

**Lee County Board of County Commissioners
Agenda Item Summary**

DATE CRITICAL
Blue Sheet No. 20021302

1. REQUESTED MOTION:

ACTION REQUESTED: Ratify the County's earlier authorization for the now completed replacement of a State of Florida wireless communication facility (tower) just off Pine Island Road, west of U.S. 41 in North Fort Myers, Florida.

WHY ACTION IS NECESSARY: The Lee County Board of County Commissioner's approval of Blue Sheet 20010492, resulting in Resolution Number 010517, included an inadvertent erroneous representation of the height of the former wireless communication facility requested to be replaced. A revised approval and resolution are necessary to confirm the completed installation.

WHAT ACTION ACCOMPLISHES: Allows the State of Florida to move forward to obtain a certificate of completion for the replacement of an outdated wireless communication facility as part of the State's Phase 3 of the 800 MHZ Statewide Law Enforcement Communications Network on the West Coast of Florida from Collier County through to Citrus County.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT # 4

C12A

3. MEETING DATE:

11-19-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT County Atty's Office
- C. DIVISION Land Use
- BY: *John J. Fredyma*
John J. Fredyma
Assistant County Attorney

5 min **TIME REQUIRED:**

7. BACKGROUND: In 2001, the State of Florida requested Board approval to replace an existing guyed wireless communication facility (tower) located on the site of an FDOT maintenance yard at 2981 NE Pine Island Road in North Fort Myers, Florida (just to the west and behind the Home Depot at Merchants Crossing). The State's request, originally detailed in Blue Sheet 20010492, erroneously referenced an existing 350-foot high guyed communication tower that would be replaced with a new 350-foot high self-supporting (lattice) tower. Once the new tower was completed, it was determined the existing tower was only 309 feet in height, not 350 feet as originally thought. The new tower is now complete, in service and awaiting the issuance of a certificate of completion from the County's Development Services Division. The new replacement tower is 348 feet in height or 41 feet taller than the tower it replaced.

The tower contractor unintentionally and erroneously believed the original tower was 350 feet in height and it would be replaced by a new tower of similar height. The new tower would have to be re-engineered and completely reconstructed if its height has to be reduced (by 41 feet) to match the height of the now-removed old tower. Additionally, the cost associated with such a change to the facility would be substantial (estimated to be excess of \$50,000.00). The State seeks to retain the new tower as presently constructed and has agreed to limit use of the top 50 feet of the tower to antenna installations by Lee County Public Safety. While Public Safety does not have need for this location now, they can foresee possible use in the future. The Department of Community Development would have preferred the lower height of the old tower, but does not endorse or recommend the removal of the top 41 feet of the tower.

Attachment: Revised Resolution

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

| A Department Director | B Purchasing or Contracts | C Human Resources | D Other | E County Attorney | F Budget Services | | | | G County Manager |
|-----------------------------|------------------------------------|-------------------------|------------|-------------------------|----------------------|---------------------|-----------------------|---------------------|------------------------|
| N/A | N/A | N/A | N/A | <i>Dina</i> | OA <i>RK/11/6</i> | OM <i>H/11/6</i> | RISK <i>R/11/6</i> | GC <i>R/11/6</i> | <i>W/11/6</i> |

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY
FORWARDED
TO CO. ADMIN
11/6/02 2:30 PM

RECEIVED BY
COUNTY ADMIN. *RK*
11-6-02
2:30
COUNTY ADMIN.
FORWARDED TO: *DS*
11/7 11:30

Resolution No. _____

**Amendment to Resolution No. 010517 to Direct
Acceptance of an Application from
the State of Florida to Construct a Replacement Communication Service Facility**

WHEREAS, in 2001, during the effective period of Lee County Ordinance No. 01-20, prohibiting the construction of communication towers in excess of 149 feet in height, the Lee County Board of County Commissioners received a request from the State of Florida to replace or reconstruct a guyed communication tower located on the site of a State of Florida Department of Transportation maintenance yard at 2981 NE Pine Island Road in North Fort Myers, Florida; and

WHEREAS, the request to replace the existing was approved by the Lee County Board of County Commissioners on May 15, 2001, and the approval was embodied in Lee County Resolution Number 010517, authorizing the construction of a 350-foot high self-supporting wireless service facility (tower); and

WHEREAS, after the new communication tower was constructed it was determined the old guyed communication tower was only 309 feet tall, not 350 feet as originally represented; and

WHEREAS, the State of Florida seeks to retain the new tower without additional modification or reduction in height, and

WHEREAS, the State of Florida agrees to limit use of the top 50 feet of the communication tower to antenna installations by Lee County Public Safety.

WHEREAS, the new communication tower is already in service and a critical link in Phase 3 of the Statewide Law Enforcement Communications Network and the Florida Department of Transportation's Intelligent Transportation System (ITS); and

WHEREAS, Florida case law presents a legally sustainable basis to grant the request by the State of Florida to allow the construction of the replacement wireless service facility based upon the State's legal argument that the public interest in favor of the proposed use outweighs the County's interest in its decision to prohibit the construction of a new wireless service facility until it has developed and adopted a Personal Wireless Service Facility (PWSF) Master Plan; and

WHEREAS, the requested replacement wireless service facility does not include a commercial component for a private carrier(s) at this time, although this type of use may be requested in the future, after the adoption of the County's PWSF Master Plan.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Lee County, Florida, that in consideration of the foregoing, the Board directs the following:

The Department of Community Development, Development Services Division, is authorized to issue a certificate of completion for the State of Florida's now constructed 348-foot high self-supporting wireless service facility (tower), located on the site of a State of Florida Department of Transportation (FDOT) maintenance yard at 2981 NE Pine Island Road in North Fort Myers, Florida, as part of Phase 3 of the Statewide Law Enforcement Communications Network and the Florida Department of Transportation's Intelligent Transportation System (ITS).

Any development order or permit issued must include a condition prohibiting the installation of any antenna array or commercial component for use by private carriers. This condition may be reconsidered once the County has had an opportunity to research, develop and adopt a PWSF Master Plan, after which commercial or private carriers may be added to this wireless service facility (tower) in conformity with the regulations as then adopted.

Additionally, a condition of this approval requires FDOT to provide Lee County with co-location on the new tower at no cost, except for the County's own cost of equipment and installation, and further, the top 50 feet of the tower is reserved for use by Lee County Public Safety.

The foregoing resolution was offered by Commissioner _____ to move its adoption. The motion was seconded by Commissioner _____, and being put to a vote, the vote was as follows:

Robert P. Janes _____
Douglas R. St. Cerny _____
Ray Judah _____
Andrew W. Coy _____
John E. Albion _____

Duly passed and adopted this _____ day of November, 2002.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

Approved as to form by:

County Attorney's Office

[110502/1915]