

## MEMORANDUM

**TO:** Planning and Zoning Board

**FROM:** Allen Parsons, AICP, Director  
Planning, Zoning and Building Department

**REPORT DATE:** January 3, 2022

**MEETING DATE:** January 18, 2022

**SUBJECT:** Ordinance 2022-02, Amending Final Decision-making Authority for Freestanding Personal Wireless Facilities

### Recommended Action

Forward Ordinance 2022-02, with a recommendation of approval, to the January 24, 2022 Town Commission Special Meeting for first reading and public hearing.

### Background

At their December 6, 2021 Regular Meeting, the Town Commission directed staff to draft an ordinance related to the delegation of final decision-making approval authority for Freestanding Personal Wireless Facilities. It was brought to the Town Commission's attention that under current Town Code, the Planning and Zoning Board (P&Z Board) has final decision-making approval authority for Freestanding Personal Wireless Facilities, in the form of Special Exception and Site Development Plan approval.

The Town Commission's direction was associated with discussion regarding development approvals that involve improvements to cellular communications, which are a top Town Commission strategic priority. Such decisions can have Town-wide, or larger than site-specific, applicability. As discussed at the December 6, 2021 Regular Meeting, the Town Commission has discretion over the authority it delegates to its advisory boards.

Ordinance 2022-02 therefore has been drafted to amend the various provisions in the Zoning Code that address final decision-making authority associated with Freestanding Personal Wireless Facilities<sup>1</sup>. The necessary changes include:

- Amendments to Section 158.009, *Chart of Decisions and Appeals*, to reflect that Freestanding Personal Wireless facilities final decision-making authority will be with the Town Commission, following a recommendation from the P&Z Board. Note: Staff is also taking the opportunity to update this Chart to add two approval types that were inadvertently missing from the chart in which the Town Commission has final decision-making authority, including Final/Site Development Plans, associated with Planned Unit Developments and nonconforming density redevelopment projects approved via the Conformance Overlay Redevelopment District process.

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<sup>1</sup> Note: Personal Wireless Facilities co-located on existing structures or mounted on existing utility poles are administratively approvable. Freestanding Personal Wireless Facilities require Special Exception and Site Development Plan approval.

- Amendments to Section 158.011, *P&Z Board Powers and Duties*, to reflect that final decision-making approval authority for Freestanding Personal Wireless facilities will be with the Town Commission, following a recommendation from the P&Z Board.
- Amendments to Sections 158.018 and 158.019, *Applications for Special Exception Uses and Special Exception Uses*, respectively, to reflect that Special Exception Uses, which currently are approvable solely by the P&Z Board, may also be approvable by the Town Commission, following a recommendation by the P&Z Board, pursuant to applicable provisions within the Zoning Code.
- Amendments to Sections 158.029, *Site Development Plan Submission Procedure*, to reflect that certain Site Development Plan applications may also be approvable by the Town Commission, following a recommendation from the P&Z Board, pursuant to applicable provisions within the Zoning Code.
- Revised Subsection 158.114(C), *Freestanding Facilities*, to reflect that final decision-making approval authority for Freestanding Personal Wireless facilities would be with the Town Commission, following a recommendation from the P&Z Board.

Ordinance 2022-02 includes a retroactive provision that makes the ordinance applicable to all personal wireless service facility development applications filed with the Town on or after October 1, 2021. Accordingly, the changes within Ordinance 2022-02 would apply to the Verizon special exception and site development plan applications that were filed with the Town on October 11, 2021. According to the Town Attorney, ordinances can only apply retroactively if a retroactive provision is specifically provided for in the text of the legislation, is civil in nature, and the regulation does create new rights, destroy vested rights or create unduly harsh or oppressive consequences. See, *Seaboard S. R., Inc. v. Clemente*, 467 So. 2d 248 (Fla. 3<sup>rd</sup> DCA 1985).

Ordinance 2022-02 is on an expedited timetable with consideration by the Town Commission scheduled for a Special Meeting on January 24, 2022. The ordinance would be effective immediately upon adoption and the provisions, as noted in Section 9.

### **Staff Recommendation**

Forward Ordinance 2022-02, with a recommendation of approval, to the January 24, 2022 Town Commission Special Meeting for first reading and public hearing.

### **Attachment**

Ordinance 2022-02 (Available in Town Clerk's Office)