

**CELLULAR COMMUNICATIONS
ADVISORY COMMITTEE
UNAPPROVED MINUTES**

Facilitator: Dr. Navita James, University of South Florida
Facilitator: Dr. David Payne, University of South Florida

Recap of Meeting on May 25, 2011 at 5:00 p.m.
County Center

Members

The following Cellular Communications Advisory Committee members were present:

Laura Belflower	Will Bissett	Michael Brooks
Richard Davis	Carrie Grimail	Dr. Tom Mason
Jim Porter	Denise Verrill	Lee Vaughan
Dr. Tom Weller	Lisa Williams	

The CCAC meeting was brought to order at 5:10 pm by Navita James, USF Facilitator who welcomed everyone to the meeting.

Dr. James requested a motion to approve the minutes of the April 12, 2011 and the May 4, 2011 meetings. The motion was made and seconded for approval. A question arose regarding the minutes from the May 4, 2011 meeting regarding the list of issues. Dr. Payne suggested that the motion to approve be amended to attach his document to the minutes as a record that would clarify the minutes. The suggestion was agreed upon and the motion to approve both sets of minutes passed unanimously.

The committee moved on to the agenda and Dr. James reviewed agenda and the documents provided by staff and committee members as back-up to the agenda. A motion was made and seconded to approve the agenda and passed unanimously. Discussion arose as to the agenda not being received prior to the meeting and the committee was advised that this agenda was not sent out due to extraordinary circumstances, however, future agendas should be sent out in advance of the meeting.

The main issue the committee needs to address during this meeting is to complete the identification of issues regarding the area of safety. Finally, the committee wants to make specific proposals related to the areas of setbacks, allowable heights, aesthetics and safety. The meeting will conclude by identifying information, materials and resources needed for the next meeting on June 15th.

Dr. Payne introduced County Administrator Mike Merrill to the committee, who gave an overview of moving forward and the moratorium that was brought up at the May 4th meeting. Mr. Merrill would like to see some short-term wins. He feels it is too early in the process to talk

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about a moratorium and encouraged the committee to put it aside so they can focus on other short-term issues that would show progress. He wants the committee to find resolutions that can be presented to the Board of County Commissioners and be able to have the desired outcomes from the committee.

Mr. Lee Vaughan discussed his reasons for bringing up the moratorium. Mr. Vaughan feels that the committee could possibly be working for months in order to bring recommendations to the Board regarding the cell tower issues and it makes sense to approve a moratorium until the committee completes its recommendations to the Board.

Mr. Merrill was asked if he had been threatened with a lawsuit regarding this issue and he responded "no". His only concern is for the committee to be successful and he feels a moratorium will impede the success of the committee.

Also a factor in the mix is the fact that the budget will be presented to the Board that calls for massive cuts. In that light, he feels the Board will be more inclined to provide additional funding if there are recommendations on the table that demonstrates progress by the committee.

Dr. Payne explained the position of Dr. James and himself relative to the moratorium. Their concern is for the group, so they are concerned that spending time discussing the moratorium will be a distraction from the progress of the committee.

A motion was made and seconded to defer the discussion to a later date. The committee requested Mr. Gormly to provide his views on the legal issues associated with the moratorium. Mr. Gormly addressed the issue in two parts (1) the Federal Telecommunications Act (FTA) and (2) Section 365.172 of the Florida Statutes that addresses the emergency 911 service.

The Federal Telecommunications Act is comprised of three provisions that apply to the issue at hand and is a regulation that applies nationwide. The first element requires an application for a cell tower to be approved or denied in a reasonable time after receipt of the application. The second element prohibits a discriminatory effect among similar services, and lastly, and most importantly, the action cannot prohibit wireless communication services.

A moratorium was upheld in the City of Medina because of the early regulatory action after the FTA act was approved, the size of the city (limited number of cell tower sites) and the fact that the city did not want a few applicants to take over available sites and exclude other potential carriers. Hillsborough County is different in that we have a very large area and many applications for towers that must be handled in a reasonable time. There must be a compelling factor not being addressed by the county regulations to justify a moratorium in Hillsborough County.

Another consideration is that Florida state law provides a time frame in which a properly completed application for a cell tower must be approved or denied (90 business days). With a moratorium in place, an applicant cannot be advised if an application is properly completed or not and this would be contrary to the state law. Any denial of an application would have to be

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based on competent and substantial evidence and the appropriate reasons for denial clearly stated.

Mr. Gormly was asked if he feels Mr. Merrill's suggestion that a moratorium would be more likely to succeed if proposals were presented to the Board. Mr. Gormly responded that any proposals must ensure that shutting out competing carriers would not be allowed. Hillsborough County has made multiple changes to the cell tower regulations in response to the telecommunications act, state law and county initiated changes regarding tower location relative to different types of residential uses and location to residential uses.

The main question is whether the applications can be placed on hold while the county reviews/amends the regulations. A moratorium of one year would be very difficult to defend. In some cases, a 60 day moratorium has been upheld, however, the county must be aware of the state time limits and state law time frames allowed to approve or deny an application.

A question arose about the allowability of not accepting applications at all and the committee was advised that the statute is designed to move the properly completed applications through the system and not to be an avenue to stop accepting applications altogether.

The committee discussed whether the moratorium could be legally achieved or not.

Mr. Gormly was asked if any of the case laws cited had similar provisions as the Florida statutes and he advised that no case laws cited were similar to Florida Statutes. He further noted that the elements could have been present in the statutes, but were not cited in the decisions. As to the remedies for violations to the telecommunications act, he stated that an injunction could be issued to order the application approved. In addition, the Florida statute provides that if the application is not approved or denied in 90 days, the application automatically is approved.

The committee then voted to defer the discussion of a moratorium to a later date.

The safety issue was addressed by the committee. The Building Code states that if a tower is abandoned for 12 months, it is considered discontinued. The security aspect provides that a chain link fence or wall, barbed wire not less than eight feet in height and a locked gate is also required at the site.

The issues to be addressed regarding safety are as follows:

1. Structural design standards, wind load standards
2. Specify hurricane category the tower can withstand
3. No construction next to a hurricane shelter
4. Difference in state codes for towers, (i.e., tornadoes, hurricanes, natural events)
5. Cannot change Florida Building Code per state law
6. Amend state law
7. At time of safety, must have information on Hillsborough County codes. Can Hillsborough County deviate from existing codes? Wayne Francis, HC Building Official, will need to attend meeting to discuss provisions of the Building Code.

Structural Issues Also Related to Safety

8. Wade Trim – Structures
9. “Crumple Factor/Towers that collapse on themselves /monopole/fall zone & setbacks
10. Consider proximity to children
11. Enforcement of Code
12. Industrial equipment at base of tower, batteries, propane gas, etc.
13. How are “things” in ground stipulated in the Code
14. Put burden on tower company to enforce the code – to pay for inspections
15. No yearly inspection required for towers
16. Ask Building Code requirements, Building Official, input
17. Revisit types of fencing and its height
18. Public notification (park this issue)

Mr. Books motioned to have the committee invite Kevin Bauman, of the Paul J. Ford Company, to address the committee on structural integrity of the cell towers. The motion was seconded by Mr. Vaughn and approved unanimously.

The committee moved to Summary of Issues and Concerns document from the last meeting. A concern was raised regarding the use of “private viewing” in the goals statement. It was suggested that “private viewing” be replaced with “to minimize impact on the aesthetics of the community and surrounding area”. The committee also agreed to change “preserve the market value of property” to “minimize negative impact on property values”. The committee also discussed a change in setbacks on school property from “one to three feet” to “from the current requirement”.

The agenda for the June 15 meeting will include a presentation from Kevin Bauman. Once this presentation is complete, the committee can prioritize some issues. Dr. Payne would like to arrive at some agreed upon proposals on the issues of setbacks, property values and safety issues at this next meeting. The following meeting, the committee can identify issues related to process that the committee can take up later if additional time is approved for the committee.

There being no further business, the meeting adjourned at 7:25 p.m. The next scheduled meeting will be held on June 15, 2011 in the 26th Floor in Conference Room B of the County Center located at 601 E. Kennedy Blvd., Tampa, FL 33602.