FL 33401
3. Mariko Tolman, Verizon Wireless, 777 Yamato Road, Boca Raton, FL
4. Josephine Conde, Verizon Wireless, 777 Yamato Road, Boca Raton, FL
5. Karen Cunningham, Verizon Wireless, 1019 Hollyberry Court, Brandon, FL

ADDITIONAL COUNTY STAFF:

1. Donna Marie Collins, Assistant County Attorney, P. O. Box 398, Ft. Myers, Florida 33902-0398

PUBLIC PARTICIPATION:

A. THE FOLLOWING PERSONS TESTIFIED OR SUBMITTED EVIDENCE FOR THE RECORD AT THE HEARING (SEE SECTION VI.):

For: NONE

Against: NONE

B. THE FOLLOWING PERSONS SUBMITTED A LETTER/COMMENT CARD, OR OTHERWISE REQUESTED A COPY OF THE HEARING EXAMINER DECISION:

For: NONE

Against: NONE

IX. LEGAL DESCRIPTION:

See Exhibit A (scanned legal description).

X. UNAUTHORIZED COMMUNICATIONS:

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or pending matter relating to appeals, variances, rezonings, special exceptions, or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation. . . . [Administrative Code AC-2-5]

No person shall knowingly have or attempt to initiate an unauthorized communication with the hearing examiner or any county commissioner [or their staff]. . . . [LDC Section 34-52(a)(1), emphasis added]

Any person who knowingly makes or attempts to initiate an unauthorized communication . . . [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]

Revocation, suspension or amendment of any permit variance, special exception or rezoning granted as a result of the hearing examiner action which is the subject of the unauthorized communication. [LDC Section 34-52(b)(1)b.2.]; OR

A fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. [LDC Section 1-5(c)]

XI. APPEALS:

This Decision becomes final on the date rendered. A Hearing Examiner Decision may be appealed to the Circuit Court in Lee County. Appeals must be filed within thirty (30) days of the date the Hearing Examiner Decision is rendered. Appeal is by Petition for Writ of Certiorari in accordance with Lee County Land Development Code Section 34-146.

XII. COPIES OF TESTIMONY AND TRANSCRIPTS:

A. A complete verbatim transcript of the testimony presented at the hearing can be purchased from the court reporting service under contract to the Hearing Examiner's Office. The original documents and file in connection with this matter are located at the Lee County Department of Community Development, 1500 Monroe Street, Fort Myers, Florida.

B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

This decision is rendered this 23rd day of March, 2005. Notice or copies of this decision will be delivered to the offices of the Lee County Board of County Commissioners.



DIANA M. PARKER
LEE COUNTY CHIEF HEARING EXAMINER
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 239/479-8100
Facsimile: 239/479-8106

EXHIBIT PH-3.C.1

**DESCRIPTION OF
PARENT TRACT**

(DESCRIPTIONS RECORDED IN THE OFFICIAL RECORD BOOK 1095, PAGE 1541 AND OFFICIAL RECORD BOOK 1118, PAGE 1097 OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA.)

THE SOUTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHEAST ONE-QUARTER (1/4) OF SECTION 24, TOWNSHIP 43 SOUTH, RANGE 25 EAST;
AND THE NORTH ONE-HALF (1/2) OF THE SOUTHWEST ONE-QUARTER (1/4) OF THE NORTHEAST ONE-QUARTER (1/4), SECTION 24, TOWNSHIP 43 SOUTH, RANGE 25 EAST;
AND THE NORTH ONE-HALF (1/2) OF THE NORTHWEST ONE-QUARTER (1/4) OF THE NORTHEAST ONE-QUARTER (1/4) OF THE NORTHEAST ONE-QUARTER (1/4) OF SECTION 24, TOWNSHIP 43 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA.

AND TOGETHER WITH:

THE EAST ONE-HALF (1/2) OF THE EAST ONE-HALF (1/2) OF SECTION 24, TOWNSHIP 43 SOUTH, RANGE 25 WEST, LYING NORTH OF AND WEST OF STATE ROAD #78, LESS STATE ROAD RIGHT-OF-WAY, AND THE REMAINING EAST HALF SOUTH OF THE STATE ROAD # 78 THEREOF.

**DESCRIPTION OF
VERIZON LEASE PARCEL**

A PARCEL OF LAND BEING A PART OF THE NORTHEAST ONE-QUARTER (NE1/4) OF SECTION 24, TOWNSHIP 43 SOUTH, RANGE 25 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCE AT THE NORTHEAST CORNER OF SAID NORTHEAST-ONE-QUARTER (1/4);
THENCE N 89°49'28" W ALONG THE NORTH LINE OF SAID NORTHEAST-ONE QUARTER (NE1/4) A DISTANCE OF 928.19 FEET;

THENCE S 00°10'32" W A DISTANCE OF 565.69 FEET TO THE POINT OF BEGINNING;

THENCE S 57°32'28" E A DISTANCE OF 50.00 FEET;

THENCE S 32°27'22" W A DISTANCE OF 40.00 FEET;

THENCE N 57°32'28" W A DISTANCE OF 50.00 FEET;

THENCE N 32°27'32" E A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

SAID LAND SITUATE WITHIN LEE COUNTY, FLORIDA CONTAINING 2,000 SQUARE FEET, MORE OR LESS.

**DESCRIPTION OF
20' INGRESS/EGRESS EASEMENT**

A 20.00 FOOT STRIP OF LAND LYING IN THE NORTHEAST ONE-QUARTER (NE1/4) OF SECTION 24, TOWNSHIP 43 SOUTH, RANGE 25 SOUTH, THE CENTERLINE OF SAID STRIP BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID NORTHEAST ONE-QUARTER (NE1/4);

THENCE N 89°43'41" W, ALONG THE NORTH LINE OF SAID NORTHEAST ONE-QUARTER (NE1/4) A DISTANCE OF 150.00 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 31;

THENCE S 00°16'19" W ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 61.79 FEET, TO THE POINT OF BEGINNING;

THENCE N 89°48'42" W A DISTANCE OF 450.27 FEET;

THENCE S 00°17'11" W A DISTANCE OF 421.31 FEET;

THENCE S 89°54'02" W A DISTANCE OF 246.73 FEET;

THENCE S 07°03'05" W A DISTANCE OF 112.80 FEET

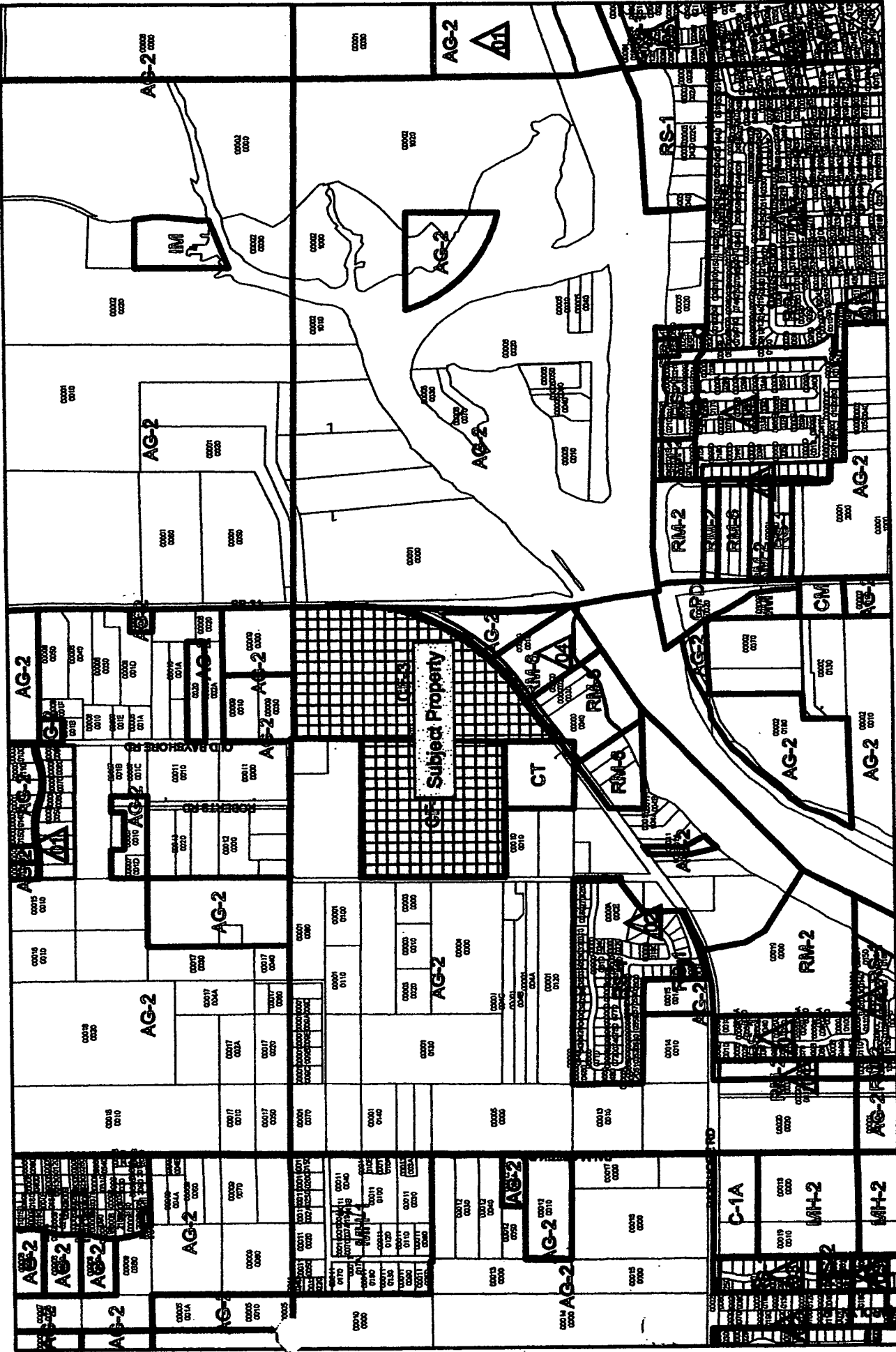
THENCE N 57°32'28" W A DISTANCE OF 72.86 FEET TO A POINT OF TERMINATION.

SAID LAND SITUATE WITHIN LEE COUNTY, FLORIDA CONTAINING 28,075 SQUARE FEET, MORE OR LESS.

Applicant's Legal Checked

EXHIBIT A

[Signature] August 04, 2004



1,250 625 0 1,250 Feet