COUNTY AGENDA REQUEST

Department:	Planning and Zoning	Presenter(s):	Pete Frisina / Dennis Dutton
Meeting Date:	Wednesday, October 5, 2011	Type of Request:	Old Business

Wording for the Agenda:

Further discussion of a request from Commissioner Brown to discuss the Fayette County Zoning Ordinance as it relates to cell tower regulations.

Background/History/Details:

At the Board of Commissioners Workshop held September 7, 2011, the Board of Commissioners asked for information on the following items:

1. What constitutes a complete tower application?

2. Staff vs. Board of Commissioners approval of variances for tower height and should a tower application go before the Board of Commissioners for approval.

3. A "good neighbor policy" of establishing a distance for cell towers from adjacent municipalities and counties.

4. Public notification of a proposed tower site.

What action are you seeking from the Board of Commissioners?

Staff is seeking direction from the Board of Commissioners concerning possible amendments to the Zoning Ordinance regarding cell tower regulations.

If this item requires funding, please describe:

Funds are not needed at this time, but will be part of an overall cost to update the Fayette County Code.

Has this request been considered within the past two years?	Yes	If so, when?	Wednesday, September 7, 2011
Is Audio-Visual Equipment Required for this Request?	No	Backup Provided with Request?	Yes

STAFF USE ONLY

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

Staff Notes:

Minutes

Board of Commissioners
September 7, 2011
3:30 P.M.

Notice: A complete audio recording of this meeting can be heard by accessing Fayette County's Website at www.fayettecountyga.gov. Click on "Board of Commissioners", then "County Commission Meetings", and follow the instructions. The entire meeting or a single topic can be heard.

The Board of Commissioners of Fayette County, Georgia, met in Official Session on September 7, 2011, at 3:30 p.m. in the Public Meeting Room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

Commissioners Present:
Herb Frady, Chairman
Robert Horgan, Vice Chairman
Steve Brown
Lee Hearn
Allen McCarty

Staff Present:
Jack Krakeel, County Administrator
Scott Bennett, County Attorney
Floyd L. Jones, Chief Deputy Clerk
Karen Morley, Chief Deputy Clerk

Call to Order.

Chairman Frady called the September 7, 2011 Workshop Meeting to order at 3:33 p.m.

Acceptance of Agenda.

Commissioner Brown moved to remove all agenda items that were "up for a vote by the Board", for the removed agenda items to be heard at the next regularly scheduled Thursday meeting, and to accept the remainder of the agenda as published. Commissioner McCarty seconded the motion. No discussion followed. The motion failed 2-3 with Chairman Frady, Vice-Chairman Horgan, and Commissioner Hearn voting in opposition.

Commissioner Hearn moved to accept the agenda as published. Commissioner Horgan seconded the motion. The motion passed 3-2 with Commissioner Brown and Commissioner McCarty voting in opposition.

PUBLIC COMMENT:

Maria Kachadurian: Ms. Maria Kachadurian, a resident of Kedron Hills in Peachtree City, spoke about the approval process that took place resulting in SCI's authorization to build a cell tower on Crabapple Road, and how she thought that process did not comply with the County's tower ordinance that was in place at that time. She thought the approval should be overturned in favor of Highwood Towers who, she claimed, submitted a proper application with Fayette County. She spoke about how SCI failed to meet the County's requirements, and asked the Board to review the situation and to stop the construction of the cell tower on Crabapple Road. She closed by asking that all future applications for the construction of a cell tower be required to be heard through the Public Hearing process.

Matt Allen: Mr. Matt Allen, representing Highwood Towers, said he had all the respect for the Planning and Zoning's staff, however, he thought it was "clear and undisputable that a mistake had been made since the current cell tower ordinance states that the FAA Certificate must be in prior to submittal." He explained that while the requirement of an FAA Certification may sound like a small technicality, it involves a public process that requires notifying competitors that a company intends to submit an application within a jurisdiction. He continued that by allowing a company to proceed with the construction, who does not have a FAA Certificate, the County was awarding the work to a company that intentionally did not comply with the ordinance. He added that information on the application was materially incorrect, and that if the correct information had been provided, the application would not have been approved. He closed saying there were several other issues that were not considered such as the impact on wetlands, and if the County allows for minimal submittals, and puts the burden on staff to make decisions, then the County would set a bad precedent not only for cell tower applications but all applications involving the Planning and Zoning Department.

NEW BUSINESS:

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

   Chairman Frady reminded the Board it would need to be careful about what was said since a hearing was taking place concerning this topic, and that the hearing would not be concluded until September 19, 2011. He suggested that if the Board wanted to have the Planning and Zoning Department to review the ordinance and look at issues such as distance requirements from city limits, then that would be appropriate.

   Commissioner Brown told about several areas of concern he had with the County's Zoning Ordinance as it relates to cell tower regulations, discussed on each of his concerns, and asked for the Board's consent authorizing staff to review each concern. Specifically, the concerns raised by Commissioner Brown were: 1) the application process itself in order to determine what makes a complete application; 2) the possibility of returning the approval process back to the Board of Commissioners itself instead of leaving the approval process up to County staff; 3) a provision in the ordinance that

places distance requirements between municipal borders and neighboring county borders; and 4) a provision in the ordinance that would mandate a legitimate notification process for those near the proposed cell tower site. Discussion followed.

Director of Community Development Pete Frisina briefly spoke about the existing distance requirements in the cell tower ordinance, and he suggested that staff could go to the Planning Commission the following week to "bounce ideas off of them" before returning to the October 2011 Workshop.

The Board directed staff to consult the Planning Commission about the issues as discussed, and to return to the October 5, 2011 Workshop Meeting with recommendations. A copy of the request, identified as "Attachment 14", follows these minutes and is made an official part hereof.

To: Board of Commissioners

From: Pete Frisina

Date: September 21, 2011

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

On September 7, 2011, staff met with the Board of Commissioners to address issues with Fayette County Zoning Ordinance as it relates to cell tower regulations. These regulations were recently amended on December 9, 2010 and May 26, 2011. The concerns brought up for review of the County Zoning Ordinance and cell tower regulations are as follows:

1. *What constitutes a complete tower application?*

ART. V. Sec. 5-47. G. Site Application Requirements. of the Fayette County Zoning Ordinance states:

All applicants for new tower construction shall include the following:

a. completed application forms signed and notarized;
b. proof of ownership of the parent tract;
c. site plan prepared by an Engineer or Architect registered by the State of Georgia;
d. landscape plans;
e. provide inventory of Existing or Planned Tower sites;
f. a report including all tower specifications and a description of the tower with technical reasons for its design;
g. documentation establishing the structural integrity for the tower's proposed uses;
h. the general capacity of the tower and information necessary to assure that ANSI standards are met;
i. a statement of intent on whether excess space will be leased;
j. a copy of the Determination of No Hazard to Air Navigation from the FAA; and
k. a copy of the Carrier's FCC license (as applicable for an antenna).

ART. V. Sec. 5-47. H. Site Application Timeframes. states:

The County shall act on applications for co-locations within 90 days, and all other applications within 150 days. The Zoning Administrator has 30 days to determine if an application is complete. If the Zoning Administrator requests additional information within the 30 day review period, the time it takes the applicant to respond will not count towards the 90 or 150 day time limits. Upon notice that an application is incomplete, the applicant has 30 days to submit all information necessary to complete the application. Failure to complete the application in this timeframe shall result in an automatic withdrawal of the application and proposed tower will no longer be deemed a planned tower.

2. *Staff vs BOC approval of variances for tower height and should a tower application go before the Board of Commissioners for approval.*

ART. V. Sec. 5-47.E. *Supplemental Requirements*. 1. c. and 2. b. states:

> Towers in excess of 250 feet in height in the Highway Corridor shall require public hearings before the Planning Commission and Board of Commissioners.
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> Towers in excess of 180 feet in height outside of the Highway Corridor shall require public hearings before the Planning Commission and Board of Commissioners.

These height thresholds were present in the ordinance before the amendments adopted on December 12, 2010 and May 26, 2011. Towers that meet these height requirements, as well as other applicable requirements, can be administratively approved by staff. The amendments made on December 12, 2010, reduced two other requirements which decreased the need for public hearings. These amendments included a reduction of the two mile separation between towers outside of the highway corridor to one and one-half miles and the reduction of the setback from an off-site residence from 1,000 feet to a setback equal to three times the tower height or a minimum of 500 feet, whichever is greater.

In 2010, the County was approached by the tower industry (attorneys) because they were having difficultly in providing service in various areas in the county due to the strict tower regulations the County had in place. It was presented that the industry need was shifting from the commuting corridors to residential areas as the trend of dropping land lines and depending solely on wireless service in the home was increasing. Generally, tower ordinances had been written to discourage towers in residential areas. Staff reviewed the tower regulations of other metro counties and found that our regulations in some cases were stricter. Even with the aforementioned reductions in tower regulations, the County's regulations are still more restrictive than most other metro county's tower regulations. Staff, industry representatives and the Planning Commission worked together on the ordinance amendments.

3. *A "good neighbor policy" of establishing a distance for cell towers from adjacent municipalities and counties.*

A distance requirement for cell towers from adjacent municipalities and counties could be required under D. General Requirements. This would force a cell tower to meet this distance. If the distance could not be met, a public hearing would be required. A public hearing requires that the property be posted and a legal notice placed in the newspaper. In addition, as with any public hearing, staff would provide notice to and seek input from an adjacent municipality or county. However, adding this to the ordinance does not guarantee the same consideration from adjoining municipalities and counties. Staff discussed a one-half mile setback from an adjacent municipality or county with the Planning Commission.

4. *A public notification of a proposed tower site to be located near adjacent property owners of a proposed tower site.*

Staff discussed with the Planning Commission the concept of public notification for an administrative tower approval. Both Staff and the Planning Commission had concerns that the public would interpret the sign as opportunity to provide public input as is the case in a public hearing and cause frustration. However, a sign could be placed on the property that reads "Proposed Cell Tower Site" and provide a number to call for information. Staff's experience is whenever a sign goes up in an area the word spreads fast.

Staff has attached a matrix of the tower regulations for the municipalities in Fayette County and other metro counties for comparison and discussion.

TELECOMMUNICATIONS TOWERS

Jurisdiction	Zoning	Heights	Setbacks	Separations	Permit Fees and Costs	Required Documents
Fayetteville	Allowed in M-1 & M-2.	Towers over 70 feet in height must be over 4,500 feet from any existing tower.	From any residential property, setback must be at least the greater of the tower height or 200 ft. If abutting non-residential property the setbacks and buffers must comply with the M-1- or M-2 district regulations.	Towers greater than 70 feet high must be at least 4,500 feet from any other tower.	Administrative Review Application: $250.	a scaled site plan (acceptable scale established by Development Guide), showing the location and dimensions of all improvements, including information concerning topography, radio frequency coverage, tower height requirements, setbacks, access, existing and proposed utilities, parking, fencing, landscaping, and other information necessary to assess compliance with this article
Peachtree City	Permitted as conditional use in Light Industrial (LI); General Industrial (GI) and Open Space Public (OS-P) districts Permitted as conditional use subject to additional conditions in General Commercial (GC) and OI districts.	NTE 180 feet AGL.	Minimum of 250 feet from base to residential, school or church property line. Minimum of 200 ft front yard setback. Side and rear yard setback is no less than the greater of 50% of the tower height or 75 ft.	None	Administartive review = $250 . Conditional Use review on existing faciltiy = $2,000 and on new faciltiy = $4,500.	**Administrative Review:** Construction Plans, Plat, Authorization Documentation, Fees, Application, Information, Electronic Copy **Conditional Use:** Schematic Site Plan, Construction Plans, Plat, Authorization Documentation, Fees, Utilities and Services Letters, Environmental Constraints Analysis, Ownership Mailing List, Evidence of Need Report, Visual Impact Assessment, Property Deeds, Survey/Legal Description, Application, FAA Documentation, Peachtree City Airport Authority Documentation, Information, Electronic Copy
Tyrone	M-1; M-2.	Max height is 199' if the tower is to be one mile or more room another tower. If less than one mile the max height is 70'.	From Res or AR property the setback is the greater of the tower height or 200'. From non-res property the setback is the greater of the tower height or 200'.	Towers greater than 70' tall must be at least 4,500 feet from any other tower.	Application fee is $250.	Site plan; Inventory of Existing& planned towers; Proof of Federal approvals.
Fayette County Highway Corridor - 1,000 ft either side of highway.	Any zoning district	250'	Tower height + 10' to res'l zoned property line; 3x tower height or 500 feet minmum, whichever is greater to off-site residential structure.	1.0 mile	Application fee is $150.	Completed application forms signed and notarized; Proof of ownership of the parent tract;Site plan prepared by an Engineer or Architect registered by the State of Georgia; Landscape plans;Provide inventory of Existing or Planned Tower sites;Report including all tower specifications and a description of the tower with technical reasons for its design; Documentation establishing the structural integrity for the tower's proposed uses;The general capacity of the tower and information necessary to assure that ANSI standards are met; Statement of intent on whether excess space will be leased; Copy of the Determination of No Hazard to Air Navigation from the FAA; and Copy of the Carrier's FCC license (as applicable for an antenna).
B. Outside of Highway Corridor	R-70; A-R; C-C; C-H; M-1;M-2	180'	Tower height + 10' to res'l zoned property line; 3x tower height or 500 feet minmum, whichever is greater to off-site residential structure.	1.5 miles		

TELECOMMUNICATIONS TOWERS: COMPARISON OF LOCAL ZONING CODES				
Jurisdiction	Zoning	Heights	Setbacks	Separations
Cobb	By Special Use Permit in most districts. Public hearing waived for multi-tenant towers up to 150'.	Allows uo to 150 foot tower.Infers that higher tower would require full public hearing process.	40' from Res property - External setback = height of tower to nearest residential structure.	Any tower of 90' must be minimum of 1/4 mile from other > 90' tower.
Gwinnett	Permited in C1, C2, C3, OI, OBP, M1 & M2 Districts.	Up to 125' for 3 tenant; 150' for 4 tenant.	One-half of tower height. Adjacent to residential areas is 100 percent of tower height.	In districts other than C1, C2, C3, OI, OBP, M1 & M2, towers over 100' are not permitted within 1,500' of another 100+ ft. tower.
Coweta	Must locate in highest prioritysite: 1-Gov't owned; 2-Co-locate on existing; 3 - areas zoned for (3) business, (4) agriculture, or (5) residential.	Not to exceed 150 feet without proof of technical need.	110% of tower height to residential structure or public road.	
Henry	Incl. all zoning dists.	Max heights vary: ResAg=150' for 2 tenants;180' for 3 tenants.SF/2F=75;MF,MHP& C1=90'. OI=120'; C2=C2=150'; C3=180'; M1 = 190' & M2=200'.	50% of tower ht.+50% of ht over 75'.(eg,100' towertower requires 50' +22.5' for a total 72.5' setback).	Tower >150' tall must be at least 1/4 mile from any other tower >150' tall unless evidence is provided that it can't support add'l array. (Exempts C2,C3,M1,M2).
Cherokee	Allowed in GC, HI, LI, AG, R15, 20, 30, 40, 60 & 80	Encourages co-location. New locations must provide an inventory of all facilities w/in 1/4 mile of property and must be designed as alternative tower stuctures.	Setback from each property is equal to height of tower.	Towers > 90' tall must be a minimum of 1/4 mile from any other tower > 90' tall.