

## ORDINANCE NO. 02-

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING SECTION 62-1953, "TOWERS AND ANTENNAS", BY ADDING NEW RESTRICTIONS ON CONSTRUCTION OF TOWERS TO PROTECT MIGRATORY BIRDS; AMENDING SECTION 62-3203, "DEVELOPMENTS REQUIRING SITE DEVELOPMENT PLANS", BY DELETING THE SITE PLAN REQUIREMENT FOR CO-LOCATING ADDITIONAL ANTENNAS ON EXISTING TOWERS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE BREVARD COUNTY CODE OF ORDINANCES.

WHEREAS, the U.S. Fish and Wildlife Service (USFWS) estimates that 4 to 5 million birds are killed annually by lit towers that are over 200 feet tall; and

WHEREAS, the USFWS has published guidelines for tower design and construction to mitigate migratory bird deaths; and

WHEREAS, on March 6, 2001, the Board of County Commissioners directed preparation of an amendment to the Zoning Regulations incorporating the USFWS guidelines; and

WHEREAS, the Local Planning Agency, on November 19, 2001, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Board of County Commissioners has reviewed the recommendations of the Local Planning Agency and has considered the comments of interested citizens in public hearing.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1. Chapter 62, Article VI, Section 62-1953**, Code of Ordinances of Brevard County, Florida, is hereby amended to read as follows:

**Sec. 62-1953. Towers and antennas.**

(a) Addition of antennas to existing structures.

- (1) A conditional use permit (CUP) shall not be required to locate antennas on or within existing or permitted structures, ~~high-rise utility transmission towers nor upon utility poles and light poles within public rights-of-way~~ regardless of the zoning classification, provided

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that the top of the antenna will be 20 feet or less above the highest point of the aforementioned existing or permitted structure ~~utility structures or light poles~~. No combination of extensions exceeding 20 feet above the height of the original structure shall be permitted.

- (2) ~~In the commercial, industrial, GML and multifamily zoning classifications, the conditional use permit (CUP) for towers and antennas shall not be required where antenna elements are to be located on existing buildings or watertowers under the following circumstances:~~
- ~~a. The existing building or watertower shall be at least 45 feet high.~~
  - ~~b. The antenna elements shall not exceed the height of the structure upon which they will be located by more than 20 feet.~~
- (3) ~~The antenna elements must be painted to match the structure upon which they will be placed. The zoning official may consider such other aesthetic treatments as are proposed to integrate the antenna with the structure.~~

- (b) The conditional use permit (CUP) for towers and antennas shall not be required to locate antenna elements on existing towers where the element does not exceed the height of the existing tower. Where an existing tower is nonconforming, the location of additional antenna elements on an existing tower pursuant to this subsection shall not be considered an expansion of a nonconforming use. Existing towers may be reconstructed, or removed and rebuilt, if the reconstruction is for the purpose of adding additional antennas which would otherwise require construction of a new tower, provided that the reconstructed tower does not exceed 200 feet and does not require lighting. Replacement towers shall be of the same type as the existing tower or improved aesthetically as follows. For the purpose of this section, a lattice tower is more aesthetic than a guyed tower, a monopole tower is more aesthetic than a lattice tower, and a stealth tower is more aesthetic than a monopole tower. Replacement towers shall either be constructed adjacent to the existing tower, or shall meet the following criteria:

- (1) Replacement towers shall be set back from the nearest property line a distance equal to or greater than the existing distance to the nearest property line; and
- (2) Replacement towers shall be set back from the nearest residentially zoned property a distance equal to or greater than the existing distance to the nearest residentially zoned property.

- (c) In the PBP, PIP, IU and IU-1 zoning classifications, towers and antennas may be permitted without a conditional use permit under the following circumstances:

- (1) Towers and antennas which exceed 35 feet and are 200 feet or less in height shall be located on the site at a distance equal to or in excess of five times the height of the tower or antenna, (from the base of the tower or antenna) from existing off-site single-family residential homes or property zoned primarily for single-family residential use (including AU). Any tower shall be set back a minimum of 200 feet from all property lines. Such towers and antennas shall meet all rules and regulations of the Federal Communications Commission and all governmental bodies having jurisdiction over such matters.
- (2) Such towers shall use construction techniques that do not require guy wires (e.g., lattice or monopole structures).

- (d) In the PA and AGR zoning classifications, towers and antennas may be permitted without a conditional use permit under the following circumstances:
- (1) Such towers and antennas are subject to the requirements of subsection (c) ~~(4)~~ above.
  - (2) Towers must be spaced at least 3,500 feet from the nearest off-site tower.
  - (3) Any existing vegetation six feet in height or above along a 50-foot perimeter around the entire parcel upon which the tower is to be erected must be preserved until the property is developed and county land clearing and landscaping requirements are met.
- (e) Noncommercial towers and antennas over 35 feet in height are permitted as a conditional use in any residential zoning classification on lots of one acre or more, provided they are set back from all property lines equal to the height of the tower. Such towers shall not exceed 100 feet.
- (f) Provisions applicable to all commercial towers.
- (1) The applicant may provide a bond and performance contract at the time of building permit which is sufficient to cover the cost of tower removal in the event the tower is dilapidated or abandoned.
  - (2) Towers which have not had active antennas for a period of six consecutive months shall be removed. Subject to subsection (j), failure to remove the tower within 60 days after notice shall either result in forfeiture of the above-referenced bond, which shall be applied to the cost of removal, or the county shall have the right to remove such tower and impose a lien for the cost of removal on the site which was the subject of the application. This provision is deemed a condition to the issuance of any permit and applicant seeking a permit waives and releases any claim for damages as a result of the county's invocation of the removal condition.
  - (3) Every second year, the owner of any tower shall submit to the county building official a sealed statement from a certified civil engineer that the structure is sound. The certification shall be due by the end of the month upon each anniversary of the issuance of the building permit. If the report is not provided within 14 days after receipt of written notice by the CUP holder and property owner, towers which have not been certified shall be considered dilapidated and shall be removed by the property owner. Subject to subsection (j), failure of the property owner to remove the tower within 30 days after receiving notice to effect removal shall either result in forfeiture of the above-referenced bond which shall be applied to the cost of removal or the county shall have the right to remove such tower and impose a lien on the site which was the subject of the application.
  - (4) Equipment buildings shall be fenced and shall be landscaped and maintained with opaque landscape buffer six feet tall and 15 feet deep. Security lighting for on-ground facilities and equipment shall be down-shielded to keep light within the boundaries of the site and minimize its potential attraction for birds.
  - (5) In the GU and agricultural zoning classifications, equipment buildings shall be unmanned and not exceed 300 square feet.
  - (6) Applicants seeking to erect new towers that require a conditional use permit shall demonstrate to the reasonable satisfaction of the county that no existing or approved tower or structure, irrespective of municipal and county jurisdictional boundaries, can

accommodate the applicant's proposed antenna. The county reserves the right to hire an independent expert witness to evaluate any evidence submitted by applicants pursuant to this section. Evidence submitted to demonstrate that no existing or approved tower or structure can accommodate the applicants proposed antenna may consist of any of the following:

- a. No existing or approved towers or structures are located within the required geographic area meet the applicant's engineering requirements.
  - b. Existing or approved towers or structures are not of sufficient height to meet applicant's engineering requirements.
  - c. Existing or approved towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
  - d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing or approved towers or structures, or the antenna on the existing or approved towers or structures would cause interference with the applicant's proposed antenna.
  - e. The fee, costs, or contractual provisions required by the owner in order to share an existing or approved tower or structure or to adapt an existing or approved tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
  - f. The applicant demonstrates that there are other limiting factors that render existing and/or approved towers and structures unsuitable, as documented by a qualified and licensed professional electrical engineer, as applicable.
- (7) All towers approved after ~~(date) December 14, 1999~~, including those granted as a conditional use permit, must be constructed to permit co-location by other providers. New communication towers approved after said date shall be designed and constructed, both structurally and electrically, to (a) provide sufficient excess capacity over the initial loading; and (b) permit at least ~~one~~ two other comparable communication providers to use the approved tower where feasible and subject to reasonable terms. The term "where feasible," as it applies to co-location, means that utilization of a tower by another party would, at the time of such utilization, comply with sound engineering principles, would not materially degrade or impair the communication tower's utilization by existing users, would not unduly burden the tower structurally, and would not otherwise materially and adversely impact existing users. Reasonable terms for use of a communication tower that may be imposed by the owner include a requirement for reasonable rent or fees, taking into consideration the capitalized cost of the communication tower and land, the incremental cost of designing and constructing the tower so as to accommodate additional users, increases in maintenance expenses relating to the tower and a fair return on investment, provided such amount is also consistent with rates paid by other co-locators at comparable tower sites.
- (8) Towers exceeding 200' in height must use the minimum number of warning and obstruction lights required by the Federal Aviation Administration (FAA).
- (9) Towers exceeding 200' in height must use lights having the minimum intensity and number of flashes per minute (i.e., the longest duration between flashes) permitted by the FAA. The use of solid red or pulsating red warning lights shall be prohibited at night.

- (10) On towers exceeding 1000' in height, only white strobe lights shall be used at night, where permissible by the FAA.
- (11) Where lighting is required by Brevard County Mosquito Control on towers less than 200' in height, the frequency of high intensity lighting shall not exceed 20 flashes per minute.
- (12) All lights on towers of any height shall be up-shielded. All existing towers shall comply with this provision within two years of the date of the adoption of this regulation.
- (13) Where permitted, guyed towers shall use daytime visual markers (e.g., bird diverter devices) on the guy wires to reduce collisions by migratory birds.
- (g) In the PA, AGR, PBP, PIP, IU and IU-1 classifications, a waiver to one or more of the conditions enumerated in subsections (c) or (d) above may be considered by the board of county commissioners through a conditional use permit (CUP) application, provided the general section 62-1901(c) CUP standards are met. The applicant must also demonstrate technical necessity for the location of the tower, and that there are special existing or proposed circumstances pertaining to the structures or properties involved which will protect the public interests which the conditions in subsections (c) and (d) are intended to address. The applicant shall prepare an exhibit which will demonstrate to the board the visual impact of the proposed tower. The conditional use permit shall expire if a site plan for the tower is not submitted within one year of the conditional use permit approval or if the construction does not commence within two years.
- (h) Towers in the GU, AU, ARR, BU-1, BU-2 and GML classifications; any tower in excess of 200 feet; or any other tower not permitted without a conditional use permit shall require a conditional use permit. The applicant must demonstrate consistency with (1) the general criteria set forth in section 62-1901(c); and (2) the requirements listed in subsections (c) and (d) above, failing which the applicant must demonstrate technical necessity for the location of the tower at the proposed site, and that there are special existing or proposed circumstances pertaining to the structures or properties involved which will protect the public interests which the conditions in subsections (c) and (d) are intended to address. The applicant shall prepare an exhibit which will demonstrate to the board the visual impact of the proposed tower.
- (i) The conditional use permit or building permit for a tower shall expire if a site plan for the tower (if required) is not submitted within one year of approval or if construction does not commence within two years of approval.
- (j) Prior to effecting the removal of any tower or forfeiture of any bond, the county shall provide notice and an opportunity to be heard to both the landowner and the CUP holder who shall show cause why the tower should not be removed in accordance with the provisions and requirements of the ordinance. A notice describing the reason for removal and the date of a hearing before the county commission shall be served by certified mail, fax, actual delivery, or U.S. mail (if otherwise undeliverable) at least 21 days prior to the hearing. The time for effecting removal shall be tolled pending a final determination by the board or, if an action is filed, by a court with jurisdiction.
- (k) Third party (i.e., private sector tower company) tower construction projects on federal or state lands are subject to the provisions of this section, and all other applicable regulations, unless the third party is acting on behalf of the federal or state government. A tower constructed by a third party on behalf of the federal or state government does not require local permits; however, a tower constructed on federal or state property for a private sector endeavor shall comply with all local regulations.

**SECTION 2. Chapter 62, Article VIII, Section 62-3203, Code of Ordinances of Brevard County, Florida, is hereby amended to add a new paragraph (8) as follows:**

**Sec. 62-3203. Developments requiring site development plans.**

A building permit for the construction or expansion of a building, structure or complex of buildings or structures on property located within zoning classifications listed herein, shall not be issued, unless the construction plans are accompanied by an approved site development plan. A site development plan shall be required for institutional developments, multiple-family units, commercial enterprises, industrial activities and other developments which are identified below. For the purpose of this section, institutional, multiple-family, commercial and industrial developments are defined as follows:

- (1) *Institutional:* Public buildings, buildings for public assemblage, libraries, fire stations, churches, public and private utility plants, hospitals, sanitariums, convalescent homes, stadiums and other public recreational facilities, private schools and camps and private clubs.
- (2) *Multiple-family units:* Multiple-family units as permitted under the high density multiple-family residential zones (RU-2-30), the medium-density multiple-family residential zones (RU-2-12), (RU-2-15), and the low-density multiple-family residential zones (RU-2-4), (RU-2-6), (RU-2-8), (RU-2-10), paved and duplex subdivisions. (three lots or more) and single-family attached residential zoning classifications (RA-2-4), (RA-2-6), (RA-2-8), (RA-2-10); included within such permitted uses are apartments, efficiencies, townhouses and boardinghouses.
- (3) *Commercial:* Commercial enterprises are defined as business or professional activities permitted under the residential professional classification (RP), restricted neighborhood retail commercial zone (BU-1-A), general retail commercial zone (BU-1), general retail, warehousing and wholesale business zone (BU-2), general tourist zone (TU-1) and highway interchange tourist zone (TU-2).
- (4) *Industrial:* Industrial activities are defined as activities and associated structures which are permitted under the planned business park (PBP), planned industrial park classification (PIP), the industrial use zone (IU) and the heavy industrial zone (IU-1).
- (5) *Other developments requiring site development plans:* Any institutional, recreational, commercial or industrial type use which may be permitted in the agricultural use classification (AGR), the agricultural residential classification (AU), the productive agricultural classification (PA), TR-3 and TRC-1 Mobile Home Park Developments, the general use zoning classification (GU), government managed land zoning classification (GML), RVP shall require site planning in accordance with zoning requirements. Where golf courses and maintenance buildings are permitted in any zoning classification, only the clubhouse, maintenance buildings and parking areas shall require a site development plan. Expansion of parking will require minor site plan approval.
- (6) Maximum of one storage shed, up to and including 200 square feet is exempt from site plan review. More than one shed or a shed greater than 200 square feet will require site plan review.
- (7) Projects within lands zoned government managed land (GML) (see definitions) may have the option of submitting the site plan under the standard land development process. If they choose to coordinate their site plan review, all county agencies regulations must be satisfied. Note: Sketch plans and drawing submitted as exhibits with variance or conditional use permit applications, including binding site plans, binding concept plans, binding development agreements, and binding development plans shall not be accepted for review as a site development plan, unless prepared under the guidelines of this section and contain all the information, data and exhibits outlines herein and reviewed by the land development section prior to submittal.

(8) Co-locates of antennas and equipment on existing towers and tower sites, where there is no expansion of the lease area, no relocation of existing fencing, and no clearing of existing vegetation necessary, shall not require a site plan.

**SECTION 3. Conflicting Provisions.** In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule code or regulation, the more restrictive shall apply.

**SECTION 4. Severability.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

**SECTION 5. Area Encompassed.** This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

**SECTION 6. Effective Date.** A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

**SECTION 7. Inclusion in Code.** It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Brevard County Code, and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

**DONE, ORDERED AND ADOPTED**, in regular session, this 15<sup>th</sup> day of January, 2002.

Attest:

**BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA**

\_\_\_\_\_  
Scott Ellis, Clerk

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Truman G. Scarborough, Jr., Chairman  
As approved by the Board on January 15, 2002.

( S E A L )