

ORDINANCE NO. 99-10

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, AMENDING ORDINANCE NO. 83-19, AS AMENDED, THE NASSAU COUNTY ZONING CODE, BY CREATING SITING REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES; PROVIDING FOR INTENT AND DEFINITIONS; PROVIDING FOR REGULATIONS OF WIRELESS COMMUNICATION FACILITIES, AND ACCESSORY EQUIPMENT BUILDINGS; PROVIDING FOR REMOVALS; PROVIDING FOR COLLOCATION; PROVIDING FOR REPLACEMENT AND MODIFICATION OF EXISTING STRUCTURES; PROVIDING FOR CONFLICT, SEVERABILITY, INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Nassau County, Florida this 8th day of February, 1999 as follows:

SECTION 1.

Ordinance No. 83-19, as amended, is hereby further amended to include "*Siting Regulations for Wireless Communication Facilities*" to read as follows:

SITING REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES

Section 1. Intent.

The regulations and requirements of this Article are intended to:

- A. Promote the health, safety and general welfare of the citizens by regulating the siting of wireless communication facilities;
- B. Accommodate the growth and demand for wireless communication services;
- C. Provide for the appropriate location and development of wireless communication facilities within the county;
- D. Recognize that the provision of wireless services may be an essential service within such land use categories as may be provided for under the Comprehensive Plan, subject to the limitations set forth in this ordinance;
- E. Minimize adverse visual effects of wireless communication facilities through careful design, siting, landscape screening and innovative camouflaging techniques;
- F. Encourage the location and collocation of antennas on existing structures thereby minimizing new visual impacts and reducing the need for additional antenna support structures; and

- G. Further the balance between the need to provide for certainty to the communications industry in the placement of wireless communication facilities and the need to provide certainty to the residents and citizens of Nassau County that the aesthetic integrity of the county will be protected from the proliferation of unnecessary antenna support structures.

Section 2. Definitions.

- A. **Accessory Equipment Building.** Any building, cabinet or equipment enclosure constructed for the primary purpose of housing the electronics, backup power, power generator, and other free standing equipment associated with the operation of antennas.
- B. **Alternative Site.** One or more separate locations within the Search Ring at which a Provider could place its antenna to serve substantially all of the area intended to be served by the site requiring a Special Exception. Alternative sites must be available to the provider on commercially reasonable terms.
- C. **Antennas.** Any apparatus designed for the transmitting and/or receiving of electromagnetic waves which includes, but is not limited to, telephonic, radio or television communications. Types of antennas include, but are not limited to, whip antennas, panel antennas, and dish antennas. As used herein the term antenna includes all antennas integrated and used as a single unit, such as an antenna array. For purposes of this ordinance, the following shall not be considered antennas and shall not be regulated by this ordinance: privately owned amateur radio and citizens band antennas irrespective of height and diameter; and antennas with a total diameter or width, including all parts of the antenna arrays, of two meters or less in commercial or industrial areas, or one meter or less in all areas if mounted no greater than fifteen (15) feet above the roofline.
- D. **Antenna Support Structure.** A facility that is constructed and designed primarily for the support of antennas, which include the following types: (i) Guyed Tower - a tower that is supported in whole or in part by guy wires and ground anchors or other means of support in addition to the superstructure of the tower itself; (ii) Lattice Tower - a tower that consists of vertical and horizontal supports and crossed metal braces, which is usually triangular or square in a cross section; (iii) Monopole - A tower of a single pole design; and (iv) Camouflaged Structure - A structure designed to support antenna and designed to blend into the existing surroundings. Privately owned amateur radio and citizens band antennas support structures shall be exempt from this ordinance.
- E. **Collocation.** When more than one FCC licensed provider uses an antenna support structure to attach antennas.
- F. **Existing Structures.** Any lawfully constructed man-made structure including but not limited to antenna support structures, buildings, utility structures, light poles, clock

towers, bell towers, steeples, water towers and the like, which allow for the attachment of antennas.

- G. **FAA.** The Federal Aviation Administration.
- H. **FCC.** The Federal Communications Commission.
- I. **Provider.** An FCC licensed communications company.
- J. **Temporary Antenna Support Facility.** A facility that is designed and constructed to serve, on a temporary basis, as a means of supporting antennas and is used typically to provide emergency wireless communications service or to provide wireless communications service to special events.
- K. **Search Ring.** A geographic area in which a provider's antenna is intended to be located to serve the provider's coverage area.

Section 3. Antennas.

- A. **Where permitted.** Antennas attached to existing structures shall be permitted in all zoning districts subject to the requirements of this Section:
- B. **Requirements.** All antenna installations shall meet the following requirements:
 - 1. Antennas may be located on existing structures with a height of thirty (30) feet or greater, so long as the antennas do not extend more than fifteen (15) feet above the highest point of the existing structure, and as limited by 3., below;
 - 2. Antennas may be located on existing structures with a height of less than thirty (30) feet, so long as the antennas do not extend more than five (5) feet above the highest point of the existing structure, and as limited by 3., below;
 - 3. Notwithstanding subsections 1 and 2 above, antennas, as defined in Section 2, shall not be located on single family structures.
 - 4. Antennas to be located on existing structures in public road rights-of-way may only be located in collector, arterial or limited access road rights-of-way;
 - 5. No advertising shall be allowed on an antenna;
 - 6. No signals, lights, or illumination shall be permitted on an antenna, unless required by any applicable federal, state or local rule, regulation or law;
 - 7. Antennas shall comply with all Federal Communications Commission emission standards;

8. Design, construction, and installation of antennas and antennas and accessory buildings shall comply with all applicable local building codes in accordance with sealed plans for 110 mile per hour wind speed.
 9. Accessory equipment buildings used in conjunction with antennas, if located on the ground, shall comply with the minimum accessory building setback requirements of the zoning district in which they are located.
- C. **Approvals.** All antenna installations shall require a site plan. All such site plans which comply with the requirements of this Ordinance shall be approved administratively.
- D. **Non-conforming Antennas.** All antennas legally installed at the time of initial installation may be repaired, replaced and/or relocated at an equal or lower height on the existing structure.

Section 4. Antenna Support Structure.

- A. **Approval Process:** The approval process shall be divided into those requests which can be reviewed administratively and those which, due to the zoning district in which it would be located or the surrounding uses, shall be reviewed as a special exception.

1. Monopoles.

- a. Monopoles not exceeding 200 feet in height that are proposed to be located in industrial, heavy commercial or utility zoning districts shall be approved administratively and shall require a site plan. These consist of zoning districts Commercial Intensive (CI), Government/Public Use (GPU), Industrial Warehouse (IW), Industrial Heavy (IH), and Mixed Employment Center (MEC).
- b. Monopoles not exceeding 200 feet in height that are proposed to be located in agricultural, government/institutional and neighborhood commercial zoning districts and that are located a distance from the nearest residentially zoned and used structure or building envelope equal to or greater than the height of the monopole shall be approved administratively and shall require a site plan. This applies to the following zoning districts: Agriculture (AGR), Commercial Neighborhood (CN), Commercial General (CG), Commercial Highway and Tourist (CHT), and Commercial, Professional and Office (CPO).

The distance shall be measured from the closest point at the base of the monopole to the nearest principal residential zoned structure or building envelope. In the event that the residential zoned property is vacant, the distance shall be measured from the closest point at the base of the monopole to the

closest principal residential structure setback line (building envelope).

- c. Requests for monopoles that cannot be approved administratively in accordance with provisions a and b above, shall be reviewed as a special exception. This applies to the following zoning districts: Open Rural (OR), Recreation and Open Space (ROS), Preservation-Conservation (PC), and Planned Unit Development (PUD).
- d. A certified engineering letter confirming the structural integrity of the monopole is required at the time of application.

2. Lattice or Guyed Towers.

- a. Lattice and Guyed Towers not exceeding 200 feet in height that are proposed to be located in industrial and heavy commercial zoning districts shall be approved administratively and shall require a site plan. This applies to the following zoning districts: Commercial Intensive (CI), Industrial Warehouse (IW), Industrial Heavy (IH), and Mixed Employment Center (MEC).
- b. Lattice and Guyed Towers not exceeding 200 feet in height that are proposed to be located in agricultural and government/institutional and utility zoning districts and that are located a distance from the nearest residentially zoned structure or building envelope equal to or greater than the height of the Lattice and Guyed Tower shall be approved administratively and shall require a site plan. This applies to the following zoning districts: Agriculture (AGR), Commercial, Professional Office (CPO), and Government/Public Use (GPU).

The distance shall be measured from the closest point at the base of the Lattice or Guyed Towers to the nearest principal residentially zoned structure or building envelope. In the event that the residentially zoned property is vacant, the distance shall be measured from the closest point at the base of the Lattice and Guyed Towers to the closest principal residential structure setback line (building envelope).

- c. Requests for Lattice or Guyed Towers that cannot be approved administratively in accordance with provisions a and b above, shall be reviewed as a Special Exception. This applies to the following zoning districts: Commercial Neighborhood (CN), Commercial Highway and Tourist (CHT), Open Rural (OR), Recreation and Open Space (ROS), Preservation Conservation (PC), and Planned Unit Development (PUD).

- d. A certified engineering letter confirming the structural integrity of the lattice or guyed towers is required at the time of application.
 - e. Lattice and guyed towers shall not exceed 300 feet in height.
3. To minimize adverse visual impacts associated with the unnecessary proliferation of antenna support structures, the location of antennas on an existing structure shall take precedent over the construction of new antenna support structures. Therefore, as a condition of approval for all new antenna support structures, a provider shall demonstrate that it is unable to locate its antenna on suitable and available existing structures within the search ring on commercially reasonable terms. The search ring shall be a minimum of 1000 feet.

B. Criteria for Antenna Support Structures that Require Special Exception Approval.

1. Intent and Purpose. The intent and purpose of this subsection is to address and balance the concerns about antenna support structures that do not meet the requirements for approval under A.1 and A.2 and the recognized need of the provider to serve the entire community. These issues shall be reviewed on a case-by-case basis for each Special Exception request in accordance with the existing standards set forth in Nassau County Zoning Code, in Sections 5.03 and 5.04, and the provisions of this subsection. The Nassau County Planning Commission shall consider and weigh the aesthetic impact and compatibility issues of the proposed antenna support structure with the public benefit derived from having an efficient and reliable wireless communications system when determining whether or not to grant special exception approval. To assist the Nassau County Planning Commission in reaching such determination, the application shall provide the information set forth below:

- a. Design of the antenna support structure with particular reference to design characteristics that have the affect of reducing visual obtrusiveness;
- b. Nature of principal uses on the site, with preference being given to the use of sites which are already developed with non-single family uses and which are currently visually impacted by tall structures, utility facilities, light poles, or other similar improvements;
- c. Nature of uses on adjacent and nearby properties and the proximity of the antenna support structure to all adjacent land uses, with preference being given to sites adjacent to non-residential uses or non-dwelling aspects of residential properties, such as open space areas, parks, retention ponds, golf courses, wetland areas, etc.;

- d. On-site and surrounding tree coverage and foliage, with preference being given to sites which can provide heavy vegetative screening of an antenna support structure; and
- e. The lack of suitable existing structures within the search ring.

2. Special Exception Criteria. In determining a special exception request for an antenna support structure in addition to those criteria set forth in Nassau County Code, Sections 5.03 and 5.04, the Nassau County Planning Commission shall take into consideration whether or not the proposed antenna support structure will have substantial and adverse aesthetic impact on neighboring residential lands. The Nassau County Planning Commission determination shall be based on relevant and competent evidence, documentation, and testimony received at the public hearing from the staff, the applicant, and any party in support or opposition, or their respective representatives. The Nassau County Planning Commission shall utilize the following criteria in determining if a special exception is deemed approvable:

- a. Aesthetic impact. Aesthetic impact shall take into consideration, but not be limited to, the amount of the antenna support structure that can be viewed from surrounding residential zones in conjunction with the antenna support structure's proximity (distance) to the residential zone, mitigation, landscaping, or intervening visual buffers, existing character of surrounding area, or other visual options proposed by the applicant.
- b. Compatibility. Compatibility shall take into consideration the degree to which an antenna support structure is designed and located to be compatible with the nature and character of other land uses and/or with the environment within which the antenna support structure proposes to locate. The antenna support structure may be placed or designed to assist with mitigating the overall aesthetic impact of an antenna support structure.
- c. Availability of Alternative Sites. This means the Nassau County Planning Commission must consider whether there is a suitable and available alternative site. If the applicant demonstrates that an alternative site does not exist and this demonstration is not rebutted by competent and substantial evidence, the Nassau County Planning Commission shall issue special exception approval.

C. Camouflaged Structures.

- 1. Criteria to be considered in determining whether an antenna support structure qualifies as a Camouflaged Structure:

- a. Does the antenna support structure (i) resemble a natural object or a man-made structure; (an example of a natural object is a tree)(examples of a man-made structure are bell and clock towers, church steeple, detached or attached sign structure or a lookout station) or (ii) serve a purpose other than supporting antennas, for example lighting of sports facilities, transmission of electrical and/or telephone lines; flag poles; and
 - b. Is the antenna support structure designed to be compatible with the architectural elements, such as bulk, massing, and scale of the surrounding properties; and
 - c. Is the antenna support structure designed to blend with the principal use structure, if any.
2. Upon receipt of the appropriate application, the Senior Planner shall make the determination whether the particular antenna support structure qualifies as a camouflaged structure using the criteria set forth in Section 4.C.1 above. A denial by the Senior Planner may be appealed by the applicant to the Nassau County Planning Commission.
 3. Camouflaged structures shall be permitted in all zoning districts; provided, however, if located in single or multi-family residential zoning districts, camouflaged structures shall be permitted only on non-residentially used property.
 4. Depending on the type of camouflage structure, the county may require that it meet the fencing requirements of Section 5.H of this Ordinance.
 5. All camouflaged structure installations shall require a site plan. All site plans, which comply with the requirements of this ordinance, shall be approved administratively. Site plans, which do not comply with the requirements of this Ordinance, shall require a special exception, which shall be governed by the requirements of section 4.B.

Section 5. General Requirements for All Antenna Support Structures.

- A. Antenna support structures shall be constructed in compliance with all applicable construction building codes, which shall include Electronic and Technological Industry Association standards, as amended.
- B. An antenna support structure may be located on a zoning lot containing other principal uses and may be located within an area smaller than the minimum lot size of the applicable zoning district if the zoning lot within which the antenna support structure is located complies with the applicable minimum lot

size for the existing principal use or is a legal non-conforming or grandfathered lot.

- C. Unless another section of the ordinance indicates otherwise, the area within which the antenna support structure is located shall be the areas subject to the requirements of this section, rather than the entire zoning lot.
- D. Antenna support structures shall comply with the minimum setback requirements of the underlying zoning district, except additional setbacks due to height shall not apply. Ground anchors for guyed towers shall meet the minimum setbacks for accessory structures in the underlying zoning district.
- E. Prior to the issuance of a building permit, the applicant shall provide evidence that the antenna support structure is in compliance with FAA and Local Aviation Administration regulations.
- F. No advertising shall be allowed on the antenna support structure.
- G. No signals, lights, or illumination shall be permitted on the antenna support structure, unless required by any federal, state or local agency, or such lighting or illumination is part of the design of a camouflage structure.
- H. The antenna support structure site (exclusive of guyed anchors where applicable) shall be enclosed within a metal/wood fence or a wall not to exceed 8 feet in height. This requirement shall not apply to camouflaged structures and may be waived by the administrator for other antenna support structures if the structure is made unclimbable up to a height of above twenty feet. Concurrent regulations limit fence heights to a maximum of six feet.
- I. Landscaping shall be provided between an antenna support structure or accessory equipment building and public streets or residential parcels.
 - 1. If the antenna support structure or accessory equipment building abuts the public right-of-way or residentially developed or zoned property, the antenna support structure or accessory equipment building shall be screened from such abutting use by placing the landscaping along the security fence or wall.
 - 2. If the antenna support structure or accessory equipment building is not immediately abutting a public right-of-way or residentially developed or zoned property, the landscaping shall be provided along the boundaries of the zoning lot between the antenna support structure or accessory equipment building and the public right-of-way or residentially developed or zoned property.
 - 3. Existing landscaping, vegetation or intervening buildings or permanent structures that provide the equivalent screening may be substituted.

4. If required, the landscaping shall consist of plant material listed in the County's Development Review Regulations.
- J. The only signage that may be permanently attached to the fence or wall shall be for the purpose of identifying the party responsible for the operation and maintenance of the facility, its address, and telephone number, and security or safety signs.
- K. Mobile or immobile equipment not used in direct support of the wireless facility shall not be stored or parked on the site, unless repairs to the antennas and related equipment and/or to the antenna support structure are being made.
- L. A temporary antenna support facility may be used by a provider in any zoning district for the purpose of providing temporary wireless service for special short-term events such as political events, sporting events, or entertainment events; to allow for modification, replacement, and/or repairs to a permanent facility; or as necessary to aid in post disaster relief efforts.

Section 6. Accessory Equipment Building.

If built in a flood zone, all accessory equipment buildings and equipment used in conjunction with the operation and maintenance of antennas shall be permitted and equipment will be above the established BFE and subject to the following requirements:

- A. Shall not exceed 750 square feet of gross floor area per provider;
- B. If ground constructed or mounted, shall not exceed twenty (20) feet in height;
- C. Shall be located within close proximity, as is reasonably possible, to the structure upon which the antennas are attached;
- D. If ground constructed or mounted, shall meet the underlying zoning district setback requirements for accessory structures;
- E. Shall be designed, constructed, and installed in compliance with all applicable local building codes. If pre-fabricated, shall be certified by the State of Florida under all applicable state laws and shall comply with all applicable local building codes in accordance with sealed plans for 110 mile per hour wind speed;
- F. Shall be of a material and/or color which matches the exterior of the existing structure, if any, where the antennas are located; and if in public view, the building should match the color but not necessarily the material of primary structure.
- G. If ground constructed or mounted shall meet the landscaping requirements of Section 5.I of this ordinance.

Section 7. Collocation.

To encourage a reduction in the number of antenna support structures that may be required to site antenna in order to meet the community's increasing demand for wireless service, antenna support structures shall be structurally designed to accommodate the collocation of antenna as follows:

- A. All antenna support structures, except camouflaged structures, over 80 feet and up to and including 150 feet in height shall be structurally designed to accommodate at least two providers.
- B. All antenna support structures, except camouflaged structures, exceeding 150 feet in height shall be structurally designed to accommodate at least three providers.

Section 8. Removal of Abandoned Antenna Support Structures.

- A. At the time of building permit the applicant shall enter into a contractually enforceable agreement with the county that requires the applicant or the owner of this antenna support structure to obtain a county issued demolition permit to remove the antenna support structure upon its abandonment.
- B. In the event all legally approved use of any antenna support structure has been discontinued for a period of one hundred eighty (180) consecutive days, the antenna support structure shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the Senior Planner who shall have the right to request documentation and/or affidavits from the antenna support structure owner regarding the issue of antenna support structure usage.
- C. At such time as the Senior Planner reasonably determines that an antenna support structure is abandoned, the Senior Planner shall provide the antenna support structure owner with written notice of an abandonment determination by certified mail. Failure or refusal by the owner to respond within sixty (60) days of receipt of such notice shall constitute prima facie evidence that the antenna support structure has been abandoned.
- D. If the owner of the antenna support structure fails to respond or fails to demonstrate that the antenna support structure is not abandoned, the antenna support structure shall be considered abandoned and the owner of the antenna support structure shall have an additional one hundred twenty (120) days within which to:
 - (i) reactivate the use of the antenna support structure or transfer the antenna support structure to another owner who makes actual use of the antenna support structure within the one-hundred-twenty-day period, or
 - (ii) dismantle and remove the antenna support structure. At the earlier of one hundred twenty-one (121) days from the date of abandonment without reactivation or upon completion of dismantling and removal, any special exception approval for the antenna support structure shall automatically expire.

Section 9. Nonconforming Antenna Support Structures, Replacements and Modifications of Existing Structures.

To encourage the use of sites that already have an existing structure that creates a visual or height impact, modifications to or replacement of such facilities may occur subject to the following conditions:

A. **Non-conforming Antenna Support Structures:** All antenna support structures legally installed at the time of initial construction, which, because of changes to the Code, no longer conform to the requirements of the Code, shall be considered legally permitted non-conforming uses. Such facilities may be used or repaired and, may be replaced or modified in accordance with this Section.

B. **Modification or Replacement of Existing Structures to Accommodate Collocation:**

1. Modification or Replacement of Existing Antenna Support Structures. An existing antenna support structure may be modified or replaced to accommodate the collocation of antenna(s) as follows:

a. Antenna support structures which, when modified or replaced, will conform to the requirements of the Code, may be modified or relocated on the same zoning lot up to the requirements of the Code.

b. Antenna support structures which, when modified or replaced, will not conform to the requirements of the Code, may be increased in height, one time, up to forty feet above the approved height and/or may be relocated on the same zoning lot, one time, within 75 feet of the existing location, with administrative review and without conformance with any other setbacks, or height related requirements.

c. After the antenna support structure is replaced, as provided herein, the existing antenna support structure shall be removed within ninety (90) days.

d. An antenna support structure which is modified or replaced to accommodate the collocation of additional antenna(s) shall be either of the same type as the existing antenna support structure or a monopole.

2. Utilization of Existing Structures, Other than Antenna Support Structures. An existing structure, other than an antenna support structure, may be modified or replaced to accommodate both its prior function and antenna(s) as follows:

a. Such existing structures which, when modified or replaced, will conform to the requirements of the Code for antenna support structure, may be modified or relocated on the same zoning lot up to the requirements of the Code.

- b. Such existing structures which, when modified or replaced, will not conform to the requirements of the code for antenna support structures, may be:
- (1) increased in height, one time,
 - (a) if a distance greater than 110% of the height of the modified existing structure from any single-family residential structure, up to 50% of the height of the existing structure or 40 feet, whichever is less; or
 - (b) if the distance is less than 110% of the height of the modified existing structure from any single-family residential structure, up to 25% of the height of the existing structure or 40 feet, whichever is less.
 - (2) relocated on the same zoning lot, one time, within 50 feet of the existing location, with administrative review and without conformance with any other setbacks, separations, or height-related requirements contained herein.
- c. The modified or relocated pole-type structure shall comply with all applicable FCC and FAA regulations and applicable building codes.

SECTION 2. CONFLICT.

This ordinance shall prevail over all prior ordinances or resolutions or parts thereof in conflict herewith to the extent of such conflict.

SECTION 3. SEVERABILITY.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portion of this Ordinance.

SECTION 4. INCLUSION IN THE COUNTY.


It is the intention of the Board of County Commissioners of Nassau County, Florida, and it is hereby ordained that the provisions

of this Ordinance shall become and be made a part of the Nassau County Land Development Code of the Code of Ordinances, and that the Sections of this Ordinance may be renumbered, re-lettered, and the word "ordinance" may be changed to "section", "article", or such other word or phrase in order to accomplish such intention. In no case shall any provision be read to eliminate any requirements for a franchise, license or other authorization to occupy the affected property.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall become effective upon its being filed with the Office of the Secretary of the State.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA



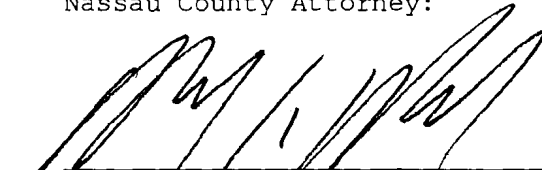
J. H. COOPER
Its: Chairman

ATTEST:



J. M. "CHIP" OXLEY, JR.
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney:



MICHAEL S. MULLIN