

AGENDA COVER MEMO

DATE: February 9, 2005 (date of memo)

February 16, 2005 (4th Reading)

February 2, 2005 (3rd Reading)

November 3, 2004 (2nd Reading)

October 20, 2004 (1st Reading)

TO: Board of County Commissioners

DEPT.: Public Works Department/Land Management Division

PRESENTED BY: Steve Hopkins, AICP

AGENDA ITEM TITLE:

IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO REVISE THE APPLICABLE STANDARDS FOR TELECOMMUNICATION FACILITIES (LC 16.264).

I. MOTION

Move to modify the ordinance as noted in the staff report, and adopt the revised ordinance.

II. ISSUE OR PROBLEM

At the hearing on Feb. 2, the Board requested a comparison of Ord. No. 17-04 to the telecommunication codes of Washington, Clackamas and Marion counties. That analysis is presented in this cover memo, with details contained in Attachment #1.

If the Board adopts this ordinance, which is applicable outside the urban growth boundaries (UGBs), staff will return with identical revisions to the telecom regulations that apply inside the UGBs.

The revision mentioned in the suggested motion above, refers to subsection 3(h)(ii) of the ordinance. This subsection needs to be modified for clarification. It should read as follows:

"No new lights are proposed unless required by the Oregon Department of Aviation (ODA) or the Federal Aviation Administration (FAA), and."

If the Board wishes to adopt the ordinance, this modification should be included in the motion.

III. DISCUSSION

A. Analysis

Comparison with other counties

The proposed revisions to the Lane County Code are similar to the existing telecom ordinances of Washington, Clackamas and Marion counties. For example, all four counties have similar regulations related to tower design, lighting, proving a need for the service,

and removal of the facility if it is abandoned. All counties except Marion have a "change out" policy that allows replacement of existing equipment without a land use application.

In addition, all four counties have peer review of some type. Each county requires the applicant to provide an engineer, but Marion and Clackamas Counties limit the engineer's review to whether collocation on an existing tower is reasonable. Only Washington County has an option to hire, at the applicant's expense, a 3rd party engineer; it is not mandatory. Refer to Attachment #1 for a more detailed comparison of the county codes.

All four counties have separation requirements. Washington and Clackamas Counties require a separation between towers. The distance varies from 1,000' to 2,640'. The farm and forest zones have a greater separation than residential or commercial zones. Marion County requires a separation from dwellings that is one foot greater than the height of the tower. Lane County requires a 1,200' separation between a tower and a dwelling or school, which is a moderate distance in comparison with these counties. All jurisdictions allow a reduction of the separation distance.

Two counties require an applicant to have a lease agreement for collocation before a new tower is built. This prevents tower speculation, which occurs when a tower is constructed without any transmitting facilities. Lane County requires two lease agreements for collocation. Washington County requires only one lease agreement. Marion and Clackamas Counties do not require any lease agreements prior to approval of a tower.

Attachments

Ron Fowler submitted a letter on February 4. It is included as Attachment #2. His letter does not raise new issues, but restates the issues outlined in his previous letters. Each issue raised by Mr. Fowler was previously addressed in Attachments #7b and 7c of the staff report dated October 6, 2004 (refer to Attachment #7). While many of his issues are outside the scope of the direction from the Board, several of his requests have been included in the ordinance. Two examples are the new policy for "change outs" and a clarification of when approvals are needed from the FAA and local airport authorities.

At the hearing on February 2, there were questions regarding the notification for this ordinance. On November 3, the hearing was continued. On January 12, notice published in the Register-Guard for the third reading and public hearing on February 2, 2005. The details for the notification are included as Attachment #3. This attachment also includes emails from Mona Linstromberg that show how she has been included in this process since June 28, 2004.

B. Alternatives/Options

Option #1

Ord. No. 17-04 was revised to include the recommended changes and was distributed at the hearing on Feb 2. Because of this, the Board has the option of adopting the ordinance on Feb. 16.

Option #2

Another option is to make additional changes to Ord. No. 17-04. Depending on the significance of the changes, at least one, and possibly two more readings will be required.

Option #3

The Board may also decline to adopt the ordinance.

C. Recommendations

Staff recommends option #1, adoption of Ord. No. 17-04, with the revision described in Section II of this staff report.

D. Timing

The amendment does not contain an emergency clause and will become effective 30 days after adoption.

IV. IMPLEMENTATION/FOLLOW-UP

A notice of the County Commissioners action will be provided to DLCD.

V. ATTACHMENTS

Exhibit "A", Findings of Fact (Revised)

1. Comparison of telecommunication ordinances.
2. Submittal from Ron Fowler dated February 4, 2005.
3. Notification details:
 - a. Legal ad publication dates.
 - b. Email dated June 28, 2004.
 - c. Email dated July 20, 2004.
 - d. Email dated August 16, 2004.
 - e. Email dated September 09, 2004.
 - f. Email dated September 23, 2004.
 - g. Email dated November 03, 2004.
 - h. Email dated November 04, 2004.
 - i. Email dated November 07, 2004.
 - j. Email dated November 16, 2004.
 - k. Email dated December 05, 2004.
 - l. Email dated December 09, 2004.
 - m. First email dated January 30, 2005.
 - n. Second email dated January 30, 2005.
4. Clackamas County telecommunication ordinance.
5. Marion County telecommunication ordinance.
6. Washington County telecommunication ordinance.
7. Staff report dated October 6, 2004, with original Attachments #7b and 7c.
8. Staff report dated January 19, 2005.

FINDINGS OF FACT

Finding 1. Lane Code 16.252(2): This subsection of Lane Code requires that the adoption of amendments to land use regulations implementing the Lane County Rural Comprehensive Plan (RCP), and components thereto, be by ordinances. The adoption of Ordinance No. 17-04 would amend the Lane Code 16.264 by ordinance and therefore complies with this code requirement.

Finding 2. Lane Code 16.252(2). This section of Lane Code requires Ordinance No. 17-04 to comply with applicable state laws and the Statewide Planning Goals. Based on the findings below, Ordinance No. 17-04 complies with applicable state laws and Statewide Planning Goals.

- a. Statewide Planning Goal 1 ensures citizen participation and Goal 2 requires, “Opportunities shall be provided for review and comment by citizens during the preparation, review and revision of plans and implementation ordinances.” Lane County followed its acknowledged citizen involvement program and provided the opportunities identified below for citizens to review and comment on the preparation, review and revision of Ordinance No. 17-04. These opportunities were adequate to comply with Goals 1 and 2.
 - Beginning June 16, 2004, copies of the proposed changes to LC 16.264 were available at the LMD for distribution to citizens.
 - A legal ad was published in the *Register-Guard* on June 16, 2004, providing notice of the Lane County Planning Commission (LCPC) public hearing in Harris Hall of the Lane County Public Service Building on July 6, 2004.
 - On July 6, 2004, LCPC held a public hearing in Harris Hall of the Lane County Public Service Building in Eugene to receive citizen comments on proposed amendments to Lane Code Chapter 16.264. The LCPC also requested additional information regarding the proposed changes to the Lane Code.
 - At the public hearing on July 6, 2004, Mona Linstromberg requested an extension to submit additional comments into the record. The LCPC granted the request and kept the record open until July 13, 2004.
 - On July 6, 2004, the LCPC tabled the item to September 7, 2004.
 - On August 3, 2004, a packet containing the requested information was mailed to the LCPC members.
 - On August 10, 2004, the public comment period on the requested information ended.
 - On September 7, 2004, the LCPC voted 4-1 to recommend approval of the amendment to the Board of County Commissioners.
 - On July 20, 2004, at least 45 days in advance of the Board of County Commissioners’ November 3, 2004 public hearing, LMD mailed a 45-day post-acknowledgment amendment notice and two copies of the proposed changes to Lane Code 16.264 to DLCD.

- At least 20 days in advance of the First Reading, a legal ad was published in the The Register-Guard (on September 29, 2004) providing notice of the Board of Commissioners' First Reading on October 20, 2004, and the Second Reading and public hearing on November 3, 2004 in the Commissioners' Conference Room of the Lane County Public Service Building.
 - On November 3, 2004, a public hearing was held by the Board of Commissioners in the Commissioners' Conference Room of the Lane County Public Service Building of Eugene, to receive citizen comments on the proposed amendments to Lane Code Chapter 16.264. On that date, the Board voted unanimously to direct staff to work with those testifying to further draft revision to the ordinance to address three concerns identified during the public hearing.
 - On December 6, 2004, the people who gave testimony at the public hearing met with staff to discuss and draft revisions to the ordinance that addressed the three issues identified at the hearing.
 - At least 20 days in advance of the Third Reading and Public Hearing, a legal ad was published in the The Register-Guard (on January 12, 2005) providing notice of the Board of Commissioners' Third Reading and public hearing on February 2, 2005 in the Commissioners' Conference Room of the Lane County Public Service Building.
 - On February 2, 2005, a public hearing was held by the Board of Commissioners in the Commissioners' Conference Room of the Lane County Public Service Building in Eugene, to receive citizen comments on the proposed revisions to Ordinance No. 17-04. On that date, the Board requested additional information. The hearing was closed but the record was left open.
 - The Fourth Reading occurred on February 16, 2005, in Commissioners' Conference Room of the Lane County Public Service Building.
- b. Ordinance No. 17-04 acknowledges citizen comments received during citizen information meetings, written testimony submitted into the record, and testimony during the Lane County Planning Commission public hearings on July 6, 2004. Board action also considers the testimony and evidence received in the record and at the public hearings conducted on November 3, 2004, and February 2, 2005. As a result of the public testimony, a new policy was created to allow limited changes to existing telecommunication facilities without a land use application. In addition, the separation requirements were revised to comply with citizen comments. Specifically, the separation is 1,200 feet from towers to schools or dwellings, with an allowance for a reduced separation. These findings establish an adequate basis for a Board action taken to enact Ordinance No. 17-04 and comply with Goal 2.

- c. The changes to the standards made applicable to telecommunication facilities by Ordinance No. 17-04 do not otherwise affect compliance with Statewide Planning Goals 3-19. Many of the standards adopted by Ordinance No. 4-02 remain in the regulations and the findings of Goal compliance adopted in support of those standards remain valid and are incorporated here by this reference.

Finding 3. Lane Code 16.252(2). This subsection of Lane Code requires the Board to find the amendment achieves the general purposes of LC Chapter 16, is consistent with applicable RCP elements or components and is not contrary to the public interest. Ordinance No. 17-04 is appropriate and proper as set forth in subsections III(A) and III(B) of the staff report, dated October 6, 2004, prepared for the October 20, 2004 and November 3, 2004 Board meetings, and incorporated here by this reference. By resolving the three issues originally identified by the Board, this amendment will promote public participation on the planning process. The original issues identified by the Board were:

- The need to verify the technical statements made by the applicant,
- The need for an alternate notice requirement on large forestlands, and
- When the proposed facility is located on federal land, there was a need to verify the federal government, as the landowner, will allow the submittal of the land use application.

These issues are resolved by amending the Lane Code to:

- Require a licensed engineer to verify the technical statements of the applicant related to radiation levels of the facility, and
- Allow the applicant to send notice to landowners within ½ mile of the location of the tower instead of sending notice based on the perimeter of the tract, and
- To recognize a signed lease agreement with the applicable agency, such as the Bureau of Land Management or the Forest Service, as the signature of the landowner.

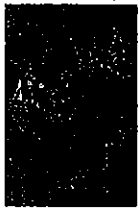
No one has identified any inconsistency with the purposes of LC Chapter 16 or any RCP elements and components. For those reasons and the reasons stated above, the amendments are not contrary to the public interest and should be adopted.

Finding 4. The Board finds that, in accordance with Measure 37, a landowner can submit a claim for compensation when a new land use regulation lowers the land value. The government has the option of paying the claim or waiving the regulation. The Board finds Ordinance No. 17-04 amends the land use regulations pertaining to telecommunication facilities. Because Ordinance No. 17-04 does not implement a state statute or administrative rule, a claim against this ordinance would be filed with Lane County. The Board also finds Ordinance No. 17-04 is less restrictive than the current code, as identified in Table #1 and Table #2 of the staff report dated January 19, 2005, prepared for the February 2, 2005 Board meeting, and incorporated here by this reference.

	Lane County	Marion County Adopted 10/04	Washington County Adopted 9/28/04	Clackamas County Adopted 6/6/02
Peer review	Engineer provided by applicant	Engineer provided by applicant. Related only to whether collocation on an existing tower is feasible.	Engineer provided by applicant. 3 rd party option at discretion of Director.	Provided by applicant. Related only to whether collocation on an existing tower is feasible.
Separation	1200' from dwellings and schools. Reduction allowed.	From dwellings: 1' greater than the height of the tower. Reduction allowed.	1000' from other towers. Reduction allowed.	1000' to 2640' from other towers, depending on zone.
Change outs	Allowed	Silent	Allowed	Allowed
Approval process	<ul style="list-style-type: none"> • Director approval for collocations. • Public hearing required for towers. 	Director approval. Public hearing only required if Director's decision is appealed.	The Director will determine if a hearing is needed. If so, the planning commission or hearings official reviews the application.	<ul style="list-style-type: none"> • Director approval for less intrusive collocations in commercial and industrial zones. • Public hearing required in residential, rural and forest zones, and 201' tall towers in EFU zone.
Collocation lease agreements	2 required prior to tower approval	none	1 required prior to tower approval	none
Unique features	<ul style="list-style-type: none"> • Tower must be renewed every 2 years. • Bond required insuring removal of abandoned facility. • Require two lease agreements prior to approval of a new tower. 	No requirement to show the facility complies with FCC radiation limits.	<ul style="list-style-type: none"> • A sign identifying the operator's name and emergency telephone is required. • Applicant must submit one collocation agreement with a new tower application. 	<ul style="list-style-type: none"> • Facilities in the EFU zone that are less than or equal to 200' tall are exempt. • Towers located on federal land are exempt.

Regulations common to the four counties:

1. The applicant must prove the proposed tower or collocation is needed.
2. The equipment must be designed and painted to blend into the landscape.
3. Towers must be designed to allow multiple collocations.
4. Lighting is not permitted on a tower unless required by state or federal agencies.
5. The facility must be removed if the use is abandoned.



TERRAQUEST INTERNATIONAL

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February 4, 2005

Board of County Commissioners
Lane County
125 East 8th Street
Eugene, Oregon 97401

RE: Proposed amendments to Lane Code 16.264

Dear Chairman and members of the Commission:

TerraQuest International is a contracted consultant to New Cingular PCS, LLC, Inc., doing business as Cingular Wireless ("CW") and their affiliates and is representing them and acting on their behalf.

We have submitted letters to the Planning Commission on August 4, September 29, and November 3, 2004 setting out a number of questions and expressing our concerns about the proposed amendments to Lane County Code 16.264. To date, our primary concerns have not been addressed and our comments appear to have been largely ignored. At the hearing on February 2, 2005, we expressed additional serious concerns about the proposed code that exacts standards on wireless communications that are not emulated for other types of land uses. We feel that the proposed and existing code raise serious issues that need to be addressed, and, as written, may violate existing law, including the Telecommunications Act of 1996. In addition, as pointed out to the City of Eugene by another wireless company during their code revisions, the Lane County code may raise a cause of action under Measure 37.

In General

Wireless communications are the future of communications. It is estimated that by 2010, 50% or more of citizens in the United States will use wireless as their only form of phone communications at home. In addition, new wireless data systems promise to deliver high speed broadband internet access to areas that cannot obtain such service by conventional means. The proposed Lane County code will not only inhibit providing such services, but may actually make expansion of the wireless systems in unincorporated Lane County infeasible.

There are approximately 170,000,000 mobile phones in use in the United States today and the general public is depending on this service for business, home use and emergency services. We believe the County should embrace the technology and work with industry to develop a code that is reasonable, fair and recognizes the public demand for the services.

Unfortunately, the proposed code amendments remain confusing, excessive, and discriminatory, and, make development problematic, if not impossible. Due to various controversial sections in the code, it may be difficult for County staff to administer the regulations, and, for industry to reasonably comply with the provisions. This will certainly lead to stagnated development, conflict and possibly litigation.

Many of our concerns have been addressed by recent drafts of the code, but many problems still remain. Following is a recap of the primary areas that remain in the latest redraft of 16.264 we are concerned about:

1. The code continues to use some very unusual definitions that are non-standard or contrary to the general industry interpretation of the terms. For example, the code definitions of "provider" (indicates that a cell phone user is a provider) and "collocation" need to be clearly defined and consistent with industry usage of the term.
2. 16.264 3.c. – "Coverage" is not the only reason that new sites are needed. The language appears to limit the ability to develop the networks to address capacity and quality requirements of the carriers.
3. 16.264 3.h. – We support the changes in this section.
4. 16.264 4.c. (ii) (C) – The provision requires a new applicant to have additional tenants under contract before they can apply for a new tower location. The industry universally challenges this provision as being a de facto prohibition of new tower installations for a number of reasons, including:
 - a. Wireless carriers are not in the business of renting tower space before they even apply for land use authority to construct a tower. The towers are built to address a service need and are not planned for a revenue source. Therefore, construction is driven by an identified need that may not be a current problem for other carriers or providers.
 - b. Wireless carriers or providers carefully protect their designs and plans for development. They are reluctant to share business trade secrets with their competitors before they have publicly divulged their design.
 - c. According to our legal department, "..... collusion on design or implementation of service in a location in conjunction with other licensed carriers or competitors would raise serious anti-trust concerns and could not be condoned at this time"
 - d. Budgets for companies are developed 18-24 months prior to the development of a new site is on the air. Other carriers or providers may not have plans for the same area within the same time frames and would be unwilling to enter into a contract before a tower is built.
 - e. The requirement may encourage speculators to attempt to intervene with development.
 - f. This is an unreasonable interference with private industry and the county has no legitimate right under the Lane County code or the law to make this a requirement. Does the County require any other private commercial developer to have additional tenants in place before they can apply for land use approval? We have asked the County to verify that other uses are subjected to the same standard and they have provided no information to support their position. **This requirement is unique to Lane County and will force the carriers and providers to resort to expensive and lengthy litigation.**

5. 16.264 4.c. (iv) – Why is it necessary to require agreement with the property owner as to removal of a tower, when the County also requires the tower developer to post a removal bond? This provision appears to be redundant and overbearing, and, will inhibit the willingness of a property owner to enter into a lease agreement.
6. 16.264 4.d (i) – The County continues to require that the applicant prove a “need” for the new development although they do not have similar requirements for other types of uses. Also, it exacts an arbitrary area 10 miles in radius that they apparently feel will prove or disprove the applicant’s need for the site. Carriers and providers do not spend hundreds of thousands of dollars for facilities and sites that they do not need or are not “necessary”. The County needs to explain the specific purpose and intent of this requirement. We have asked the County for justification for this provision and have received no response. In order to avoid litigation over this issue, the County should reword or drop this requirement as it is arbitrary and not within the authority of the County to regulate in this manner without reason.
7. 16.264 4.d. (i) (A), (B) and (C)– Collocation is not a simplistic issue and the code provisions do not adequately address the concerns that may be raised when considering a collocation. For example, the provision fails to include reasons for unsuitable collocations due to: quality requirements of the carrier; ability to obtain ground space; excessive rents charged by the tower owner; unwilling tower or property owner; cost of modifying the structure or facility to accommodate the collocation; etc. The code is not sufficiently comprehensive and encourages disagreement between the applicant and county staff as to compliance.
8. 16.264 4.f. (ii) and (iii) – What is the reasoning behind requiring renewal of the special use permit every two years? Is there a valid concern, or is the County looking upon this as an opportunity to set new requirements that may force a telecommunications provider to dismantle or move the site location? Is there a valid reason for this requirement? Does the County require other commercial uses to renew their permits? Once a provider invests hundreds of thousands of dollars in a communications facility, they are at a distinct disadvantage when the County elects to set new “... applicable conditions of approval...”.

This provision has no valid purpose and is certain to result in litigation and controversy between industry and the County. The tower owner and all collocations on the tower will be forced to begin renewal of land use permits at least six months prior to the expiration of the current permit. All parties will be forced to spend thousands of dollars and countless hours of staff time to comply with a meaningless, arbitrary and punitive requirement that has no reasonable or legitimate regulatory purpose. We have repeatedly asked the County for information on similar requirements for other uses and no information has been provided. Therefore, we must presume that the County motives are intended to be discriminatory and an attempt to discourage development of communications facilities. Accordingly, we believe that this provision is a violation of the law.

9. 16.264 5. – This section makes collocation on existing sites very complex and difficult. All other jurisdictions encourage collocation by offering an abbreviated approval process for using existing facilities. To the contrary, the Lane County code makes collocation as difficult as constructing a new tower location. The entire section should be modified to simplify the process and make collocations a preferred alternative for developers.

It is ironic that the neighbors and industry stand together in their universal opposition against the County and their proposed code amendments. The code doesn’t seem to work for

anyone but the County, and lacks support from those who are affected by it. In addition, the County appears to be purposely attempting to subvert the development of legitimate and high demand services for the community without any apparent or stated purpose or reason. Why is the County determined to take this unpopular course of action?

In summary, as we have previously stated, the proposed code needs more work in order to comply with existing laws and avoid unnecessary controversy or litigation. As it currently stands, the County is forcing the carriers to take a defensive posture and even reconsider the need to develop telecommunications in Lane County. The objective of code regulations should be to protect the public interest while setting reasonable requirements for development. This proposed code fails to do so in many respects.

On behalf of Cingular Wireless and their affiliates, we are proposing that the Board adopt the recent proposed revisions, and, at the very least, strike the provisions set out in items 4, 5 and 8 above. Following the passage of the amendment, the County should undertake a full code review in relation to wireless in order to address the needs and concerns of all parties, and, to recognize the importance of this dynamic technology. The current code does not have the support of industry and appears not to have the support of the public.

Please contact me if you have questions.

Sincerely,

Ron Fowler
Consultant to New Cingular PCS, LLC

LEGAL AD AND NOTIFICATION DETAILS

The legal ad shown below was published by the indicated newspapers on these dates:

June 16, 2004

Register-Guard
Springfield News
Siuslaw News

September 29, 2004

Register-Guard

January 12, 2005

Register-Guard

In addition to the required notification in the newspapers, I met with Ms. Linstromberg on June 30, 2004. Since then, she has contacted me through emails. Her emails and my response to each one is included in this attachment. This information is in the record, but has been included in this packet to show that Ms. Linstromberg has been included in each step of the process and that each of her messages were answered in a timely manner.

Notice of Public Hearing
Board of Lane County Commissioners

Notice is hereby given that the Board of County Commissioners will have the Third Reading and Public Hearing of an amendment to the Lane Code on Wednesday, February 2, 2005, at 9:00 A.M. in the Board of County Commissioners Conference Room of the Lane County Public Service Building, 125 East 8th Ave, Eugene, OR. to discuss an amendment to the Lane Code:

**IN THE MATTER OF AMENDING LANE CODE 16.264 TO REVISE THE
TELECOMMUNICATION REGULATIONS.**

At the recommendation of the Lane County Planning Commission and the direction of the County Commissioners, an amendment has been drafted to revise the telecommunication regulations. An information packet is available in the Lane County Land Management Division office that includes a staff report and the proposed amendment that is being considered for adoption.

Lane County complies with state and federal laws and regulations relating to discrimination, including the Americans With Disabilities Act of 1990 (ADA). Individuals with disabilities requiring accommodations should contact Steve Hopkins at least 48 hours prior to the meeting. The proposed ordinance is available at the Lane County website at: www.lanecounty.org. For additional information, contact Steve Hopkins, Planner. Phone: 682-3159; Email: steve.hopkins@co.lane.or.us; Fax: 682-3947; Mail: Lane County Land Management Division, 125 E. 8th Ave, Eugene, OR 97401-2926.

From: Mona & Craig [monancraig@pacinfo.com]

Sent: Monday, June 28, 2004 11:30 PM

To: steve.hopkins@co.lane.or.us

Subject: Telecommunication ordinance

Sorry if the attached appears a bit hurried, it is. I will bring in a copy of the court case when I meet with you on Wednesday.

Mona Linstromberg

<<Attachment>>

From: Mona Linstromberg [monal@northbankcpa.com]

Sent: Tuesday, July 20, 2004 12:18 PM

To: 'HOPKINS Steve P'

Subject: RE: Update request - Telecomm. Revision

Thank you.

Mona

—Original Message—

From: HOPKINS Steve P [mailto:Steve.HOPKINS@co.lane.or.us]

Sent: Tuesday, July 20, 2004 10:30 AM

To: 'Mona Linstromberg'

Subject: RE: Update request - Telecomm. Revision

Here is the timeline as approved by the planning commission on July 6.

July 13: Record closed. No more comments on 7/06 packet.

August 3: Mail the final packet. This packet will contain all the comments up to July 13, a revised amendment based on the public comments, and a revised cover memo.

August 10: End comment period for final packet. A packet that contains the comments submitted August 3-10 will be sent to the Commission.

September 7: Public meeting for deliberation. At 7:00 in Harris Hall.

Because the hearing and the record are closed, no more public comments will be taken.

—Original Message—

From: Mona Linstromberg [mailto:monal@northbankcpa.com]

Sent: Tuesday, July 20, 2004 11:26 AM

To: steve.hopkins@co.lane.or.us

Subject: Update request - Telecomm. Revision

Greetings -

Is there a target date for comments on the Telecomm. Ord. revision - i.e. from when to when?

Thank you,

Mona Linstromberg

Please respond to MonanCraig@pacinfo.com

From: HOWE Kent
Sent: Monday, August 16, 2004 4:42 PM
To: 'Mona & Craig'
Cc: HAMPTON Don E; DWYER Bill J; MORRISON Anna M; GREEN Bobby; HOPKINS Steve P; SORENSON Peter
Subject: RE: Telecomm Ordinance revisited revision

Hi Mona,

I understand you are concerned, however the record for the Planning Commission is closed.

To make the record clear, staff understand the Board direction regarding peer review. Peer review always has been and is still in the draft revisions. Sections 4(c)(iv) and (viii) of the current draft proposal provide the peer review requirements for transmission towers. Sections 5(b)(vii) and (viii) provide the peer review for colocation facilities. In fact, the Section 3(b)(ix) you reference in the existing ordinance is an option and the draft language make peer review a requirement in Sections 4 and 5 referenced, above.

If this language does not address your concerns you will have another opportunity when the draft ordinance is being considered by the Board of Commissioners.

Thanks, Kent

—Original Message—

From: Mona & Craig [mailto:monancraig@pacinfo.com]
Sent: Monday, August 16, 2004 11:54 AM
To: kent.howe@co.lane.or.us
Cc: don.hampton@co.lane.or.us; bill.dwyer@co.lane.or.us; anna.morrison@co.lane.or.us; bobby.green@co.lane.or.us; steve.hopkins@co.lane.or.us; peter.sorenson@co.lane.or.us
Subject: Telecomm Ordinance revisited revision

Kent, thank you for your detailed response. I apologize for not making clear the nature of my concern. I had already gone back and re-listened to tapes of work sessions and hearings and re-read the minutes of others. My concern is the vagueness of the wording of Board directive number two concerning "peer" review especially since Mr. Hopkins apparently has no context in which to interpret that directive - which is obvious from his first revision of the current ordinance.

After comments from interested parties including myself and representatives from the telcomm. industry, Mr. Hopkins in his second revision has not only NOT addressed "peer" review but has eliminated the one reference to it in the current ordinance (3)(b)(ix), unless I am missing something. No doubt Mr. Hopkins eliminated all reference to "peer review by an independent engineering firm of the proposed telecommunications facility SYSTEM DESIGN" in his quest for simplicity, but I should think that would run contrary to Board directive. The concern expressed about the current ordinance and peer or independent review of technical aspects of a telecom application has to do with the existing discretionary nature of this review. In order for independent technical review to actually be meaningful, it needs to be incorporated into a fee schedule and utilized - fee to be refunded if review not necessary. As is, this Board directive has been dismissed at staff level of review.

Sincerely,

Mona Linstromberg

Member, Citizens for Responsible Placement of Cell Phone Transmission Towers
Veneta, OR

From: HOPKINS Steve P
Sent: Thursday, September 09, 2004 8:33 AM
To: 'Mona & Craig'
Subject: RE: Telcomm Ord.

I have attached the version of the amendment recommended by the planning commission. I have tentatively scheduled the second reading and hearing with the County Commissioners on Nov 3.

—Original Message—

From: Mona & Craig [mailto:monancraig@pacinfo.com]
Sent: Wednesday, September 08, 2004 5:52 PM
To: steve.hopkins@co.lane.or.us
Subject: Telcomm Ord.

Could you please e-mail me the approved Planning commission version.

Thanks,
Mona Linstromberg

From: HOPKINS Steve P
Sent: Thursday, September 23, 2004 4:04 PM
To: 'Mona & Craig'
Subject: RE: Telecomm. Ord.

In this situation, the standard notice requirements apply. LC 14.100(4)(a)-(c) and LC 14.300(3)(d) require notice from "the exterior boundaries of the contiguous property". The definition of "contiguous" is contained in LC 16.090.

—Original Message—

From: Mona & Craig [mailto:monancraig@pacinfo.com]
Sent: Wednesday, September 22, 2004 6:54 PM
To: HOPKINS Steve P
Subject: Re: Telecomm. Ord.

I am asking this on the run.....if the applicant and the owner are the same and there is no leased area, then what are the notification requirements in terms of distance from what? i.e. is the distance determined by the boundaries of the owner's property?

HOPKINS Steve P wrote:

The notice is sent to people within a certain distance of the leased area, rather than from the boundaries of the landowners' property. If the landowner and the applicant are the same, there is no leased area.

—Original Message—

From: Mona & Craig [mailto:monancraig@pacinfo.com]
Sent: Wednesday, September 22, 2004 7:19 AM
To: steve.hopkins@co.lane.or.us
Subject: Telecomm. Ord.

Greetings,

Could you clarify an item for me on page 7 of 12, 3. j. Notice: If the property does not contain a leased area, this subsection shall not apply.

Why is a distinction being made between property that does or does not contain a leased area? What is the significance?

Thank you,
Mona Linstromberg

From: Mona Linstromberg [monal@northbankcpa.com]
Sent: Wednesday, November 03, 2004 5:05 PM
To: HOPKINS Steve P
Subject: RE: Telecommunication ordinance

Monday Dec. 6 and Friday Dec.10 work for me. I may be out of the area on an audit Tues, Weds, and Thurs. of that week.

Mona Linstromberg

-----Original Message-----

From: HOPKINS Steve P [mailto:Steve.HOPKINS@co.lane.or.us]
Sent: Wednesday, November 03, 2004 4:54 PM
To: terraquest@comcast.net; monancraig@pacinfo.com; pat.evans@T-Mobile.com; pslotemaker@realcomassoc.com; monal@northbankcpa.com
Cc: HOWE Kent
Subject: Telecommunication ordinance

You are receiving this message because you submitted testimony regarding Ordinance No. 17-04, the telecommunication ordinance for Lane County. At the direction of the County Commissioners, another public hearing will be conducted in February. Prior to that, people who submitted testimony are invited to attend a meeting to discuss three items in this ordinance. The purpose of this meeting is to reach a consensus regarding the listed items.

The items are:

- 1) Peer review
- 2) a new policy regarding "change outs"
- 3) separation distance from new towers and existing dwellings/schools.

In order to comply public notice deadlines and to rewrite the ordinance, the meeting will need to occur by the first full week of December so a revised ordinance can be submitted to the County Commissioners in February. The meeting will last for 2 hours or less. I will reserve a conference room at the Public Service Building, 125 E 8th street. Please choose a time that you are available and I will schedule a time that is convenient for the majority of people. These are the times available:

Dec 6: Monday 10 am
Dec 7: Tuesday: 3 pm
Dec 8: Wednesday: 10 am, 3 pm
Dec 10: Friday: 10 am, 3 pm

I will need your reply by November 9. A final email will be sent on November 10 that will confirm the meeting date.

Steve Hopkins, AICP
Planner
Lane County Land Management
125 E 8th Ave
Eugene, OR 97401
682-3159

From: Mona & Craig [monancraig@pacinfo.com]
Sent: Thursday, November 04, 2004 12:05 PM
To: HOPKINS Steve P
Cc: Martha F Johnson; Heather & Bob McCarthy
Subject: Re: Telecommunication ordinance

Steve: I see that Mr. Fowler can meet on Dec. 6 or 8th at 10:30 am. The 6th would be preferable for me, but my schedule appears to be open on the 8th also.

HOPKINS Steve P wrote:

You are receiving this message because you submitted testimony regarding Ordinance No. 17-04, the telecommunication ordinance for Lane County. At the direction of the County Commissioners, another public hearing will be conducted in February. Prior to that, people who submitted testimony are invited to attend a meeting to discuss three items in this ordinance. The purpose of this meeting is to reach a consensus regarding the listed items.

The items are:

- 1) Peer review
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I will need your reply by November 9. A final email will be sent on November 10 that will confirm the meeting date.

Steve Hopkins, AICP
Planner
Lane County Land Management
125 E 8th Ave
Eugene, OR 97401
682-3159

From: Mona & Craig [monancraig@pacinfo.com]
Sent: Sunday, November 07, 2004 12:04 PM
To: HOPKINS Steve P
Subject: Re: Telecommunication ordinance

Either the 12/6 or 12/8 is ok with Martha Johnson but she would prefer to start at 11:00 if that is possible.

Thanks, Mona Linstromberg

HOPKINS Steve P wrote:

You are receiving this message because you submitted testimony regarding Ordinance No. 17-04, the telecommunication ordinance for Lane County. At the direction of the County Commissioners, another public hearing will be conducted in February. Prior to that, people who submitted testimony are invited to attend a meeting to discuss three items in this ordinance. The purpose of this meeting is to reach a consensus regarding the listed items.

The items are:

- 1) Peer review
- 2) a new policy regarding "change outs"
- 3) separation distance from new towers and existing dwellings/schools.

In order to comply public notice deadlines and to rewrite the ordinance, the meeting will need to occur by the first full week of December so a revised ordinance can be submitted to the County Commissioners in February. The meeting will last for 2 hours or less. I will reserve a conference room at the Public Service Building, 125 E 8th street. Please choose a time that you are available and I will schedule a time that is convenient for the majority of people. These are the times available:

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Dec 7: Tuesday: 3 pm

Dec 8: Wednesday: 10 am, 3 pm

Dec 10: Friday: 10 am, 3 pm

I will need your reply by November 9. A final email will be sent on November 10 that will confirm the meeting date.

Steve Hopkins, AICP
Planner
Lane County Land Management
125 E 8th Ave
Eugene, OR 97401
682-3159

From: HOPKINS Steve P
Sent: Tuesday, November 16, 2004 11:23 AM
To: 'Mona & Craig'
Subject: RE: Lane County telecommunication ordinance

Heather is welcome to attend. You will need to give her the location and time of the meeting because I do not have her contact information.

—Original Message—

From: Mona & Craig [mailto:monancraig@pacinfo.com]
Sent: Friday, November 12, 2004 10:30 AM
To: HOPKINS Steve P
Cc: Martha F Johnson; Heather & Bob McCarthy; Ron Fowler; HOWE Kent; hopsbran@aol.com
Subject: Re: Lane County telecommunication ordinance

Steve:

Thank you for making the arrangements for this meeting. I would request that Heather Kent be included in this discussion as she did attend and speak at the public hearing before the Board. Although Heather did make comment on my behalf, she is on record in response to questions from the Board. Also, Nena Lovinger is tending an ill father and, I believe, Darlene is out of the state.

Also, although I realize we are working from the Lane Co. Teleocmm Ordinance revision, I do think it might be helpful for those attending to review one of the many ordinances our group has utilized in supporting our positions on the siting of transmission towers. This particular one is from Concord, MA (poputlation slightly over 15,000) and can be found at www.concordnet.org/dplm/zoning%20bylaw.html. pages 64-75. Mr. Fowler, this is also the ordinance we utilized in establishing a setback for the City of Eugene of 1000 from schools. In an e-mail with the Director of Planning, Marcia Rasmussen, she stated this setback was motivated by the attractive nuisance aspect of towers. In a neighboring community, a young man jumped to his death from a transmission tower. Peer review is also an important aspect of this bylaw. I have copies of all of this (and more) for our discussion on Dec. 6. I look forward to it.

Thank you, Mona Linstromberg

HOPKINS Steve P wrote:

The response from the group indicates that a majority of people want to meet on Monday (Dec 6) at 10 am. It will be in the County Commissioners conference room, the same room the hearing was in. There are three items that we will discuss:

- *peer review
- *a new policy for "changeouts"
- *the separation distance from new towers and existing dwellings

The purpose of the meeting is to make changes to the ordinance so that everyone in the group can recommend approval. Here is the ordinance we will be changing:

<<Telecommunication Amendment.doc>>

If you have specific language you would like included in the ordinance, feel free to email it to me.
The people invited to the meeting are:

- *Mona Linstromberg
- *Ron Fowler
- *Pat Evans
- *Paul Slotemaker
- *LeAndra Bell Matson
- *Nena Lovinger
- *Darlene Schanfald
- *Martha Johnson

If you are unable to attend the meeting, you can email your proposed changes. You can also call me at the number listed below.

Steve Hopkins, AICP
Planner
Lane County Land Management
125 E 8th Ave
Eugene, OR 97401
682-3159

From: Mona & Craig [monancraig@pacinfo]
Sent: Sunday, December 05, 2004 9:53 PM
To: HOPKINS Steve P; HOWE Kent; VORHES Stephen L
Subject: Lane Co. Telecomm revision

Greetings,

I had hoped to get this out to Mr. Fowler, too, for a bit of review before Monday's meeting. It would be appreciated if you could forward it to him. No doubt it will be too late, but I am hoping you will take the opportunity to read it as some of it is quite specific.

<Attachment>

MessageFrom: HOPKINS Steve P
Sent: Thursday, December 09, 2004 10:20 AM
To: 'Mona Linstromberg'
Subject: RE: Telecomm. Ord.

There will be another hearing before the county commissioners. The date has not been set, but it will be in February. There will be a notice in the Register Guard and I will notify the members of the group as soon as the date is set.

—Original Message—

From: Mona Linstromberg [mailto:monal@northbankcpa.com]
Sent: Thursday, December 09, 2004 10:12 AM
To: HOPKINS Steve P
Subject: Telecomm. Ord.

How will the County now proceed on this revision? Is there to be another public hearing before the Board or what and when?

Thanks , Mona Linstromberg

From: Mona & Craig [monancraig@pacinfo.com]
Sent: Sunday, January 30, 2005 8:58 PM
To: HOPKINS Steve P
Cc: HOWE Kent; Jeffery.Towery@co.lane.or.us;
Ollie.Snowden@co.lane.or.us; VORHES Stephen L; GREEN Bobby;
peter.sorenenson@co.lane.or.us; STEWART Faye H; DWYER Bill J; MORRISON
Anna M
Subject: Upcoming Lane Co. public hearing

Mr. Hopkins,

Just to let you know that you have your facts wrong. The City of Eugene recently amended its ordinance, and its provision on independent technical review was amended from "may" to "shall." This makes independent technical review mandatory and has actually has been implimented for about a year now. You will be receiving a packet of information from me with an actually review of a current application for 24th and Polk in Eugene.

And, yes, if the 1200 ft setback withstands a court challenge then independent technical review would not be as critical. However, since the County has never established in the "purpose" section of the Telecommunication Ordinance the basis for a setback provision, it is quite likely that this particular provision might not withstand a court challenge. If legal counsel had been proactive or Kent Howe had done his homework we could all feel more confident that the County would prevail on many different levels if challenged..

Regards,
Mona Linstromberg
87140 Territorial Rd.
Veneta, OR 97487

PS Thank you for notifying those persons on record as interested parties of the upcoming hearing (of course, you did not). I would be interested in knowing if you contacted Mr. Fowler or other industry representatives.

From: Mona & Craig [monancraig@pacinfo.com]
Sent: Sunday, January 30, 2005 9:51 PM
To: DWYER Bill J; GREEN Bobby; STEWART Faye H; SORENSON Peter; MORRISON Anna M
Cc: HOPKINS Steve P; HOWE Kent
Subject: Telecomm. public hearing

I had contacted staff, Steve Hopkins, in January asking the date of the public hearing. I was informed that it would be in February. I apologize for not getting the packet of information I am leaving for your review sooner. My experience with other jurisdictions is that if one is on record as an interested party, one receives notification of upcoming hearings. Having testified and submitted comment throughout this process, I made the obviously bad assumption I would have been notified.

Again, I apologize for not getting this to you sooner.

Mona Linstromberg
87140 Territorial Rd.
Veneta, OR 97487

**CLACKAMAS COUNTY
SECTION 800 - SPECIAL USE REQUIREMENTS**

835 WIRELESS TELECOMMUNICATION FACILITIES (6/6/02)

<u>835.01</u>	PURPOSE
<u>835.02</u>	APPLICABILITY
<u>835.03</u>	DEFINITIONS
<u>835.04</u>	PRIMARY USES
<u>835.05</u>	USES SUBJECT TO REVIEW BY THE PLANNING DIRECTOR
<u>835.06</u>	CONDITIONAL USES
<u>835.07</u>	COLLOCATION
<u>835.08</u>	CONDITIONAL STANDARDS
<u>835.09</u>	DIMENSIONAL STANDARDS.
<u>835.10</u>	SUBMITTAL REQUIREMENTS
<u>835.11</u>	ADJUSTMENTS
<u>835.12</u>	ABANDONMENT

835.01 PURPOSE

- A. This section is intended to bring this ordinance into compliance with the Federal Telecommunications Act of 1996;
- B. Enhance the provision of communication services to county residents, businesses and visitors;
- C. Protect the visual character of the county from the potential adverse effects of wireless communications facilities development;
- D. Encourage collocation of facilities to minimize the number of new facilities; and
- E. Ensure structural safety.

835.02 APPLICABILITY

All wireless telecommunication facilities are subject to the standards of this section, with the following exceptions:

- A. Existing wireless telecommunication facilities. Collocation on existing wireless telecommunication facilities is subject to the provisions of this section;
- B. Amateur (Ham) radio towers, citizen band transmitters and antennas;

- C. Wireless telecommunication facilities located in the Exclusive Farm Use District when the wireless telecommunication tower is less than or equal to 200 feet tall; and
- D. Towers located on lands wholly owned by any branch of the United States government.

835.03 DEFINITIONS

- A. Abandonment. Wireless telecommunication facilities will be considered abandoned when there has not been a carrier licensed or recognized by the Federal Communications Commission operating on the facility for a period of one year (365 consecutive days).
- B. Antenna. A transmitting or receiving device used in telecommunications that radiates or captures electromagnetic waves, including, but not limited to, directional antennas, such as panel and microwave dish antennas, and omni-directional antennas, such as whips.
- C. Collocation. The use of a single support structure by more than one wireless telecommunications provider.
- D. Essential Public Communication Services. Police, fire and other emergency communications networks.
- E. Equipment Shelter. A structure that houses power lines, cable, connectors and other equipment ancillary to the transmission and reception of telecommunications.
- F. Existing Wireless Telecommunication Facility. A wireless telecommunications tower, or other supporting structure, antenna and equipment structures that received land use approval prior to (date of adoption).
- G. Support Structure. A wireless telecommunication tower, building, or other structure that supports an antenna used for wireless telecommunications.
- H. Wireless Telecommunication Facility. An unmanned facility for the transmission of radio frequency (RF) signals, consisting of an equipment shelter, cabinet or other enclosed structure containing electronic equipment, a support structure, antennas or other transmission and reception devices.
Freestanding point-to-point microwave dishes, high power television and FM transmission facilities and AM facilities are not wireless telecommunication facilities.
- I. Wireless Telecommunication Tower. A freestanding support structure, including monopole and lattice tower, designed and constructed primarily to support antennas and transmitting and receiving equipment. Wireless telecommunication towers include:
 - 1. Lattice tower. A tower characterized by an open framework of lateral cross members which stabilize the tower; and
 - 2. Monopole. A single upright pole, engineered to be self-supporting, that does not require guy wires or lateral cross supports.
- J. Wireless Telecommunication Tower Height. The distance from the finished grade at the antenna tower base to the highest point of the tower, including the base pad, mounting structures and panel antennas, but not including lightning rods and whip antennas.

835.04 PRIMARY USES

- A. Collocation of antennas on a previously approved wireless telecommunication facility, provided:

1. Collocation proposals involving an existing wireless telecommunication facility must have an approved and implemented landscaping plan that is in compliance with Subsection 835.08(G);
 2. No increase in the height of the existing wireless telecommunication support structure is proposed;
 3. The proposed collocated antennas are no more than 20 feet higher than the existing support structure;
 4. All aspects of the collocation improvements must be located within the previously approved fenced (lease) area;
 5. The collocation improvements must satisfy the development standards for the underlying zone;
 6. The collocation may not involve the removal of any previously approved landscaping/buffering;
 7. The collocation does not propose the location of antennas on a wireless telecommunication tower within an urban residential zoning district, to include the Future Urbanizable (FU-10) 10 Acre District; and
 8. Collocations in commercial and industrial zones are not subject to Section 1102 (Design Review).
- B. Use of existing utility poles (electric, cable, telephone, etc.), within a public right-of-way, for the placement of wireless telecommunication facilities, provided the following requirements are satisfied:
1. If it is necessary to replace the existing pole with a pole that is suitable for wireless communication, the new pole shall be no taller than the pole that is being replaced; and
 2. Equipment shelters shall be consistent with Section 830, located on the pole and within the public right-of-way.
- C. Essential Public Communication Services. When these facilities are proposed in commercial, industrial, or multifamily zoning districts, they are subject to the Section 1102 (Design Review).

835.05 USES SUBJECT TO REVIEW BY THE PLANNING DIRECTOR

- A. The following uses may be approved by the Planning Director pursuant to Subsection 1305.02 when the applicant demonstrates compliance with Subsections 835.08 and 835.09 and Section 1000. Uses authorized under Subsection 835.05(A)(1) are also subject to Subsection 835.07.
1. Wireless telecommunication facilities on lands located within commercial and industrial zoning districts, except the Neighborhood Commercial zone;
 2. Collocation of facilities that exceed the limitations identified in Subsection 835.04(A). Collocations in commercial or industrial zones are not subject to Section 1102 (Design Review); and
 3. The use of a replacement utility pole (electric, cable, telephone, etc.), within a public right-of-way, for the placement of wireless telecommunication facilities when the height of the replacement pole exceeds the height of the pole being replaced by no more than 20 feet.

835.06 CONDITIONAL USES

- A. The following uses may be approved by the Hearings Officer when the applicant demonstrates compliance with Subsections 835.07, 835.08 and 835.09 and Sections 1000 and 1203:
 - 1. Wireless telecommunication facilities proposed in the Village Community Service District or on sites with a Comprehensive Plan designation of Residential, Rural Center, Rural or Forest; and
 - 2. Wireless telecommunication facilities in the Exclusive Farm Use District that include a tower over 200 feet in height.
- B. The Hearings Officer may require the applicant to provide information about possible alternate locations on the tract. The Hearings Officer may require placement of the tower in an alternate location on the tract if the Hearings Officer finds that the alternate location would result in greater compliance with the criteria in Section 1203 than the proposed site. In order to avoid relocating the proposed facility, the applicant must demonstrate that the necessary service cannot reasonably be provided from the alternate location.

835.07 COLLOCATION

No new tower will be permitted under the provisions of Subsections 835.05(A)(1) or 835.06 unless the applicant demonstrates to the satisfaction of the Planning Director or Hearings Officer, as applicable, that no existing tower or support structure can accommodate the applicant's proposed antenna. All proposals for new wireless telecommunication facilities must be accompanied by a statement from a qualified person, as determined by the Planning Director or Hearings Officer, that the necessary service cannot be provided by collocation for one or more of the following reasons:

- A. No existing towers or support structures, or approved but not yet constructed towers or support structures, are located within the geographic area required to meet the applicant's engineering requirements;
- B. Existing towers or support structures are not of sufficient height to meet the applicant's engineering requirements;
- C. Existing towers or support structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment;
- D. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing tower or support structure, or the existing antenna would cause interference with the applicant's proposed antenna; or
- E. The applicant demonstrates that there are other limiting factors that render existing towers and support structures unsuitable.

835.08 CONDITIONAL STANDARDS

- A. All wireless telecommunication towers proposed for location within the Portland metropolitan area urban growth boundary shall be of monopole type construction.
- B. All new wireless telecommunication towers shall be designed and built to accommodate collocation or additional loading. For the purposes of this provision, this means that the tower shall be designed specifically to accommodate no less than the following equipment, in addition to the applicant's proposed equipment:
 - 1. Twelve antennas with a float plate wind-loading of not less than four square feet per antenna;
 - 2. A standard mounting structure, stand off arms, platform or other similar structure designed to hold the antennas;
 - 3. Cable ports at the base and antenna levels of the tower; and
 - 4. Sufficient room within or on the tower for 12 runs of 7/8" coaxial cable from the base of the tower to the antennas.
- C. Wireless telecommunication towers shall be painted or coated in a manner that blends with the surrounding area. The finished coloring shall result in a non-reflective surface that makes the tower as visually unobtrusive as possible, unless state or federal regulations require different colors. Colors will be determined through the Design Review process.
- D. Equipment shelters may be painted or coated with a finish that best suits the operational needs of the facility, including the ability to reflect heat and to resist accumulations of dirt. Colors will be determined through the Design Review process. If, through the Design Review process, it is determined that there is a conflict between acceptable colors and the operational needs of the facility, Design Review may require the use of architectural screen panels.
- E. No lighting shall be permitted on a tower, except as required by state or federal regulations. If required, the light shall be shielded or deflected from the ground and other properties, to the extent practicable.
- F. The wireless telecommunication facility shall be located within an area that is enclosed on all sides. The enclosure must be at least six feet tall and sight obscuring.
- G. Landscaping shall be placed outside of the enclosed area and shall consist of the following:
 - 1. A combination of landscaping materials that includes ground cover, shrubs and trees that are reflective of the natural surrounding vegetation in the area, as determined through the Design Review process;
 - 2. Existing landscaping/vegetation may be used to satisfy the above requirements;
 - 3. Through the Design Review process, applications shall be reviewed for consistency with Subsection 1009.10; and
 - 4. In cases where a portion of the wireless telecommunication facility is screened from points off-site by a building that is at least eight feet tall, the landscaping requirements of this subsection will not be required for the screened area.
- H. Applications reviewed under Subsections 835.05(A)(1) and (3) and 835.06 are subject to Section 1102 (Design Review).
- I. Equipment shelters shall be entirely enclosed. Equipment shelter exterior materials shall be those approved through the Design Review process.

- J. Noise generated by the wireless telecommunication facility shall not exceed the levels established by the State of Oregon, Department of Environmental Quality (DEQ). If properties adjacent to the property upon which the wireless telecommunication facility is proposed have a lower DEQ standard than the proposed site, the lower standard shall be applicable.
- K. Maintenance of the lease area is the responsibility of the owner/operator of the wireless telecommunication facility. The owner operator shall prevent the facility from entering into a state of disrepair due to negligence, vandalism, natural hazard, or any other source. This requirement places the responsibility for maintenance on the owner/operator and is, otherwise, consistent with the requirements of Subsection 1102.09.

835.09 DIMENSIONAL STANDARDS.

- A. Lands within the Portland metropolitan area urban growth boundary and lands zoned HR, RR, MRR and RTC:
 - 1. Wireless telecommunication tower maximum height: 100 feet.
 - 2. Minimum tower separation: 1000 feet.
 - 3. Setbacks: Must satisfy setbacks of the zone. Additionally, the wireless telecommunication tower shall be set back a distance not less than its height from all property lines.
- B. Lands with a Comprehensive Plan designation of Rural Center, Rural Commercial, Rural Industrial or Rural (except lands zoned RR):
 - 1. Wireless telecommunication tower maximum height: 150 feet.
 - 2. Minimum tower separation: 2000 feet.
 - 3. Setbacks: Same as 835.09(A)(3).
- C. Lands with a Comprehensive Plan designation of Forest or Agriculture:
 - 1. Wireless telecommunication tower maximum height: 250 feet.
 - 2. Minimum tower separation: 2640 feet.
 - 3. Setbacks: Same as 835.09(A)(3).

835.10 SUBMITTAL REQUIREMENTS

- A. Uses authorized under Subsection 835.04 (Primary Uses):
 - 1. Building permit application accompanied by information demonstrating compliance with Subsections 835.04(A)(1) through (6) or (B)(1) and (2).
- B. Uses reviewed under Subsection 835.05 (Uses Subject to Review by the Planning Director):
 - 1. Planning Division land use application form;
 - 2. Planning Division supplemental application form;
 - 3. A site plan, drawn to scale, that includes:
 - a. existing and proposed improvements;
 - b. adjacent roads;

- c. parking, circulation and access;
- d. areas of existing and proposed vegetation to be added, retained, replaced, or removed; and
- e. setbacks from property lines of all existing and proposed structures. If an adjustment is requested, the plan must identify the distance from the wireless telecommunication tower to residences and other structures offsite that are within a distance not less than the height of the tower from the proposed location of the tower.

Plans that have been reduced, but have not had their scale adjusted, will not be accepted as satisfying this submittal requirement;

- 4. A vicinity map showing adjacent properties, land uses, zoning and roadways within 500 feet of the proposed antenna site;
 - 5. Elevations showing antennas, towers, equipment shelters, area enclosure and other improvements related to the facility;
 - 6. Color simulations of the site after construction of the antenna for all new antennas;
 - 7. An accurate graphic (map) inventory of existing wireless telecommunication facilities within one mile of the property under consideration; and
 - 8. An alternatives analysis demonstrating compliance with Subsection 835.07.
- C. Uses subject to review under Subsection 835.06 (Conditional Uses):
- 1. Requirements listed under Subsections 835.10(B)(1) through (8); and
 - 2. Requirements listed in Subsection 1203.04. (6/6/02)

835.11 ADJUSTMENTS

- A. Adjustments to the standards of this section may be approved by the Hearings Officer. The Hearings Officer may grant an adjustment under either of the following circumstances:
- 1. The Hearings Officer may grant an adjustment when a gap in the applicant's service exists and that gap can only be alleviated through the adjustment of one or more of the standards of this section. If an adjustment is to be approved, the applicant must demonstrate the following:
 - a. A gap in coverage or capacity exists in the wireless telecommunication provider's service network that results in network users being regularly unable to connect with the provider's network, or maintain connection;
 - b. The proposed facility will fill the existing service gap. The gap would be filled if the proposed facility would substantially reduce the frequency with which users of the network are unable to connect, or maintain connection, with the provider's network; and
 - c. The gap cannot be filled through collocation on existing facilities, or establishment of facilities that are consistent with the standards of this section on properties other than the proposed site or on the proposed site in a manner which does not require an adjustment under this subsection.

2. The Hearings Officer may grant an adjustment to a standard when the proposed adjustment would utilize existing site characteristics to minimize demonstrated or potential impacts on the use of surrounding properties. For the purposes of this subsection, site characteristics shall include, but need not be limited to, those identified in Subsection 1203.01(B). Applicants for an adjustment under this provision must demonstrate that the adjustment will result in a lower level of impact on surrounding properties than would be generated if the standard were not adjusted. In considering the requested adjustment, the Hearings Officer may consider the following:
 - a. Visual impacts;
 - b. Impacts on view;
 - c. Impacts on property values; and
 - d. Other impacts that the Hearings Officer finds can be mitigated by an adjustment so that greater compliance with Subsection 1203.01(D) occurs.
- B. Requests for adjustment under this subsection shall be considered part of the application to establish a wireless telecommunication facility, not a separate application. All applications that propose an adjustment must be reviewed by the Hearings Officer pursuant to Section 1300.

835.12 ABANDONMENT

- A. Determination of abandonment will be made by the Planning Director, who shall have the right to demand documentation from the facility owner regarding the tower or antenna use.
- B. Upon determination of abandonment, the facility owner shall have 60 calendar days to:
 1. Reuse the facility or transfer the facility to another owner who will reuse it within 60 calendar days of the determination of abandonment; or
 2. Remove the facility.
- C. If the facility is not reused within 60 calendar days of the determination of abandonment, county authorization for the use shall expire. Once authorization for the use has expired, the facility operator shall remove the facility from the property within 90 calendar days. If the facility operator does not remove the facility within 90 calendar days, the county may remove the facility at the expense of the facility operator, or, in the alternative, at the property owner's expense.

(LAST TEXT REVISION 6/6/02)

CHAPTER 120¹
SPECIFIC CONDITIONAL USES
MARION COUNTY

120.080 WIRELESS COMMUNICATION FACILITIES. A wireless communication facility shall meet the following use and development standards.

(a) In addition to the standard application materials, any request for a wireless communication facility shall include the following items:

(1) Eight photo simulations of the proposed facility and equipment enclosure as viewed from affected residential properties and public right-of-ways at varying distances at locations within a 1,000 foot radius of the proposed facility that are agreed upon by planning staff and the applicant prior to filing the application.

(2) Map showing the location and service area of the proposed wireless communication facility and an explanation of the need for that facility.

(3) Map showing the locations and service areas of other wireless communication facilities/sites operated and proposed by the applicant that are close enough to affect service.

(4) Site/landscaping plan; showing the specific placement of the wireless communication facility on the site; showing the location of existing structures, trees, and other significant site features; showing type and locations of proposed screening; and the proposed color(s) for the wireless communication facility and equipment enclosure.

(5) Signed agreement providing that the applicant shall remove the facility and equipment enclosure within 6 months of the date it ceases to be operational.

(6) Lease agreement with the landowner or contract purchaser that allows the landowner or contract purchaser to enter into leases with other providers; and specifies that if the provider fails to remove the facility and equipment enclosure within 6 months of the date it ceases to be operational, the responsibility for removal falls upon the landowner or contract purchaser.

(7) Anticipated capacity of the wireless communication facility (including number and types of antennae which can be accommodated); and the number of additional wireless communication facilities attached that may be co-located on the proposed tower.

(8) Evaluation of the feasibility of co-location of the subject facility as an alternative to the requested permit. The feasibility study must include:

A. Written verification or other documentation revealing the availability and/or cooperation shown by other providers to gain access to existing sites/facilities to meet the needs of the applicant.

B. Compliance with the requirements of (8)A above may be demonstrated by providing evidence of mailing the following co-location request letter to all other wireless providers licensed to provide service within the county:

¹ These regulations are also found in Chapter 125 "Limited Uses" of the Marion County Code.

"Pursuant to the requirements of Section 120.080 (8)A, (wireless provider) is hereby providing you with notice of our intent to make application with Marion County to locate a freestanding wireless communication facility that would be located at _____. In general, we plan to construct a support structure of ____ feet in height for the purpose of providing (cellular, PCS, etc.) service.

Please inform us whether you have any wireless facilities located within (distance) of the proposed facility, that may be available for possible co-location opportunities. Please provide us with this information within 15 business days after the date of this letter. Your cooperation is appreciated."

C. Tower type and height of potential co-location facilities.

D. Specific reasons why co-location is or is not feasible. Reasons may include but are not limited to the following:

1. A statement from a qualified radio engineer indicating whether the necessary service can or cannot be provided by co-location at the identified site(s) by the other provider(s).

2. Evidence that the lessor of the site(s) identified by the other provider(s) either agrees or disagrees to co-location on their property

3. Evidence that adequate site area exists or does not exist at the site(s) identified by the other provider(s) to accommodate needed equipment and meet all of the site development standards.

(9) A narrative discussion of how the proposed facility and equipment enclosure complies with applicable use and development standards.

(b) Notwithstanding other height limitations in this ordinance all lattice, monopole, guyed or other freestanding support structures, including antennae, shall have the following height limitations above natural grade:

- (1) In the IP, IC, IUC, CC, and CG zones 130 feet.

- (2) In the AR and CR zones 100 feet.

(c) Only monopole freestanding support structures shall be allowed in the AR, CR and CG zones.

(d) Lattice, monopole, guyed or other freestanding support structures, antennae, associated enclosures and all exterior mechanical equipment, shall be surfaced so as to be nonreflective. For purposes of this requirement a galvanized metal monopole shall be considered nonreflective.

(e) In the AR and CO zones a wireless communication facility, including equipment enclosure, shall be screened by a sight obscuring fence, wall or hedge of equal or greater height than the equipment enclosure.

(f) Notwithstanding other setback standards in this ordinance the exterior base of a lattice, monopole, guyed or other freestanding support structure shall be separated from all dwellings and residential accessory structures, not located on the subject property, and residential zones

boundaries (including the AR and CO zones) by a distance equal to one (1) foot greater than the total height of the support structure and antennae. A freestanding support structure may be placed closer to a residential zone boundary (including the AR and CO zones) where it is demonstrated that location of the proposed facility closer to the boundary will take advantage of an existing natural or artificial feature to conceal the facility or minimize its visual impacts.

(g) Lattice, monopole, guyed or other freestanding support structures, antennae and associated enclosures and all exterior mechanical equipment shall not be illuminated except as required by the Oregon State Aeronautics Division or the Federal Aviation Administration.

(h) Lattice, monopole, guyed or other freestanding support structures up to 70 feet in height shall have provisions that will allow for co-location of at least one (1) additional user or wireless communication provider. Support structures exceeding 70 feet in height shall have provisions that will allow for co-location of at least two (2) additional users or wireless communication providers.

(i) A permittee shall cooperate with other wireless communication providers and others in co-locating additional antennae on support structures. A permittee shall exercise good faith in co-locating with other providers and sharing the permitted site, provided shared use does not result in substantial technical impairment of the ability to provide the permitted use (i.e., a significant interference in broadcast or reception capabilities as opposed to a competitive conflict or financial burden). Good faith shall include sharing technical information sufficient to evaluate the feasibility of colocation. In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the county may require a third party technical study at the expense of either or both the applicant and permittee.

(j) Failure to comply with the co-location requirements of this section may result in the denial of a permit request or revocation of an existing permit.

(k) Lattice, monopole, guyed or other freestanding support structures and equipment enclosures shall be removed by the facility owner or property owner within 6 months of the date it ceases to be operational.

ATTACHMENT #6

**Washington County
Telecommunication Ordinance**

16 pages

430-109 Receiving and Transmitting Antennas and Communication Towers

430-109.1 As used in this section, the words listed below have the following meaning:

- A. Antenna A device commonly in the form of a metal rod, wire panel or dish, for transmitting or receiving electromagnetic radiation, digital signals, analog signals, radio frequencies, wireless telecommunication signals, broadcast signals, and other communication signals. Accessory equipment and shelters needed for the use of the antenna shall be included in the term antenna.
- B. Non-residential Districts Includes the NC, OC, CBD, GC, IND, INS, SID, TO:RC, TO:EMP, TO:BUS, EFU, EFC, AF-20, R-COM, R-IND and MAE Land Use Districts.
- C. Residential Districts Includes the R-5, R-6, R-9, R-15, R-24, R-25+, FD-10, TO:R9-12, TO:R12-18, TO:R18-24, TO:R24-40, TO:R40-80, TO:R80-120, AF-5, AF-10 and RR-5 Land Use Districts.

430-109.2 The following are exempt from the regulations of this section:

- A. Emergency or routine repairs or maintenance of lawfully established communication towers or antennas;
- B. Reconstruction or replacement of transmitters, antennas, or other components of antennas or communication towers; approved subject to the provisions of Ordinance 402; subject to the following:
 - (1) Does not increase the height or bulk of the existing tower or structure as originally approved or constructed;
 - (2) Does not reduce existing landscape buffers unless replaced with vegetation with the same effect;
 - (3) Does not use colors or lights that make the tower or antenna more visually obtrusive; and
 - (4) Does not result in an increase in radio frequency emissions.

Reconstruction or replacement of transmitters, antennas or other components of nonconforming antennas or communication towers is subject to the provisions of Section 440, Nonconforming Uses, and applicable provisions of 430-109 as required by Section 440;

- C. Industrial, scientific and medical equipment as regulated by the Federal Communications Commission in 47 CFR Part 18;
- D. Military and government radar antennas and associated communication towers used for navigational purposes as regulated by 47 CFR Part 87;
- E. Amateur (ham) and citizen band transmitting and receiving antennas and associated communication towers, as regulated by 47 CFR Parts 97 and 95 respectively (see Sections 201-2 and 430-1 for applicable standards);

- F. A transmitting antenna and associated communication tower as a temporary use - Section 430-135.1 H.;
- G. Radio transceivers normally hand-held or installed in a vehicle, such as an automobile, truck, trailer, watercraft, or aircraft, including cellular phone or mobile broadcast studio;
- H. A radio frequency machine which is designated and marketed as a consumer product, such as microwave ovens and radio control toys; or is in storage, shipment, or on display for sale, provided such machines are not operated except for demonstration purposes;
- I. Receive-only satellite dishes and other antennas for reception of broadcast signals, as an accessory use (see Sections 201-2 and 430-1 for applicable standards); and
- J. Pole-mounted receiving and transmitting antennas located within a public road right-of-way, as provided in Section 201-2.

430-109.3 Facility Siting Requirements for Type II and III Applications:

- A. Receiving and transmitting antennas and communication towers shall be designed and located so as to minimize their visual impacts and minimize the number of new communication towers. New antennas and communication towers shall be sited using the hierarchy described below. The order of ranking by Facility Type, from highest to lowest, shall be 1, 2, 3, 4. When a lower ranked facility type is proposed (e.g., 4), the applicant shall submit documentation which demonstrates that the higher ranked facility type(s) are not technically feasible, available, or reasonably practicable.
 - (1) Facility Type 1: Co-location. Co-location means the placement of two or more antenna systems and accessory equipment facilities by separate FCC license holders (service providers) on an existing structure such as a tower or the placement of one or more antenna systems and accessory equipment facilities on a structure such as a building, water tank or utility pole.
 - (2) Facility Type 2: Concealment. Concealment means to:
 - (a) Hide an antenna in a structure so that it is not visible, such as hiding an antenna behind a building parapet, under the eave of a building, or hiding an antenna through the use of innovative technology referred to as "stealth;" or
 - (b) Disguise an antenna and/or communication tower by designing the facility to resemble a natural or man-made object that is or would be commonly found on the site or in the surrounding area based upon the site's land use designation. Examples of disguised facilities include facilities designed to resemble an indigenous evergreen tree, rock feature, building architectural feature (e.g., clock or bell tower, parapet), flag pole, or light pole.

- (3) Facility Type 3: Screening of New Communications Towers. Screening means to use existing evergreen vegetation, topography, and/or buildings to substantially screen the proposed antenna and/or communication tower from view and cause the facility to be visibly subordinate to the surrounding area. Screened facilities may be partially visible, but not visually dominate in relation to their surroundings. The height of the existing trees, buildings or topography that is used as screening shall be at least seventy (70) percent of the height of the tower.
- (4) Facility Type 4: New communication towers without screening (i.e., Facility Type 3) or concealment (i.e., Facility Type 2).

B. Alternative Sites

Applications for a new antenna and/or tower, excluding the replacement of an approved, conforming tower or co-located antennas (i.e., Facility Type 1 applications), shall include documentation which demonstrates the following:

- (1) That other existing or approved communication towers and other existing or approved structures cannot accommodate the antenna(s) planned for the new tower. Proposed antenna(s) cannot be accommodated on another existing or approved tower or other structure if:
 - (a) The antenna(s) would exceed the structural capacity of existing and approved towers, considering their existing and planned use;
 - (b) The antenna(s) would cause RF interference with other existing or approved antennas, and that interference cannot be prevented at reasonable cost;
 - (c) Existing or approved towers or other structures do not have space on which the proposed antenna(s) can be placed so that it will fulfill the purpose for which it is intended;
 - (d) The proposed antenna(s) cannot function effectively given the communication services to be provided and the user group or area it is intended to serve; or
 - (e) Addition of the proposed antenna(s) to an existing tower or structure would cause radio frequency emissions in excess of the levels allowed by Table B or in excess of 1,000 watts ERP total output power.
- (2) Use of an existing or approved tower or structure is not precluded simply because a reasonable fee is charged for use of the tower or structure or because of reasonable costs necessary to adapt the existing and proposed antenna(s).

C. Communication Tower Sharing

- (1) A new communication tower, or a proposed tower that will replace an existing, nonconforming tower, shall be designed and constructed to

accommodate shared use by two or more antenna systems by separate service providers in a manner that will accommodate the additional antennas without the need to increase the height or footprint of the tower.

- (2) A tower subject to this subsection shall describe the nature and approximate number of antennas that can be accommodated on the new tower.
- (3) A tower subject to this subsection may be approved only subject to a condition that the applicant negotiate in a timely manner and in good faith for shared use of the tower by third parties and allow shared use of the tower if the third party agrees in writing to pay a reasonable pro rata charge for sharing, including all charges necessary to modify the tower to accommodate shared use and to observe technical requirements warranted to avoid radio frequency interference. An applicant will not be required to permit shared use of any unused tower capacity that the applicant demonstrates is needed for the applicant's future system expansion or modification plans. This condition shall run with the land and be binding on subsequent purchasers of the tower site. Failure to comply with this condition shall be grounds for revocation of the permit for the tower.

430-109.4 Application Requirements:

In addition to the requirements of Section 203-4, an application for a communication tower or antenna shall contain the following information:

- A. An accurate and to-scale site plan showing the location of the tower(s), guy anchors (if any), antennas, transmitter building and other uses accessory to the communication tower or antenna;
- B. An engineering report from one or more licensed professional engineers that addresses the requirements described below. The report shall be accepted as complete by the Director prior to the submission of an application for a new antenna or tower. The Director may require an outside peer review of the report by an engineer selected by the Director to assist staff determine the report's completeness. The applicant shall be responsible for the cost of this review.

Engineering Report Requirements:

(1) Communication Tower Design

- (a) Tower height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design. A cross-section of the tower structure shall be included;
- (b) Total anticipated capacity of the structure, including number and types of antennas which can be accommodated, including antennas that can be co-located on the tower;
- (c) Evidence of structural integrity of the tower structure as required by the Building Official;

- (d) Failure characteristics of the tower and documentation that site and setbacks are of adequate size to contain debris; and
 - (e) Ice hazards and mitigation measures, which have been employed, including increased setbacks and/or de-icing equipment.
- (2) Communication Antenna Design (For Each Antenna)
- (a) Antenna height above ground, design, dimensions, wind load rating, gain and radiation pattern;
 - (b) Failure characteristics of the antenna and documentation that the site and setbacks are of adequate size to contain debris; and
 - (c) Ice hazards and mitigation measures, which can be employed, including increased setbacks and/or deicing equipment.
- (3) Compliance with the NIER emission standards of 430-109.6 E., except as exempted therein. Documentation shall be prepared by a professional engineer licensed in the State of Oregon to address these emission standards.
- (4) Compliance with applicable DEQ noise standards if the installation contains heating, cooling, electrical generating or other equipment likely to produce noise.
- (5) Compliance with the requirements of Section 430-109.3 A. and B., 430-109.6 A.(4), 430-109.6B., 430-109.6E., 430-109.6F.(4), and 430-109.7.
- (6) When applicable in the rural area, compliance with ORS 215.275 and OAR 660-33 (utility facilities necessary for public service), including the required technical analysis.
- C. Agency coordination statements required by 430-109.6 F.(2) or evidence of a good faith, timely effort to achieve such responses.
- D. Proof of liability insurance coverage for the proposed communication tower or antenna. Such proof shall be submitted prior to issuance of a building permit. Liability insurance shall be maintained until the tower or antenna is dismantled. Failure to maintain insurance coverage shall constitute a violation of this Code.
- E. When applicable, a copy of a signed contractual agreement, excluding financial information, between the tower provider and a telecommunications service provider to provide wireless service on the proposed tower.

430-109.5 Standards for Type I, II and III Applications:

- A. New towers, except those approved as a Facility Type 2, shall be painted or otherwise coated in a manner that blends in with the surrounding area in order to minimize visual impact. The finish color shall result in a non-reflective surface that makes the tower as visually unobtrusive as possible, unless state or federal regulations require different colors. If there is heavy vegetation in the immediate

area, the tower shall be painted or finished from base to treeline to blend with the surrounding vegetation;

- B. New towers shall be illuminated as required by the Oregon Department of Aviation or FAA. However, no lighting shall be incorporated if not required by the Oregon Department of Aviation, FAA or other responsible agency;
- C. The property owner shall execute and record a restrictive covenant which sets forth the requirements of Section 430-109.9. The covenant shall specifically include the following language: "In the event the antenna(s) and/or tower are not removed and the site restored within the time period specified in Section 430-109.9, Washington County may remove the facilities and restore the site pursuant to Section 430-109.9. Washington County's costs to remove the facilities and restore the site shall be a lien on the property of the owner."

A copy of the recorded covenant shall be provided to the Director prior to the issuance of a building permit, or when required, final land use approval of the antenna and/or tower. The restrictive covenant shall not be modified or released without the written signature of the Director.

- D. A speculation ("spec") tower is prohibited in all land use districts. A speculation tower is a tower for the purpose of providing location mounts for wireless communications facilities without a binding contractual commitment by a service provider to locate an antenna upon the tower at time of application submittal.

430-109.6 Site-Specific Standards for Type II and III Applications:

A. General Criteria

- (1) Arrange structures and use areas to minimize impacts on adjacent developments and surrounding land uses;
- (2) Locate and design structures and uses to preserve, to the greatest extent possible, scenic views or vistas identified in the applicable community plan and viewable from adjacent properties or public thoroughfares, by considering setbacks, building height, bulk and landscaping;
- (3) Orient major service activity areas (e.g., loading and delivery areas) of the proposed development, if any, away from existing dwellings; and
- (4) Placement of more than one tower on a non-residential lot shall be permitted, provided all applicable regulations are met. Structures may be located as close to each other as technically feasible, provided failure characteristics of the towers on the site will minimize the potential for multiple failures in the event that one fails.

B. Setbacks

Notwithstanding the setback provisions of the individual land use districts, the setback provisions in Table A shall be applied to communication towers and antennas, except for antennas that are incorporated in or on an existing building and are hidden or disguised as a Facility Type 2.

C. Access

In residential districts, when a site abuts a local street and a collector or an arterial, new access to the site shall be from the collector or arterial when there is compliance with applicable County transportation standards, including the requirements of Section 501-5.3 and the Washington County Uniform Road Improvement Design Standards. Access shall be taken from the local street when access to a collector or arterial cannot meet the applicable transportation standards.

D. Landscaping, Screening and Fencing

- (1) Landscaping, screening and buffering shall be provided as required by Sections 407 and 411. However, in no case shall the screening and buffering within or adjacent to a residential district be less than Section 411-6.3. Tree and shrub species shall be selected so as to achieve the maximum screening effect without interfering with transmitted signals;
- (2) Native vegetation on the site shall be preserved to the greatest practical extent. The applicant shall provide a site plan showing existing significant vegetation to be removed (as defined in Section 407-6.2 B.) and vegetation to be replanted to replace that lost;
- (3) Notwithstanding the requirements of Section 411, trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted;
- (4) The base of a communication tower and any guy anchors shall be fenced or otherwise designed to prevent access by unauthorized personnel; and
- (5) In lieu of the preceding standards, the approval authority may allow use of an alternate detailed plan and specifications for landscape and screening, including plantings, fences, walls and other features designed to screen and buffer towers and accessory uses. The plan shall accomplish the same degree of screening achieved in (1), (2), (3), and (4) above, except as lesser requirements are desirable for adequate visibility for security purposes and for continued operation of existing bona fide agricultural or forest uses, including but not limited to produce farms, nurseries, and tree farms.

E. Radio Frequency Emissions

- (1) A transmitting antenna shall not exceed or cause other facilities to exceed the radio frequency emission standards specified in Table B.
- (2) A transmitting antenna that operates at less than 1000 watts ERP and that complies with the minimum siting distance to habitable structures shown in Table C is conclusively presumed to comply with the emission standards in Table B.

- (3) Unless the proposed antenna complies as outlined in (2) above, an application for a transmitting antenna subject to Section 430-109.6 E. shall include a scaled map and exhibits showing:
 - (a) Horizontal and radial distance from the proposed antenna to the nearest point on the property line; the nearest habitable structure regularly occupied by people other than those residing or working on the property; the nearest publicly accessible spaces, such as parks and playgrounds; and the point(s) off the property with the highest calculated radio frequency emission level(s) and the elevation above sea level at those points.
 - (b) Ambient radio frequency emission levels in the frequency range of the proposed antenna measured at the points identified above.
 - (c) Calculated radio frequency emission levels after establishment of the proposed antenna(s) at the points identified above. Radio frequency emission level calculations shall be consistent with FCC Office of Science and Technology Bulletin 65 or other engineering practices recognized by the FCC, EPA, NCRP, ANSI, or similar organization.
- (4) If the calculated radio frequency emission level at any point identified in section 430-109.6 E. (3)(a) is more than one-third the maximum radio frequency emission level permitted under Table B, then the antenna may only be approved subject to a condition that the applicant measure the radio frequency emission level at those points after the antenna is established, and that such measurements show the radio frequency emission level complies with Table B. Additional radio frequency emission tests shall be conducted every two (2) years thereafter.
- (5) Radio frequency emission measurements.
 - (a) Radio frequency emission measurements required in Section 430-109.6 E. shall be made by a licensed professional engineer with an FCC General Radio-Telephone License.
 - (b) Measurement shall comply with the latest version of American National Standards Institute (ANSI) Standard C95.3 Techniques and Instrumentation for the Measurement of Potentially Hazardous Electromagnetic Radiation at Microwave Frequencies, or with similar methods considered appropriate by the engineer and shall employ spatial averaging procedures.
 - (c) For all radio frequency emission measurements made to ensure compliance with this section, evidence must be submitted showing that the instrument or instruments used were calibrated within the manufacturer's suggested periodic calibration interval, and that the calibration is by methods traceable to the National Bureau of Standards. A letter must also be submitted verifying the accuracy of the results of the measurements and stating that the measurements were made in accordance with good engineering practices.

- (d) Measurements shall be made when radio frequency emission levels are reasonably expected to be highest due to operating and environmental characteristics.
 - (e) The effect of contributing sources of radio frequency emissions below the lower frequency limit of a broadband measuring instrument may be included by separate measurement of these sources with a narrow band measuring instrument. Radio frequency emission levels of less than 20 microwatts per square centimeter or the minimum sensitivity of the instrument, whichever is less, shall be treated as zero.
- (6) Measurements and calculations shall be certified by the person responsible for them and shall be accompanied by an explanation of the protocol, methods, equipment, and assumptions used. The certification shall include an affidavit stating the qualifications of the person responsible for the measurements and calculations. If deemed necessary by the Director, the County may retain the services of an independent RF emissions expert to review the calculations and any subsequent RF emission measurements submitted by the applicant. The services of the independent expert shall be paid for by the applicant.
- (7) If the federal or state government adopts mandatory or advisory radio frequency emission standards more stringent than those described in this section, the Director shall prepare a report and recommendation to the Planning Commission and Board of County Commissioners to bring the County standards into compliance with those state or federal standards within a reasonable period of time after the date the new standards are effective.

F. Other Provisions

- (1) **Signs.** Notwithstanding the provisions of Section 414, all communication towers and antennas, which are not located at the user's place of business or operation, shall be identified with a sign not exceeding four (4) square feet. The sign shall list the owner or operator's name and emergency telephone number and shall be posted in a conspicuous place visible to the general public. Other signs may be located on the site as allowed by the underlying land use district.
- (2) **Agency Coordination.** The applicant shall provide the following information in writing from the appropriate responsible official:
- (a) A statement from the Federal Aviation Administration that the application has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulations, or a statement that no compliance with Part 77 is required.
 - (b) A statement from the Oregon Department of Aviation that the application has been found to comply with the applicable regulations of the Division, or a statement that no such compliance is required.

- (c) A statement from the Federal Communications Commission that the application complies with the regulations of the Commission or a statement that no such compliance is necessary.
 - (d) The statements in (a) through (c) shall be waived when the applicant demonstrates that a good faith, timely effort was made to obtain such responses but that no such response was forthcoming, provided the applicant conveys any response received; and further provided any subsequent response that is received is conveyed to the approval authority as soon as possible.
- (3) If the installation contains heating, cooling, electrical generating or other equipment likely to produce high noise levels, the operator shall submit appropriate evidence prepared by qualified personnel documenting that the operation complies with applicable DEQ noise standards. Such evidence shall be submitted within forty-five (45) days after the date the equipment commences operation.
 - (4) The applicant shall submit a statement describing the nature and extent of any interference which may be associated with the proposed communication tower and/or antenna and describing the applicant's responsibilities under federal regulations.
 - (5) If deemed necessary by the Director, the County may retain the services of an independent expert to review the completed engineering report(s) submitted under Section 430-109.4 B. to assist staff determine compliance with the requirements of Sections 430-109.3 A. and B., 430-109.4 B. (6), and 430-109.7 A. The applicant shall be responsible for the cost of this review.

430-109.7 Additional Standards for Type II and III Applications in Residential Districts

A. Standards Applicable to Type II and III Applications

- (1) If a communication tower or antenna is proposed, other than as a replacement for an approved, conforming tower or antenna or co-located antennas (i.e., Facility Type 1 applications), the applicant shall submit documentation to show that the tower or antenna cannot be sited in a non-residential district. The proposed facilities cannot be sited in a non-residential district if:
 - (a) Sites in non-residential districts would not accommodate the proposed antenna(s) or the communication tower associated with the antenna(s) considering the site size needed for the tower, topography and other physical characteristics of possible alternative sites, and the communication services to be provided by the proposed antenna(s);
 - (b) The tower or antenna(s) would pose a hazard to aircraft as an obstacle or source of adverse electromagnetic interference; and

- (c) The proposed antenna(s) cannot function effectively given the communication services to be provided and the user group or area it is intended to serve.

(2) Maximum Height

Transmitting and receiving antennas and communication towers shall be no higher than necessary to provide adequate communications for immediate and future planned use, and shall be freestanding where the negative visual effect is less than would be created by use of a guyed tower.

(3) Clustering

- (a) New communication towers and antennas may not be sited in a residential district within 1,000 feet of any existing nonexempt communication tower and/or antenna. This restriction does not apply to the siting of new antennas on existing communication towers.
- (b) If a new communication tower and/or antenna is proposed to be sited in a residential district, the applicant shall submit evidence that there are no existing nonexempt communication towers and/or antennas located within 1,000 feet of the proposed facility. The 1,000 foot radius shall be measured from the center of the footprints of any existing and the proposed towers and/or antennas, not from property lines or guy wire anchors.

B. Standards Applicable to Type III Applications

The tower/antenna shall be located and designed to minimize obstruction or degradation of views and vistas not identified in the Community Plans or the Rural/Natural Resource Plan by considering setbacks, building heights, bulk and landscaping.

430-109.8 No source of non-ionizing electromagnetic radiation, including facilities operational before the effective date of these regulations, shall exceed the RF emission standards specified in Section 430-109.6 E., Table B.

430-109.9 Abandonment

- A. Wireless telecommunication facilities shall be considered abandoned when there has not been a licensed service provider operating from the site facility for a period of one year. Within ninety (90) days of abandonment, the service provider shall remove all facilities from the site and restore the site to its previous condition. In the event the communication facilities are not removed within this time period, Washington County may remove the facilities and restore the site and assess the cost for such actions against the last service provider using the facilities, the owner of the facilities and the property owner.
- B. If any abandoned facilities have not been removed from a site, no new communication facility in unincorporated Washington County shall be approved for the service provider or property owner.

- C. The property owner and service provider shall annually provide the Director with written documentation verifying that the antenna(s) continue to operate in accordance with the requirements of Section 430-109, all conditions of approval and all applicable state and federal regulations.

Figure 1.

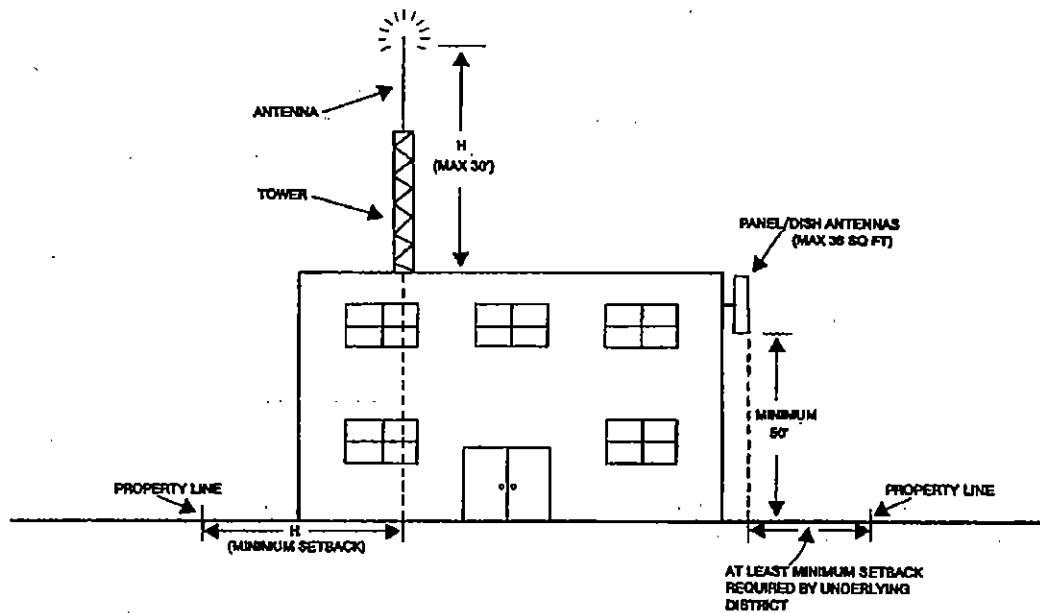


Figure 2.

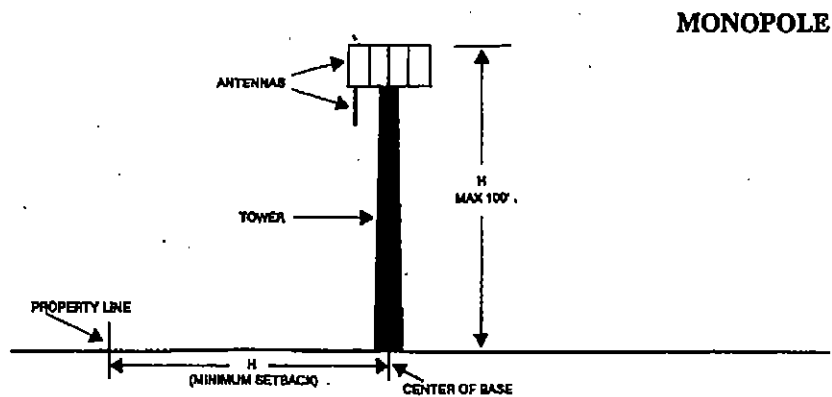
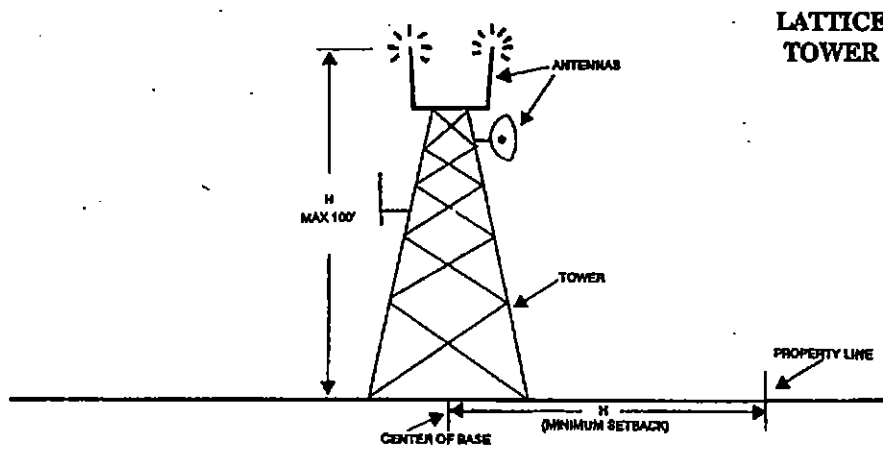
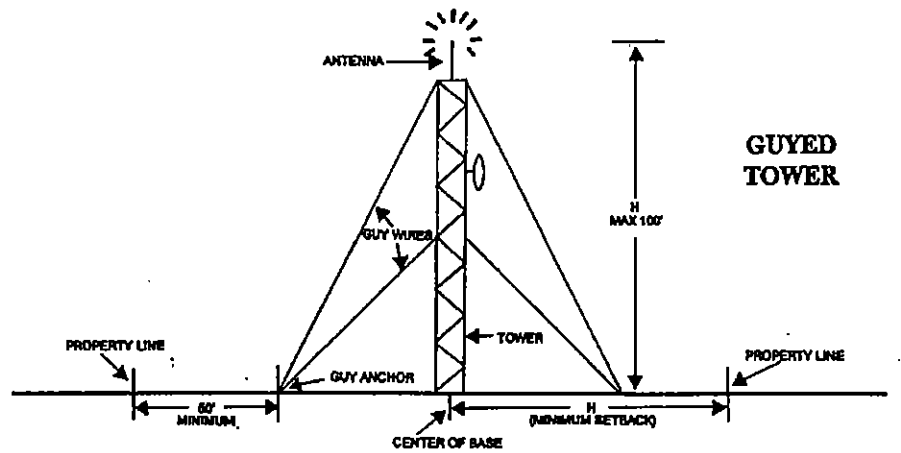


Figure 3.

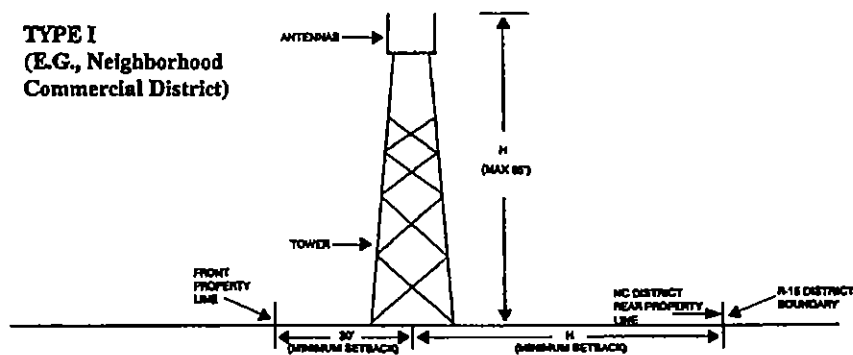
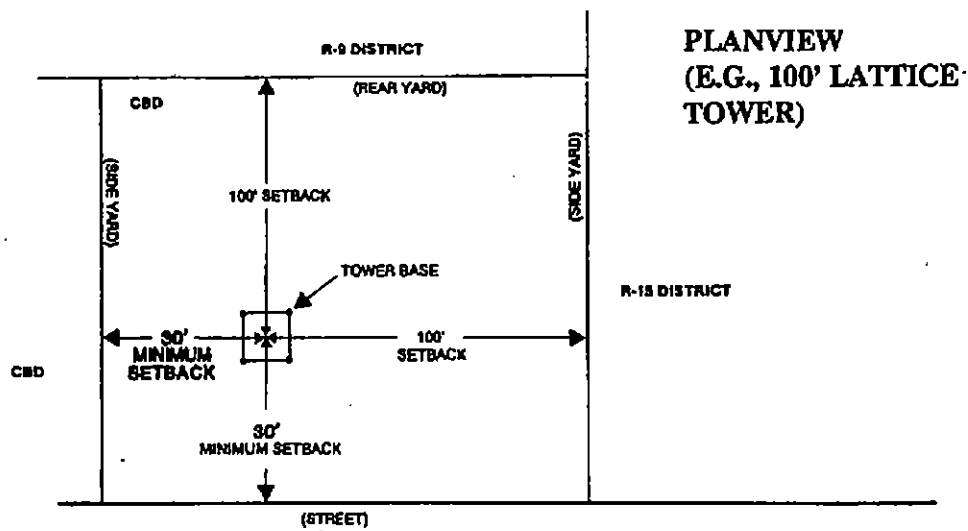
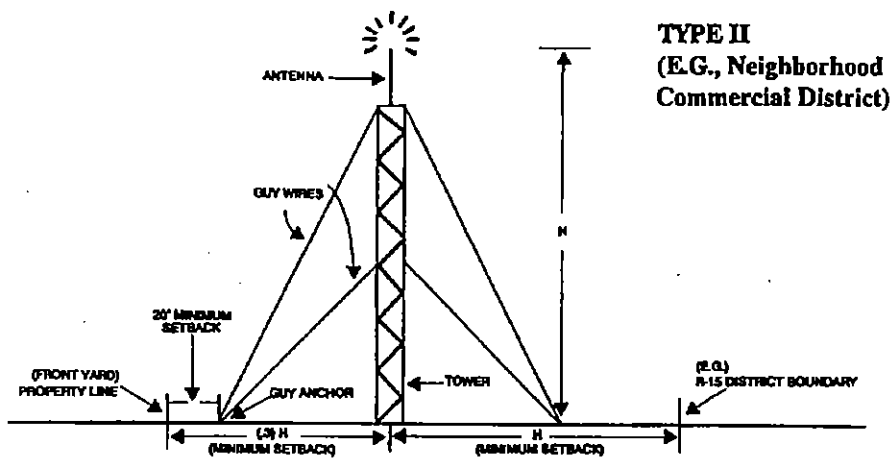


Figure 4.



430-109

**TABLE A
SETBACK PROVISIONS**

ALLOWED USE	SETBACK PROVISION (See below)	ILLUSTRATION
<u>RESIDENTIAL DISTRICTS</u>		
Type II Uses:		
(a) Towers and antennas located on existing structures or buildings	II-R/I-NR	Fig. 1
(b) Antennas located on previously approved towers	Not applicable	
Type III Uses:		
(c) Free-standing towers and antennas to a maximum height of 100 feet	III-R	Fig. 2
<u>NONRESIDENTIAL DISTRICTS</u>		
Type I Uses:		
(a) Free-standing towers and antennas to maximum height of underlying district	I-NR	Fig. 3
(b) Towers and antennas located on existing structures or buildings	II-R/I-NR	Fig. 1
(c) Antennas located on previously approved towers	Not applicable	
Type II Uses:		
(d) Free-standing towers and antennas up to 200 feet in height	III-NR	Fig. 4
(e) Towers and antennas on parcels with 50% or more of perimeter abutting residential districts	III-NR	Fig. 4
Type III use:		
(f) Free-standing towers and antennas over 200 feet in height	III-NR	Fig. 4

R = RESIDENTIAL DISTRICT; NR = NONRESIDENTIAL DISTRICT

- II-R/I-NR: The base of the antenna and/or its supporting tower shall maintain setbacks at least equal to the height of the antenna and its supporting tower. Dish or panel antennas shall be located at least fifty (50) feet above grade and meet the minimum yard requirements of the underlying district (Figure 1).
- III-R: Provide setbacks for the tower/antenna at least equal to the height of the tower/antenna above grade between the base of the tower and the outer boundary of the site. Provide setbacks of at least fifty (50) feet between any guy anchors and the outer boundary of the site. Provide a setback of at least twenty-five (25) feet between any accessory structures (except fences) and the outer boundary of the site (Figure 2).
- I-NR: Provide setbacks as required by the underlying land use district. However, in no case shall the setbacks be less than 100 percent of the height of the tower above grade between the base of the tower and the boundary of any residential district existing at the time the application is submitted (Figure 3).
- III-NR: Provide setbacks for the antenna/tower equal to 30 percent of the height of the tower above grade between the base of the tower and the outer boundary of the site. In no case shall the setback be less than 100 percent of the height of the tower above grade between the base of the tower and the boundary of any residential district existing at the time the application is submitted. Provide setbacks for guy anchors and accessory uses (except fences) in accordance with the provisions of the underlying land use district (Figure 4).

Notwithstanding the provisions of III-NR above, within the EFU, AF-20 and EFC Land Use Districts, the setbacks shall also not be less than 100 percent of the height of the tower above grade between the base of the tower and any dwelling unit in these districts existing at the time the application is submitted.

AGENDA COVER MEMO

DATE OF MEMO: October 6, 2004

FIRST READING: October 20, 2004

HEARING DATE: November 3, 2004

TO: Board of County Commissioners

DEPT.: Public Works Department/Land Management Division

PRESENTED BY: Steve Hopkins, AICP

AGENDA ITEM TITLE:

IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO REVISE THE APPLICABLE STANDARDS FOR TELECOMMUNICATION FACILITIES (LC 16.264).

STRATEGIC PLAN:

This amendment implements the goals of citizen participation and appropriate community development, as identified in the Lane County Strategic Plan.

I. MOTION

MOVE TO ADOPT THE PROPOSED AMENDMENT.

II. ISSUE OR PROBLEM

The telecommunication regulations have been reformatted and three issues have been resolved.

III. DISCUSSION

A. Background

On July 30, 2003, the Board approved a work program for the newly expanded long-range planning program. As part of that work program, the Board identified three issues in the current telecommunications ordinance. The issues are:

1. Notice on large forestlands. Refer to proposed LC 16.264(3)(j). Construction of a new tower or collocation requires notice to landowners within ½ mile (2640 feet) of the leased area. Previously, notice was required on all adjacent land under the same ownership. For a site on federal or state owned land, this resulted in a notification list that contained hundreds of names. Some of those people owned land miles from the tower site.

2. Peer review of radiation limits and tower design. Refer to proposed LC 16.264(4)(c)(iv) and (viii). A registered engineer must certify the proposal will meet structural standards and FCC radiation limits. Mona Linstromberg has voiced concerns about not having additional engineers verify the emissions and structural requirements of new towers and collocations. The engineer's stamp is legally binding. The extra review would be redundant and costly.
3. Signature of the USFS/BLM on the land use application. Refer to proposed LC 16.264(4)(c)(v). A lease agreement with the federal government may be substituted for the signature of the landowner.

The entire chapter has been reformatted for clarity, but the wording from the current code has been retained whenever possible.

On July 6, 2004, the LCPC held a public hearing. After taking public testimony, the LCPC requested additional information. The hearing was closed on July 13, 2004, except for comments on the requested information, which were allowed until August 10, 2004. The LCPC held deliberations on September 7, 2004, and recommended approval of the amendment.

B. Analysis

There were several issues identified in the public hearing. Two of those issues were peer review and change-outs.

Peer review.

Mona Linstromberg voiced concern that an engineer paid by the applicant may not be impartial when reviewing the structural plans and emission limits of a proposed tower or collocation. She has proposed including language similar to what is in Section 9.5750(11) of the Eugene City Code. This section states:

"Fees. Notwithstanding any other provision of this code, the city manager may require, as part of application fees for building or land use permits for telecommunication facilities, an amount sufficient to recover all of the city's costs in retaining consultants to verify statements made in conjunction with the permit application, to the extent that verification requires telecommunications expertise."

The proposed amendment requires an engineer to verify the emissions from the tower do not exceed FCC limits, and that the tower is capable of supporting the collocation. Hiring another engineer would be redundant for structural review since a building permit is required. For the emissions statement, the engineer who knowingly submits false information can be held responsible. Neither the LCPC nor staff recommend this change.

Change-outs

A change-out is the replacement of a collocation or a tower with similar equipment. This is proposed by Ron Fowler. According to the Building Official, a change-out would require a building permit. For planning purposes, there is no way to know if the new

equipment is similar to the existing equipment unless there is some type of review. The amendment can be altered to include an abbreviated review process for change-outs that are similar to existing equipment, or for placement of mandated equipment, such as a GPS unit. The LCPC did not recommend this change. In addition, staff does not recommend allowing change-outs without planning review.

There were additional comments from the public that requested revisions to the ordinance that exceeded the scope of the Board's directive. The Lane County Planning Commission did not recommend including any of those items in the amendment.

C. Alternatives/Options

1. Adopt the amendment as presented.
2. Adopt the amendment with changes.
3. Deny the amendment.

D. Recommendations

On September 7, 2004, the Lane County Planning Commission voted 4-1 to recommend approval of the amendment. Staff also recommends approval.

E. Timing

The amendment does not contain an emergency clause and will become effective 30 days after adoption.

IV. IMPLEMENTATION/FOLLOW-UP

A notice of the County Commissioners action will be provided to DLCD.

V. ATTACHMENTS

7. Staff Response to Comments
 - b. Ron Fowler, 8/4
 - c. Ron Fowler, 9/29

Rebuttal to the comments from Ron Fowler in his letter dated July 26 and August 4. Each comment is addressed in the order presented in the letter.

- 1) A lease agreement with the federal government contains language that requires compliance with local land use regulations. Therefore, the applicant who locates on federal land is subject to LC 16.264, and any other applicable portion of the Lane Code. This determination is also supported by the decision of the hearings official in the appeal of PA 03-5724.
- 2) The definition of "collocation" has been modified by replacing "antenna" with "telecommunication equipment". A collocation requires director approval without a hearing, but a tower requires director approval w at a hearing. A separate process can be included for specific additions, such as a GPS antenna or change outs that meet specific criteria. The definition of "provider" has not been amended.
- 3) This subsection requires the applicant to consider other sites and to show why the proposed site and equipment were chosen.
- 4) Lane County can not prohibit a sign required by a state or federal agency.
- 5) Suggestion included.
- 6) Refer to #2.
- 7) Refer to #1. The only change to the fire break standards is a specific location (30 feet) for placement of gravel.
- 8) A meeting is required.
- 9) This requirement is current county code.
- 10) 4(c)(iii) is a submittal requirement, not a standard. Mr. Fowler's suggested language is included in 4(d)(iv)(B).
- 11) Even though the 10-mile standard is arbitrary, it is part of the current code. The planning commission may recommend a different standard.
- 12) Refer to the definition.
- 13) The standards for removal of a tower are part of the current code. The planning commission may recommend a different standards.
- 14) These standards are part of the current code. They are not vague or arbitrary because they contain criteria that determine an "adequate level of service".
- 15) This standard is current county code.
- 16) This subsection is in the current county code. The planning commission may recommend additional criteria.
- 17) This subsection is in the current county code. The planning commission may recommend additional criteria.
- 18) The term "user" should be replaced with "provider". Delete the term "collocation sites" and replace with "collocations".
- 19) This is already included in the draft. Refer to 4(c)(iv).

- 20) The concern regarding a *Nollan* violation may have merit. Even though this subsection is part of the county code, staff recommends replacing 4(d)(iv) with: "All necessary access easements shall be maintained."
- 21) This should be amended to state: "Provide documentation showing the FAA, ODA, and any other applicable state agency has approved the tower, or that the tower does not require approval by these agencies."
- 22) The separation is the greater of the two listed distances, while the setback is determined by the base zone. These are the standards in the current county code.
- 23) The renewal requirement is part of the current county code. This renewal standard is unique to telecommunication towers.
- 24) Refer to #2. A collocation requires director approval without a hearing, but a tower requires director approval without a hearing. The planning commission can recommend a separate approval process for specific additions to towers.
- 25) This standard is in the current county code. The planning commission may recommend a change to this standard.
- 26) This is a new standard suggested by staff who process collocation and tower applications. The purpose is to verify the applicant is allowed to provide the service in the proposed location.

Staff response to the letter from Ron Fowler dated Sept. 29, 2004. Each item is addressed in the order presented in the letter. The text from the letter is followed by staff response.

1. IN GENERAL

- a. Several provisions in the proposed code appear to exceed the scope of the legal and statutory authority of the County to regulate the standards set. Shouldn't the County leave issues of regulatory authority with the authorized agency? Does the County maintain that they have regulatory authority that exceeds the powers of applicable Federal and State agencies? See various comments below regarding specific code sections.
- b. The County code should encourage collocation of carriers, but several sections of the proposed code actually make collocation as difficult as building a new tower, and, does little to actively promote or encourage collocation by the carriers.

2. 16.264 2. Definitions

Collocation- This language has not been clarified and continues to be confusing and difficult to interpret reasonably. A literal reading of this definition appears to require full review for collocation rather than encouraging collocation. Also, it only allows for installations on existing structures or buildings without providing for the necessary equipment space on the ground.

The definition of "collocation" has been changed by removing "antennae" and replacing it with "telecommunication equipment". Other related equipment are called "ancillary facilities".

The code appears to require that the placement of any equipment on an existing site would trigger a full land use review, although the addition of equipment may be mandated by Federal or State law. A good example is the required addition of a GPS antenna to many sites (usually mounted on top of the equipment cabinets and is a small conical antenna about 6" long) or the Federal requirement that E911 antennas be added to sites. The E911 deadlines are very specific and the requirements are strict. The County should leave some flexibility in the code to allow for such occurrences.

In addition, replacing antennas with new antennas of like size, dimension and type should not create a situation where full land use approval is required. With changing technology and improving design of antennas, change-outs of antennas are a common event. In one recent case in Lane County, AT&T Wireless has been subjected to an extensive process for antenna change-outs (they have cited the collocation language) even though the actual impact on the site is nil. I am unaware of any other planning agency that considers antenna change-outs for an existing site as a new "collocation". The County appears to be seizing on these opportunities to exact more standards or requirements on previously approved and developed sites.

In accordance with current policy, the replacement of a collocation requires director approval. Refer to #5.

The Washington County, Oregon Board of County Commissioners approved the amending of their code on September 28, 2004 and the new code has many

provisions that should be considered by Lane County that address this issue. I can supply the language if you need it.

Provider – The proposed language does not appear to be comprehensive or complete. This language would imply that users of a wireless system are actually providers, and, limits a provider to being a person, which would exclude the majority of actual wireless providers. This language should be completely rewritten to clearly define and set the intent of the County. The Federal statutes usually refer to wireless providers as “commercial mobile radio services” (CMRS) and this would include all present and future types of technologies that are not covered by this definition. In particular, the code does not cover wireless data systems, Wi-Fi or other future technologies.

The Board did not identify this as an issue to be resolved in this amendment. Because it is outside the scope of the Board’s direction, no change to the definition of “provider” is proposed.

3. 3.c. – In part, the provision states that “.... or do not provide the communication coverage necessary to provide the service.” Coverage is not the only reason that new communications facilities are needed and this section appears to summarily disallow sites that are required to improve service or meet capacity objectives. This section ignores the reality of the technology and may clearly violate Federal regulations pertaining to development.

This wording is from the existing code and has been used whenever possible. The existing code is adopted by Lane County and acknowledged by LCDC. Because no specific “Federal regulations” are cited, this objection can not be verified.

4. 3.f. – There are some instances where federal or state law may require additional signage on a site. I would suggest that language be added to this provision stating, “All other signs are prohibited unless required by federal, state or local law or regulations.” This language remains unchanged and should be corrected.

This is the language from the current code. The Board did not identify this as an issue to be resolved in this amendment. Because it is outside the scope of the Board’s direction, no change to the definition of “provider” is proposed.

5. 3.h. – This provision is a major issue and will cause problems for carriers in the future. As noted above, in relation to “collocation”, this section should be expanded to allow for substitution or replacement of existing antennas that may actually be considered an upgrade to the site, and not maintenance or repair. I would recommend integration of some of the sections of the new Washington County codes.

This section needs to address realities and places Lane County in the position of being the only jurisdiction that considers antenna modifications as a “collocation” and requiring an existing tower operator to go back through an application 125 process for upgrades that do not require new building permits or electrical connections, and, will have no substantive impact on the visual nature or characteristics of the site. The wireless industry is an evolving and dynamic industry that will require upgrades and

minor changes to remain current and meet consumer demands. A reasonable rewriting of this language would also help alleviate the burden on the County's planning staff by avoiding the necessity of processing unnecessary applications.

Mr. Fowler is suggesting a new policy that allows "change-outs". This allows an existing collocation to be replaced with similar equipment without any review by LMD. According to Tony West, the Lane County Building Official, a building permit is required for this type of action. The current code requires director approval for an antennae change-out. A hearing is required for a tower change-out.

6. We cannot concur with the County's position on item 3.i. Lane County is the only jurisdiction that I am aware of on the west coast that places land use restrictions on Federal property (rights of the County for land use review are pre-empted by the Constitution). This has caused considerable problems in the past and we can't understand the County's determination to undermine the rights of the Federal government in the administration and management of Federal property. Regardless of the County's representations to the contrary, the County does not have an unfettered right to regulate development on Federal lands and we are not certain why they maintain this position. On several occasions, Federal officials have expressed their opposition to the County position, but their objections have been ignored. This would be a good opportunity to correct this situation.

A lease agreement with the federal government contains language that requires compliance with local land use regulations. Therefore, the applicant who locates on federal land is subject to LC 16.264, and any other applicable portion of the Lane Code. This determination is also supported by the decision of the hearings official in the appeal of PA 03-5724.

7. 4.b. – Why is a neighborhood meeting still required in the cases where the property owner owns all the property for ½ mile around the site area (forest lands or large agricultural tracts)? It would seem like the intention of the code is to maintain separation of the tower from neighboring properties, but this regulation appears to be excessive and unclearly defined. Shouldn't the actual intent be to maintain the separation rather than create undue process?

The intent is to encourage public participation.

8. 4.c.ii (C) – This provision is still confusing and is impossible to interpret. It seems to require that the applicant have two collocation lease agreements in place before they can apply for the special use permit and planning approval. This requirement is excessive and unmatched in the regulation of other types of uses under the County codes. Are there other industries, buildings or developments where the County requires tenants before they approve the application? What is the purpose of this regulation of wireless development? The requirement of "two collocation lease" agreements ignores reality and will prevent necessary development.

This requirement is in the current code. The intent is to prevent speculation by building unneeded towers. The Board did not identify this as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed.

9. 4.c.(iii) – This requirement should not apply to any collocation installations on existing facilities unless the overall height of the structure is increased.

The Board did not identify these concerns as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed.

10. 4.c.(vii) – Although this is a provision of the current code, that does not validate the requirement. We objected to this provision when it was passed previously and continue with our objections. The standard of ten miles appears to be arbitrary and without reasonable foundation. A 10-mile radius of the proposed site would far exceed the actual coverage of most wireless communications sites and would place an undue burden on applicants where terrain or other obstructions require the establishment of a new facility. New towers are often required to resolve service or "capacity" issues and if an applicant is filing for a new installation for that purpose, the County should be willing to recognize that communications facilities a substantial distance away may not meet that need. What is the reason for the 10-mile radius standard? Does the County place similar requirements on other similar types of uses (I.E. long haul microwave; emergency services)?

Even though the 10-mile standard is arbitrary, it is part of the current code.

11. 4.c.(viii) – The term "collocation" still is problematic. Addition to or modification of existing equipment is NOT a collocation under any industry definition that I am aware of. These situations are not collocations.

The term "telecommunication equipment" was added to the definition of "Collocation" to allow a broader range of equipment. An alternate definition has not been provided by any commenters.

12. 4.c.(x) – We have previously asked if this has been an actual concern or problem in the past in Lane County? If not, why subject the applicant to a requirement for a bond? Does the County require bonds for removal of other types of improvements on property?

A performance bond is not required for other types of development.

13. 4.d.(i) – This section of the code appears to attempt to establish a "needs" requirement that the provider must meet when other uses are not subjected to similar requirements. The "ten-mile" standard is arbitrary and the County has not indicated the purpose or need for such a requirement, or, their ability to analyze the stated needs of the applicant. The Code continues to place requirements on wireless that are unique and without justification or merit. The wireless carriers do not build sites indiscriminately or without justifiable need. Do you place similar standards on re *[sic]*
14. 4.d.(i)(A) – In many cases, tower owners require excessive rents that make collocation economically infeasible, towers can be incapable of handling the loading, and, there may be unwilling landlords that will not lease ground space or access to the applicant. The section needs to be modified to allow for these exigent circumstances. Just because there is another tower within 10 miles, doesn't mean that it can be used. The section must be **comprehensive and complete**, or, it should not set standards at all.

These requirements are in the current code. The Board did not identify these concerns as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed

15. 4.d.(i)(B) – As previously stated, this section should be more clearly defined to include other reasons that a site may be needed. For example, "Inability to meet the carrier's quality of service, coverage or capacity needs or requirements."
16. 4.d.(i)(C) – This section should be expanded to include other examples of type of problems that may arise. I would suggest modifying this language to allow for more flexibility on these types of issues. Suggested language could be something like "Technical reasons such as interference, incompatible uses, inter-modulation or other technical problems that would prohibit use by the carrier."

The Board did not identify these concerns as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed.

17. 4.d.(ii) – As previously noted, term "provider" should be rewritten. Does this section mean that the applicant has to provide space for the applicant, **and** space for two other collocation tenants? The provision is still not clear.

The tower must contain space for at least 3 providers. Refer to #8.

18. 4.d.(iii) – Although staff refers to Section 4(c)(iv) to cover this provision, this is strictly a FCC issue and the County has no authority regarding emissions or enforcement of FCC regulations.

This requirement is in the current code.

19. 4.d.(iv) – According to the notes supplied by staff, it appears that this concern has been addressed. However, we wish to review the final drafts before commenting.

20. 4.d.(v)(A) – We would like to review the final draft of the ordinance.

21. 4.e. – Although this is previous code language, the section is still very confusing and difficult to interpret. Schools are often excellent sites for locating towers (lighting for athletic sports, parking lot lights) and are apparently excluded by implementation of a wide separation requirement. What is the purpose of this exclusionary zone? Why are schools a focus this provision? **Is the County concerned about health or safety issues?** This section should be clarified and rewritten, and, the County is obligated to explain the purpose for the separation.

The Board did not identify this as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed.

22. 4.f.(iii) – What is the purpose of the requirement for renewing the permit every two years? Is this intended as an opportunity for the county to revoke the permit, or, to impose new requirements on the applicant in order for them to maintain their permit? If

there are only two requirements for renewal, the County needs to clarify the Code and avoid any broad interpretation that may allow for abuse of this provision.

Our primary concern is still unresolved and the County needs to explain the apparent discrimination against the telecommunications industry. What other commercial uses are subject to renewal of the permits every two years? Does the County require renewals for restaurants, fuel stations or other utilities? The telecommunications industry invests millions of dollars into the basic service infrastructure of the County and should not be subjected to arbitrary regulations or permitting renewal without good reason. Staff has indicated that this is unique to telecommunications and accordingly, **we strongly object to this provision.**

Compliance with FCC regulations is a federal issue. Compliance with the bond requirements can be readily addressed by requiring notice if the bond is terminated or cancelled.

The Board did not identify these concerns as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed.

23. 5. – IN GENERAL

The provisions for Collocation appear to be as complex as permitting for a new tower location and require the applicant to submit excessive information in relation to the prospective impact. The code should encourage collocation through a reduced or simplified process rather than creating excessive standards for use of an existing facility. Separate approval criteria should be set out and should not be left up to the Planning Director to modify or recommend non-standard solutions.

The term "replacement collocation" is a non standard term and we are really not certain what the intent of this language is. Does the County want a party that is collocated on a tower to go through the permitting process again if they simply change antennas or upgrade their equipment? This is very unconventional language. This section remains a mystery and staff has offered no explanation.

Does this section apply to antenna replacements or replacing of electronic equipment when the number and size of antennas do not increase, and, the equipment area is not increased? As noted above, antenna replacements or upgrades should be exempted from review if they do not substantially increase the overall impact of the site. The requirement should pass the "nexus" test set out in the Dolan case.

The Board did not identify these concerns as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed.

24. 5.b.(iii) – The County needs to avoid delving into regulatory matters that are not within their enforcement or regulatory authority. Why does the County require information relating to airports for collocations? The responsibility for compliance with FAA registration or FAA regulations rests entirely with the tower owner, and, unless the collocation tenant increases the overall height of the facility, further FAA review is not required or necessary. The provision simply appears to create an extra and

unnecessary step in the process without substantive need. It is irrelevant that this provision is already a part of the code. We now have the opportunity to address and modify the language.

This is a new standard suggested by staff who process collocation and tower applications. The purpose is to verify the applicant is allowed to provide the service in the proposed location. It is similar to the requirement addressed in #18.

25. 5.b.(ix) and c.(iii)– Although the following questions have been asked, staff has not responded to our questions. Specifically, we wish to know what is the purpose of these provisions? Are collocations limited to only FCC licensed users? Is it required that an applicant be FCC licensed? What about tower companies that are building the tower on behalf of a licensed carrier, but the application and ownership of the tower will be in the tower company's name? What about other types of use that may not necessarily be subject to FCC licensing (Wi-Fi, unlicensed microwave, weather stations, monitoring)? Isn't the primary objective to limit the number of towers in the County and avoid tower proliferation? This requirement should not be a part of the code without some specific and valid reason for its inclusion.

These requirements are contained in the existing code. The Board did not identify them as an issue. Because it is outside the scope of the Board's direction, no change is proposed.

AGENDA COVER MEMO

DATE: January 19, 2005 (date of memo)

October 20, 2004 (1st Reading)

November 3, 2004 (2nd Reading)

February 2, 2005 (3rd Reading)

TO: Board of County Commissioners

DEPT.: Public Works Department/Land Management Division

PRESENTED BY: Steve Hopkins, AICP

AGENDA ITEM TITLE:

IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO REVISE THE APPLICABLE STANDARDS FOR TELECOMMUNICATION FACILITIES (LC 16.264).

STRATEGIC PLAN:

This amendment implements the goals of citizen participation and appropriate community development, as identified in the Lane County Strategic Plan.

I. MOTION

MOVE TO ADOPT THE REVISED ORDINANCE.

II. ISSUE OR PROBLEM

On November 3, staff presented Ord. No. 17-04 to the Board. After taking public testimony, the Board directed staff to revise the ordinance to resolve 3 issues identified at the hearing. The Board should review the proposed changes to the ordinance and direct staff on how to proceed. There are three options:

- Adopt the ordinance with the proposed changes
- Adopt the ordinance without the changes
- Do not adopt the ordinance. This means LC 16.264 would remain unchanged.

III. DISCUSSION

A. Background

The issues identified at the hearing are:

1. A new policy regarding "change outs".
2. The separation distance from new towers and existing dwellings/schools.
3. Peer review.

Staff contacted the 4 people who gave testimony at the hearing. This group met on December 6 and reached consensus regarding issues #1 and #2. The issue of peer review was not resolved. However, according to Ms. Linstromberg, the new 1,200 feet separation standard alleviates much of her concern regarding peer review.

B. Analysis

The tower group recommends two changes to Ordinance No. 17-04. The recommendations are explained below.

Change outs

This is a new policy that allows the replacement of existing equipment without a landuse application. The new equipment can't increase capacity and it must look similar to the existing equipment. This policy encourages use of the newest technology.

Separation

The minimum separation from dwellings or schools is 1200 feet. This is not applicable to schools or dwellings located on the same parcel as the tower. Encroachment is allowed if the encroached homeowners submit written approval of the encroachment. The group also recommends removal of the "imaginary surfaces" height restriction near airports.

Peer Review

No consensus was reached on this issue. As written, the ordinance requires an Oregon-registered professional engineer to certify:

1. The proposed facility will comply with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC), and
2. The tower is structurally sufficient to support the proposed collocation equipment.

Ms. Linstromberg wants to amend this requirement to have the county hire, at the applicant's expense, a third party engineer to verify these same statements and "review the application for accuracy". Refer to Attachment #6k. The City of Eugene has a similar requirement, but it is used at the discretion of the city manager. Specifically, the city manager may hire a consultant "to verify statements made in conjunction with the permit application, to the extent that verification requires telecommunications expertise." [EC 9.5750(11)] The proposal by Ms. Linstromberg requires this type of third party review for every application. The group remained at an impasse regarding this issue. However, as stated before, Ms. Linstromberg feels the 1,200 feet separation standard alleviates much of her concern regarding peer review.

Measure 37 Analysis

In accordance with Measure 37, a landowner can submit a claim for compensation when a new land use regulation lowers the land value. The government has the option of paying the claim or waiving the regulation. Because Ord. No. 17-04 does not implement a state statute or administrative rule, a claim against this ordinance would be filed with Lane County. The proposed ordinance has a low risk of a Measure 37 claim because the ordinance is generally

less restrictive than the current code (refer to Table #2). In addition, portions of the Lane Code will be deleted (refer to Table #1).

One item is included in the ordinance that is only implied in the current code [refer to 4(f)(iii) in Table #2]. Other items are more specific or clearly stated [refer to 4(c)(iii); 5(b)(vii) and 5(c)(iii) in Table #2]. These items may be considered new regulations and could be subject to a Measure 37 claim.

Table #1: Regulations deleted from existing code.

Existing Lane Code	Deleted Text	Comments
16.264(5)(c)	"Directional / parabolic antennae shall be selected to optimize performance and minimize visual impact. "	The proposed change is less restrictive.
16.264(3)(b)(vii)	"An application shall include the following information: Documentation of lease agreements with a Federal Communications Commission (FCC) licensed provider."	The proposed change is less restrictive.

Except for the items listed below, the ordinance is less restrictive than the current code. Refer to Table #2 for more details:

- *Peer review* [4(c)(iii) & 5(b)(vii)]: The verification of emissions is not new. However, the new regulations require an engineer to do the verification.
- *Renewal of tower* [4(f)(iii)]: The ordinance explicitly requires a land use application to renew a tower. The current code only implies a land use application is needed.
- *FCC license* [5(c)(iii)]: This is not a new standard, just more specific. The current code requires compliance with "all State of Oregon and Federal licenses for telecommunication tower facilities."

Table #2: New Regulations

Location in amendment	New standard	Comments
2	A definition of "Changeout" was created. The definitions of "collocation" and "transmission tower" have been broadened to include new technology.	This is less restrictive than the current county code.
3(h)	A new policy that allows equipment changeouts without a land use application.	This is less restrictive than the current county code.
3(j)	Notice shall be sent to landowners and applicable community organizations recognized by the Lane County Board of Commissioners in Lane Manual 3.513, within ½ mile of the leased area.	The current code requires notice from the property lines. The new standard is less restrictive.
4(c)(iii); 5(b)(vii)	An engineer is required to verify that the radiation emissions comply with the FCC standards.	The verification is not new. The engineer's review is new. Refer to LC 16.264(3)(d) & (7)(b)
4(e)(ii)	A tower must be 1,200 feet from the nearest dwelling or school. The adjacent landowners may allow a closer location. The separation does not apply to dwellings or schools on the same parcel as the tower.	This is less restrictive than the current county code.
4(c)(v)	A signed statement from the property owner indicating awareness of the removal responsibilities. <u>A lease agreement with the Federal government that includes a removal requirement may be substituted.</u>	The underlined portion is new. It is less restrictive.
4(c)(vi)	Signature(s) of the property owner(s) on the application form. <u>A lease agreement with the federal government may be substituted.</u>	The underlined portion is new. It is less restrictive.
4(f)(iii)	An application must be submitted to renew a tower.	This is implied by the current code, but is not explicitly stated. Refer to LC 16.264(7).
5(c)(iii)	The provider shall maintain an FCC license for the geographic region and for the service provided by the collocation.	This standard is not new. It is clarified. Refer to LC 16.264(3)(d).

C. Alternatives/Options

1. Adopt the revised ordinance, or
2. Adopt the original ordinance.

D. Recommendations

Ron Fowler, Martha Johnson, Heather Kent and Mona Linstromberg endorse the revisions to the ordinance. Staff recommends adoption of the revised ordinance.

If the Board votes to further revise the ordinance, there are two options:

1. Adopt the ordinance and resolve any outstanding or unexpected issues after implementation.

2. Do not adopt the ordinance and direct staff to further revise the ordinance.

This will mean a delay of several months and is the most expensive and time consuming option. In addition, this option does not allow time for implementation to reveal unexpected issues.

E. Timing

The amendment does not contain an emergency clause and will become effective 30 days after adoption.

IV. IMPLEMENTATION/FOLLOW-UP

A notice of the County Commissioners action will be provided to DLCD.