

MEMORANDUM

TO: Tom Harmer

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

REPORT DATE: January 12, 2022

MEETING DATE: January 24, 2022

SUBJECT: Ordinance 2022-02, Amending Chapter 158, Final Approval Authority for Freestanding Personal Wireless Facilities

Recommended Action

Forward Ordinance 2022-02 to the February 7, 2022 Regular Meeting for second 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 approval authority for Freestanding Personal Wireless Facilities. It was brought to the Town Commission's attention that under current Town Code, the Planning & Zoning Board (P&Z Board) has final 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 is a Town Commission strategic planning 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 provisions in the Zoning Code that address final approval authority associated with Freestanding Personal Wireless Facilities¹. The necessary changes include:

- Amendments to Section 158.009, *Chart of Decisions and Appeals*, to reflect that Freestanding Personal Wireless facilities final approval 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.

¹ 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 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 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 not 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. 3rd DCA 1985). The Ordinance would be effective immediately upon adoption and the provisions, as noted in Section 9.

Ordinance 2022-02 is on an expedited timetable with a public hearing held by the Planning & Zoning Board (P&Z Board) on January 18, 2022. At their public hearing, the P&Z Board recommended approval (7-0).

Staff Recommendation

Forward Ordinance 2022-02 to the February 7, 2022 Regular Meeting for second reading and public hearing.

Attachment

1. Ordinance 2022-02 (Available in Town Clerk's Office)
2. PowerPoint Presentation (Available in Town Clerk's Office)

End of Agenda Item