

Commerce Department  
Planning Division

## Cabarrus County Government

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Cabarrus County Planning and Zoning Commission Meeting  
August 16, 2007  
7:00 P.M.  
County Commissioners Chamber  
Cabarrus County Governmental Center

### Agenda

1. Roll Call
2. Approval/Correction of July 19, 2007 Minutes
3. New Business - Planning Board Function:
  - A. Preliminary Plat Approval - Petition C2007-03 (S)  
Townhomes at Skybrook  
Standard Pacific of the Carolina, LLC  
11525 Carmel Commons Blvd, Suite 301  
Charlotte, NC 28226
  - B. Proposed Changes to Chapter 8 – Wireless Telecommunications Services
4. Directors Report
5. Adjournment

PLANNING STAFF REPORT  
CABARRUS COUNTY PLANNING AND ZONING COMMISSION  
Thursday, August 16, 2007

**Petition:** C2007-03 (S) Preliminary Plat Approval

**Subdivision Name:** Townhomes at Skybrook

**Subdivision Type:** Attached Single Family (Town homes)

**Applicant Information:** Standard Pacific of the Carolinas , LLC  
11525 Carmel Commons Blvd.  
Suite 301  
Charlotte, NC 28226

**Zoning:** LDR – Low Density Residential (The proposed site was previously approved as part of the Skybrook master plan in 1999. At that time, the subject property was designated as MDR- Medium Density Residential) The Planning and Zoning Commission decided in September of 2006, that the zoning of this parcel was vested and the developers were allowed to continue based on their plans for the property as approved in 1999 under MDR Zoning.

**Township:** Number 3 – Odell

**Property Location:** Harris Rd. & Skybrook Drive

**PIN#:** 4670-56-7602  
4670-67-4212  
4670-67-3373

**Proposed Lots:** 187

**Area in Acres:** +/- 25.16

**Site Description:** The site is currently vacant.

**Adjacent Land Uses:** To the south, the adjacent property is zoned City of Concord C-2. This property is currently vacant, but there are plans for this property to be used as a commercial center. Cascades at Skybrook, another multifamily town home project, is located to the west of the property. The property directly to the north is the Skybrook golf course. Properties to the east are residential, both being part of the Skybrook Subdivision.

**Surrounding Zoning:** The subject property is surrounded by Low Density Residential zoning to the north, east, and west. There is a Concord zoning designation of C-2 to the south of the subject property.

**Infrastructure:** The proposed subdivision will be served by a CMUD (Charlotte-Mecklenburg Utility Department) water and sewer system.

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Exhibits:

1. Site Map
2. Preliminary Plat
3. School Adequacy Worksheet
4. CMUD intent to serve letter

**Code Considerations:** The MDR district is a medium density residential zoning district. The minimum lot size is 10,000 sq. feet under traditional development. Under customized standards, the maximum density is 4.5 units per acre.

Development standards for the customized development option are:

- Front setback- 30' front setback on 50% of lots, flexible for the remainder.
- Side yard setbacks- Flexible
- Rear yard setbacks- Flexible
- Maximum impervious surface- 40%
- Maximum structural coverage- 30%

A minimum of 30% open space is required for this development. The required open space has been provided throughout the Skybrook Subdivision.

**Adequate Public Facilities:** **Cabarrus County Schools- Robert Kluttz:** Schools that serve this area are inadequate at this time. (Please see attached school adequacy worksheet for details.)

**Soil and Erosion Control:** **Thomas Smith:** The applicant will be required to submit soil and erosion plans before commencing any land disturbing activities.

**NCDOT:** **Leah Wagner:** A roadway improvement plan must be submitted for review. A driveway permit is required for both entrances and the location of the entrance on Fairwoods Drive must be staked to verify sight distance. The developer should be aware of the fact that if the connection to Townhomes at Skybrook occurs prior to the proposed Shea Homes/Rankin tracts project, then the developer will be responsible for constructing the left turn lane on Harris Road. Fifty five feet (55') as measured from the existing centerline of the road, should be reserved/dedicated as indicated in the Cabarrus-Rowan MPO Street Appendix.

**Fire Marshall's Office:** **Steve Langer:** No Comments

**Analysis:** The subject parcel was rezoned from MDR to LDR per countywide rezoning changes on June 20, 2005. The number and type of units (multifamily/town home) were originally approved under the Skybrook Master Plan, and were vested at the time of the countywide rezoning. Therefore, the design will follow the zoning regulations of MDR under

PLANNING STAFF REPORT  
CABARRUS COUNTY PLANNING AND ZONING COMMISSION  
Thursday, August 16, 2007

the 1999 Cabarrus County Zoning Ordinance. Open space requirements will be met through the overall Skybrook Master Plan, so long as residents of this town home subdivision are part of the Skybrook Homeowner's Association and have access to all amenities.

**Land Use Plan:**

The draft version of the updated Cabarrus County Northwestern Area Plan recommends that the subject property be developed as residential, with a density of 1-3 units per acre. This draft plan was utilized in 2005 when the zoning for the county was updated and the current zoning of LDR was assigned. The proposed subdivision meets the overall residential component of the draft Northwestern Area Plan. However, it exceeds the intensity of residential development specified in the plan for the parcels under consideration. LDR is a zone that does not allow for town homes.

According to the Northwestern Small Area Plan of 1990, which the subject property was originally approved under, the subject property was originally zoned MDR (Medium Density Residential) and allowed for town homes.

**Recommendations:**

Should the Planning Commission grant approval of the subdivision, it is requested that the following conditions be added:

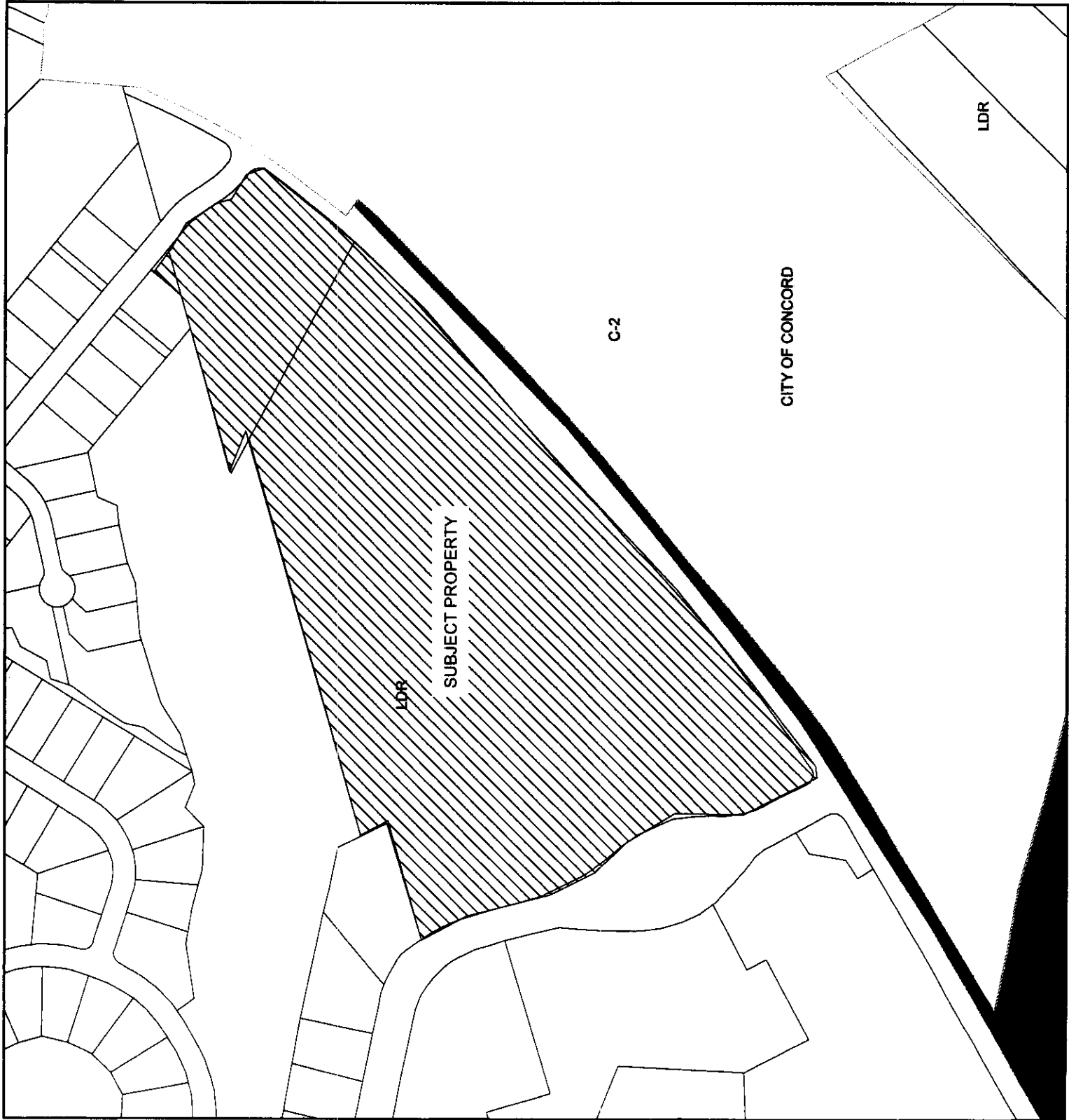
1. The developer shall pay \$500.00 per lot as designated in the Consent Agreement for the Skybrook Subdivision to address school adequacy. (Schools/APFO)
2. The developer shall obtain driveway permits from NCDOT. (NCDOT/APFO)
3. A roadway improvement plan must be submitted for review. (NCDOT/APFO)
4. The developer should be aware of the fact that if the connection to Townhomes at Skybrook occurs prior to the Shea Homes/Rankin tracts project, the developer will be responsible for constructing the left turn lane on Harris Road. (NCDOT/APFO)
5. Fifty-five feet (55'), as measured from the existing centerline of the road, should be reserved/dedicated as indicated in the Cabarrus-Rowan MPO Street Appendix. (NCDOT/APFO)
6. The developer shall gain approval by the Division of Environment, Health, and Natural Resources for the connection of water and sewer. (CMUD)

**Townhomes at  
Skybrook**

Standard Pacific of  
the Carolinas, LLC

Case: 2007-03 (S)

PIN: 4670-56-7602  
4670-67-4212  
4670-67-3373



190 95 0 190 Feet



Cabarrus County shall not be held liable for any errors in these data. This map is for informational purposes only. It is not intended to be used as a legal document. The County of Cabarrus, North Carolina, is not responsible for any errors or omissions in this data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained in the data.

Map Prepared by Cabarrus County Planning Services, August 2007.

## Adequate Public Facility Worksheet – Schools

Please fill out the following questionnaire regarding the Townhomes at Skybrook. This project is being considered by the Commission for consideration. Your response is required by April 2, 2007 for inclusion in the staff report to the Commission.

Please see the enclosed map and project detail sheet for location and information regarding the proposed development. If you need additional information for this project please contact Colleen Nelson @ 704-920-2149 or Canelson@cabarruscounty.us.

### Questions

1. At present students from the proposed development would attend the following schools:

Elementary - Cox Mill

Middle - Harris Road

High - Northwest Cabarrus

2. Using the most recent attendance figures, these schools are at what percent of their stated capacity? **Month 5, February 7, 2007.**

Elementary - 119.69%

Middle - 103.96%

High - 110.33%

3. How many students are expected from this development?

**Based on 187 townhouses**

Elementary - 43

Middle - 17

High - 14

4. Including previously approved subdivisions these schools will be at what percent of their stated capacity when the proposed development is completed?

Elementary - 101.11% **note: Carl Furr scheduled to open in Aug. 2007 will draw from Cox Mill.**

Middle - 170.03%

High - 177.58%

5. The schools currently available in this area can or cannot accommodate the additional students expected from this development? **(if the answer above is "can", please stop here)**
6. If this development cannot be served by existing schools, are any steps planned within the next two years to address this service delivery issue? Yes / No. If yes, please describe the steps that will be taken (use an additional sheet if necessary). Are these changes in an adopted capital improvement plan or has funding been identified?

In the 15-Year Facilities Plan a new elementary school is scheduled to open in the August, 2007 (Carl Furr) in the first funding cycle. Another elementary school and high school in the northwest area and a new middle school in the south central area are proposed for 2009.

7. If there are not plans for new school facilities in the next two years, please describe the additional resources required to adequately serve the proposed development (attach an additional sheet if necessary)?

Additional capital funding needed for a new high school (2009) west of Lake Howell, a new middle school (2009) in the south central area between US Highway 29 and Poplar Tent Road, and a new elementary school (2009) in the northwest area.

8. Are the improvements described in question 7 above included in an adopted capital improvement plan or has funding been identified? Yes / No

The new elementary school, new middle school, and new high school mentioned in question 7 have been included in the Revised 15-Year Facilities Plan presented to the BOE on February 22, 2007 as information. **Funding for construction and land acquisition has not been identified for these projects.**

*This form was completed by: Robert C. Kluttz Date: April 2, 2007*



SC003220

April 5, 2007

Mr. Alan R. Veverka  
Dewberry & Davis, Inc.  
6135 Lakeview Road  
Suite 400  
Charlotte, NC 28269

**SUBJECT: WATER AND SEWER FLOW ACCEPTANCE  
TOWNHOMES @ SKYBROOK  
CABARRUS COUNTY TAX PARCEL # 4670-56-7602  
C-MU TRACKING # 600-07-564**

Dear Mr. Veverka:

In response to your application for flow acceptance, a study of the subject site has been completed and it has been determined that the discharge from this project does not transmit through areas of SSO concern by the NCDENR, Division of Water Quality. See attached map.

Upon completion and acceptance of all necessary sewer lines, Charlotte-Mecklenburg Utilities (C-MU) agrees to accept the gravity sewage flow of 35,530 gpd (187 residential townhomes/condominiums x 190 gpd) from this project for transmission to the Rocky River Wastewater Treatment Plant; NPDES permit number NC0036269, located in Cabarrus County, for treatment. This acceptance of flow is based on the existing capacity of the designated publicly owned treatments works; which is contingent upon final acceptance and issuance of a discharge permit from the appropriate local, State, or Federal Agency, whichever might have control.

Upon completion and acceptance of all necessary water mains, Charlotte-Mecklenburg Utilities agrees to furnish water to the subject project. The water quality to the subject project is regulated by the State Drinking Water Act Amendments of 1986 and The Water Supply Management Plan, dated January 2000, (WSMP # 00-00251 & PWS ID # 0160010) on file with the Public Water Supply Section of NCDENR. However, C-MU cannot guarantee a constant pressure or quality of flow. This agreement is also contingent upon approval by the Division of Environment, Health, and Natural Resources.

Charlotte-Mecklenburg Utilities does not expect any of the above conditions preclude water or sewer service to the subject site. However, the applicant should understand that due to the involvement of other agencies and continuing growth of the water and sewer system, the ability to provide service for future projects cannot be guaranteed nor reserved. Connection to the C-MU system is accepted on a first come, first served basis.

Thank you for your interest Charlotte-Mecklenburg Utilities. If you have any questions, please do not hesitate to contact me at (704) 391-5107.

Sincerely,

**CHARLOTTE-MECKLENBURG UTILITIES**

Philip S. Johnson  
Customer Service Division, New Service Section

**CHARLOTTE-MECKLENBURG UTILITIES**  
New Services Section

[www.cmutilities.com](http://www.cmutilities.com)  
5100 Brookshire Boulevard  
Charlotte, NC 28216  
Ph: 704/399-2221  
Fax: 704/393-2219



# Memo

**To:** Cabarrus County Planning and Zoning Board  
**From:** Jay Lowe, Senior Zoning Inspector  
**Date:** 8/09/2007  
**Re:** Proposed Text Amendment to Chapter 8 (C2007-08-ZT)

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- Attached you will find proposed text to help address recent changes to N.C. General Statutes
- You will be asked to provide a recommendation to the County Commissioners regarding the proposed change.
- Please look over the materials and be prepared to discuss the change at the meeting.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

SENATE BILL 831  
RATIFIED BILL

AN ACT STREAMLINING LOCAL GOVERNMENT REGULATION OF WIRELESS  
FACILITIES AND WIRELESS SUPPORT STRUCTURES AND THE COLLOCATION  
OF WIRELESS FACILITIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 19 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

"Part 3E. Wireless Telecommunications Facilities.

**"§ 160A-400.50. Purpose and compliance with federal law.**

(a) The purpose of this section is to ensure the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare. The following standards shall apply to a city's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

(b) The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332 as amended, and in accordance with the rules promulgated by the Federal Communications Commission.

**"§ 160A-400.51. Definitions.**

The following definitions apply in this Part.

- (1) Antenna. – Communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
- (2) Application. – A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.
- (3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.
- (4) Collocation. – The installation of new wireless facilities on previously-approved structures, including towers, buildings, utility poles, and water tanks.
- (5) Equipment enclosure. – An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.
- (5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.
- (6) Land development regulation. – Any ordinance enacted pursuant to this Part.
- (7) Search ring. – The area within which a wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.
- (8) Utility pole. – A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.
- (9) Wireless facility. – The set of equipment and network components, exclusive

of the underlying support structure or tower, including antennas, transmitters, receivers base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and telecommunications services to a discrete geographic area.

- (10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

**"§ 160A-400.52. Construction of wireless facilities and wireless support structures.**

(a) A city may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a city from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 160A-400.50. For purposes of this Part, public safety shall not include requirements relating to radio frequency emissions of wireless facilities.

(b) Any person that proposes to construct or modify a wireless support structure or wireless facility within the planning and land-use jurisdiction of a city must do both of the following:

- (1) Submit a completed application with the necessary copies and attachments to the appropriate planning authority.
- (2) Comply with any local ordinances concerning land use and any applicable permitting processes.

(c) A city's review of an application for the placement, construction, or modification of a wireless facility or wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the city may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. In reviewing an application, the city may review the following:

- (1) Applicable public safety, land use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.
- (2) Information or materials directly related to an identified public safety, land development, or zoning issue including evidence that no existing or previously approved structure can reasonably be used for the antenna placement instead of the construction of a new tower, that residential, historic, and designated scenic areas cannot be served from outside the area, or that the proposed height of a new tower or initial antenna placement or a proposed height increase of a modified tower, replacement tower, or collocation is necessary to provide the applicant's designed service.
- (3) A city may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing structure or structures within the applicant's search ring. Collocation on an existing structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the tower is unwilling to enter into a contract for such use at fair market value. Cities may require information necessary to determine whether collocation on existing structures is reasonably feasible.

(d) A collocation application entitled to streamlined processing under G.S. 160A-400.53 shall be deemed complete unless the city provides notice in writing to the applicant within 45 days of submission or within some other mutually agreed upon timeframe. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

(e) The city shall issue a written decision approving or denying an application within 45 days in the case of collocation applications entitled to streamlined processing under G.S. 160A-400.53 and within a reasonable period of time consistent with the issuance of other land-use permits in the case of other applications, each as measured from the time the application is deemed complete.

(f) A city may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site or modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services. Any charges or fees assessed by a city on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the city in connection with the regulatory review authorized under this section. The foregoing does not prohibit a city from imposing additional reasonable and cost based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant.

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

(h) The city may not require the placement of wireless support structures or wireless facilities on city owned or leased property, but may develop a process to encourage the placement of wireless support structures or facilities on city owned or leased property, including an expedited approval process.

(i) This section shall not be construed to limit the provisions or requirements of any historic district or landmark regulation adopted pursuant to Part 3C of this Article.

**§ 160A-400.53. Collocation of wireless facilities.**

(a) Applications for collocation entitled to streamlined processing under this section shall be reviewed for conformance with applicable site plan and building permit requirements but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review.

(b) Applications for collocation of wireless facilities are entitled to streamlined processing if the addition of the additional wireless facility does not exceed the number of wireless facilities previously approved for the wireless support structure on which the collocation is proposed and meets all the requirements and conditions of the original approval. This provision applies to wireless support structures which are approved on or after December 1, 2007.

(c) The streamlined process set forth in subsection (a) of this section shall apply to all collocations, in addition to collocations qualified for streamlined processing under subsection (b) of this section, that meet the following requirements:

- (1) The collocation does not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached.
- (2) The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.
- (3) The wireless facilities in the proposed collocation comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.
- (4) The additional wireless facilities comply with all federal, State and local safety requirements.
- (5) The collocation does not exceed the applicable weight limits for the wireless support structure.

**SECTION 2.** Article 18 of Chapter 153A of the General Statutes is amended by adding a new Part to read:

"Part 3B. Wireless Telecommunications Facilities."§ 153A-349.50. Purpose and compliance with federal law.

(a) Purpose. – The purpose of this section is to ensure the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare. The following standards shall apply to a county's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

(b) Compliance with the Federal Communications Act. – The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332 as amended, and in accordance with the rules promulgated by the Federal Communications Commission.

"§ 153A-349.51. Definitions.

The following definitions apply in this Part.

- (1) Antenna. – Communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
- (2) Application. – A formal request submitted to the county to construct or modify a wireless support structure or a wireless facility.
- (3) Building permit. – An official administrative authorization issued by the county prior to beginning construction consistent with the provisions of G.S. 153A-357.
- (4) Collocation. – The installation of new wireless facilities on previously-approved structures, including towers, buildings, utility poles, and water tanks.
- (5) Equipment enclosure. – An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.
- (5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.
- (6) Land development regulation. – Any ordinance enacted pursuant to this Part.
- (7) Search ring. – The area within which a wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.
- (8) Utility pole. – A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.
- (9) Wireless facility. – The set of equipment and network components, exclusive of the underlying support structure or tower, including antennas, transmitters, receivers base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and telecommunications services to a discrete geographic area.
- (10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

"§ 153A-349.52. Construction of wireless facilities and wireless support structures.

(a) A county may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a county from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 153A-349.50. For purposes of this Part, public safety shall not include requirements relating to radio frequency emissions of wireless facilities.

(b) Any person that proposes to construct or modify a wireless support structure or wireless facility within the planning and land-use jurisdiction of a county must do both of the following:

- (1) Submit a completed application with the necessary copies and attachments to the appropriate planning authority.
- (2) Comply with any local ordinances concerning land use and any applicable permitting processes.

(c) A county's review of an application for the placement, construction, or modification of a wireless facility or wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the county may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. In reviewing an application the county may review the following:

- (1) Applicable public safety, land use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.
- (2) Information or materials directly related to an identified public safety, land development or zoning issue including evidence that no existing or previously approved structure can reasonably be used for the antenna placement instead of the construction of a new tower, that residential, historic, and designated scenic areas cannot be served from outside the area, or that the proposed height of a new tower or initial antenna placement or a proposed height increase of a modified tower, replacement tower, or collocation is necessary to provide the applicant's designed service.
- (3) A county may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing structure or structures within the applicant's search ring. Collocation on an existing structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the tower is unwilling to enter into a contract for such use at fair market value. Counties may require information necessary to determine whether collocation on existing structures is reasonably feasible.

(d) A collocation application entitled to streamlined processing under G.S. 153A-349.53 shall be deemed complete unless the city provides notice in writing to the applicant within 45 days of submission or within some other mutually agreed upon timeframe. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

(e) The county shall issue a written decision approving or denying an application within 45 days in the case of collocation applications entitled to streamlined processing under G.S. 153A-349.53 and within a reasonable period of time consistent with the issuance of other land-use permits in the case of other applications, each as measured from the time the application is deemed complete.

(f) A county may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site or modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services. Any charges or fees assessed by a county on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the county in connection with the regulatory review authorized under this section. The foregoing does not prohibit a county from imposing additional reasonable and cost based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant.

(g) The county may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit

establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure. A county shall not deny an initial land-use or zoning permit based on such documentation. A county may condition a permit on a requirement to construct facilities within a reasonable period of time, which shall be no less than 24 months.

(h) The county may not require the placement of wireless support structures or wireless facilities on county owned or leased property, but may develop a process to encourage the placement of wireless support structures or facilities on county owned or leased property, including an expedited approval process.

(i) This section shall not be construed to limit the provisions or requirements of any historic district or landmark regulation adopted pursuant to Part 3C of this Article.

**"§ 153A-349.53. Collocation of wireless facilities.**

(a) Applications for collocation entitled to streamlined processing under this section shall be reviewed for conformance with applicable site plan and building permit requirements but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review.

(b) Applications for collocation of wireless facilities are entitled to streamlined processing if the addition of the additional wireless facility does not exceed the number of wireless facilities previously approved for the wireless support structure on which the collocation is proposed and meets all the requirements and conditions of the original approval. This provision applies to wireless support structures which are approved on or after December 1, 2007.

(c) The streamlined process set forth in subsection (a) of this section shall apply to all collocations, in addition to collocations qualified for streamlined processing under subsection (b) of this section, that meet the following requirements:

- (1) The collocation does not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached.
- (2) The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.
- (3) The wireless facilities in the proposed collocation comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.
- (4) The additional wireless facilities comply with all federal, State, and local safety requirements.
- (5) The collocation does not exceed the applicable weight limits for the wireless support structure.

**SECTION 3.** If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

**SECTION 4.** This act becomes effective December 1, 2007.

2007. In the General Assembly read three times and ratified this the 2<sup>nd</sup> day of August,

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Beverly E. Perdue  
President of the Senate

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Joe Hackney

Speaker of the House of Representatives

\_\_\_\_\_  
Michael F. Easley  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_, 2007



## 5.21. WIRELESS TELECOMMUNICATIONS SERVICES.

### 5.21.1. PURPOSE.

The purpose of this Section 5.21 is to:

5.21.1.1. protect residential areas and land uses from potential adverse impacts of towers and antennas;

5.21.1.2. encourage the location of towers in non-residential and less developed areas;

5.21.1.3. strongly encourage joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;

5.21.1.4. encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;

5.21.1.5. encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;

5.21.1.6. enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;

5.21.1.7. consider the public's health and safety in regard to communication towers; and

5.21.1.8. avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

### 5.21.2. DEFINITIONS.

The words, terms and phrases shall have the meanings assigned below provided, however, that any words, terms or phrases not defined herein shall have the meaning assigned in Appendix A to this Ordinance:

**ACCESSORY EQUIPMENT STRUCTURE.** A building or cabinet-like structure located adjacent to, or in the immediate vicinity of, a wireless telecommunication tower or antenna to house equipment customarily incidental to the receiving or transmitting of wireless broadcasts, cellular telephone

calls, voice messaging and paging services.

**ALTERNATIVE TOWER STRUCTURE** - Man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

**ANTENNA.** Equipment used for transmitting or receiving radio frequency signals, which is attached to a tower, building or other structure, usually consisting of a series of directional panels, microwave or satellite dishes, or omnidirectional "whip" antenna.

**ANTENNA, STEALTH.** Wireless telecommunication antenna and related equipment designed to blend into the surrounding environment or integrated into the physical structure to which it is attached.

**BASE TRANSCEIVER STATION.** Equipment that provides the link between wireless communications and land-based public telephone switching networks, including radio frequency transceivers, back-up power sources, power amplifiers, and signal processing hardware, typically contained in a small building or cabinet.

**COMMUNICATIONS TOWER.** A tower, which supports communication (broadcast, receiving, or relay) equipment, utilized by commercial, government or other public and quasi-public users. This does not include private home use of satellite dishes and television antennas or amateur radio operators as licensed by the Federal Communications Commission (FCC).

**SATELLITE DISH ANTENNAE OR SATELLITE DISH.** A parabolic antennae designed to receive electromagnetic transmissions from a satellite.

**TOWER.** Any ground-mounted, pole, spire, structure or combination thereof, including supporting lines, cables, wires, braces and masts, to which a telecommunications antenna is attached or affixed.

**TOWER, LATTICE.** Three- or -four-legged steel girded structures typically supporting multiple communications users and services generally ranging

from 60 to 200 feet in height.

**TOWER, MONOPOLE.** Single pole design, approximately three feet in diameter at the base narrowing to approximately one and a half feet at the top, generally ranging from 25 to 150 feet in height.

**WIRELESS TELECOMMUNICATION SERVICES (WTS).** Licensed or unlicensed wireless telecommunication services including cellular, digital cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), commercial or private paging services, or similar services marketed or provided to the general public. This definition does not include services by non-commercial entities in the amateur radio service, public safety radio service, or licenses assigned non-profit organizations such as the Red Cross, Civil Air Patrol, or other military affiliated radio services that are licenses by the Federal Communications Commissions.

#### **5.21.3. APPLICABILITY.**

The provisions of section 5.21 apply to any new Wireless Telecommunications Tower or Antenna, except as provided below. The use of land for wireless telecommunication service antenna or tower shall be permitted as set forth in Table 4.6-1 (see Article 4) subject to the criteria below.

#### **5.21.4. GENERAL GUIDELINES and REQUIREMENTS.**

**5.21.4.1. PRINCIPAL OR ACCESSORY USE.** Antennas and towers may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

**5.21.4.2. LOT SIZE.** In the event that a tower or antenna is installed and/or leased on a portion of a lot, the lot in its entirety will determine any and all district development regulations that the structure may be subjected to; including but not limited to: setback, lot-coverage, and other such requirements.

**5.21.4.3. INVENTORY OF EXISTING SITES.** Each applicant for an antenna and/or tower shall provide to the Administrator with an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the

jurisdiction of Cabarrus County, the City of Kannapolis and Concord, the Towns of Harrisburg, Mt. Pleasant and Midland. Said information shall include specific information about the location, height, and design of each tower. Each applicant shall also provide a one-year build out plan for all other proposed wireless communications facilities within the Town. The Administrator may share such information with other applicants applying for administrative approvals or conditional use permits under this Ordinance or with other organizations seeking to locate antennas within the jurisdiction of this Ordinance provided, however that the Administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

#### **5.21.4.4. AESTHETICS.**

**5.21.4.4.1.** Towers shall either maintain a galvanized steel finish or be painted a neutral color so as to reduce visual obtrusiveness.

**5.21.4.4.2.** The design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings located adjacent to the tower or antenna site.

**5.21.4.4.3.** If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure. This is in order to make the antenna, and related equipment, as visually unobtrusive as possible.

**5.21.4.5. LIGHTS.** No tower or antenna shall have affixed or attached to it in any way except during time of repair or installation, any lights, reflectors, flashers, day-time strobes or steady night time light or other illumination devices, except as required by the FAA, FCC, or the Town. This restriction against lights shall not apply to towers which have been combined with light standards for illumination of ball fields, parking lots, playgrounds, or other similar public uses. If lighting is required, the lighting sources and design shall be designed to create the minimum practicable penetration of areas outside the boundaries of the Lot or Parcel.

**5.21.4.6. STATE OR FEDERAL**

**REQUIREMENTS.** All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other state or federal government agency with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with the revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

**5.21.4.7. BUILDING CODES; SAFETY STANDARDS.** To ensure the structural integrity of towers and antennas, the owners of such facilities shall ensure that they are maintained in compliance applicable with standards contained in the State Building Code.

**5.21.4.8. FALL ZONE.** No tower or antenna shall be designed and/or sited such that it poses a potential hazard to nearby residences or surrounding properties or improvements. To this end, any tower or antenna, not located a distance equal to the height of the tower plus 50 feet away from all habitable structures, property lines, or other towers, shall be designed to withstand the maximum forces expected from wind and ice when the tower is fully loaded with antennas, transmitters and other equipment. Compliance with this requirement shall be certified by a professional engineer licensed by the State of North Carolina in a report describing the tower structure, specifying the number and type of antennas it is designed to accommodate, providing the basis for the calculations done, and documenting the actual calculations performed.

**5.21.4.9. ESSENTIAL SERVICES.** Wireless telecommunications towers and antennas shall be regulated and permitted pursuant to this chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities.

**5.21.4.10. SIGNS.** Signs on a tower, or on any portion of the premises leased for wireless communication use, shall be limited to those needed to identify the property and the owner and to warn of any danger. Signs which advertise for commercial

purposes are prohibited. All signs shall comply with the requirements of the Sign Regulations of this Ordinance.

#### **5.21.5. PERMIT REQUIREMENTS.**

**5.21.5.1.** No wireless telecommunications tower or antenna shall be erected or established unless and until a Zoning Clearance permit has been issued pursuant to this Ordinance.

**5.21.5.2.** A Stealth Antennae which does not exceed sixty-five (65) feet in height is permitted as of right and does not require a conditional use permit

**5.21.5.3.** In addition to the procedures, standards and criteria set forth in this Ordinance, conditional use permits for towers and antennas shall be issued in accordance with the following provisions:

**5.21.5.3.1.** Towers or antennas sixty-five (65) feet or more from the average ground level shall require a conditional use permit. This applies to mounted antennas, referring to the total height from the base of the building or other structure to the top of the antenna.

**5.21.5.3.2.** Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a professional engineer licensed in the State of North Carolina.

**5.21.5.4. INFORMATION REQUIRED.** In addition to any other information required pursuant to this Ordinance, applications for conditional use permits for towers shall include the following information:

**5.21.5.4.1.** A preliminary major site plan consistent with the procedures of this Ordinance which clearly indicates the location, type, and height of the proposed tower; on-site land uses and zoning; adjacent land uses and zoning (including when adjacent to other zoning jurisdictions); adjacent roadways; proposed means of access; setbacks from property lines elevation drawings of the proposed tower and any other structures; and other information deemed by the Administrator to be necessary to assess compliance with this Section.

**5.21.5.4.2.** The setback distance between the proposed tower and the nearest residential unit and

residentially zoned properties.

**5.21.5.4.3.** The availability of suitable existing towers, other structures, or alternative technology.

**5.21.5.4.4.** The separation distance from other towers pursuant to Table 5.21-1 shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.

**5.21.5.4.5.** Method of fencing and finished color and, if applicable, the method of camouflage and illumination.

**5.21.5.4.6.** A notarized statement by the applicant as to whether construction of the tower will accommodate co-location of additional antennas for future users.

**5.21.5.4.7.** A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.

**5.21.5.4.8.** A description of the feasible alternative location(s) of future towers or antennas within the County based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.

**5.21.5.4.9.** A statement of compliance with the FCC Radio Frequency (RF) exposure standards.

## **5.21.6. APPROVAL CRITERIA**

**5.21.6.1. LOCATION.** All non-stealth and stealth towers and mounted antennas are permitted by right or as a conditional use as listed in Table 3-8.

**5.21.6.2. FACTORS CONSIDERED IN GRANTING CONDITIONAL USE PERMITS FOR TOWERS.** In determining whether to issue a conditional use permit, the Board of Adjustments shall consider, in addition to any other standards in this Ordinance governing conditional use permits, the following factors:

**5.21.6.2.1.** Height of the proposed tower;

**5.21.6.2.2.** Proximity of the tower to

residential structures and residentially zoned district boundaries;

**5.21.6.2.3.** Nature of uses on adjacent and nearby properties;

**5.21.6.2.4.** Surrounding topography;

**5.21.6.2.5.** Surrounding tree coverage and vegetation;

**5.21.6.2.6.** Design of the tower, with particular reference to design characteristics that reduce or eliminate visual obtrusiveness;

**5.21.6.2.7.** Proposed ingress and egress; and

**5.21.6.2.8.** Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in § 5.21.6.2.3 of this Ordinance.

**5.21.6.3. AVAILABILITY OF SUITABLE EXISTING TOWERS, OTHER STRUCTURES, OR ALTERNATIVE TECHNOLOGY.** No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Administrator, or Board of Adjustment (if conditional use permit is required), that no existing tower, structure or alternative technology, that does not require the use of towers or structures, can accommodate the applicant's proposed tower or antenna. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed tower or antenna may consist of any or all of the following:

**5.21.6.3.1.** No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.

**5.21.6.3.2.** Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

**5.21.6.3.3.** Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

**5.21.6.3.4.** The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would

cause interference with the applicant's proposed antenna.

**5.21.6.3.5.** The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs required by the owner of existing tower or structure that exceed new tower development are presumed to be unreasonable.

**5.21.6.3.6.** The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

**5.21.6.3.7.** The applicant demonstrates that alternative technologies, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, that does not require the use of towers or structures, are unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

**5.21.6.3.8.** SEPARATION. Towers shall be separated a distance, as measured from the base, equal to at least the minimum standards established in Table 5.21-2 from any preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the preexisting tower and the base location, pursuant to a site plan, of the proposed tower.

**5.21.6.3.9.** SECURITY FENCING. Towers shall be enclosed by security fencing not less than six (6) feet in height and no more than eight (8) feet in height, constructed of block or masonry or wood material, and shall be equipped in such a manner as to deter climbing.

**5.21.6.3.10.** LANDSCAPING.

Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound. Plant materials forming the visual buffer may be existing on the subject property or installed as part of the proposed facility, but existing mature plant growth and natural land forms on the site shall be preserved to the maximum extent possible. The Administrator may waive these

requirements in locations where the view of the tower base is obstructed by existing buildings or natural topography and cannot be viewed from adjacent property or a public street.

## **5.21.7. BUILDINGS OR OTHER EQUIPMENT STORAGE.**

**5.21.7.1. ACCESSORY EQUIPMENT STRUCTURES.** The equipment cabinets and other support structures used in association with towers or antennas shall comply with the following provisions:

**5.21.7.1.1.** Equipment cabinets and/or other structures shall comply with all applicable building codes.

**5.21.7.1.2.** Guys and accessory buildings shall satisfy the minimum zoning district setback requirements.

## **5.21.7.2. LOCATION OF ACCESSORY EQUIPMENT STRUCTURES.**

**5.21.7.2.1.** Equipment cabinets and/or structures shall be no greater than fourteen (14) feet in height or three hundred (300) square feet in gross floor area. The entry or access side of a cabinet and/or structure shall be gated by a solid, sight-obscuring gate that is separate from the cabinet and/or structure. Such access way shall not face residentially zoned property.

## **5.21.8. CO-LOCATION.**

**5.21.8.1. GOOD FAITH.** Applicants and permittee shall make a good faith effort to share wireless communication structures, facilities and sites where feasible and appropriate. Good faith effort shall include sharing technical information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location, and may include negotiations for erection of a replacement support structure to accommodate co-location. A competitive conflict to co-location or financial burden caused by sharing such information normally will not be considered as an exception to the duty of good faith.

**5.21.8.2. THIRD PARTY TECHNICAL REVIEW.** In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the Administrator may

require the applicant to obtain a third party technical study at the applicants expense. the Administrator may review any information submitted by the applicant and permittee(s) in determining whether good faith has been exercised.

**5.21.8.3. EXCEPTIONS.** No co-location may be required where the shared use would or does result in significant interference with the broadcast or reception capabilities of the existing wireless communication facilities or the failure of the facilities to meet federal standards for emissions.

**5.21.8.4. VIOLATION; PENALTY.** Failure to comply with co-location requirements may result in denial of a permit request or revocation of an existing permit.

#### **5.21.9. REMOVAL OF ABANDONED ANTENNAS AND TOWERS.**

**5.21.9.1.** Any antenna or tower that is not operated for a continuous period of one (1) year shall be considered abandoned, and the owner of such facility shall remove the antenna or tower within ninety (90) days of receipt of notice from the Board of Adjustment notifying the owner of such abandonment. If there are two or more users of a single tower or antenna, then this provision shall not become effective until all users cease using the tower or antenna for the prescribed period. "Physically remove" shall include, but not be limited to:

**5.21.9.1.1.** Removal of antennas, mount, equipment shelters and security barriers from the subject property.

**5.21.9.1.2.** Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

**5.21.9.1.3.** Restoring the location of the facility to its natural condition, except that any landscaping and grading shall remain in the after condition.

#### **5.21.9.2. AUTHORITY TO REMOVE**

**5.21.9.3. REQUIRE BOND.** A performance bond shall be set for 1.25 times the estimated cost of removal of all towers, antennas, and accessory equipment structures that are approved. The performance bond shall be filed prior to issuance of a zoning clearance. This amount will be determined by

a removal company and certified by a North Carolina Licensed Engineer. For every year following approval, the bond shall increase by an inflation factor based upon the Consumer Price Index (CPI) Index.

#### **5.21.10. NONCONFORMING USES.**

**5.21.10.1. NO EXPANSION OF NONCONFORMING USE.** Towers that are constructed, and antennas that are installed, in accordance with the provisions of this chapter shall not be deemed to constitute the expansion of a nonconforming use or structure.

**5.21.10.2. PREEXISTING TOWERS.** Preexisting towers constructed prior to the adoption of this Ordinance shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this chapter.

**5.21.10.3. REBUILDING DAMAGED OR DESTROYED NONCONFORMING TOWERS OR ANTENNAS.** Notwithstanding this Section, bona fide nonconforming towers or antennas that are damaged or destroyed by weather events or other non-manmade causes to conform to the requirements of this Ordinance provided the type, height, and location of the tower onsite shall be of the same type and intensity as the original facility; provided, however, that any destroyed lattice or guyed tower shall be replaced with a monopole structure only. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned.

<b>Table 5.21-1 Separation Requirements from Offsite Uses/Areas</b>	
Single-family or duplex residential units [1]	200 feet or 300% of tower height, whichever is greater
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary plat approval which is not expired [2]	
Vacant unplatted residentially zoned land [3]	100 feet or 100% of tower height, whichever is greater
Existing multi-family residential units greater than duplex units	
Non-residentially zoned lands or non-residential uses	None, only setbacks apply
<p>[1] Includes modular homes and mobile homes used for living purposes.</p> <p>[2] Separation measured from base of tower to closest building setback line.</p> <p>[3] Includes any unplatted residential use properties without a valid preliminary subdivision plan or valid development plan and any multi-family residentially zoned land greater than a duplex.</p>	

**Table 5.21-2  
Separation Distances Between Towers**

	Monopole 65 ft. in height or greater	Monopole less than 65 ft. in height
Monopole 65 feet in height or greater	1,500 feet	750 feet
Monopole less than 65 feet in height	750 feet	750 feet

## **28. WIRELESS TELECOMMUNICATIONS SERVICES**

### **Section 1. Purpose and Legislative Intent.**

The Telecommunications Act of 1996 affirmed the County of Cabarrus's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The County of Cabarrus finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the County and its inhabitants. The County also recognizes that facilitating the development of wireless service technology can be an economic development asset to the County and of significant benefit to the County and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the County's land use policies, the County is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Local Ordinance is to minimize the negative impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the County of Cabarrus.

### **Section 2. Title.**

This Ordinance shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the County of Cabarrus.

### **Section 3. Severability.**

- A) If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- B) Any Conditional Use Permit issued under this Ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the County.

### **Section 4. Definitions.**

For the purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not



inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

1. **"Accessory Facility or Structure"** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **"Applicant"** means any Wireless service provider submitting an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.
3. **"Application"** means all necessary and appropriate documentation that an Applicant submits in order to receive a Conditional Use Permit for Wireless Telecommunications Facilities.
4. **"Antenna"** means a system of electrical conductors that transmit or receive electromagnetic waves of radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, personal Telecommunications services (PCS), microwave Telecommunications and services not licensed by the FCC, but not expressly exempt from the County's siting, building and permitting authority.
5. **"Co-location"** means the use of a Tower or structure to support Antennae for the provision of wireless services without increasing the height of the Tower or structure.
6. **"Commercial Impracticability" or "Commercially Impracticable"** means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be "commercially impracticable" and shall not render an act or the terms of an agreement "commercially impracticable".
7. **"Completed Application"** means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.

8. **"Commission"** means the County Commission of the County of Cabarrus.
9. **"Conditional Use Permit"** means the official document or permit by which an Applicant is allowed to construct and use Wireless Telecommunications Facilities as granted or issued by the County.
10. **"County"** means Cabarrus County, North Carolina.
11. **"FAA"** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
12. **"FCC"** means the Federal Communications Commission, or its duly designated and authorized successor agency.
13. **"Height"** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightning protection device.
14. **"Modification" or "Modify"** means, the addition, removal or change of any of the physical and visually discernible components or aspects of a wireless facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernible components, vehicular access, parking and/or an upgrade or change out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.
15. **"NIEER"** means Non-Ionizing Electromagnetic Radiation
14. **"Person"** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
15. **"Personal Wireless Facility"** See definition for 'Wireless Telecommunications Facilities'.

16. **"Personal Wireless Services"** or **"PWS"** or **"Personal Telecommunications Service"** or **"PCS"** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
17. **"Telecommunication Site"** See definition for Wireless Telecommunications Facilities.
19. **"Stealth" or "Stealth Technology"** means minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,.
20. **"State"** means the State of North Carolina.
21. **"Telecommunications"** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
22. **"Telecommunications Structure"** means a structure used in the provision of services described in the definition of "Wireless Telecommunications Facilities".
23. **"Temporary"** means temporary in relation to all aspects and components of this Ordinance, something intended to, or that does, exist for fewer than ninety (90) days.
24. **"Wireless Telecommunications Facilities"** means and includes a **"Telecommunications Tower"** and **"Tower"** and **"Telecommunications Site"** and **"Personal Wireless Facility"** means a structure, facility or location designed, or intended to be used as, or used to support, Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds and structures that employ camouflage technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other structures that can be used to mitigate the visual impact of an Antenna or the functional equivalent of such, including all related facilities such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal Telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt

from the County's siting, building and permitting authority, excluding those used exclusively for the County's fire, police or exclusively for private, non-commercial radio and television reception and private citizen's bands, amateur radio and other similar non-commercial Telecommunications where the height of the facility is below the height limits set forth in this ordinance.

**Section 5. Overall Policy and Desired Goals for Conditional Use Permits for Wireless Telecommunications Facilities.**

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the County's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the County hereby adopts an overall policy with respect to a Conditional Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- 1) Implementing an Application process for person(s) seeking a Conditional Use Permit for Wireless Telecommunications Facilities;
- 2) Establishing a policy for examining an application for and issuing a Conditional Use Permit for Wireless Telecommunications Facilities that is both fair and consistent.
- 3) Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers;
- 4) Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,

**Section 6. Conditional Use Permit Application and Other Requirements.**

- A) All Applicants for a Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this Ordinance. The County Commission is the officially designated agency or body of the County to whom applications for a Conditional Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking Conditional Use

Permits for Wireless Telecommunications Facilities. The County may at its discretion delegate or designate other official agencies of the County to accept, review, analyze, evaluate and make recommendations to the County Commission with respect to the granting or not granting, recertifying or not recertifying or revoking Conditional Use Permits for Wireless Telecommunications Facilities.

- B) An Application for a Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the Applicant, shall also sign the Application. At the discretion of the County, any false or misleading statement in the Application may subject the Applicant to denial of the Application without further consideration or opportunity for correction.
- C) The County may reject applications not meeting the requirements stated herein or which are otherwise incomplete.
- D) The Applicant shall include a statement in writing:
  - 1) That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Conditional Use Permit, without exception, unless specifically granted relief by the County in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and Federal Laws, rules, and regulations;
  - 2) That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
- E) No Wireless Telecommunications Facilities shall be installed or constructed until the Application is reviewed and approved by the County, and the Conditional Use Permit has been issued.
- F) All applications for the construction or installation of new Wireless Telecommunications Facilities shall contain the information hereinafter set forth. Where a certification is called for in this Ordinance, such certification shall bear the signature and seal of a Professional Engineer licensed in the State. The Application shall include the following information:

- 1) Documentation that demonstrates the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the County. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;
- 2) The Name, address and phone number of the person preparing the report;
- 3) The Name, address, and phone number of the property owner, operator, and Applicant, and to include the legal form of the Applicant;
- 4) The Postal address, tax map parcel number of the property and street address;
- 5) The Zoning District or designation in which the property is situated;
- 6) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
- 7) The Location of nearest residential structure;
- 8) The Location, size and height of all structures on the property which is the subject of the Application;
- 9) The Location, size and height of all proposed and existing antennae and all appurtenant structures;
- 10) The Type, locations and dimensions of all proposed and existing landscaping, and fencing;
- 11) The number, type and design of the Tower(s) and Antenna(s) proposed and the basis for the calculations of the Tower's capacity to accommodate multiple users;
- 12) The make, model and manufacturer of the Tower and Antenna(s);
- 13) A description of the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
- 14) The frequency, modulation and class of service of radio or other transmitting equipment;
- 15) The actual intended transmission and the maximum effective radiated power of the Antenna(s);
- 16) Direction of maximum lobes and associated radiation of the Antenna(s);
- 17) Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC;
- 18) Certification that the proposed Antenna(s) will not cause interference with other telecommunications devices;
- 19) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;
- 20) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the

site is adequate to assure the stability of the proposed Wireless Telecommunications Facilities on the proposed site.

- G) In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the County. Copies of written requests and responses for shared use shall be provided to the County in the Application, along with any letters of rejection stating the reason for rejection.
- H) The Applicant shall certify that the Telecommunication Facility, foundation and attachments are designed and will be constructed to meet all local, County, State and Federal structural requirements for loads, including wind and ice loads.
- I) The Applicant shall certify that the Wireless Telecommunications Facilities will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- K) The Applicant shall furnish a Visual Impact Assessment, which shall include:
- 1) A " Zone of Visibility Map" which shall be provided in order to determine locations from which the Tower may be seen.
  - 2) Pictorial representations of "before and after" views from key viewpoints both inside and outside of the County as may be appropriate including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts, preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at a pre-application meeting.
  - 3) An assessment of the visual impact of the Tower base, guy wires and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- L) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed Wireless Telecommunications Facilities.

- M) Any and all representations made by the Applicant to the County on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the County.
- N) All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- O) All Wireless Telecommunications Facilities shall contain a demonstration that the Facility be sited so as to be the least visually intrusive reasonably possible and thereby have the least adverse visual effect on the environment and its character, on existing vegetation and on the residences in the area of the Wireless Telecommunications Facility.
- P) Both the Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may required by the County.
- Q) At a Telecommunications Site, an access road, turn around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- R) All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the County, State, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.



S) A holder of a Conditional Use Permit granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the County or other governmental entity or agency having jurisdiction over the applicant.

T) An Applicant shall submit to the County the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities.

V) The Applicant shall examine the feasibility of designing a proposed Tower to accommodate future demand for at least five (5) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least five (5) additional Antenna Arrays equal to those of the Applicant and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden based upon:

- 1) The foreseeable number of FCC licenses available for the area;
- 2) The kind of Wireless Telecommunications Facilities site and structure proposed;
- 3) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
- 4) Available space on existing and approved Towers.

W) The owner of the proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:

1. Respond within 60 days to a request for information from a potential shared-use Applicant;
2. Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
3. Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project

administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.

Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit for the Tower.

- X) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site. Costs of the County's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.
- Y) The holder of a Conditional Use Permit shall notify the County of any intended Modification of a Wireless Telecommunication Facility and shall apply to the County to modify, relocate or rebuild a Wireless Telecommunications Facility.
- Z) In order to better inform the public in the case of a new Telecommunication Tower, the applicant shall, prior to the public hearing on the application, hold a "balloon test". The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant in a local newspaper of general circulation seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the County. At least fourteen (14) days in advance of the test date the Applicant shall provide the County with a list of residents and their mailing addresses, along with pre-addressed and stamped envelopes so the County may provide individual notices of the requested facility. At least fourteen (14) days in advance of the scheduled test date the Applicant shall inform the County, in writing, of the dates and times of the balloon test and the intended use of the property,. The Applicant shall also post a sign at the site stating the date and time of the test, which sign shall be able to be read from a minimum of 50 feet distance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 PM on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. (I would like to include a written notice to nearby property owners and a requirement to post a sign of the property regarding the test)

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

**Section 13. Lot Size and Setbacks.**

All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

**Section 14. Retention of Expert Assistance and Reimbursement by Applicant.**

- A) The County may hire any consultant and/or expert necessary to assist the County in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any requests for recertification.
- B) An Applicant shall deposit with the County funds sufficient to reimburse the County for all reasonable costs of consultant and expert evaluation and consultation to the County in connection with the review of any Application including the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500 with the County shall precede the pre-application meeting. The County will maintain a separate escrow account for all such funds. The County's consultants/experts shall invoice the County for its services in reviewing the Application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall immediately, upon notification by the County, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the County before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the County is more than the amount of the actual

- C) Such shared use shall consist only of the minimum Antenna array technologically required to provide service primarily and essentially within the County, to the extent practicable, unless good cause is shown.

**Section 9. Height of Telecommunications Tower(s).**

- A) The Applicant shall submit documentation justifying the total height of any Tower, Facility and/or Antenna and the basis therefore. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the County, to the extent practicable, unless good cause is shown.
- B) No Tower constructed after the effective date of this Ordinance, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with municipal, County, State, and/or any Federal statute, law, local law, County ordinance, code, rule or regulation.

**Section 10. Visibility of Wireless Telecommunications Facilities.**

- A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law.
- B) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Ordinance.
- C) If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of an unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

**Section 11. Security of Wireless Telecommunications Facilities.**

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- 1) All Antennas, Towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
- 2) Transmitters and Telecommunications control points shall be installed such a manner that they are readily accessible only to persons authorized to operate or service them.

**Section 12. Signage.**

invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the Applicant.

- C) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

**Section 15. Exceptions from a Conditional Use Permit for Wireless Telecommunications Facilities.**

- A) No Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of Wireless Telecommunications Facilities as of the effective date of this Ordinance without having first obtained a Conditional Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Conditional Use Permit shall be required for those non-commercial exceptions noted in the definition of Wireless Telecommunications Facilities.
- B) All Wireless Telecommunications Facilities existing on or before the effective date of this Ordinance shall be allowed to continue as they presently exist, provided however that any visible modification of an existing Wireless Telecommunications Facility must comply with this Ordinance.

**Section 16. Public Hearing and Notification Requirements.**

- A) Prior to the approval of any Application for a Conditional Use Permit for a new tower, a public hearing shall be held by the County, notice of which shall be published in the official newspaper of the County no less than ten (10) calendar days prior to the scheduled date of the public hearing. In order that the County may notify nearby landowners, the Application shall contain the names and address of all landowners whose property is located within fifteen hundred (1500) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located.
- B) There shall be no public hearing required for an application to co-locate on an existing tower or other structure, as long as there is no proposed increase in the height of the Tower or structure, including attachments thereto.
- C) The County shall schedule the public hearing referred to in Subsection (A) of this section once it finds the Application is complete, the County, at any

stage prior to issuing a Conditional Use Permit, may require such additional information as it deems necessary.

**Section 17. Action on an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.**

- A) The County will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
- B) The County may refer any Application or part thereof to any advisory or other committee for a non-binding recommendation.
- C) After the public hearing and after formally considering the Application, the County may approve, approve with conditions, or deny a Conditional Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the Applicant.
- D) If the County approves the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the County's action, and the Conditional Use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Occupancy, once a Conditional Use Permit has been granted hereunder, no additional permits or approvals from the County, such as site plan or zoning approvals, shall be required by the County for the Wireless Telecommunications Facilities covered by the Conditional Use Permit.
- E) If the County denies the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the County's action.

**Section 18. Recertification of a Conditional Use Permit for Wireless Telecommunications Facilities.**

- A) Between twelve (12) months and six (6) months prior to the five (5) year anniversary date after the effect date of the Conditional Use Permit and all subsequent five year anniversaries of the effective date of the original Conditional Use Permit for Wireless Telecommunications Facilities, the holder of a Conditional Use Permit for such Wireless Telecommunication Facilities shall submit a signed written request to the County for

recertification. In the written request for recertification, the holder of such Conditional Use Permit shall note the following:

- 1) The name of the holder of the Conditional Use Permit for the Wireless Telecommunications Facilities;
  - 2) If applicable, the number or title of the Conditional Use Permit;
  - 3) The date of the original granting of the Conditional Use Permit;
  - 4) Whether the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, or otherwise visibly modified since the issuance of the Conditional Use Permit and if so, in what manner;
  - 5) If the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, , or otherwise visibly modified, then whether the County approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
  - 6) That the Wireless Telecommunications Facilities are in compliance with the Conditional Use Permit and compliance with all applicable codes, Laws, rules and regulations;
  - 7) Re-certification that the Tower and attachments both are designed and constructed and continue to meet all local, County, State and Federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a Professional Engineer licensed in the State, the cost of which shall be borne by the Applicant.
- B) If, after such review, the County determines that the permitted Wireless Telecommunications Facilities are in compliance with the Conditional Use Permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the County shall issue a recertification of the Conditional Use Permit for the Wireless Telecommunications Facilities, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review it is determined that the permitted Wireless Telecommunications Facilities are not in compliance with the Conditional Use Permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the County may refuse to issue a recertification Conditional Use Permit for the Wireless Telecommunications Facilities, and in such event, such Wireless Telecommunications Facilities shall not be used after the date that the Applicant receives written notice of the decision by the County until such time as the Facility is brought into compliance. Any decision requiring the cessation of use of the Facility or imposing a penalty shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the Facility.

- C) If the Applicant has submitted all of the information requested and required by this Ordinance, and if the review is not completed, as noted in subsection (B) of this section, prior to the five (5) year anniversary date of the Conditional Use Permit, or subsequent five year anniversaries, then the Applicant for the permitted Wireless Telecommunications Facilities shall receive an extension of the Conditional Use Permit for up to six (6) months, in order for the completion of the review.
- D) If the holder of a Conditional Use Permit for Wireless Telecommunications Facilities does not submit a request for recertification of such Conditional Use Permit within the timeframe noted in subsection (A) of this section, then such Conditional Use Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Conditional Use Permit, or subsequent five year anniversaries, unless the holder of the Conditional Use Permit adequately demonstrates that extenuating circumstances prevented a timely recertification request. If the County agrees that there were legitimately extenuating circumstances, then the holder of the Conditional Use Permit may submit a late recertification request or Application for a new Conditional Use Permit.

**Section 19. Extent and Parameters of Conditional Use Permit for Wireless Telecommunications Facilities.**

The extent and parameters of a Conditional Use Permit for Wireless Telecommunications Facilities shall be as follows:

- 1) Such Conditional Use Permit shall be non-exclusive;
- 2) Such Conditional Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the County.
- 3) Such Conditional Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Conditional Use Permit, or for a material violation of this Ordinance after prior written notice to the holder of the Conditional Use Permit.

**Section 20. Application Fee.**

- A) At the time that a person submits an Application for a Conditional Use Permit for a new Tower, such person shall pay a non-refundable application fee of \$5,000.00 to the County. If the Application is for a Conditional Use Permit for co-locating on an existing Tower or other



suitable structure, where no increase in height of the Tower or structure is required, the non-refundable fee shall be \$2,500.00.

- B) No Application fee is required in order to re-certify a Conditional Use Permit for Wireless Telecommunications Facilities, unless there has been a visible modification of the Wireless Telecommunications Facility since the date of the issuance of the existing Conditional Use Permit for which the conditions of the Conditional Use Permit have not previously been modified. In the case of any modification, the fees provided in Subsection (A) shall apply.

### **Section 21. Performance Security.**

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the County a bond, or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the County to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Conditional Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Conditional Use Permit.

### **Section 22. Reservation of Authority to Inspect Wireless Telecommunications Facilities.**

In order to verify that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, ordinances and regulations and other applicable requirements, the County may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

### **Section 23. Liability Insurance.**

- A) A holder of a Conditional Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit in amounts as set forth below

- 1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
  - 2) Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate;
  - 3) Workers Compensation and Disability: Statutory amounts.
- B) The Commercial General liability insurance policy shall specifically include the County and its officers, Councils, employees, committee members, attorneys, agents and consultants as additional named insureds.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least thirty-(30) days prior written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the County at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- F) Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the grant of the Conditional Use Permit, the holder of the Conditional Use Permit shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts.

#### **Section 24. Indemnification.**

- A) Any application for Wireless Telecommunication Facilities that is proposed for County property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of

damages as may be attributable to the negligent or intentional acts or omissions of the County, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the County.

- B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the County itself applies for and secures a Conditional Use Permit for Wireless Telecommunications Facilities.

### **Section 25 Fines.**

- A) In the event of a violation of this Ordinance or any Conditional Use Permit issued pursuant to this Ordinance, the County may impose and collect, and the holder of the Conditional Use Permit for Wireless Telecommunications Facilities shall pay to the County, fines or penalties as set forth below.
- B) The holder of a Conditional Use Permits failure to comply with provisions of this Ordinance shall constitute a violation of this Ordinance and shall subject the Applicant to the code enforcement provisions and procedures as provided in the Cabarrus County Zoning Ordinance and/or the General Statutes of North Carolina.
- C) Notwithstanding anything in this Ordinance, the holder of the Conditional Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Ordinance or any section of this Ordinance. An attempt to do so shall subject the holder of the Conditional Use Permit to termination and revocation of the Conditional Use Permit. The County may also seek injunctive relief to prevent the continued violation of this Ordinance without limiting other remedies available to the County.

### **Section 26. Default and/or Revocation.**

If Wireless Telecommunications Facilities are repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Conditional Use Permit, then the County shall notify the holder of the Conditional Use Permit in writing of such violation.

### **Section 27. Removal of Wireless Telecommunications Facilities.**

- A) Under the following circumstances, the County may determine that the health, safety, and welfare interests of the County warrant and require the removal of Wireless Telecommunications Facilities.

- 1) Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
  - 2) Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
  - 3) Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or any other necessary authorization.
- B) If the County makes such a determination as noted in subsection (A) of this section, then the County shall notify the holder of the Conditional Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the County may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.
- C) The holder of the Conditional Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the County. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the County.
- D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the permit holder has received notice, then the County may order officials or representatives of the County to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Conditional Use Permit holder.
- E) If the County removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the

site to a lawful location within ten (10) days, then the County may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.

- F) Notwithstanding anything in this Section to the contrary, the County may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Conditional Use Permit, subject to the approval of the County, and an agreement to such plan shall be executed by the holder of the Conditional Use Permit and the County. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the County may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

#### **Section 28. Relief.**

any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance may request such at the pre-Application meeting, provided that the relief or exemption is contained in the original Application for either a Conditional Use Permit, or in the case of an existing or previously granted Conditional Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the County in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the County, its residents and other service providers.

#### **Section 29. Periodic Regulatory Review by the County.**

- A) The County may at any time conduct a review and examination of this entire Ordinance.
- B) If after such a periodic review and examination of this Ordinance, the County determines that one or more provisions of this Ordinance should be amended, repealed, revised, clarified, or deleted, then the County may take whatever measures are necessary in accordance with applicable Law in order to accomplish the same. It is noted that where warranted, and in the best interests of the County, the County may repeal this entire Ordinance at any time.

AA) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the Tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration Regulation Part 77. This requirement shall be for any new tower or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines, that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.

### **Section 7. Location of Wireless Telecommunications Facilities.**

- A) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and seven (7) being the lowest priority.
- 1) On existing Towers or other structures without increasing the height of the tower or structure;
  - 2) On County-owned properties;
  - 3) On other publicly owned property;
  - 4) On properties in areas zoned for Heavy Industrial use;
  - 5) On properties in areas zoned for Commercial use;
  - 6) On properties in areas zoned for Agricultural use;
  - 7) On properties in areas zoned for Residential use; and
  - 8) On properties in areas zoned for Office/Institutional use.
- B) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.
- C) An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the County why co-location is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.
- D) Notwithstanding the above, the County may approve any site located within an area in the above list of priorities, provided that the County finds

that the proposed site is in the best interest of the health, safety and welfare of the County and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.

- E) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.
- F) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the County may disapprove an Application for any of the following reasons.
  - 1) Conflict with safety and safety-related codes and requirements;
  - 2) Conflict with the historic nature or character of a neighborhood or historical district;
  - 3) The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
  - 4) The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the County, or employees of the service provider or other service provider;
  - 5) Conflict with the provisions of this Ordinance.

**Section 8. Shared use of Wireless Telecommunications Facilities and other structures.**

- A) The County, as opposed to the construction of a new Tower, shall prefer locating on existing Towers or other structures without increasing the height. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within four (4) miles of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure can not be used.
- B) An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant.

- C) Notwithstanding the provisions of subsections (A) and (B) of this Section, the County may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Ordinance.

**Section 30. Adherence to State and/or Federal Rules and Regulations.**

- A) To the extent that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Conditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Conditional Use Permit for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

**Section 31. Conflict with Other Laws.**

Where this Ordinance differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or federal government, this Ordinance shall apply.

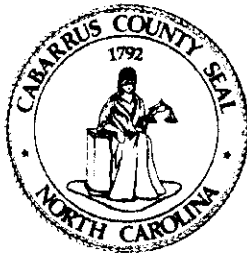
**Section 32. Effective Date.**

This Ordinance shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

**Section 33. Authority.**

This Local Ordinance is enacted pursuant to applicable authority granted by the State and federal government.





## Cabarrus County Government

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Planning and Zoning Commission Minutes  
August 16, 2007  
7:00 P.M.

Mr. Roger Haas, Chairman, called the meeting to order at 7:00 p.m. Members present, in addition to the Chair, were Ms. Brenda Cook, Mr. Eugene Divine, Mr. Larry Ensley, Mr. Danny Fesperman, Mr. Larry Griffin, Mr. Ted Kluttz, Mr. Thomas Porter, Jr., and Mr. Barry Shoemaker. Attending from the Planning and Zoning Division were Ms. Susie Zakraisek, Planning and Zoning Manager, Ms. Colleen Nelson, Senior Planner, Mr. Jay Lowe, Zoning Officer, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

### Roll Call

### Approval of Minutes

Mr. Danny Fesperman **MOTIONED, SECONDED** by Mr. Larry Griffin, to **APPROVE** the July 19, 2007, meeting minutes. The vote was unanimous.

### New Business - Planning Board Function:

#### **The Chair introduced Petition C2007-03 (S) – Preliminary Plat Approval – Townhomes at Skybrook – Standard Pacific of the Carolinas, LLC**

Ms. Colleen Nelson, Senior Planner, addressed the board stating this is Petition C2007-03(S), Preliminary Subdivision for Townhomes at Skybrook. The applicant is Standard Pacific of the Carolinas, LLC. The property is located north of Harris Road and to the east of Skybrook Drive, the total acreage is 25.17 acres. The current zoning is Low Density Residential (LDR). The site was previously approved under the Skybrook Master Plan in 1999, and it was originally zoned as Medium Density Residential (MDR). She said the Planning and Zoning Commission decided in September of 2006, that the zoning of this parcel was vested and that the developers were allowed to continue based on their plans for the property as approved in 1999, under Medium Density Residential (MDR). The site is currently vacant. To the south, the adjacent property is zoned City of Concord C-2. There are plans for this property to be used as a commercial center. To the west is the Cascades of Skybrook, another multifamily town home project. To the north is the Skybrook golf course and to the east is the Skybrook residential property. The subject

property is surrounded by Low Density Residential (LDR) zoning to the north, east and west and to the south is C-2, a commercial district for Concord.

The infrastructure for the proposed subdivision will be served by the Charlotte Mecklenburg Utility Department (CMUD) for the water and sewer system. The code considerations are: Medium Density Residential (MDR) zoning that this project falls under is a Medium Density Zoning District. The following requirements encompass the entire Skybrook development and its required open space and density has been met. The minimum lot size is 10,000 square feet and the maximum density is 4.5 units per acre. The set backs are: 30 ft. front setback on 50% of the lots and flexible for the remainder. Side and rear setbacks are also flexible. Maximum impervious surface is 40% and maximum structural coverage is 30%.

The schools that service this area are inadequate at this time. The applicant must submit soil and erosion control plans before disturbing any land.

The roadway improvement plan must be submitted for review and driveway permits must be obtained. The developer should be aware that if the connection to the Townhomes at Skybrook occurs prior to the proposed Shea Homes/Rankin tracts project, the developer will be responsible for constructing the left turn lane on Harris Road. Fifty-five foot (55'), as measured from the existing centerline of the road, should be reserved/dedicated as indicated in the Cabarrus-Rowan MPO Street Appendix.

The subject properties were rezoned from Medium Density Residential (MDR) to Low Density Residential (LDR) per the countywide rezoning in 2005. The number and type of units were originally approved under the Skybrook Master Plan that was vested at that time. Open space and density requirements will be met through the overall Skybrook Master Plan.

The draft version of the updated Cabarrus County Northwestern Area Plan recommends that the subject property be developed as residential with a density of 1-3 units per acre. This particular area plan was used when the property was rezoned in the county wide rezoning in 2005. According to the Northwestern Small Area Plan of 1990, which the subject property was originally approved under, the subject property was originally zoned Medium Density Residential (MDR) and allowed for town homes, where as the Low Density Residential (LDR) does not allow for town homes now.

Should the Planning and Zoning Commission grant approval of the subdivision, staff requests that the following conditions be added:

1. The developer shall pay \$500.00 per lot as designated in the Consent Agreement for the Skybrook Subdivision to address school inadequacy.
2. The developer shall obtain driveway permits from NCDOT.
3. A roadway improvement plan must be submitted for review.

4. The developer should be aware of the fact that if the connection to Townhomes at Skybrook occurs prior to the Shea Homes/Rankin tracts project, the developer will be responsible for constructing the left turn lane on Harris Road.
5. Fifty-five feet (55'), as measured from the existing centerline of the road, should be reserved/dedicated as indicated in the Cabarrus-Rowan MPO Street Appendix.
6. The developer shall gain approval by the Division of Environment, Health, and Natural Resources for the connection of water and sewer (CMUD).

The Chair asked if there were any questions.

Mr. Shoemaker asked what the build out schedule was.

Mr. John Loberg, Director of Land Development for Standard Specific Homes, addressed the Board. He said they are targeting three sales per month, 36 sales per year, over 180 units is about 4.5 years.

Mr. Shoemaker asked how soon the first ones would be available.

Mr. Loberg said probably in the second quarter of 2008 depending on how soon the plans were approved.

Mr. Fesperman asked if all of the streets were going to be private.

Mr. Loberg said yes, private streets with utilities provided by CMUD, and the utilities within the community will also be private; the water and sewer lines will have a single meter source of water. He said it will be a privately contained community and the homeowners association will have responsibility for maintaining the infrastructure. He said a reserved set aside has been set up in the HOA dues to handle that.

Mr. Porter said like most of the subdivisions that come before the board, the school over crowding situation is similar in this case also.

There being no further discussion, Mr. Shoemaker, **MOTIONED, SECONDED** by Mr. Griffin, to Approve Petition C2007-03(S) Preliminary Plat Approval – Townhomes @ Skybrook with the conditions recommended in the staff report. The vote was 6 to 3 with Mr. Tommy Porter, Mr. Eugene Divine, and Mr. Larry Ensley voting against.

The Chair introduced the next item on the Agenda, Proposed Text Amendment to the Cabarrus County Zoning Ordinance, C2007-08ZT - Chapter 8 – Wireless Telecommunications Services.

Mr. Jay Lowe, Zoning Officer, addressed the Board stating this is a proposed text amendment change. He said over the last 15 years we have been traveling along at a pace

of about 1 cell tower per year being put up in the county. He said about 3 or 4 years ago as the industry began to grow that started to increase. We were bringing more and more cell tower applications before the board as Conditional Uses. He said then all of a sudden a tower company came before the board over a 6 month span and wanted to put up 9 to 10 cell towers that range from the northeastern part of the county to the southwestern part of the county. He said out of the 9 towers, the Planning and Zoning Board decided to decline one of those towers and it was sent to the Superior Court and the judge over ruled that decision. He said at that time there was a lot of out cry from the public that they were not being represented fairly and it was felt that it was time to take a look at our ordinance. He said three years ago a new section was adopted to the county ordinance involving wireless telecommunications towers. He said we contracted with a third party to do the review process and since that time there have been no towers.

Mr. Griffin said the third party wrote the ordinance.

Mr. Lowe said they wrote that section of the ordinance and it is about a 28 page document. He said the document presented tonight is a lot more user friendly. He said the intent was not to do away with cell towers completely. He said there was a 3 year contract with the third party that ended in January; we are now on a month to month basis with them. He said, over the past year we started having some co-locations, up until that point we were not getting any cell towers or co-locations. He said there are a lot of reasons for that; one of the reasons is the cell tower companies have to put up approximately \$11,000.00 up front. He said some of that is to pay for the third party that we have contracted with, some of it goes to county, and some of it is refunded back to the cell tower companies if there is any left over.

Mr. Lowe said from the very beginning of that 3 year period we were hearing a lot from the cell tower industry about how they were being singled out. He said they were going through the right process; they were trying to get us to come back to the Board sooner but we had already contracted with the third party so we had to give it at least the 3 year span. He said there are a lot of problems with what we have done over the past 3 years. He said one problem is the money issue; they are being singled out in a way because no other Conditional Use requires that anyone put up that kind of money. Another major problem is keeping up with the money with the finance department along with the zoning department.

He said it seemed that it was time to take another look at the ordinance. He met with some of the other municipalities around the county and got some ideas of what they were trying to do. He sat down with some of the folks from the cell tower industry to see if that ordinance was working for them. He said the City of Concord was one of the municipalities contacted to get some input. The folks from the industry seemed to think it was working pretty well for them; the municipalities seemed to like their ordinance.

Mr. Lowe said after meeting with the cell tower folks, there were two items they thought were giving them problems when they dealt with some of the municipalities; one was the fall zone and the other was the set backs involving residential uses. He said the fall zone

says if you are locating next to residential property, you need to be the height of the tower plus fifty feet away from the residence, not the property line. The chart in the proposed text says 200 feet or 300% of the height of the tower which ever is greater. They thought that the 300% of the tower height was giving them some problems and that it should read just like the fall zone section says: the height of the tower plus fifty feet if locating in a residential zone. He said that was one suggestion they wanted him to make to the Board if you choose to adopt this ordinance.

Mr. Griffin asked if the Senate bill had been signed by the Governor.

Mr. Lowe is not sure but believes it has been. He has received some input from Municipal Solutions, the third party we deal with, along with the tower industry and they seem to think that really has not made a whole lot of change. He said the cell tower gets 2 years or more, everyone else only gets one year for a Conditional Use Permit; changes being that a conditional use normally has a one year vested right and cell towers normally have one, this gives the cell tower industry two years. He said there were others things like money up front, projected cost and definitions, there were no major changes.

Ms. Zakraisek said she recently attended a conference where this was discussed extensively. She said the cell tower industry initially asked for cell towers to be permitted outright, they wanted to be treated like everyone else. That part of the initial bill did not make it through the ratification, so at this point, we can still require them to do a conditional use permit, but we cannot ask them any information about their business practices or why they need the towers. She said if they come to us with a request for a tower, as long as they can show that there is no where within their search range that they have an opportunity to locate on another tower or another structure, we have to let them go through the process. She said we can keep it as a conditional use and there are certain things that we are to look at, the structure, the aesthetics of the structure, is it permitted in the zone, if it is, we can have them go through the conditional use permit process. She said there is now a time frame set on co-locations; we have to make a decision within 45 days. If they turn in an application and it is not complete we have to have a letter back to them stating why it is not complete within those 45 days and then we, as a staff, have to act on it with 45 days.

She said one of the differences is with a typical conditional use permit, that permit is only good for 1 year, the applicant has up to 1 year to pull their building permit for that particular structure. In this bill, it was approved that they would not be subject to that particular condition like everyone else; they are getting 2 years to act on it. We have to give them 24 months from the day that the Board approves the Conditional Use Permit. Initially, they have to give us the information and show how many arrays the tower can support. She said, when they do the co-locations, we cannot ask for structural information if they showed that in the initial application. She said the escrowing does not cut it under this statute anymore; everything has to be established up front, as far as the fees and the time for review.

She said we have had a very difficult time with the consultant trying to have the money, paying the bills, figuring out who we should be paying and what we should be paying. She said this will simplify the process and the language is pretty much straight from the UDO, which the other jurisdictions find they are able to administer. She said if the Board decides to move it onto the Board of Commissioners, we would make a change to add in the two year time frame for the Conditional Use Permit. She said this text is line with keeping with what has now been placed into legislation.

Mr. Ensley asked if the language was going to be similar with the other municipalities, and if it will it be identical legislature so that there is no discrepancy down the road.

Ms. Zakraisek said yes, that is one thing that will make it easier for the staff. She said sometimes when they come in it is for multiple towers or going into multiple jurisdictions. The purpose of the UDO is so that if I am in Kannapolis or if I am in Concord the rules should be somewhat similar. She said this puts us in line with the other jurisdictions so that some of the dead spots in different areas can get better service

She received a call from Nextel/Sprint; they developed several upgraded towers in the county in general and have designed them for a G4 Project. They are looking at co-locations (upgrades) on several towers in the county, some in the unincorporated county, some in Midland and one she believes in Mt. Pleasant, so the co-locations would simply be if they show us up front that the tower can support that, then that would just be an administrative process. She said the Planning and Zoning Commission would only become involved when there is a new tower and a Conditional Use Permit.

The Chair asked if there was any change in the application that the companies fill out.

Ms. Zakraisek said as far as the information that we get in, she does not see any major changes as far as what they will have to give us or anything like that; it is the standard information that they currently provide. The difference will be that staff will do the review and if there is something questionable, we can send it out. She said as long as we have the site plans, the structural information and the certifications from the engineer, everything will be handled in-house so they will not be bogged down in a three month process with a consultant.

Mr. Griffin recalls in order for the 3<sup>rd</sup> party to do their analysis, in essence, required a company to open their books and engineer processes and sends everything to them. They had to provide enormous amount of engineering information to them, and that in itself was expensive, not just the money they had to pay them to go through another analysis.

Ms. Zakraisek said they typically give you a structural letter from a certified engineer that says it is good and as long as we have that information, plus the additional information that they are required to turn in, we would provide that information to the Planning and Zoning Commission and if you wanted additional information then we would request it. Beyond that, we would not make any of those types of requests. She said it is a very straight forward process, ours is somewhat muddled at this point.

The Chair asked if there was a fee connected to this.

Ms. Zakraisek said it has not been decided yet, but she would assume that we would do a standard conditional use permit fee. She said they would have to come in for a site plan review so they would have the site plan review fee and then the permit fee.

Mr. Griffin said state law says there will be a fee that will be determined; not the way it has been lately, where you have to put the money into escrow and then they find out down stream what it is going to cost.

Ms. Zakraisek said based on what the folks from Institute of Government said, you can still use the escrowing option, but it has to be a determined amount up front and then it is given back. She said that is where some of the issues come in because it may go over that or it maybe less than that. She said if we take the simpler approach, where they apply for the Conditional Use Permit and we will do the review at that time. They come back for a site plan review and then for their permit and then the Zoning Officer will do the final inspection. She said it will be a lot less for them to actually file for a new permit as well as to do co-locations.

She said another thing to come out of that was that you cannot require them to locate on government owned towers. She said you can do things to encourage them to do that, like if we wanted to make a location on towers in certain zoning districts an incentive and make it permitted by right, we could take that route. She said right now, all of the zoning districts are conditional use so that way it will run through that process; you have the ability to do findings of fact and the folks would have the opportunity to provide sworn testimony.

Mr. Griffin said he was the only person on the Planning and Zoning Commission when we went through that with AT&T and he was the only one to vote to not do what we did.

Mr. Lowe said there is a standard conditional use application and they would be using the same one as everybody else.

The Chair thinks it was mentioned in the bill that if you co-locate it on an existing tower, you will have an expedited process that supposedly moves quicker than it would under normal circumstances.

Ms. Zakraisek said that is not something that has to be put in. She said people were making them do conditional use permits for co-locations. She said we have never done that historically, and do not have to add that specifically. We already go through an expedited process, which is the administrative review.

Mr. Lowe said that encourages them to co-locate, that way they get through our process in about a week whereas if it has to come before the Board it takes 30-45 days.

Mr. Lowe said the charts in the fall zone conflict and that the language needs to match. He said the cell tower industry was okay with saying that when you are locating next to residential property the setback has to be the height of the tower, plus 50 ft, plus a letter from a North Carolina registered certified engineer.

Ms. Zakraisek said when you get into situations like that you are going to have the towers that will supposedly collapse on themselves, so that if it does fall down, it is supposed to fall straight down instead of falling over. She said some of the larger towers will go over. If they are 65 ft. or less, which will be like a monopole type, they are constructed to collapse on themselves.

Mr. Lowe thinks that the proposed ordinance calls for the towers to be monopole.

She said if they are 65 ft or less they will not have to go through the conditional use process. She said this is to simplify it and get it in line with the statutes.

Mr. Shoemaker said 521.9.1 talks about a tower that has not operated in a period of a year. He asked if there was a way to know if a tower is being operated.

Ms. Zakraisek said when a tower is in disrepair that is when you know it is not being used. If they are using it they are going to maintain it and make sure it is structurally sound. She said if they are not using them, they will probably try to get their bond back or transfer it to somebody else's ownership; which will require the new owner to come in with a bond comparable or based on them adding newer arrays or something like that to the tower.

Mr. Shoemaker asked if they provided a performance bond 1.25 times the cost of removal, in some type of escrow account.

Ms. Zakraisek said yes, they give us a letter of credit or they could do a cash bond. Her experience has been a letter of credit.

There being no further discussion, Mr. Griffin **MOTIONED, SECONDED** by Mr. Ensley to recommend **Approval** of the Proposed Text Amendment to the Cabarrus County Zoning Ordinance, C2007-08ZT - Chapter 8 – Wireless Telecommunications Services, to the Board of Commissioners with the 3 conditions recommended by staff:

1. **Modifications to the ordinance to get in line with the general statutes,**
2. **2 year conditional use**
3. **When locating next to a residential property the setback has to be the height of the tower, plus 50 ft, plus a letter from a North Carolina registered certified engineer.**

The vote was unanimous.

**Directors Report:**



Ms. Zakraisek, Planning and Zoning Manager, addressed the Board. She said there was a bill passed that is going to allow Kannapolis to annex the Wayne Brothers site. She said the Western Area Plan text will be coming soon and an updated map. She said the City of Concord has finished their land use plan update, and since most of our western area is in either Concord or Kannapolis; we have been waiting for them to get their updates done so that we could use that as the base to update our plan.

Ms. Zakraisek said there was another committee meeting for the APFO. The committee suggested some changes; we made those changes to APFO language and took it to the Board of Commissioners at the last agenda meeting. She said they entertained both of the ideas, and on Monday, August 20, 2007, there will be a public hearing for either Option 1 or Option 2 of the APFO draft text. It will then be added into the Zoning Ordinance. She said there will need to be a Subdivision amendment to reference back to the Zoning Ordinance.

**Option 1** - The applicant will be able to come in and do a Reservation of Capacity up front; so if they were Concord or Kannapolis or where ever they find a piece of property they would be able to take that piece of property based on what the current zoning was of that property, ask for a capacity reservation from the Board of Commissioners based on the highest number of units that they would be able to get on that property. They would then go to the Board of Commissioners and negotiate the reservation of capacity, they will have to have a build out schedule, but they would also have to negotiate with the Board of Commissioners or with the School Board if a school site was needed. She said that would give the Board of Commissioners the opportunity up front to negotiate with the developers instead of coming in on the back end after the developer has designed the project.

She said they would be able to do a reservation of capacity, then the Board of Commissioners approves it and the reservation will be good for up to 1 year. During that time they would have to go back to the respective jurisdiction and get their development approval, which is called a development order. Once they have the development order, they would be able to come back to the Board of Commissioners and enter into the Consent Agreement. They would get locked in with the amount of the reservation of capacity certificate, but it would only be good for 12 months. She said they would not have the ability to come in with a Consent Agreement and bring the project in 20 years later; there will be a set time frame. She said the jurisdiction would have to notify us of that and then come back to do a Consent Agreement based on what ever the numbers and stipulations were negotiated for the Reservation of Capacity Certificate.

**Option 2** - They would go through the same type of process that they go through now. They would come to the Planning and Zoning Commission for approval and then they would start the Consent Agreement process. Instead of the negotiations happening with the Board of Commissioners, the negotiations would take place with the County Manager or his representative and then it would be placed on the Board of Commissioners agenda as a consent item, there would be no discussion.

Ms. Zakraisek said, Commissioner White has asked us to look at making traffic impact studies a function of the County so that folks will no longer contract with who ever they want for a traffic study. She said there would be two or three companies that they could pick from, we would have to pay them and get reimbursed by the applicant. She said there has been some discussion about it but we have not had the opportunity to sit down with him one on one to find out what his concerns are and what he is trying to address.

Ms. Zakraisek is still trying to convene the architectural committee and then move the text amendment to the Board of Commissioners.

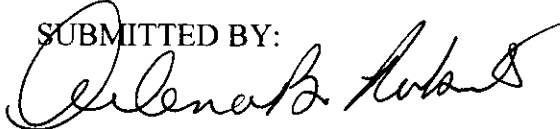
There being no further discussion, Mr. Griffin **MOTIONED, SECONDED** by Mr. Fesperman to **ADJOURN** the meeting. The vote was unanimous. The meeting ended at 7:47 p.m.

APPROVED BY:



Roger Haas, Chairman

SUBMITTED BY:



Arlena B. Roberts

ATTEST BY:

Susie Zakraisek  
Planning and Zoning Manager