

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

DATE CRITICAL  
Blue Sheet No. 20030286

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Conduct second public hearing on the adoption of proposed amendments to the Lee County Land Development Code (LDC) provisions related to wireless communication facilities and authorize publication of proposed amendments.

**WHY ACTION IS NECESSARY:** Public Hearings are necessary to adopt amendments to the Land Development Code (LDC).

**WHAT ACTION ACCOMPLISHES:** Allows for discussion and public input on proposed adoption of the amendments to LDC wireless communication facilities regulations.

**2. DEPARTMENTAL CATEGORY:  
COMMISSION DISTRICT #CW**

*5:05 #1*

**3. MEETING DATE:**

*04-08-2003*

**4. AGENDA:**

<input type="checkbox"/>	CONSENT
<input type="checkbox"/>	ADMINISTRATIVE
<input type="checkbox"/>	APPEALS
<input checked="" type="checkbox"/>	PUBLIC
<input type="checkbox"/>	WALK ON
<input checked="" type="checkbox"/>	TIME REQUIRED: 45 Minutes

**5. REQUIREMENT/PURPOSE:  
(Specify)**

<input type="checkbox"/>	STATUTE
<input checked="" type="checkbox"/>	ORDINANCE (LDC)
<input type="checkbox"/>	ADMIN. CODE
<input type="checkbox"/>	OTHER

**6. REQUESTOR OF INFORMATION:**

A. COMMISSIONER	
B. DEPARTMENT	County Attorney
C. DIVISION	Land Use
BY:	<i>John J. Fredyma</i> John J. Fredyma Assistant County Attorney

**7. BACKGROUND:** In November of 2001, the Board of County Commissioners adopted an interim ordinance regulating the development of communication towers and related facilities in Lee County. Those interim communication tower regulations will sunset May 1, 2003. With Board direction and assistance from contracted wireless communication consultants, County staff has assisted in the production of proposed amendments to the LDC regulations for wireless communication facilities in unincorporated Lee County.

The Land Development Code Advisory Committee (LDCAC) reviewed the proposed amendments on February 14, 2003; the Local Planning Agency (LPA) reviewed the proposed amendments on February 24, 2003 and found them consistent with the County Comprehensive Plan (the Lee Plan). The Executive Regulatory Oversight Committee (EROC) reviewed and approved the proposed amendments on March 12, 2003, though the Committee had some concerns. Copies of the committee minutes and findings are available upon request.

Staff continues to work with interested parties, including industry representative, to review and subsequently present additional alternatives or choices for the Board's consideration at the public hearing scheduled for April 8<sup>th</sup> at 5:05 P.M. Draft 5 of the proposed amendments is again attached.

Attachments: (1) Draft Wireless Communication Facilities (Draft 5)  
(2) FAIS Form

**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>[Signature]</i>	OA <i>RK 3/18</i>	OM <i>WJ 3/19</i>	RISK <i>JD 3/18</i>	GC <i>DS 3/18</i>	<i>[Signature]</i> 3/19-03

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY.  
FORWARDED  
TO CO. ADMIN.  
*3/18/03 3PM*

RECEIVED BY  
COUNTY ADMIN. *RF*  
*3-18-03*  
*ds*  
COUNTY ADMIN.  
FORWARDED TO: *DS*  
*3/19 5:00*

**LEE COUNTY, FLORIDA  
FINANCIAL & ADMINISTRATIVE IMPACT STATEMENT  
PROPOSED COUNTY ORDINANCE**

NAME OF ORDINANCE: **COMMUNICATION TOWER MASTER PLAN  
AND ORDINANCE**

I. DESCRIPTION OF ORDINANCE

A. Statement of Purpose

**To update, supplement and revise existing regulations for wireless communication facilities. To develop new regulations consistent with current and anticipated changes in wireless communication facility technology. To ensure effective regulation of existing and planned future wireless communication facilities in Lee County.**

B. Narrative Summary of Ordinance (Several Sentence Summary)

**Creates updated and revised regulations covering the construction of wireless communication facilities in unincorporated Lee County. These regulations are intended to supplement and supercede existing regulations in the Lee County Land Development Code and the adopted Communication Tower Interim Ordinance (Lee County Ordinance No. 01-20), and creates a hierarchy of regulations to facilitate an administrative approval process that will supplement a more formal process otherwise requiring a public hearing.**

C. Principal Division(s) or Department(s) Affected (List)

**Department of Community Development**

**LEE COUNTY, FLORIDA  
FINANCIAL & ADMINISTRATIVE IMPACT STATEMENT  
PROPOSED COUNTY ORDINANCE:**

**Communication Tower Master Plan and Ordinance**

**II. Fiscal Impact on County Agencies/County Funds.  
(This section to be completed by Division of Budget Services)**

- A. What is estimated Demand? (Develop Indicators) N/A
- B. What is estimated Workload? (Develop Indicators) N/A
- C. What are estimated costs?

	<u>1st Year \$'s</u>		<u>2nd Year \$'s</u>	
	<u>Existing</u>	<u>New</u>	<u>Existing</u>	<u>New</u>
Personnel	N/A		N/A	
Fringe	N/A		N/A	
Operating	N/A		N/A	
Capital Outlay	N/A		N/A	
<b>Total</b>	<b>N/A</b>		<b>N/A</b>	

- D. List the anticipated revenues to cover costs identified in II, C, above. If a fee is to be charged, answer the following:
  - 1. What is the basis (rationale) for the fee? N/A
  - 2. Do the anticipated fees cover the full cost of operation? If not, what percentage of the costs are covered? N/A
- E. Give a brief narrative analysis of the information contained in II, A-D, above.

No adverse administrative impact – these regulations require the applicant to provide additional information that formerly county staff would research. The new regulations are structured in such a way that if the applicant complies as desired, administrative approval may be given rather than requiring a public hearing. On the other hand, when necessary, the county can require an expert review (which the applicant must bear the cost) and a public hearing may be in order.

LEE COUNTY ORDINANCE NO. 03- \_\_\_

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC) TO AMEND CHAPTER 34 (ZONING); AMENDING THE DEFINITION OF "COMMUNICATION TOWER" (§34-2); FUNCTIONS AND AUTHORITY (BOARD OF COUNTY COMMISSIONERS) (§34-83); REHEARING OF DECISIONS (§34-84); FUNCTIONS AND AUTHORITY (HEARING EXAMINER) (§34-145); FINAL DECISION; JUDICIAL REVIEW (§34-146); ADDITIONAL REQUIREMENTS FOR APPLICATIONS REQUIRING PUBLIC HEARING (§34-203); AMENDING USE ACTIVITY GROUPS - ESSENTIAL SERVICE FACILITIES (§34-622); AMENDING USE REGULATIONS TABLE FOR AGRICULTURAL DISTRICTS (§34-653); FOR ONE- AND TWO-FAMILY RESIDENTIAL DISTRICTS (§34-694); FOR MULTIPLE-FAMILY RESIDENTIAL DISTRICTS (§34-714); FOR MOBILE HOME DISTRICTS (§34-735); FOR RECREATIONAL VEHICLE DISTRICTS (§34-791); FOR COMMUNITY FACILITIES DISTRICTS (§34-813); FOR CONVENTIONAL COMMERCIAL DISTRICTS (§34-843); FOR MARINE-ORIENTED DISTRICTS (§34-873); FOR INDUSTRIAL DISTRICTS (§34-903); FOR PLANNED DEVELOPMENT DISTRICTS (§34-934); AMENDING PRIVATE RECREATIONAL FACILITIES PLANNED DEVELOPMENTS (§34-941); AMENDING MODIFIED LAND DEVELOPMENT REGULATIONS, MASTER SITE PLAN - THE NORTH TAMiami REDEVELOPMENT OVERLAY DISTRICT (§34-1124); REPEALING AND REPLACING SATELLITE DISHES AND AMATEUR RADIO ANTENNA/TOWERS (§34-1175) AND CREATING A NEW SECTION ENTITLED SATELLITE EARTH STATIONS AND AMATEUR RADIO ANTENNAS, THAT PROVIDES FOR PURPOSE, APPLICABILITY, DEFINITIONS AND PROPERTY DEVELOPMENT REGULATIONS (§34-1175); REPEALING AND REPLACING ARTICLE VII, DIVISION 11, COMMUNICATION TOWERS IN ITS ENTIRETY (§§34-1441 - 34-1446); CREATING ARTICLE VII, DIVISION 11, ENTITLED WIRELESS COMMUNICATION FACILITIES; PROVIDING FOR PURPOSE AND INTENT (§34-1441); DEFINITIONS (§34-1442); APPLICABILITY AND EXEMPTIONS (§34-1443); PERMISSIBLE WIRELESS COMMUNICATION FACILITY LOCATIONS (§34-1444); DEVELOPMENT REVIEW PROCESS (§34-1445); APPLICATION SUBMITTAL REQUIREMENTS (§34-1446); CREATING DEVELOPMENT REGULATIONS PERTAINING TO ANTENNA-SUPPORTING STRUCTURES, COLLOCATIONS, ROOF-MOUNTED ANTENNA-SUPPORTING STRUCTURES, SURFACE-MOUNTED ANTENNAS AND STEALTH WIRELESS COMMUNICATION FACILITIES (§34-1447); PROVIDING FOR EXPERT REVIEW (§34-1448); MONITORING AND EVALUATION (§34-1449); FEES AND INSURANCE (§34-1450); DISCONTINUED USE (§34-1451); NONCONFORMING ANTENNA-SUPPORTING STRUCTURES (§34-1452); AND VARIANCE CRITERIA (§34-1453); RENUMBERING RESERVED PROVISIONS §§34-1447 - 34-1470 TO §§34-1454 - 34-1470 (§§34-1447 - 34-1470); AMENDING EXCEPTIONS TO HEIGHT LIMITATIONS FOR CERTAIN STRUCTURAL ELEMENTS (§34-2173); AMENDING ARTICLE VIII NONCONFORMITIES (APPLICABILITY); AND

PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County, Florida is authorized to regulate growth and development of the County pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate and enforce zoning regulations necessary for the protection of the public; and

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code, which contains regulations applicable to the development of land in Lee County; and

WHEREAS, Goal 24 of the Lee County Comprehensive Land Use Plan (Lee Plan) mandates that the county maintain clear, concise, and enforceable development regulations that fully address on-site and off-site development impacts, yet function in a streamlined manner; and

WHEREAS, Lee Plan Policies 14.5.3, 24.1.9, 52.1.1 and 110.6.2 require county staff and private citizen committees to review existing development regulations to determine whether the regulations can be fine tuned and streamlined to meet the goals, objectives and policies of the Lee Plan; and

WHEREAS, Lee Plan Policy 5.1.5 requires the protection of existing and future residential areas from any encroaching uses that are potentially destructive to the character and integrity of the residential environment; and

WHEREAS, Goal 49 of the Lee Plan seeks to ensure the effective and efficient provision of facilities and services in support of law enforcement and justice for the growing population of Lee County; and

WHEREAS, Lee Plan Policy 77.10.5 requires the County to continue to permit towers in excess of 100 feet only by special exception and to consider the impacts of those towers on woodstorks; and

WHEREAS, Goal 77 of the Lee Plan seeks to protect wildlife resources by maintaining and enhancing habitats; and

WHEREAS, Goal 84 of the Lee Plan seeks to protect the fragile ecological characteristics of the wetlands systems; and

WHEREAS, Goal 98 of the Lee Plan encourages shoreline management if furtherance of the protection of water dependent uses from displacement by non-water-dependent uses; and

WHEREAS, Policy 110.1.4 of the Lee Plan provides that Lee County will work with all applicable entities to provide a strong public safety program capable of protecting the citizens of Lee County and their property; and

WHEREAS, Objective 110.2 of the Lee Plan, and the Policies that implement it, seeks to maintain and develop programs to encourage tourism to position Lee County as a friendly and hospitable visitor destination; and

WHEREAS, Policy 18.2.3 of the Lee Plan establishes the University Window Overlay and requires the development of standards addressing landscaping, signage and architectural features visible from designated road segments; and

WHEREAS, personal wireless service facilities comprise a rapidly growing segment of the communications sector and have merit and value for the community; and

WHEREAS, the U.S. Congress adopted Section 704 as part of the Telecommunications Act signed into law on February 8, 1996, Section 704 defines personal wireless services and personal wireless service facilities and preserves local zoning authority over decisions regarding the placement, construction, and modification of personal wireless service facilities; and

WHEREAS, the County desires to regulate the proliferation and effect of personal wireless service facilities so as to promote the overall good of the County; and

WHEREAS, it would be undesirable and inconsistent with sound planning principles to allow the proliferation of antenna-supporting structures without the benefit of a study and development of a county-wide ordinance to regulate wireless communication facilities; and

WHEREAS, the County commissioned an independent review and analysis of the use and location of antenna-supporting structures in unincorporated Lee County, and a review of the existing regulations as they may be found in the County's Land Development Code (LDC) and other adopted ordinances and regulations; and

WHEREAS, the report entitled *Lee County, Florida, Wireless Facility Master Plan* prepared for Lee County by CityScape Consultants, Inc., in conjunction with Freilich, Leitner & Carlisle, dated \_\_\_\_\_, 2003, has been utilized in development of the proposed amendments; and

WHEREAS, during the period of review, evaluation and study, and to facilitate the preparation of a wireless facility master plan and ordinance, the County adopted the *Communication Tower Interim Ordinance* (Lee County Ordinance No. 01-20) for a period of eight months, supplemented by extensions of that ordinance (Lee County Ordinances No. 02-21 and Ordinance No. 02-30), extending the interim regulations until May 1, 2003; and

WHEREAS, on February 14, 2003, the Lee County Land Development Code Advisory Committee (LDCAC) reviewed the proposed amendments to the Land Development Code to regulate wireless communication facilities; and

WHEREAS, on March 12, 2003, the Executive Regulatory Oversight Committee (EROC) reviewed the proposed amendments to the Land Development Code to regulate wireless communication facilities; and

WHEREAS, on February 24, 2003, the Local Planning Agency reviewed the proposed amendments to the Land Development Code to regulate wireless communication facilities and found them to be consistent with the County's Comprehensive Plan (the Lee Plan); and

WHEREAS, the purpose and intent of this ordinance is to enact standards for the location, siting and design of antenna-supporting structures and wireless service facilities. The goal of this ordinance is to promote the compatibility of wireless service facilities with surrounding land uses, and protect the health, safety and general welfare of the citizens of Lee County.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:**

**SECTION ONE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 34**

Lee County Land Development Code Chapter 34, Articles I, II, VI, VII and VIII are amended to read as follows with strike through identifying deleted language and underline identifying additional language.

**CHAPTER 34 ZONING**

**ARTICLE I. IN GENERAL**

**Sec. 34-2. Definitions. (Board of County Commissioners)**

~~Communication tower means a tower structure, whether placed on foundations, on another structure, or otherwise, for the primary purpose of raising the height of an antenna that is designed for use for radio, television, microwave, cellular, radar or other similar communication purpose. Communication Tower does not include amateur radio antenna/towers licensed by the Federal Communication Commission or satellite antennas or antennas regulated by section 34-1175.~~

Communications facility, wireless, means any facility used for the transmission and reception of wireless communications, usually consisting of an antenna or group of antennas, base station, transmission lines, ancillary appurtenances, equipment enclosures, or repeaters, and may include an antenna-supporting structure. Any of the following will be considered a wireless communications facility: antennas, antenna-supporting structures (including replacement and broadcast), base stations, equipment enclosure, roof-mounted antenna-supporting structures, surface-mounted antennas, repeaters, stealth wireless communications facilities, and amateur radio facilities.

**ARTICLE II. ADMINISTRATION**

**DIVISION 6. APPLICATIONS AND PROCEDURES FOR CHANGES, PERMITS, INTERPRETATIONS AND APPROVALS**

**Sec. 34-83. Functions and authority.**

(a) **Unchanged.**

(b) *Zoning actions.*

(1) *Function.*

- a. The Board of County Commissioners must hold public hearings (see sections 34-231 through 34-236) on the following applications: rezoning, the special exceptions that meet the criteria for developments of county impact, appeals from decisions of the hearing examiner concerning wireless communication facilities, developments of regional impact, and any other action in conjunction with such applications.

- b. All requests for variances, use of TDR or affordable housing bonus density units, and special exceptions which are part of an application for a rezoning must be considered by the Board of County Commissioners with the application for rezoning and heard together with and at the same time as the rezoning.
- (2) *Considerations.* In rendering its decision, the Board of County Commissioners must consider the following:
- a. The considerations set forth in section 34-145(c)(2) which are applicable to the case.
  - b. *The substantive recommendation of the hearing examiner when applicable.*
- (3) *Findings.* Before granting any rezoning, or special exception, or appeal of a hearing examiner decision pertaining to a wireless communication facility, the Board of County Commissioners must find that:
- a. through h. Unchanged.**
  - i. In the case of an appeal of a hearing examiner decision pertaining to wireless communication facilities, the decision of the Board of County Commissioners must also be supported by the formal findings set forth in sections 34-1445(b) and 34-1453, as applicable.
- (4) *Decisions and authority.*
- a. In exercising its authority, the Board of County Commissioners:
    - 1. and 2. Unchanged.**
    - 3. Has the authority to attach such conditions and requirements to any approval of a request for a special exception, development of regional impact, planned development, use of TDR or affordable housing bonus density units in conjunction with a rezoning request, or variance within their purview, deemed necessary for the protection of the health, safety, comfort, convenience or welfare of the general public. These conditions and requirements must be reasonably related to the action requested;:
    - 4. In the case of an appeal of a hearing examiner decision pertaining to wireless communication facilities, the Board of County Commissioners must consider the decision as a recommendation only and may, in conformity with the provisions of this chapter, reverse, affirm or modify the decision of the hearing examiner, or remand the case to the hearing examiner.

**b. and c. Unchanged.**

**(5) and (6) Unchanged.**

**Sec. 34-84. Rehearing of decisions.**

- (a) Any person who may be aggrieved by a decision of the Board of County Commissioners made pursuant to an application for rezoning, development of regional impact, special exception that meets the criteria of a development of county impact, or special exceptions or variances heard as part of a rezoning, or an appeal pursuant to section 34-1445(b)(2)b. may file a written request for a public rehearing by the Board of County Commissioners for a modification or rescission of the decision. The request must be filed with the director of community development and the county attorney's office within 15 calendar days after the decision. For purposes of computing the 15-day period, the date of the decision is the date of the public hearing at which the Board of County Commissioners made its decision by oral motion.

**(b) through (g) Unchanged.**

**DIVISION 4. HEARING EXAMINER**

**Sec. 34-145. Functions and authority. (Hearing Examiner)**

(a) ***Appeals from administrative action.* Unchanged.**

(b) *Variances.*

**(1) and (2) Unchanged.**

(3) *Findings.* Before granting any variance, the hearing examiner must find that all of the following exist:

**a. through e. Unchanged.**

**f.** In the case of wireless communication facilities, the hearing examiner must also make the findings required by section 34-1453.

**(4) *Authority.* Unchanged.**

(5) *Judicial review.* Except as provided in section 34-1453(b) for wireless communication facilities, judicial review of final decisions of the hearing examiner with respect to variances are to the circuit court in accordance with section 34-146.

(c) *Special exceptions.*

**(1) and (2) Unchanged.**

(3) *Findings.* 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; and
- c. Any other applicable county ordinances or codes; and
- d. In the case of wireless communication facilities the hearing examiner must also make the findings required by section 34-1445(b).

**(4) Authority. Unchanged.**

**(5) Judicial review.** Except as provided in section 34-1445(b) for wireless communication facilities, judicial review of final decisions of the hearing examiner with respect to special exceptions will be in circuit court in accordance with section 34-146.

**(d) Zoning matters. Unchanged.**

**Sec. 34-146. Final decision; judicial review.**

**(a)** The decision of the hearing examiner will be final on applications for administrative appeals, variances, and special exceptions, when such variances or special exceptions are not part of a rezoning or development of county impact request that requires final decision by the Board of County Commissioners. Judicial review of a final decision of the hearing examiner concerning an administrative appeal, variance or special exception will be in circuit court. This review may only be obtained through filing a petition for writ of certiorari pursuant to the Florida Rules of Appellate Procedure. The petition must be filed within 30 calendar days after the decision has been rendered.

Appeals from hearing examiner decisions concerning wireless communication facilities must be to the Board of County Commissioners pursuant to sections 34-1445(b) and 34-1453, as applicable.

**(b) through (d) Unchanged.**

**Sec. 34-203. Additional requirements for applications requiring public hearing.**

**(a) through (d) Unchanged.**

**(e) Special exceptions.** Except for special exceptions that are developments of county impact (see section 34-341), all applications for a special exception must, in addition to the requirements of sections 34-202(a) and (b) and 34-203(e)(1) and (2), include the following:

**(1) through (9) Unchanged.**

**(10) Communication towers.** ~~(Refer to section 34-1442 for definitions specific to communication towers.)~~ Wireless communication facilities. (Refer to section 34-1441, et seq.)

**[DRAFTER'S NOTE: The remaining subsections (a - e) of Sec. 34-203(e)(10) have been deleted in their entirety. In an effort to conserve paper and reduce the overall length of the draft document the deleted provisions are noted but not shown.]**

**a through e Deleted in their entirety.**

(f) *Variances.* Every application for a variance from the terms of this chapter must, in addition to the requirements of section 34-202(a) and (b), include the following:

**(1) through (3) Unchanged.**

(4) Variance from required street setbacks on collector and arterial roads. For a variance from a collector or arterial street setback, the applicant:

a. In the case of a variance from required street setbacks on collector and arterial roads, the applicant:

1. May modify the property owners list and property owners map [see section 34-202(a)(6) and (7)] to show only the names and locations of property owners that abut the perimeter of the subject property.

b. 2. Must submit a site plan, drawn to scale, showing:

1.i. All structures, easements, and rights-of-way, etc., within 100 feet of the peripheral boundary of the subject property;

2.i. The location of all proposed structures, easements, rights-of-way and vehicular access onto the property, including entrance gates or gatehouses; and

3.iii. The extent of modification from street setbacks requested.

b. In the case of variances concerning wireless communication facilities, refer to section 34-1453.

(g) *Use variance.* Use variances are not legally permissible, and no application for a use variance will be processed. Department staff will notify the applicant when a more appropriate procedure, e.g., rezoning or special exception, is required.

(h) *Modifications to submittal requirements.* Upon written request, on a form prepared by the county, the director may modify the submittal requirements contained in this section where it can be clearly demonstrated by the applicant that the submission will have no bearing on the review and processing of the application. The request and the director's written response must accompany the application submitted and will become a part of the permanent file. The decision of the director is discretionary and may not be appealed.

## ARTICLE VI. DISTRICT REGULATIONS

### DIVISION 1, GENERALLY

#### Sec. 34-622. Use activity groups.

(a) & (b) Unchanged.

(c) *Use activity groups are as follows:*

**Use activity groups (1) through (12) Unchanged.**

- (13) **Essential service facilities.** This group includes buildings or above-ground structures, exceeding 27 cubic feet in volume, required to provide essential services, including electricity, communications, telephone, cable television, gas, water, sewage, solid waste and resource recovery. This does not include communication towers wireless communication facilities which are regulated by section 34-1441 et seq. or telephone booths or pay phone stations which are addressed in section 34-3070.

**GROUPS I, II and III Unchanged.**

**Use activity groups (14) through (56) Unchanged.**

[DRAFTER'S NOTE: In an effort to conserve paper and reduce the overall length of the draft document, only the changed portion of each Use Regulation Table is shown. All other portions of each Use Regulation Table remains unchanged.]

**DIVISION 2. AGRICULTURAL DISTRICTS**

**Sec. 34-653. Use regulations table.**

Use regulations for agricultural districts are as follows:

**TABLE 34-653. USE REGULATIONS FOR AGRICULTURAL DISTRICTS**

	Special Notes or Regulations	AG-1	AG-2	AG-3
Accessory uses, buildings, and structures:	34-1171 et seq. and 34-2441 et seq.	P	P	P
Amateur radio antennas and satellite earth stations tower	34-1175	Refer to 34-1175 for regulations		
Up to 50 feet in height	34-1175	P	P	P
Over 50 feet in height	34-1175	SE	SE	SE
Docks, seawalls	34-1863	P	P	P
Entrance gates, gatehouses	34-1741 et seq.	P	P	P
Fences, walls	34-1741 et seq.	P	P	P
Nonroofed accessory structures	34-2141 et seq.	P	P	P
Signs in compliance with chapter 30		P	P	P
New accessory buildings	34-1231 et seq.	P	P	P
Communication facility, wireless tower	34-1441 et seq.	Refer to 34-1441 et seq. for regulations		
50 feet or less in height	34-1441 et seq.	P	P	P
Over 50 feet in height	34-1441 et seq.	EO/SE	EO/SE	EO/SE

**Notes: (1) through (22) Unchanged.**

DIVISION 3. RESIDENTIAL DISTRICTS

Subdivision II. One- and Two-Family Residential Districts

Sec. 34-694. Use regulations table.

Use regulations for one- and two-family residential districts are as follows:

TABLE 34-694. USE REGULATIONS FOR ONE- AND TWO-FAMILY RESIDENTIAL DISTRICTS

	Special Notes or Regulations	RSC-1	RSC-2	RSA	RS-1	RS-2	RS-3	RS-4	RS-5	TFC-1	TFC-2	TF-1
Accessory uses, buildings and structures:	34-1171 et seq., 34-2441 et seq., 34-3106	P	P	P	P	P	P	P	P	P	P	P
Amateur radio antennas and satellite earth stations tower	34-1175	Refer to 34-1175 for regulations.										
Under 50 feet in height	34-1175	P	P	P	P	P	P	P	P	P	P	P
Over 50 feet in height	34-1175	SE		SE	SE	SE	SE	SE	SE	SE	SE	SE
Animals (equines)	34-1291 et seq.	-	-	-	-	-	-	SE	SE	-	-	-
Docks, seawalls	34-1863	P	P	P	P	P	P	P	P	P	P	P
Fences, walls	34-1741 et seq.	P	P	P	P	P	P	P	P	P	P	P
Entrance gate, gatehouses	34-1741 et seq.	P	P	P	P	P	P	P	P	P	P	P
Nonroofed accessory structures	34-2194(c)	P	P	P	P	P	P	P	P	P	P	P
Signs in compliance with chapter 30		P	P	P	P	P	P	P	P	P	P	P
Communication facility, wireless	34-1441 et seq.	Refer to 34-1441 et seq. for regulations										

Notes: (1) through (14) Unchanged

Subdivision III. Multiple-Family Districts

Sec. 34-714. Use regulations table.

Use regulations for multiple-family districts are as follows:

TABLE 34-714. USE REGULATIONS FOR MULTIPLE-FAMILY RESIDENTIAL DISTRICTS

	Special Notes or Regulations	RM-2	RM-3, RM-6, RM-8, RM-10
Accessory uses, buildings, and structures:	34-1171 et seq., 34-2441 et seq., 34-3106	P	P
Amateur radio antennas and satellite earth stations <del>tower</del>	34-1175	Refer to 34-1175 for regulations.	
Under 50 feet in height		P	P
Over 50 feet in height		SE	SE
Docks, seawalls	34-1863	P	P
Fences, walls	34-1741 et seq.	P	P
Entrance gate, gatehouses	34-1741 et seq.	P	P
Nonroofed accessory structures	34-2194(c)	P	P
Signs in compliance with chapter 30		P	P
Communication facility, wireless	34-1441 et seq.	Refer to 34-1441, et seq. for regulations.	

Notes: (1) through (15) Unchanged.

Subdivision IV. Mobile Home Residential Districts

Sec. 34-735. Use regulations table.

Use regulations for mobile home districts are as follows:

TABLE 34-735. USE REGULATIONS FOR MOBILE HOME DISTRICTS

	Special Notes or Regulations	MHC-1, MHC-2	MH-1	MH-2	MH-3	MH-4
Accessory uses, buildings, and structures:	34-1171 et seq., 34-2441 et seq., 34-3106	P	P	P	P	P
Amateur radio antennas and satellite earth stations <del>tower</del>	34-1175	Refer to 34-1175 for regulations.				
Under 50 feet in height	34-1175	P	P	P	P	P
Over 50 feet in height	34-1175	SE	SE	SE	SE	SE

	Special Notes or Regulations	MHC-1, MHC-2	MH-1	MH-2	MH-3	MH-4
Animals (equines)	34-1291 et seq.	–	–	–	–	SE
Docks, seawalls	34-1863	P	P	P	P	P
Fences, walls	34-1741 et seq.	P	P	P	P	P
Gatehouses, entrance gates	34-1741 et seq.	P	P	P	P	P
Nonroofed accessory structures	34-2194(c)	P	P	P	P	P
Signs in compliance with chapter 30		P	P	P	P	P
<u>Communication facility, wireless</u>	<u>34-1441 et seq.</u>	<u>Refer to 34-1441 et seq. for regulations.</u>				

Notes: (1) through (13) Unchanged.

#### DIVISION 4. RECREATIONAL VEHICLE PARK DISTRICTS

##### Subdivision II. Conventional Recreational Vehicle Districts

#### Sec. 34-791. Use regulations table.

Use regulations for recreational vehicle districts are as follows:

TABLE 34-791. USE REGULATIONS FOR RECREATIONAL VEHICLE DISTRICTS

	Special Notes or Regulations	RV-1	RV-2	RV-3	RV-4
Accessory uses, buildings, and structures:	34-1171 et seq., 34-2441 et seq.	P	P	P	P
Amateur radio antennas and satellite earth stations tower	34-1175	<u>Refer to 34-1175 for regulations.</u>			
Under 50 feet in height	34-1175	P	P	P	P
Over 50 feet in height	34-1175	SE	SE	SE	SE
Carports	34-784 et seq.	P	P	P	P
Docks, seawalls	34-1863	P	P	P	P
Enclosures, utility rooms	34-787	P	P	P	P
Fences, walls	34-1741 et seq.	P	P	P	P
Gatehouses, entrance gates	34-1741 et seq.	P	P	P	P
Nonroofed accessory structures	34-2194(c)	P	P	P	P
Storage facility for unoccupied RV's	34-789	P	P	P	P
Storage sheds, unattached	34-786	P	P	P	P
<u>Communication facility, wireless</u>	<u>34-1441 et seq.</u>	<u>Refer to 34-1441 et seq. for regulations.</u>			

Notes: (1) through (10) Unchanged

DIVISION 5. COMMUNITY FACILITIES DISTRICTS

Sec. 34-813. Use regulations table.

Use regulations for the community facilities districts are as follows:

TABLE 34-813. USE REGULATIONS FOR COMMUNITY FACILITIES DISTRICTS

	Special Notes or Regulations	CF-1	CF-2	CF-3	CF-4
Communication facility, wireless tower	34-1441 et seq.	Refer to 34-1441 et seq. for regulations.			
100 feet or less in height	34-1441 et seq.	SE	SE	P	P
Over 100 feet in height	34-1441 et seq.	SE	SE	SE	SE

Notes: (1) through (12) Unchanged

DIVISION 6. COMMERCIAL DISTRICTS

Sec. 34-843. Use regulations table.

Use regulations for conventional commercial districts are as follows:

TABLE 34-843. USE REGULATIONS FOR CONVENTIONAL COMMERCIAL DISTRICTS

	Special Notes or Regulations	C-1A	C-1	C-2	C-2A	CN-1	CN-2	CN-3 (21, 23)	CC	CG	CS-1	CS-2	CH	CT	CR	CI	CP
Amateur radio antennas and satellite earth stations when accessory to an existing principal use	34-1175	Refer to 34-1175 for regulations.															
Communication facility, wireless tower	34-1441 et seq.	Refer to 34-1441 et seq. for regulations.															
400 feet or less in height	34-1441 et seq.	P	P	P	P	—	—	—	P	P	—	—	P	—	P	P	—
Over 400 feet in height	34-1441 et seq.	6E	6E	6E	6E	—	—	—	6E	6E	—	—	6E	—	6E	6E	—

Notes: (1) through (32) Unchanged

DIVISION 7. MARINE-ORIENTED DISTRICTS

Sec. 34-873. Use regulations table.

Use regulations for marine-oriented districts are as follows:

TABLE 34-873. USE REGULATIONS FOR MARINE-ORIENTED DISTRICTS

	Special Notes or Regulations	CM	IM	PORT
<u>Amateur radio antennas and satellite earth stations when accessory to an existing principal use</u>	<u>34-1175</u>	<u>Refer to 34-1175 for regulations.</u>		
Communication facility, wireless—tower, accessory to a permitted use:	<u>34-1441 et seq.</u>	<u>Refer to 34-1441 et seq. for regulations.</u>		
400 feet or less in height	<u>34-1441 et seq.</u>	P	P	P
Over 100 feet in height	<u>34-1441 et seq.</u>	SE	SE	SE

Notes: (1) through (12) Unchanged

DIVISION 8. INDUSTRIAL DISTRICTS

Sec. 34-903. Use regulations table.

Use regulations for industrial districts are as follows:

TABLE 34-903. USE REGULATIONS FOR INDUSTRIAL DISTRICTS

	Special Notes or Regulations	IL Note (14)	IG Note (14)	IR Note (14)
<u>Amateur radio antennas and satellite earth stations when accessory to an existing principal use</u>	<u>34-1175</u>	<u>Refer to 34-1175 for regulations.</u>		
Communication facility, wireless—tower:	<u>34-1441 et seq.</u>	<u>Refer to 34-1441 et seq. for regulations.</u>		
400 feet or less in height	<u>34-1441 et seq.</u>	P	P	P
More than 100 feet in height	<u>34-1441 et seq.</u>	SE	SE	SE

NOTES: (1) through (17) Unchanged.

DIVISION 9. PLANNED DEVELOPMENT DISTRICTS

Sec. 34-934. Use regulations table.

Use regulations for planned development districts are as follows:

TABLE 34-934. USE REGULATIONS FOR PLANNED DEVELOPMENT DISTRICTS

	Special Notes or Regulations	RPD	MHPD	RVPD	CFPD	CPD	IPD Note ((37)	AOPD	MPD
Amateur radio antennas and satellite earth stations towers	34-1175	Refer to 34-1175 for regulations.							
Up to 50 feet in height	34-2173, 34-1175	P	P	-	-	-	-	-	P
Over 50 feet in height	34-2173, 34-1175	P(2+)	P(2+)	-	-	-	-	-	P(2+)
Communication facility, wireless towers	34-1441 et seq. Note (22)	Refer to 34-1441 et seq. for regulations.							
400 feet or less in height	Note (22) 34-1441 et seq.	-	-	-	P	P	P	P	P(25)
More than 400 feet in height	Note (22), 34-1441 et seq.	-	-	-	6E	6E	6E	6E	6E-(25)

NOTES:

Notes (1) through (21) Unchanged.

Note (22) Wireless communication towers facilities must be listed on the approved on the schedule of uses for the planned development; however, approval of a specific facility must be in accordance with section 34-1441, et seq. If a communication tower will exceed the height permitted by right the exact location and height of the towers must be shown on the master concept plan. If the exact location and height is not provided but the list of uses indicates that a tower(s) will exceed the permitted height, then a special exception showing the exact location and height will be required. If the exact location and height is not shown on the approved master concept plan and if the approved list of uses does not indicate that a tower(s) will exceed the permitted height, it will be necessary to apply for a PD plan amendment.

Notes (23) and (24) Unchanged.

Note (25) In the MPD district, use is limited to commercial areas only. Reserved.

Notes (26) through (37) Unchanged.

Sec. 34-941. Private recreational facilities planned developments.

(a) & (b) Unchanged

(c) *Uses.*

(1) *Prohibited uses:* No residential uses, other than a single bonafide caretaker's residence or a resident manager's unit, are permitted within the PRFPD district.

(2) *Permissible uses:*

a. **Unchanged.**

b. The following uses are permitted only if approved in the adopted zoning resolution and their general location is shown on an adopted master concept plan.

- Aquifer storage and recovery facilities.
- Boarding horse stables and riding areas (see note 1).
- Camp grounds - tent camping only, including:
  - Camping area office (see note 1).
  - Camping restrooms (see note 1).
- ~~Communication tower (see note 1).~~
- Excavations for water retention (section 34-1651).
- Forestry tower.
- Golf course, including:
  - Country club (see note 1).
  - Golf course restrooms (see note 1).
  - Golf course maintenance areas (see note 1).
- Helistop - if required by emergency services.
- Recreational and educational facilities (see note 4).
- Wireless communication facility (see note 1).

(3) **Unchanged.**

**NOTES:**

Note (1) The following uses are subject to the stated limitation(s):

Clubhouse/administrative area: Maximum: 20,000 SF/18-hole golf course.

Golf course restrooms: Not to exceed two structures per 18-hole golf course, limited to a maximum of 150 square feet per structure. One additional structure, limited to a maximum of 150 square feet per structure, may be added for each additional nine holes.

~~Communication towers: Maximum height: 50 feet~~

Wireless communication facilities: Maximum height: 35 feet. Wireless communication facilities must be listed on the approved schedule of uses for the planned development; however, approval of a specific facility must be in accordance with section 34-1441, et seq.

Maintenance area:	Maximum: 25,000 SF/18-hole golf course. An additional 12,500 square feet of maintenance area may be added for each additional nine holes.
Horse stable:	Maximum: 40,000 SF of stable building/ten acres.
Camping restrooms:	Maximum: One toilet per four camp units, clustered in structures not to exceed 500 square feet per structure.
	Maximum: One shower per four toilets.
Camping area office:	Maximum: 1,000 SF per campground.

**Remaining Notes (2) through (5) Unchanged.**

**(d) through (g) Unchanged.**

**DIVISION 11. REDEVELOPMENT OVERLAY DISTRICTS**

**Subdivision IV. The North Tamiami Redevelopment Overlay Districts**

**Sec. 34-1124. Modified land development regulations, master site plan.**

The District Master Site Plan (Plan or MSP) contains graphic and textual aspects that modify the following specified land development regulations. All other Lee County land development regulations remain in full effect. A reduced copy of the North Tamiami Trail MSP is adopted by reference and included in reduced form as Appendix I. In general, the NTTC Sub-district retains the uses allowed in the underlying zoning districts. The NTTW and NTTWE Sub-Districts alter the uses from those of the underlying zoning districts to allow those uses set forth in Table 1, below. In addition, the type of approval required for certain uses has been modified, as also set forth in Table 1.

**(a) & (b) Unchanged.**

- (c) *Use of Table 1.* The following abbreviated terms have the meaning stated and apply to Table 1 and its explanatory lettered notes: the letter "SE" means a use only permitted by a special exception approved pursuant to section 34-145(c), approval under section 34-1082(d)(1)a. is required as well; and the letter "P" means a use is permitted subject to approval by the director pursuant to section 34-1082(d).

TABLE 1

LAND USES IN NTTW AND NTTWE SUB-DISTRICTS

Land Uses	Special Notes or Regulations	NTTW	NTTWE
<u>Amateur radio antennas and satellite earth stations when accessory to an existing principal use</u>	<u>34-1175</u>	<u>Refer to 34-1175 for regulations.</u>	
Communication <u>facility, wireless towers</u>	34-1441 et seq.	<u>Refer to 34-1441 et seq. for regulations.</u>	
100 ft. or less in height Over 100 ft. in height		P SE	SE SE
NOTES: - Unchanged			

(d) through (f) Unchanged.

ARTICLE VII. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 2. ACCESSORY USES, BUILDINGS AND STRUCTURES

[DRAFTER'S NOTE: The provisions of Sec. 34-1175, Satellite dishes and amateur radio antenna/towers, have been deleted in their entirety and replaced with a new section of the same number and renamed as "Satellite earth stations and amateur radio antennas." In an effort to conserve paper and reduce the overall length of the draft document the deleted provisions are not shown. New text is shown as underlined.]

~~Sec. 34-1175. Satellite dishes and amateur radio antenna/towers.~~

Sec. 34-1175. Satellite earth stations and amateur radio antennas.

(a) Purpose. The purpose of this section is to:

- (1) further the health, safety, and aesthetic objectives of this chapter;
- (2) protect the aesthetic character of residential zoning districts;
- (3) balance the legitimate aesthetic and land use compatibility concerns of the County with the needs and interests of operators of amateur radio services;
- (4) reasonably accommodate amateur radio services;
- (5) ensure access to satellite services; and
- (6) promote fair and effective competition among competing communications service providers.

(b) Applicability. The provisions of this section will apply only to:

- (1) satellite earth stations greater than two (2) meters (78.74 inches) in diameter that are within commercial or industrial zoning districts, or the commercial or industrial areas of a planned development;
- (2) satellite earth stations greater than one (1) meter (39.97 inches) in diameter that are within any district not specified in (1) above; and
- (3) amateur radio antennas.

(c) Definitions.

For purposes of this section only, certain terms are defined as follows:

Amateur radio services means a radiocommunication service for the purpose of self-training, intercommunication and technical investigations carried out by duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.

Amateur radio antenna means an antenna, including any mounting device, tower, or antenna-supporting structure, designed and constructed for amateur radio services.

Satellite earth stations means any device or antenna, including associated mounting devices or antenna-supporting structures, used to transmit or receive signals from an orbiting satellite, including television broadcast signals, direct broadcast satellite services, multichannel multipoint distribution services, fixed wireless communications signals, and any designated operations indicated in the FCC Table of Allocations for satellite services.

(d) Property development regulations.

(1) Satellite earth stations.

- a. Setbacks. Satellite earth stations must meet the minimum setback requirements for the zoning district in which proposed, as well as those setback requirements in section 34-2191, et seq. In no case may satellite earth stations be placed closer to a right-of-way or street easement than the principal building.
- b. Allowable size. No satellite earth station may exceed ten (10) feet in diameter except when in conjunction with a cable television or broadcast facility and approved in accordance with the variance requirements of section 34-1453.
- c. Location and placement.
  - i. Except as provided below, no satellite earth station may be mounted on a roof or a building surface.

- ii. Exception. Satellite earth stations may be mounted on buildings that exceed 35 feet in height (as measured at ground level), provided the satellite earth station is not visible at ground level from any abutting right-of-way, street easement or any property under separate ownership and zoned or used for residential purposes.
- d. Signage. Signs are prohibited on satellite earth stations.
- e. Height. Ground-mounted satellite earth stations may not exceed ten (10) feet in height, except when in conjunction with a cable television or broadcast facility and approved in accordance with the variance requirements of section 34-1453..
- f. Landscaping. Ground-mounted satellite earth stations exceeding two (2) meters (78.74 inches) in diameter must include a landscaped buffer of at least three (3) feet in width between the facility and any right-of-way or ingress/egress or access easement. The buffer must be at least four (4) feet in height at installation and be maintained at a minimum of five (5) feet in height within one year after time of planting.
- g. Structural requirements. Satellite earth stations must be constructed or mounted so as to withstand sustained winds in accordance with the Florida Building Code. In the event of structural failure, the satellite earth station must be designed to collapse completely within the boundaries of the lot on which it is located.
- h. Limited waiver of requirements. The director may waive the requirements of section 34-1175(d)(1) where an applicant for a satellite earth station demonstrates in writing that compliance with these provisions will materially limit transmission or reception by the proposed satellite earth station. The director may not waive any requirement to a greater extent than is required to ensure that transmission or reception is not materially limited. The decision of the director is discretionary and may not be appealed.

(2) Amateur radio antennas.

- a. Location and placement. Amateur radio antennas must be set back from all adjacent property lines by at least five (5) feet, and in no case may they be placed closer to the right-of-way or street easement than the principal building. Amateur radio antennas may not be located within any easement.
- b. Signage. Signs are prohibited on amateur radio antennas.
- c. Height. New amateur radio antennas proposed at heights greater than fifty (50) feet, but not higher than seventy-five (75), will be subject to administrative review in accordance with section 34-1445. New amateur radio antennas proposed at heights greater than seventy-five (75) feet will subject to the variance provisions of section 34-1453.

- d. Structural requirements. Amateur radio antennas must be constructed or mounted to withstand sustained winds in accordance with the Florida Building Code. In the event of structural failure, it must be designed to collapse completely within the boundaries of the lot on which it is located. Amateur radio antenna may be monopole, lattice or guyed type of construction.
- e. Restriction on antenna type. Personal wireless services antenna may not be placed on an amateur radio antenna.
- f. Limited waiver of requirements. The director may waive the requirements of section 34-1175(d)(2) where an applicant for an amateur radio antenna demonstrates that compliance with these provisions will preclude amateur radio services. The director may not waive any requirement to a greater extent than is required to ensure such services. The decision of the director is discretionary and may not be appealed.

#### ~~DIVISION 11. COMMUNICATION TOWERS~~

[DRAFTER'S NOTE: Division 11, Communication Towers, has been deleted in its entirety and replaced with a new division of the same number and renamed as "Wireless Communication Facilities." In an effort to conserve paper and reduce the overall length of the draft document the deleted provisions are not shown. New text is shown as underlined.]

#### DIVISION 11. WIRELESS COMMUNICATION FACILITIES

##### Sec. 34-1441. Purpose and intent.

The purpose and intent of this division is to:

- (1) Promote the health, safety and general welfare of the public by regulating the siting of wireless communications facilities;
- (2) Minimize the impacts of wireless communications facilities on surrounding areas by establishing standards for location, structural integrity, and compatibility;
- (3) Accommodate the growing need and demand for wireless communications services;
- (4) Provide for the location (and collocation) of wireless communications equipment on buildings so as to minimize visual, aesthetic, and public safety impacts, and adverse effects upon the natural environment and wildlife;
- (5) Provide for the collocation of wireless communications equipment on existing antenna-supporting structures, only where it will reduce the need for additional antenna-supporting structures;
- (6) Encourage coordination between providers of wireless communications services in Lee County;

- (7) Protect the character, scale, stability, and aesthetic quality of the residential districts of the County by imposing certain reasonable restrictions on the placement of amateur radio antennas that are over fifty feet in height;
- (8) Respond to the policies embodied in the Telecommunications Act of 1996 in such a manner as not to unreasonably discriminate between providers of functionally equivalent personal wireless service or to prohibit or have the effect of prohibiting personal wireless service in the County;
- (9) Establish predictable and balanced regulations governing the construction and location of wireless communications facilities, within the confines of permissible local regulation;
- (10) Establish review procedures to ensure that applications for wireless communications facilities are reviewed and acted upon within a reasonable period of time;
- (11) Require the timely removal of antennas and antenna-supporting structures, the use of which has been discontinued; and
- (12) Provide for the replacement or removal of nonconforming antennas and antenna-supporting structures.

#### **Sec. 34-1442. Definitions.**

For purposes of this division, certain terms are defined as follows:

Amateur radio antenna will have the meaning set forth in section 34-1175.

Ancillary appurtenances means equipment associated with a wireless communications facility including, but not limited to: antennas, attaching devices, transmission lines, and other equipment associated with a wireless communications facility. Ancillary appurtenances do not include equipment enclosures.

Antenna means any apparatus, or group of apparatus, designed for the transmitting and receiving of electromagnetic waves that includes, but is not limited to, telephonic, radio, or television communications. Antennas include omni-directional (whip) antennas, sectorized (panel) antennas, microwave dish antennas, multi or single bay (FM & TV), yaggye, or parabolic (dish) antennas, but do not include satellite earth stations.

Antenna, dish means a parabolic, spherical, or elliptical antenna intended to receive wireless communications.

Antenna, flush-mounted means a dual-polarization antenna that is attached flush to an antenna-supporting structure, without the use of sidearms or other extension devices.

Antenna, panel means a directional antenna, with more than one panel per sector, designed to transmit and/or receive signals in a directional pattern that is less than three hundred and sixty (360°) degrees.

Antenna, surface-mounted means an antenna that is attached to the surface or facade of a building or structure other than an antenna-supporting structure.

Antenna, whip means a cylindrical, omni-directional antenna designed to transmit and/or receive signals in a three hundred and sixty (360) degree pattern.

Antenna-supporting structure means 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, but do include roof-mounted antenna-supporting structures that extend above a roofline by more than twenty (20) feet. For purposes of this division a utility pole not exceeding forty (40) feet in height will not be construed to be an antenna-supporting structure.

Antenna-supporting structure, broadcast means an antenna-supporting structure, including replacements, which contains antennas that transmit signals for broadcast radio and television communications.

Antenna-supporting structure, guyed means a style of antenna-supporting structure supported by a series of guy wires that are connected to anchors placed in the ground or on a building.

Antenna-supporting structure, lattice means a style of stand-alone antenna-supporting structure, not supported by guy wires, which consists of vertical and horizontal supports with multiple legs and cross-bracing.

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.

Antenna-supporting structure, replacement means an antenna-supporting structure intended to replace an antenna-supporting structure in existence at the time of application.

Antenna-supporting structure, roof-mounted means an antenna-supporting structure, mounted on the roof of a building, that extends above the roofline by twenty (20) feet or less. An antenna extending more than twenty (20) feet above the roofline is an antenna-supporting structure.

Available space means the space on an antenna-supporting structure or other structure to which antennas are both structurally and electromagnetically able to be attached.

Balloon test means an event in which the applicant arranges to fly, or raise upon a temporary mast, for four (4) consecutive days, a brightly colored balloon not less than three feet in diameter, at the maximum height and at the location of the proposed antenna-supporting structure.

Base station means a primary sending and receiving site in a wireless communication network. A wireless communication facility may support base stations for more than one provider.

Broadcast facility means a wireless communications facility used for the transmission and reception of commercial radio or television signals.

Collocated or collocation means the addition or replacement of an antenna on a previously approved existing antenna-supporting structure or utility pole. The term collocated includes combined antennas, but does not include roof-mounted or surface-mounted wireless communications facilities.

Combined antenna means an antenna designed and utilized to provide services by more than one provider.

Equipment enclosure means an enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communications signals and support of a wireless communications facility, but not used primarily to store unrelated equipment or used as habitable space.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Geographic search area means the area in which an antenna is proposed to be located in order to provide the designed coverage or capacity. The geographic search area must be based on radio frequency engineering considerations, including grids, frequency coordination, propagation analyses, and levels of service consistent with accepted engineering standards and practices.

Letters of coordination means documentation provided by the applicant that the following notice was mailed, via certified mail, to all providers or, where applicable, owners of existing antenna-supporting structures, and that the applicant was unable to secure a lease agreement to allow the placement of the proposed antenna(s) on an existing structure or building within the geographic search area:

Text of required notice:

"Pursuant to the requirements of the Lee County Land Development Code, (name of applicant) is hereby providing you with notice of our intent to meet with the Lee County Department of Community Development in a pre-application conference to discuss the location of a free-standing wireless communications facility that would be located at (location). We plan to construct an antenna-supporting structure of (number of) feet in height for the purpose of providing (type of wireless service). Please inform the County and us if either of the following applies:

- a. you intend to place additional wireless communications facilities within two (2) miles of our proposed facility; or
- b. you know of an existing building or structure that might accommodate the antennas associated with our proposed facility.

Please provide us with this information within ten (10) days following the receipt of this letter.

Sincerely, (applicant, wireless provider)"

The department will maintain a list of known service providers and owners. Letters of coordination must be mailed at least fifteen (15) days prior to the pre-application conference required by this division and must request a response from the recipient within ten (10) days of receipt.

Monitoring means the measurement, by the use of instruments in the field, of non-ionizing radiation exposure at a site as a whole, or from individual wireless communications facilities.

Monitoring protocol means the testing protocol, such as the Cobbs Protocol, (or one substantially similar, including compliance determined in accordance with the National Council on Radiation Protection and Measurements, Report 86 and 119) that is to be used to monitor the emissions and determine exposure risk from existing and new wireless communication facilities upon the adoption of this division. As the technology changes, the director may require the use of other testing products.

Overall height means the height of a wireless communications facility measured as set forth in section 34-2171, but without any adjustment for minimum required flood elevation. Overall height includes all antennas and other ancillary appurtenances.

Personal wireless service means commercial mobile services (which include cellular, personal communication services, specialized mobile radio, enhanced specialized mobile radio, and paging), unlicensed wireless services, and common carrier wireless exchange access services, as defined in the Telecommunications Act of 1996.

Provider means a business, corporation, partnership, or other entity licensed by the FCC to provide wireless services in Lee County, Florida.

Radio frequency (RF) emissions means any electromagnetic radiation or other communications signal emitted from an antenna or antenna-related equipment on the ground, an antenna-supporting structure, building, or other vertical projection.

Repeater means a small receiver or relay transmitter of low power output relative to a base station output, designed to provide service to areas that are not able to receive adequate coverage directly from a base station.

Roofline means the uppermost line of the roof or parapet, whichever is lower.

Satellite earth station will have the meaning set forth in section 34-1175.

Shared use plan means a plan that includes the following:

- (a) a signed statement from the antenna-supporting structure owner agreeing to allow multiple providers to colocate on the structure, where reasonable and structurally feasible; and
- (b) a written evaluation of the feasibility of accommodating future collocations. Such evaluation must address the following, as appropriate:
  - (1) structural capacity of the proposed antenna-supporting structure;

- (2) radio frequency limitations impacting the ability to accommodate collocations;
- (3) geographical search area requirements;
- (4) mechanical or electrical compatibility;
- (5) any restrictions imposed upon the facility by the FCC that would preclude future collocations; and
- (6) additional relevant information as required by the County.

Sight lines means a graphic representation consisting of:

- (a) A minimum of eight (8) view lines in a zero (0) to two (2) mile radius from the site, shown beginning at True North and continuing clockwise at forty-five degree (45°) intervals; and
- (b) A plan map of a circle of two (2) miles radius of the Communication Facility Site on which any visibility of the proposed Communication Facility must be indicated; and
- (c) Using the U.S.G.S. Quadrangle map, at a scale of 1:25,000, as a base map, profile drawings on a horizontal scale of 1"= 400', and a vertical scale of 1"= 40' showing buildings, structures and trees at existing heights, as well as the trees at their projected heights in ten years.

Stealth wireless communications facility means a wireless communications facility, ancillary appurtenance, or equipment enclosure that is not readily identifiable as such, and aesthetically compatible with nearby uses. A stealth facility must 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.

Utility pole means a vertical structure used primarily by publicly regulated utilities or for street lighting and located within a street right-of-way, road easement or public utility easement.

Utility pole, replacement means a vertical structure used primarily by publicly regulated utilities or for street lighting and located within a street right-of-way, road easement or public utility easement limited to forty (40) feet in height to accommodate wireless communication facilities.

Wireless communications means any personal wireless service, radio and television broadcast services, and any other radio frequency signals, including amateur radio.

Wireless communications facility means any facility used for the transmission and reception of wireless communications, usually consisting of an antenna or group of antennas, base station, transmission lines, ancillary appurtenances, equipment enclosures, or repeaters, and may include an antenna-supporting structure. Any of the following will be considered a wireless communications facility: antennas, antenna-supporting structures (including replacement and broadcast), base stations, equipment enclosure, roof-mounted antenna-supporting structures, surface-mounted antennas, repeaters, stealth wireless communications facilities, and amateur radio facilities.

Wireless communications facility site means a property, or any part thereof, owned or leased by one or more providers and upon which one or more wireless communications facility(s) and required landscaping are located.

**Sec. 34-1443. Applicability and exemptions.**

- (a) Except as provided in subsection (b) below, this division applies to the installation, construction, or modification of wireless communications facilities.
- (b) The following items are exempt from the provisions of this division:
- (1) amateur radio antenna with an overall height of fifty (50) feet or less. Any such structure(s) may be developed only in accordance with the provisions of section 34-1175;
  - (2) satellite earth stations, other than broadcast, may only be developed in accordance with section 34-1175;
  - (3) regular maintenance and monitoring of existing wireless communications facilities that does not include the placement or replacement of a wireless communications facility;
  - (4) wireless communications facilities erected as a temporary use, that receives a temporary use permit pursuant to the provisions of section 34-3041;
  - (5) wireless communications facilities erected upon the declaration of a state of emergency by a federal, state, or local government. However, no wireless communications facility will be exempt pursuant to this paragraph unless the director of public safety makes a determination of public necessity for the facility. The written determination must be submitted to the director. No wireless communications facility will be exempt from the provisions of this division beyond the duration of the state of emergency, and such facility must be removed within ninety (90) days of the termination of the state of emergency.

**Sec. 34-1444. Permissible wireless facility locations.**

- (a) Except as provided below, wireless communications facility may be permitted only in accordance with Table 34-1447 and the provisions of this chapter. Regardless of the process required, the applicant must comply with all submittal, procedural and substantive provisions of this chapter. Variances or deviations from the requirements of this division may be granted only in accordance with the requirements of section 34-1453 for a variance.
- (b) Exceptions:
- (1) Broadcast antenna-supporting structures in excess of 250 feet will only be allowed within an agricultural zoning district by variance in accordance with the requirements of section 34-1453. Broadcast studios are not allowed in the agricultural zoning district and must comply with all other applicable zoning and development regulations.

- (2) All antennas proposed to be mounted on existing buildings or structures will be eligible for administrative review as set forth in section 34-1445(b).
- (3) On the barrier islands and within the outer island future land use areas, the overall height of wireless communications facilities must not exceed 35 feet or the height limitation set forth in section 34-2175, whichever is greater. The provisions set forth in section 34-2174 are not applicable to wireless communication facilities.
- (4) Wireless communications facilities are prohibited in the non-urban future land use areas, wetlands, environmentally critical zoning districts and areas readily visible from the University Window Overlay, except for:
  - a. stealth wireless communication facilities;
  - b. surface-mounted antennas proposed to be located only on existing, legally permitted buildings or structures by means of camouflage;
  - c. surface-mounted antennas located on utility poles; or
  - d. flush-mounted antennas on existing antenna-supporting structures.

The design of any facility proposed in these areas must be reviewed in accordance with the provisions of section 34-1445(b)(1).

#### **Sec. 34-1445. Development review process.**

##### **(a) Pre-application conference.**

- (1) Prior to submitting an application for a wireless communication facility, the applicant must file a written request for a pre-application conference with the director. The purpose of the pre-application conference is to acquaint the participants with the applicable requirements of this chapter and with preliminary concerns of the department.
- (2) The applicant's written request for a pre-application conference must include the following information with regard to the proposed facility:
  - a. location and existing conditions;
  - b. overall height;
  - c. number of antennas proposed (including those of other providers);
  - d. type(s) of wireless communications to be provided; and
  - e. proof that the letters of coordination were mailed.
- (3) Among the matters to be addressed at the pre-application meeting are:
  - a. the ability of the proposed wireless communication facility to accommodate future collocations;

- b. alternative locations or facility configurations that may result in reduced impacts on adjacent properties and the surrounding community;
- c. compatible colors for the proposed facility;
- d. the vantage points from which required photo-simulated post-construction renderings must be oriented;
- e. the need for variances or deviations from the provisions of this chapter; and
- f. the expected date of application and a preliminary schedule for development review.

(b) Zoning

(1) Administrative review. Where, pursuant to Table 34-1447, administrative review may be available and appropriate, an application will be reviewed by the director for compliance with this chapter. The director may attach conditions to any facility approved administratively. However, the complexity of technical issues involved, previous denials of similar wireless communications facilities in the vicinity of the one proposed, significant public interest to the proposed facility, the presence of environmentally sensitive lands on or near the proposed facility, and similar circumstances may prompt the director to conclude the applicant must apply for a special exception to allow for an evaluation of the proposed facility in public hearing forum. No later than 10 working days from the end of the pre-application conference, the director will render a written decision regarding the appropriateness of administrative review. The director's decision regarding the appropriateness of administrative review is discretionary and may not be appealed.

(2) Special exception.

a. Where, pursuant to Table 34-1447 or the determination of the director that a special exception is required, the application must be reviewed pursuant to the provisions of section 34-145(c) and this division.

b. Appeal. The director or any aggrieved party may appeal decisions of the hearing examiner to the Board of County Commissioners following the procedures set forth in section 34-83(b), Zoning Actions. The Board of County Commissioners will treat the decision of the hearing examiner as a recommendation and not as a final decision. Appeals must be filed with the Director within thirty (30) calendar days after the decision has been rendered.

(3) Final Decision.

a. Approval. In addition to the findings required by section 34-145, the County, in consultation with its consultant(s), must make all of the following findings (or conclude that a finding is not applicable) before granting approval of an application:

1. the applicant is not already providing adequate coverage or adequate capacity in the County; 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 County; 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 and that the required monitoring program is in place and will be paid for by Applicant.

b. Denial. Decisions by the County to deny an application for a proposed wireless communications facilities must be in writing and supported by evidence contained in a written record.

(c) Building permits and development orders. Building permits and development orders are required for all wireless communication facilities in accordance with this chapter and chapters 6 and 10.

**Sec. 34-1446. Application submittal requirements.**

(a) Minimum required information for all wireless communication facilities applications: Every application for wireless communication facilities must include the following information. However, upon written request, on a form prepared by the county, the director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request for a waiver or modification must be submitted to the director prior to submitting the application. A copy of the request and the director's written response must accompany the application and will become a part of the permanent file. The director's decision is discretionary and may not be appealed.

- (1) A covenant of unified control, executed by the property owner, the Applicant, and the provider who will be placing antennas on the proposed or existing wireless communications facility.

- (2) The name, address, and telephone contact information for the owner(s) of all proposed or existing antenna-supporting structures and wireless communication facilities; and an affidavit that such information will be updated annually or upon a change of ownership after the application is approved.
- (3) A license (and for broadcast structures, a construction permit) issued by the FCC to transmit radio signals in Lee County.
- (4) A signed statement from the facility's owner or owner's agent stating that the radio frequency emissions will comply with FCC standards.
- (5) A graphical representation and an accompanying statement of the site coverage area, design radius planned for the cell, and the geographic search area used to locate the proposed facility.
- (6) A radio frequency plot indicating the coverage of the provider's existing wireless communications sites in and adjacent to Lee County.
- (7) A statement of the power levels of the facility.
- (8) A statement confirming the overall height of the facility and all other facilities on the subject property, in terms of grade and sea-level.
- (9) A letter or letters:
  - a. demonstrating consent from the Executive Director of the Lee County Port Authority if the wireless communications facilities is to be located within the County airspace notification limits of section 34-1008;
  - b. confirming review and recommendation from the Lee County Mosquito Control District and the director of public safety or their respective designee, for any wireless communication facility exceeding 35 feet;
  - c. indicating that the antenna-supporting structure and appurtenances are in compliance with all applicable federal rules and regulations; if required by the United States Fish and Wildlife Service; and
  - d. confirming FAA compliance with Subpart C of the Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace.

These letters are not required for collocated and surface-mounted antennas.

- (10) A survey of the subject property completed by a registered land surveyor which shows all existing conditions. This requirement does not apply to roof-mounted and surface-mounted antennas.
- (11) Photo-simulated post-construction renderings of the proposed wireless communications facility, equipment enclosures, and ancillary appurtenances as they would look after construction from locations to be determined by the participants during the required pre-application conference.

- (12) Shared use plan or copy of an executed shared use plan for the existing facility. (This is not required for a broadcast facility until such time as a request is made to collocate personal wireless service equipment.)
- (13) A list and map identifying all existing wireless communications facilities to which the proposed facility will be a handoff candidate, including latitude, longitude, and power levels of each.
- (14) Floor plans, elevations, and cross sections at a scale no smaller than 1/4" = 1' (1:48) of any proposed accessory structure.
- (15) To scale elevation drawings, indicating the roof, facades, doors, and other exterior appearance and materials of the proposed wireless communication facility (signed and sealed by a Professional Engineer).

(b) Additional required information for wireless communication facilities requiring a public hearing. In addition to the submittals required by sections 34-202 and 34-203, and the requirements of subsection (a) above, the following information must be provided:

- (1) Lease required. If the property owner is not a provider, the application must include a copy of an executed lease agreement between the applicant or property owner and a provider. Where no lease agreement has been executed, the applicant must include an affidavit signed by a provider attesting to the provider's intent to make application for development order approval to place antennas on the wireless communications facility if the zoning application is approved.
- (2) The results of the balloon test conducted by the applicant pursuant to the requirements set forth in subsection (d). This requirement does not apply to collocated, roof-mounted and surface-mounted antennas

(c) Additional information for wireless communication facilities required at time of application for a development order or building permit. In addition to the submittals required by subsection (a) above, the following information must be provided along with the application for a development order or building permit:

- (1) A certificate of insurance as required by section 34-1450.
- (2) Proof the wireless communications facility has been designed to withstand sustained winds in accordance with the Florida Building Code.
- (3) Proof the antenna-supporting structure has been designed so that, in the event of structural failure, it will collapse within the boundaries of the leased area of the lot on which it is located.
- (4) A stamped or sealed structural analysis of the wireless communication facility prepared by a Professional Engineer indicating the proposed and future loading capacity of the facility and specifying the design structural failure modes of the proposed facility; OR, where the wireless communication facility is to be mounted on an existing building or structure, a stamped or sealed structural analysis prepared by a Professional Engineer showing the ability of the building or structure to carry the load of the wireless communication facility.

- (5) A landscape plan prepared by and bearing the seal of a landscape architect, including a narrative and calculations to ensure that the proposed landscaping will be in compliance with this Land Development Code. This requirement does not apply to roof-mounted, surface-mounted, or stealth antennas.
- (6) Surety for removal. A financial surety or other form of financial guarantee, payable to the County, to ensure timely removal of the facility in the event of abandonment, non-use or cessation of use. The surety must conform with the following requirements:
- a. Approval required. The surety must be posted prior to issuance of a building permit or development order to guarantee the removal of the antenna-supporting structure. The amount of the surety must be acceptable to the director. Additionally, before any surety instrument is accepted by the director as in compliance with this section, the surety instrument must be reviewed and approved by the county attorney's office. Once approved and funded, the surety instrument must be filed with the clerk of the Board of County Commissioners.
  - b. Types of surety.
    - 1. Cash performance bond.
    - 2. Other types of security. The board may accept letters of credit or escrow account agreements or other forms of security provided the reasons for not obtaining the bond are stated and the county attorney approves the document.
  - c. Certified cost estimate required. The amount of the surety will be based upon a Professional Engineer's certified cost estimate of the cost of removing the antenna-supporting structure from the site and properly disposing of the dismantled antenna-supporting structure.
  - d. Initial amount of surety. The required surety must be posted with the board and made payable to the county in an amount equal to 110 percent (110%) of the full cost of removal of the wireless communication facility as set forth in the Professional Engineer's certified cost estimate.
  - e. Annual increase required. The amount of the surety must be kept in full force and effect and must be increased by ten percent (10%) compounded for each year the antenna-supporting structure remains on the site.
  - f. Surety to remain in effect. The approved surety must remain funded until the wireless communication facility is removed from the site and properly disposed of.

- g. County's use of surety funds. The County may use the posted surety funds to remove or secure a wireless communication facility upon a determination of abandonment, non-use or cessation of use as set forth in sec. 34-1451. In the event the posted amount of surety funds is insufficient to cover the full cost of removal, the County may file a lien on the site property for the amount of unpaid costs, including legal fees.
  - h. Exemption from surety requirement. The Director may, with approval from the county attorney's office, exempt a municipality or governmental entity from the surety requirement.
- (d) Balloon test. Within thirty-five (35) calendar days after an Application for an antenna supporting structure has been deemed complete, the applicant must conduct a balloon test in accordance with the following regulations:
- (1) Seven (7) to fourteen (14) calendar days in advance of the first test date, the applicant must advertise, in a newspaper of general circulation in the County the dates (including a second date, in case of poor visibility on the initial date), times, and location of this balloon test. A copy of the ad and proof of publication must be provided to the director as part of the application.
  - (2) At least 14 calendar days in advance of this balloon test, the Applicant must inform the Director, in writing, of the dates and times of the test.
  - (3) The balloon must be flown for at least eight (8) consecutive hours between 7:00 am and 7:00 pm on the dates chosen.
  - (4) The Applicant must provide photographs of the balloon taken from each sight line. The photographs must identify the sight lines and distances from the proposed antenna-supporting structure.

**Sec. 34-1447. Development regulations.**

The development regulations set forth herein apply to all wireless communications facilities as indicated.

(a) Where permissible.

TABLE 34-1447. PERMISSIBLE ANTENNA-SUPPORTING STRUCTURE HEIGHTS

<u>Zoning Classification</u>	<u>Maximum Overall Height Allowed by the Administrative Approval Process</u>	<u>Overall Height requiring Approval by Special Exception</u>
<u>Agricultural</u>	<u>35 feet</u>	<u>35.1 - 149 feet</u>
<u>Residential<sup>1</sup></u>	<u>35 feet</u>	<u>35.1 - 75 feet</u>
<u>PRFPD<sup>2</sup></u>	<u>35 feet</u>	<u>Not Allowed</u>
<u>Industrial<sup>3</sup></u>	<u>75 feet</u>	<u>75.1 - 149 feet</u>
<u>All other zoning districts</u>	<u>75 feet</u>	<u>75.1 - 149 feet</u>

Notes:

<sup>1</sup>Includes single-family, two-family, multiple-family, and mobile home residential zoning districts, recreational vehicle park districts, and residential, mobile home, recreational vehicle, residential planned developments, airport operations planned development (AOPD), and mixed use planned developments, and planned unit developments.

<sup>2</sup>private recreational facilities planned developments.

<sup>3</sup>Includes industrial planned developments.

(b) District impacts minimized.

(1) Generally. Antenna-supporting structures must be located in a manner that is consistent with the County's interest in land use compatibility, within and between zoning districts, as set forth in this chapter's zoning district regulations, section 34-611, et seq.

(2) Siting Priorities. In order to justify the construction of an antenna-supporting structure, the applicant must demonstrate that higher ranking alternatives in the following hierarchy, beginning with a., do not constitute feasible alternatives. Such demonstration must be submitted with a statement of position, qualifications, and experience by a licensed radio frequency engineer.

a. stealth wireless communication facility, or antennas collocated or combined with a stealth facility

b. surface-mounted antennas

c. roof-mounted antennas

d. collocated or combined antennas.

(3) Proliferation minimized.

- a. Generally. No antenna-supporting structure will be permitted unless the applicant demonstrates that the proposed antenna cannot be accommodated on an existing building or structure or by construction of a stealth facility.
- b. Additional Documentation. Additional documentation may also be submitted to demonstrate compliance with this section:
  - i. that no existing wireless communications facility within the geographic search area meets the applicant's radio frequency engineering requirements;
  - ii. that no building or structure within the geographic search area has sufficient structural strength to support the applicant's radio frequency engineering requirements; or
  - iii. that there are other radio frequency engineering factors that render stealth, surface-mounted, roof-mounted or collocated facilities unfeasible.

(4) Zoning district priorities. In order to justify locating a proposed antenna-supporting structure within a zoning district lower in the hierarchy below, the applicant must adequately demonstrate that siting alternatives within higher ranked districts, beginning with a., are not reasonable or feasible. This demonstration must be made by submission of a statement of position, qualifications, and experience by a licensed radio frequency engineer.

- a. Industrial
- b. Commercial
- c. Marine-oriented
- d. Community Facilities (CF) and Airport Operations Planned Development (AOPD)
- e. Agricultural
- f. Recreational Vehicle
- g. Residential (including Mobile Home)
- h. Private Recreational Facilities Planned Development (PRFPD) and Environmentally Critical (EC)

(c) Visual impacts minimized.

- (1) Generally. Antennas must be configured on antenna-supporting structures in a manner that is consistent with the character of the surrounding community and that minimizes adverse visual impacts on adjacent properties.
- (2) Antenna type priorities. In order to justify the use of an antenna-type lower in the hierarchy below, the applicant must adequately demonstrate that higher ranked alternatives in the following hierarchy, beginning with a., cannot be used. This

demonstration must be made by submission of a statement of position, qualifications, and experience by a licensed radio frequency engineer.

- a. flush-mounted
- b. panel
- c. whip
- d. dish

(3) Stealth facilities.

- a. No stealth facility may have antennas or ancillary equipment that is 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.

(4) Camouflage, screening, and placement.

- a. Color. Antenna-supporting structures and ancillary appurtenances, including transmission lines, must maintain a galvanized gray finish or other contextual or compatible color as determined by the County, except as otherwise required by the FAA or FCC.
- b. Fencing. The developer of a wireless communication facility must install a fence or wall not less than eight (8) feet and not more than ten (10) feet in height from finished grade to enclose the base of the antenna-supporting structure and equipment enclosures associated with any wireless communication facility. Access to the antenna-supporting structure must be

controlled by a locked gate. The fence must be constructed in accordance with section 34-1742. Not more than three (3) strands of barbed wire, spaced six (6) inches apart, may be allowed above the fence.

c. Landscaping.

1. A landscaped buffer of at least ten (10) feet in width must be planted along the entire exterior perimeter of the fence or wall required by subsection b. above. Where the proposed antenna-supporting structure will be located adjacent to a residential or public recreational use, or a lot within a residential zoning district, the landscaped buffer must be at least fifteen (15) feet in width.
2. A buffer required by this section must contain at least one (1) double row of native vegetation and form a continuous hedge at least three (3) feet in height at installation. The buffer must be maintained at the height of the fence. Trees proposed for the buffer may be maintained above the height of the fence.

d. Other facilities.

1. Roof-mounted structures must be camouflaged by a parapet or other device, or otherwise situated so as to screen its visual impact along each sight line.
2. Transmission lines placed on the exterior of a building must be camouflaged or otherwise shielded within an appropriate material that is the same color as, or a color consistent with, the building to which they are attached, as determined by the County.
3. Surface-mounted antennas must be placed no less than fifteen (15) feet from the ground and, where proposed for placement on a building, must be camouflaged or otherwise shielded within an appropriate material that is the same color as, or a color consistent with, the building to which they are attached, as determined by the County.

(d) General property development regulations.

(1) Setbacks:

- a. New facilities. All new wireless communication facilities must meet the setback requirements for the zoning district in which they are proposed or a distance equal to their overall height from all lot lines of the fee property on which they are proposed, which ever is greater; unless a greater distance is required as a condition of the approval.
- b. Replacement facilities. In accordance with the development review process set forth in section 34-1445, setback requirements for replacement wireless

communication facilities may be reduced by up to 50%. No replacement facility may be placed closer to a lot line than the wireless communication facility it is replacing.

- c. Stealth wireless communications facilities, ancillary appurtenances, and equipment enclosures must meet the minimum setback requirements for the zoning district in which they are proposed, as well as those set forth in section 34-2191, et seq.

In accordance with the development review process set forth in section 34-1445, setback requirements for stealth facilities may be reduced if it is necessary to reduce the visual impact or enhance the compatibility of the proposed facility on adjacent properties and the surrounding community.

(2) Height.

- a. All antenna-supporting structures must comply with the requirements of section 34-1008.
- b. Antenna-supporting structures on the barrier islands or within the outer islands future land use areas may not exceed thirty-five (35) feet, or the special height limits set forth in section 34-2175, whichever is less.
- c. Roof-mounted antennas, attachment devices, equipment enclosures or ancillary appurtenances may be placed on commercial, institutional, industrial and multi-family buildings at least thirty-five (35) feet in height and may not extend more than twenty (20) feet above the roofline of the building on which it is attached.
- d. Collocations may not increase the existing overall height of an antenna-supporting structure.
- e. In all other cases, the overall height of an antenna-supporting structure approved in accordance with section 34-1445 may not exceed one hundred forty-nine (149) feet, except as provided below :
  - 1. FCC approved AM broadcast antenna-supporting structures may not exceed two hundred fifty (250) feet in overall height.
  - 2. All other FCC approved broadcast antenna-supporting structures may not exceed five hundred (500) feet.
  - 3. Stealth facilities must be consistent with the scale and aesthetic qualities of the proposed facility, and consistent with the character of the surrounding community.
- f. In no event may the provisions set forth in section 34-2174 apply to wireless communication facilities.

- g. The overall height of ground-mounted equipment or equipment enclosure(s) may not exceed twelve (12) feet.
- h. Private aircraft and helicopter landing facilities. In addition to the provisions of section 34-1001, et seq., antenna-supporting structures proposed within a designated notification height boundary of a private aircraft or helicopter landing facility, as specified on the Airspace Notification Map, will be limited to the height specified by that boundary, according to the proposed facility's distance from the runway or landing facility.

(e) Construction.

(1) Type of Construction. Broadcast facilities may utilize lattice or guyed antenna-supporting structures. All other wireless facilities are limited to monopole antenna-supporting structures.

(2) Accommodation of future collocations.

a. Antenna-supporting structures should be designed to accommodate future collocations. The exact amount of additional equipment to be accommodated must be agreed upon during the pre-application conference.

b. The applicant must submit a shared use plan that commits the owner of the proposed antenna-supporting structure to accommodating future collocations where reasonable and feasible in light of the criteria set forth in this section.

(3) Lighting.

a. Except for security lighting and site lighting, other types of lights, signals or illumination will only be permitted on an antenna-supporting structure or ancillary appurtenances where lighting is required by the FAA, FCC, the County, or the Lee County Mosquito Control District.

b. Security lighting. Security lighting and site lighting may be placed in association with an approved equipment enclosure. Site lighting must remain unlit except when authorized personnel are present at the facility. Security lighting and site lighting must be shielded to prevent light trespass.

c. Required lighting

1. All antenna-supporting structures one hundred (100) feet or greater in height above ground level must be artificially lighted and maintained pursuant to the technical requirements of the Federal Aviation Administration's current Advisory Circular 70/7460-1K, Obstruction Marking and Lighting, as amended, or other appropriate aviation authority. Unless pre-empted by FAA or FCC regulations, all lighting must be approved in conjunction with the development order for the facility.

2. If the height of a structure under construction equals or exceeds the height at which permanent obstruction lights are required by the FAA, FCC or the division of development services, temporary high or medium intensity flashing lights must be installed at that level in accordance with Advisory Circular 70/7460-1K, Obstruction Marking and Lighting, as amended.

(4) Notice of commencement of construction.

(a) Forty-eight hours before commencing construction of an antenna-supporting structure, and within 48 hours after the antenna-supporting structure construction reaches its maximum height, the Lee County Port Authority, Sheriff's office, Emergency Medical Services, the local fire district and the Lee County Mosquito Control District must be notified by the entity constructing the antenna-supporting structure. Notice must include the location of the antenna-supporting structure tied to the state plane coordinate system for the Florida West Zone (North American Datum of 1983/1990 Adjustment).

(b) The tall structures permit application shall not be issued if the proposed construction or alteration is found to violate the provisions of this Article VI, Division 10, Subdivision III (section 34-1001, et seq.) or any other applicable federal or state rules or regulations. No tall structures permit will be issued if all Federal Aviation Administration and county port authority comments are not addressed to the satisfaction of the county port authority. The applicant shall be forwarded a written notice if the tall structures permit is denied, from the county port authority. This written notice shall specify the reason for objections and suggestions for compliance under this subdivision and all other applicable federal or state rules and regulations.

(5) Floor area. The floor area for a wireless communications facility will be calculated based on the total square footage of all equipment enclosures and all impervious surfaces associated with the facility, and may not exceed one thousand (1,000) square feet without a special exception approval in accordance with section 34-1445.

(f) Signage.

(1) Signs on antenna-supporting structures, ancillary appurtenances, equipment enclosures, or on any fence or wall are prohibited unless permitted in accordance with this subsection.

(2) If high voltage is necessary for the operation of proposed wireless communications facilities, "High Voltage-Danger" and "No Trespass" warning signs not greater than one (1) square foot in area must be permanently attached to the fence or wall at intervals of not less than forty (40) feet and upon the access gate, or as otherwise required by the FAA or FCC.

- (3) A sign not greater than one (1) square foot in area must be attached to the access gate that includes the following information:
- a. federal registration number, if applicable;
  - b. name of property owner, facility owner, providers, and contact person; and
  - c. an emergency contact number for the contact person.

**Sec. 34-1448. Expert review.**

- (a) Upon submission of a completed application for approval under this division, the Director will determine if technical review by the County's independent expert is required. If such review is determined to be necessary, the director will notify the applicant of the need for expert technical review. Applicants seeking approval under this division must obtain permission from the owners of the property or communications facilities site for the County's staff and independent expert, to conduct necessary site visits. Where the director requires technical review by the County's independent expert, the applicant will bear the costs of such review.

The applicant must reimburse the County within ten (10) working days of the date of receipt of an invoice for expenses associated with the County's independent expert's review of the application. If the applicant fails to reimburse the County as required herein, the County will suspend review of the pending applicant's applications until payment in full is received by the County. If the County does not receive payment in full within thirty (60) calendar days of mailing the invoice, the application will be deemed withdrawn and all fees forfeited.

- (b) The expert review may address:
- (1) the accuracy and completeness of submissions;
  - (2) the accuracy and applicability of analysis techniques and methodologies;
  - (3) the validity of conclusions reached by the applicant;
  - (4) whether the proposed wireless communications facility complies with the applicable approval criteria set forth in this chapter; and
  - (5) other matters deemed by the director to be relevant in determining whether a proposed wireless communications facility complies with the provisions of this code.
- (c) Based on the results of the expert review, the director may require the applicant to revise, modify, or supplement the application or required submissions.

**Sec. 34-1449. Monitoring and Evaluation.**

- (a) Compliance with FCC RF emission requirements. The provisions of this subsection (a) will be implemented only for the purpose of confirming continued compliance of wireless communication facilities, other than broadcast, with FCC RF emission standards. The County will not regulate a wireless communications facility based on the environmental effects of RF emissions of a proposed wireless communications facility if the facility complies with the FCC's emission standards.
- (1) Monitoring Protocol. The director may require and accept the use of testing protocols. A copy of the monitoring protocol and any alternative monitoring protocol will be on file with the Department of Community Development.
- (2) Pre-testing. After zoning approval and prior to operation of any antennas, the Applicant will pay for an independent consultant, hired by the County, to monitor the background levels of electromagnetic frequency (EMF) radiation, around the existing or proposed wireless communications facility site or any repeater locations utilized for the applicant's wireless communications facilities. The independent consultant will use the approved monitoring protocol. The independent consultant will prepare a report of the monitoring results and submit the report to the director and the director of public safety.
- (3) Post-testing. The owner(s) of any wireless communications facility located on the communications facility site will submit reports prepared by an independent qualified telecommunications or radiofrequency engineer regarding non-ionizing radiofrequency radiation emissions or exposure from the site after transmission commence.
- a. There will be routine annual monitoring of emissions/exposure by the independent consultant using actual field measurement of radiation, utilizing the monitoring protocol. This monitoring must measure levels of non-ionizing radiofrequency radiation exposure at the wireless communications facility site as well as from repeaters (if any). A report of the monitoring results will be prepared by the independent engineer and submitted to the director and abutting property owners.
- b. Major modification of an existing wireless communication facility site, or the activation of additional permitted channels, will require new monitoring.
- (4) Excessive exposure. If monitoring of a wireless communications facility site reveals that the site exceeds the FCC 96-326 standard and guidelines, then the owner(s) of all other wireless communications facilities utilizing that site must be notified. In accordance with FCC requirements, the owners(s) must immediately reduce power or cease operation as necessary to protect persons having access to the site, tower, or antennas. Additionally, the owner(s) must submit to the director and the director of public safety a plan for the reduction of emissions to levels that comply with the FCC 96-326 standard within 10 business days of notification of noncompliance. That plan must reduce emissions to the standard within 15 days of the initial notification of noncompliance. Failure to accomplish this reduction of

emissions within 15 business days will be a violation of this code and subject the owner(s) to penalties and fines as specified herein. Fines will be paid by the owner(s) of the wireless communications facilities with antennas on the site, until compliance is achieved.

**b. Structural Inspection.**

1. Other than broadcast, antenna-supporting structure owners must pay for an independent consultant (a licensed professional structural engineer), hired by the County, to conduct inspections of the antenna-supporting structure's structural integrity and safety. Existing guyed antenna-supporting structures must be inspected every three years. Monopole and lattice-type antenna-supporting structures must be inspected every five years. A report of the inspection results will be prepared by the independent consultant and submitted to the director, and the director of public safety. Major modifications of existing wireless communication facilities that includes changes to antenna-supporting structure dimensions of antenna numbers or type will require new structural inspection. Broadcast antenna-supporting structure owners will provide the County with copies of inspection reports as produced, but not less frequently than every two years.
  
2. Unsafe Structure. If the inspection of any antenna-supporting structure reveals structural defect(s) that, in the opinion of the independent consultant render(s) the antenna-supporting structure unsafe, the following actions must be taken: Within 10 business days of notification of unsafe structure, the owner(s) of the antenna-supporting structure must submit a plan to the director to remediate the structural defect(s). This plan will be initiated within 10 days of the submission of the remediation plan, and completed as soon as reasonably possible. Failure to accomplish this remediation of structural defect(s) within 10 business days of initial notification will be a violation of this division and subject to the penalties and fines as specified herein. Fines will be paid by the owner(s) of the antenna-supporting structure until compliance is achieved.

**c. Removal of unsafe structure. If the owner of an antenna-supporting structure has not remedied the unsafe structural defects as required, then the County may, at its option, and without additional notification or consent from the owner of the tower or the property, secure or remove the unsafe antenna-structure utilizing surety funds posted for final removal in the event of abandonment, non-use or cessation of use.**

**Sec. 34-1450. Fees and Insurance.**

- (a) Antenna-supporting structures and wireless communications facilities must be insured by the owner(s) against damage to persons and against damage to property. Owner(s) must provide a Certificate of Insurance to the director annually.
  
- (b) Fees for antenna-supporting structures and wireless communications facilities permitting and renewal, monitoring of emissions and inspection of structures, and other fees will be established by the Board.

**Sec. 34-1451. Discontinued use.**

- (a) Notice of discontinued use. The owner of an antenna-supporting structure 750 feet or greater in height, the use of which has been discontinued for a period of one year, on an annual basis must provide the director with an affidavit of an intention to continue the use, including a description of the owner's efforts to keep the facility in use. If the affidavit is not provided the director may make a preliminary determination of discontinued use. For any other antenna-supporting structure, the use of which is discontinued for a period of one-hundred and eighty (180) days, the director may make a preliminary determination of discontinued use. In making such a determination, the director may request documentation and affidavits from the property owner(s) regarding the structure's usage, including evidence that use of the structure is imminent. The failure of a property owner(s) to provide updated contact information on the owner of the antenna-supporting structure for two consecutive years will be presumptive evidence of discontinued use. If the director determines that the use of an antenna-supporting structure or antenna has been discontinued, the director will provide the property owner with a written notice of discontinued use by certified mail.
- (b) Declaration of discontinued use. If the property owner fails to respond to the notice of discontinued use or to adequately demonstrate that the use of the antenna or antenna-supporting structure is not discontinued within ninety (90) days, such failure will be evidence of discontinued use. Based on the foregoing, or on any other relevant evidence before the director, the director may make a final determination of discontinued use, whereupon a declaration of discontinued use will be issued to the property owner by certified mail.
- (c) Removal of facility. Within one-hundred and twenty (120) days of a declaration of discontinued use, the property owner must either (i) reactivate the use of the antenna(s) or antenna-supporting structure as a wireless communications facility or transfer ownership of the antennas or antenna-supporting structure to another owner who will make use of the facility, or (ii) dismantle and remove the facility. If transfer of ownership occurs, the new owner must supply the director with an affidavit attesting that the antennas or antenna-supporting structure will be in use within one-hundred twenty (120) days of the transfer in accordance with (i), above. If the facility remains discontinued upon the expiration of 120 days, the County may enter upon the property and remove the facility, with all costs to be borne by the property owner. The County may use the funds posted in the surety for this purpose.

**Sec. 34-1452. Nonconforming antenna-supporting structures.**

Antenna-supporting structures made nonconforming by implementation of this ordinance must comply with the provisions of this division within 10 years or it must be removed. The fee owner may apply for a variance in accordance with section 34-1453, to extend the time period for compliance or removal.

**Sec. 34-1453. Variance criteria.**

- (a) Variances or deviations to this division must be in accordance with the procedures set forth in section 34-145. In addition to the considerations and findings 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;
- (2) failure to grant the variance or deviation would unreasonably discriminate among providers of functionally equivalent personal wireless services;
- (3) the variance or deviation is necessary to ensure adequate public safety and emergency management communications;
- (4) the variance or deviation is the minimum necessary in order for the applicant to provide broadcast services pursuant to an FCC-issued license or construction permit; or
- (5) failure to grant the variance or deviation would prohibit or have the effect of prohibiting the provision of amateur radio services.

(b) Appeal of decisions of the Hearing Examiner pursuant to this section will be to the Board of County Commissioners in accordance with the provisions of section 34-1445(b)(2).

**Secs. 34-1447 34-1454 - 34-1470. Reserved**

## DIVISION 30. PROPERTY DEVELOPMENT REGULATIONS

### Subdivision II. Height

NOTE: The provisions of sections 34-2173 and 34-2174 do not apply to satellite earth stations and amateur radio antennas (section 34-1175) or wireless communication facilities (section 34-1441, et seq.)

#### **Sec. 34-2173. Exception to height limitations for certain structural elements.**

(a) The following structural appurtenances may exceed the height limitations stipulated in the applicable districts for authorized uses, without increasing setbacks as required in section 34-2174:

- (1) **Unchanged.**
- (2) Appurtenances necessary to mechanical or structural functions such as chimneys and smokestacks, water tanks, elevator and stairwell enclosures, ventilators, and bulkheads; AM and FM radio and television masts, aeri~~als~~, and antennas; fire and hose towers, utility transmission and distribution structures, cooling towers, aircraft control towers or navigation aids, forest fire observation towers, and barns, silos, windmills or other farm structures when located on farms.

For satellite dishes earth stations and amateur radio antennas/~~towers~~ - refer to section 34-1175.

For wireless communication towers facilities, refer to section 34-1441 et seq.

(b) **Unchanged.**

## ARTICLE VIII. NONCONFORMITIES

The provisions of this Article do not apply to wireless communication facilities (Section 34-1441, et seq.).

### **Section Two: Conflicts of Law.**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

### **Section Three: Severability.**

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will be considered a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such invalid or unconstitutional provision was not included.

### **Section Four: Codification and Scrivener's Errors.**

The Board of County Commissioners intends that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section," "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager, or his designee, without the need for a public hearing.

### **Section Five: Effective Date.**

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

[End of provisions.]

**THE FOREGOING ORDINANCE** was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and, being put to a vote, the vote was as follows:

Robert P. Janes \_\_\_\_\_  
Douglas St. Cerny \_\_\_\_\_  
Ray Judah \_\_\_\_\_  
Andrew W. Coy \_\_\_\_\_  
John E. Albion \_\_\_\_\_

DULY PASSED AND ADOPTED THIS \_\_\_ day of March, 2003.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of County Attorney