# COUNTY AGENDA REQUEST

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| Department: | Commissioners | Presenter(s): | Commissioner Brown |
| Meeting Date: | Wednesday, September 7, 2011 | Type of Request: | New Business |

Wording for the Agenda:

Consideration of a request from Commissioner Brown to discuss the County's Zoning Ordinance as it relates to cell tower regulations.

Background/History/Details:

Commissioners have recently been contacted by residents of Peachtree City who are concerned about the proximity of a cell tower near their homes and the permit issued by the County for said cell tower. Commissioner Brown has asked that the Board receive a time line of events on the current applications, and discuss the County's ordinance, including the option that staff may be instructed to review the current regulations within the Zoning Ordinance for possible amendments. Commissioner Brown's concerns about the current ordinance, include, but are not limited to:

1. Distance requirements between a cell tower and the boundaries of a municipality or other jurisdiction;
2. The notification process for neighboring properties, including homeowners' associations and individual property owners within a specified distance;
3. If a request for exemptions to a permit application is made, who should be notified?

What action are you seeking from the Board of Commissioners?

Present time line of current applications. Discussion of the County's cell tower permitting process. If there is concurrence among Board members, staff may be directed to review the ordinance for possible amendments, which would be scheduled for discussion at the Board's October 5 Workshop.

If this item requires funding, please describe:

Not Applicable.

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| Has this request been considered within the past two years? | No | If so, when? | |
| Is Audio-Visual Equipment Required for this Request? | No | Backup Provided with Request? | Yes |

## STAFF USE ONLY

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|---|---|---|---|
| Approved by Finance | Not Applicable | Reviewed by Legal | |
| Approved by Purchasing | Not Applicable | County Clerk's Approval | Yes |
| Administrator's Approval | Yes | | |

Staff Notes:

| TOWER APPLICATION TIMELINE | | |
|---|---|---|
| | **Applicant #1** | **Applicant #2** |
| 9-Feb-11 | Filed Apllication | |
| 24-Feb-11 | Deficiencies Identified - Applicant Notified | |
| 24-Feb-11 | | Filed Apllication |
| 9-Mar-11 | Revised Application Submitted | |
| 23-Mar-11 | Application approved | |
| 11-Apr-11 | | Application Reviewed |
| 12-Apr-11 | | Deficiencies Identified - Applicant Notified |
| 14-Apr-11 | Staff requested BOC authorization to ammend the ordinance as a result of competing applications. | |
| 25-Apr-11 | | Revised Application Submitted |
| 13-May-11 | Certificate of Zoning Compliance Issued | |
| 13-May-11 | | Application denied due to proximity requirements |
| 18-May-11 | | Appeal of Actions Filed |
| 26-May-11 | BOC adopts ammendments to Tower Ordinance | |
| 27-Jun-11 | | Request Delay of ZBA |
| 26-Jul-11 | | ZBA Denies Appeal |
| 10-Aug-11 | | Request New Appeal - Lack of Advertisement |
| 19-Sep-11 | | ZBA to hear Appeal |

(Emails provided by Comm. Brown)

**Subject:** FW: Cell tower - Agenda Request

Email on cell towers:

I do not think that because SCI did not provide the FAA certificate prior to Feb 9 that this means that they should have gone through the public hearing process. Their package should not have been reviewed at all, even for administrative approval, until it was complete to include the required FAA certificate back in February, then the stormwater letter back in March.
Meanwhile it seems that Hightower should have been allowed to simultaneously present their package. The first one to satisfy the list of required docs should have been reviewed first. Apparently that is not what happened. The county attorney seemed to pick a date, April 11th, to begin review of the Hightower application and inform them of their missing document. I guess I am confused as to why this date was chosen. It does not seem to fit the prior explanation as to why Hightower's original Feb 24 application was placed on hold. The 30 day window to gather documents should have been up on March 9 for SCI, so why didn't Hightower's review for completeness begin then?

Unless I am missing something there is definitely a lack of cohesiveness in procedure here.

I do not think the fact that the county has revised their requirements for an FAA certificate in May is relevant to the requirements back in February and the months prior.

Ask the county attorney why he advised the review process the way he did. It seem arbitrary to me and if Hightower was allowed to have their application reviewed for completeness concurrently with SCI's review that Hightower would have clearly had their application completed first, and hence should have been reviewed first. If all it takes is to submit an application, no matter how incomplete it is, for other applications to be delayed until the first is completely reviewed then there is no incentive to make sure that applications are complete before they are submitted. It sends the message to just get your application in first, you have all the time in the world to make sure all docs are included because no one else can submit an application for approval until yours is complete.
That seems ridiculous.

So, my advice is to ask the county attorney why he did not allow simultaneous review for completeness of both applications? Also, where is it written that you cannot review two applications concurrently and present the first one to be complete for administrative approval? Why did he pick April 11 to begin the review of Hightower's application?

Once you get these questions answered it will help you know how to proceed.

On Sat, Aug 20, 2011 at 10:26 AM, kach22 wrote:

> ** **
>

>
> Yesterday, I received an email from Jack Krakeel in response to an email
> from Beth. In his email he attached a synopsis of events as written by
> Dennis Dutton, and also attached a *partial* copy of the original
> ordinances in place at the time. I have attached the full original ordinance
> so that you can see where the county is completely ignoring section 13,
> Federal Requirements. The way I read section 13, an FAA certificate had to
> be issued *prior* to submitting an application and site plan for
> administrative approval. According to Dennis Dutton s synopsis, SCI (the
> crabapple cell tower company) did not do so and was given a chance to apply
> for and obtain it later. From what I understand, there are two different
> processes that one can go through to obtain approval from Planning and
> Zoning for cell towers. One is the administrative approval process (where
> the cell tower does not need to be publicly advertised), and the other is a
> public hearing process. Given how I interpret section 13, it seems that SCI
> should have gone through the public hearing process because they clearly did
> not meet the requirement for an administrative approval process when they
> *first* submitted a site plan for approval on February 9th. ****
>
> ** **
>
> Using the synopsis of events that Mr. Dutton provided, he admits that SCI s
> original application was lacking several documents, including the FAA
> certificate, a fact backed up by the attached checklist sent by Mr. Dutton
> to SCI. Meanwhile, according to the synopsis, Hightower submitted an
> application, *with the required FAA certificate* necessary to receive
> administrative approval, on February 24th. SCI did not submit their
> complete application (apparently with FAA certificate I will try to obtain a
> copy of this application on Monday to see for myself whether or not it this
> is true) until March 9th. Since both applications went through the
> administrative approval process, it appears to

me that Hightower in fact had
> the first proper application submitted for
*administrative approval*(again, given the wording of section 13). Mr. Dutton s argument that SCI had
> the first application in (on Feb. 9th) may well
be true, but because it
> lacked the FAA certificate, it should have gone
through the public hearing
> process. ****
>
> ** **
>
> At this point, I feel this is the only point we
can really argue, although
> Matt Allen of Hightower Inc. claims there were
several mistakes made. Do you
> think I have a valid argument here? It may be
stretching it, but I m
> obviously looking for any mistake I can find on
the part of the county so
> that we can take this to an appeals board, and
hopefully even to a public
> hearing. The thing that really bothers me the
most right now is that the
> county changed the ordinance on May 26th,
changing the entire section
> concerning Federal Regulations to get rid of the
requirement for the FAA
> certificate prior to submitting the site plan. I
feel like they are trying
> to cover their tracks. ****
>
> ** **
>
> Before I take this issue to the local newspaper,
I would appreciate if one
> of you would review this and give me some
feedback on it. I know you are all
> very busy right now, and I really hate to be
bothering you with this, but I
> want to make sure that I do in fact have a valid
point to make at the
> appeals hearing on September 19th. ****
>
> ** **
>
> Below I have copied Jack Krakeel s email
response to Beth s inquiry, and a
> short timeline of events that I received last
night from Matt Allen, who has
> copied all the documents on file with the county
in regards to this issue. I
> have also attached a draft copy of the July 25th
appeal hearing. If you
> have a chance, please read through it (pages 10
13) as it gives us an idea
> as to how Fayette County will argue the FAA

certificate requirement issue at
> the September appeal hearing. ****
>
> ** **
>
> Thanks again for all that you are doing for us
in Kedron Hills. I can t
> tell you how much all of your support means to
me!****
>
> ** **
>
> Maria Kachadurian****
>
> ** **
> ----------
>
> Message from Jack Krakeel:****
>
> ** **
>
> Commissioners,****
>
> Within the past week you may have received an
E-Mail from Ms. Maria
> Kachadurian regarding staff approval of a cell
tower on Crabapple Lane. Ms.
> Kachadurian is an adjacent property owner and
resident of PTC. She is
> concerned about the location of the tower and
the potential adverse impact
> that it will have on her property as well as the
aesthetics of having a
> visible cell tower from her residence.
Complicating this issue is that a
> competing application for another cell tower
from a different contractor was
> submitted several weeks after the first
application and located within 1.5
> statute miles of the first application's site.
Our ordinance does not allow
> a cell tower to be located within 1.5 statute
miles from another and receive
> administrative approval. It appears that the
second contractor has been
> communicating with property owners in the area
that County staff did not
> follow policy with respect to their application.
Staff followed policy
> and advice from the County Attorney regarding
the competing
> applications, review and approval process.
Subsequent to approval of the
> first application, the second applicant was
denied a permit due to
> the separation requirements. ****
>

> ****
>
> The current cell tower ordinance (adopted in
1999) provides a process for
> administrative approval of towers meeting
certain requirements, heights etc.
> Both of the applications fell within the purview
of administrative authority
> review and approval and did not require BOC or
Planning Commission action. I
> requested and have attached staff's synopsis of
the events and actions
> associated with both of the applications. ****
>
> ****
>
> Based on my analysis of the events surrounding
these requests, I would
> recommend that the current ordinance be reviewed
for possible
> modifications that site or other
> notification requirements informing adjacent
property owners of the proposed
> tower have been complied with as part of the
application process for towers
> that fall under the purview of the
administrative review and approval
> process. ****
>
> Jack J. Krakeel****
>
> County Administrator****
>
> 140 Stonewall Avenue Suite 100****
>
> Fayetteville, Georgia****
>
> 770-305-5100****
> ----------
>
> Message from Matt Allen:****
>
> ** **
>
> Maria,
> Highwood filed for our FAA on 1-5-11
> Highwood was approved by FAA on 2-3-11 Highwood application submitted
> to Fayette County
2-24-11
> We rcvd our *rejection* from Fayette on 5-13-11 SCI application is
> signed, but not sure when it
was rcvd by Fayette (filed
> w/o FAA, etc.) 2-7-11
> There were several Checklists from Dennis to
SCI. The first one is attached
> and was faxed 2-24-11
> SCI rcvd their appvl from Dennis on 5-13-11

>
> I have also attached the draft of the minutes
from the 7-25-11 hearing. You
> can see that the agenda item prior to us was
quite contentious. By the time
> they got to us, *everyone* was tired.
>
> ****
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