

## MEMORANDUM

**TO:** Tom Harmer, Town Manager  
**FROM:** Isaac Brownman, Public Works Director  
**DATE:** April 4, 2019  
**SUBJECT:** Utilities Undergrounding Project Update

### Recommended Action

None, informational only.

### Background

Public Works provides monthly status reports regarding the Utilities Undergrounding Project to update the Commission relative to the utilities undergrounding and fiber project. When necessary, staff will seek Commission policy direction or concurrence on elements of the project.

### Underground Project – Funding

No additional information this month. Staff is in process of developing Fiscal Year 2019-2020 (FY20) budgets including Undergrounding components and Bond / P3 funding considerations.

### Underground Project – Design-Build RFP

Staff is involved with final negotiations with Wilco Electrical, LLC. (Wilco) and review of final draft Master Agreement and Work Assignments for Phase 1 and 2 electrical undergrounding construction. Notice-to-Proceed (NTP) is still anticipated to occur later in the Spring of 2019.

The Town has secured a material staging and handling site of three acres adjacent to Cortez Road and 75<sup>th</sup> Street. Staff will be including a Scope of Work in the Wilco contract to handle, manage, secure and deploy FPL materials and supplies for the project from this location.

The Town has authorized the de-coupling of Frontier project work to allow them to proceed with undergrounding their aerial copper telephone facilities with greater speed and cost savings. ***This work starts the initial construction related activities for the Undergrounding project. Corporate Frontier recent comments are to emphasize customer conversions from copper to fiber to lessen further the need for burying existing aerial lines. Anticipated commencement is mid-May 2019.***

Comcast work is under re-design by the utility themselves to get closer to budget, and this work is planned to remain within the Wilco Scope of Work.

Roles and responsibilities of installing Town-owned fiber components are being negotiated between the Town, Wilco, and Waterleaf International LLC.

### Underground Project – P3 Fiber Backbone and Provider Services

Magellan Advisors continues to assist the Town with negotiating terms of the prospective partnerships. The P3 project team has set the following milestone toward completion of P3 negotiations and contracts:

- May 2019: Approve Final Agreements

The Town has entered into an agreement with Waterleaf International LLC for full design of the Town's fiber-optic components including two (2) Radio Frequency ("RF") signal proliferation studies and models: one for pole heights at 35-ft. for Gulf of Mexico Drive (GMD) and 25-ft. for neighborhoods, and another for pole heights at 25-ft. for GMD and 15-ft. for neighborhoods.

The potential outcome of this arrangement could allow for expedited and more immediate implementation of the fiber and street light components of the project. The Town is also negotiating an agreement with Pinpoint Holdings for a potential Fiber-to-the-Home ("FTTH") solution as part of leveraging the Town's backbone infrastructure to enhance island residential and commercial fiber services.

Waterleaf has completed the initial drive-through signal proliferation data collection throughout the island community the weekend of March 30, 2019. This data on existing cell signals will be used for the basis for modeling software to provide design parameters for future antennae points at 15, 25 and 35 ft. pole heights per Commission direction.

Results of RF study will indicate considerations for poles at the prescribed heights and for additional pole locations where needed for better cellular and WiFi signal coverage with the Town's building and foliage density. **Waterleaf has also contacted the four (4) major wireless service providers and has received positive feedback regarding use of Town and P3 partner infrastructure.**

Information is being compiled from Waterleaf that will provide additional background regarding pole material options.

### **Current New Federal Communications Commission ("FCC") Regulations**

The Town Attorney has drafted a memo clarifying the September 2018 FCC Declaratory Ruling and Order (FCC-CIRC 1809-02) and resulting abilities the Town has to regulate aesthetic of small cell poles and related infrastructure. The memo is attached for reference.

In addition, Town Code Chapter 158.200 and 158.201 provides Town criteria for permitting and allowing personal wireless service facilities. Some of the current Town Code provisions will need to be updated once the RF studies and pole style information are completed and provided by Waterleaf.

### **Other Items of interest**

- FPL Phase One receipt of materials planned for the end of April, early May 2019 to site staging area.
- FPL Phase One and Two final design and Binding Cost Estimate
  - Executed and payment of CAIC, February 21, 2019
  - Receipt of Phase Two materials to commence shipment to staging area within 45 days
- Other utilities (Frontier, Comcast)
  - Frontier:

- Cost estimates have been received now on all Phases. Purchase Orders are in place for progress payments for completed designs and work for each phase.
    - Costs provided are used for budget tracking.
  - Comcast:
    - Cost estimates are currently under review for all Phases. Engineering group to identify separation of betterment to the project.
- **CDM Smith - Overall Budget Monitoring**
  - We continue to utilize Phase I and II estimates from FPL, Frontier, and Comcast to provide budget confirmation of negotiations with Wilco Electrical, LLC for these and all Phases. In negotiations with Wilco Electrical, LLC current submitted costs are favorable.
  - **Street Lighting Budget for GMD**

The current budgeted amount of \$3,112,000 was to light a significant amount of GMD. The current FDOT Justification Study locations and additional locations noted by Commissioners should require a lesser amount, pending pole height, material, and fixture determination.

    - Bond Counsel has indicated that the application of any remaining GMD street light funding is allowed to be expended if applied to underground facilities or above ground street lighting. For example, the funding can be used for additional street and/or pedestrian lighting and also additional underground fiber-optic backhaul. However, these funds cannot be applied to above-ground cellular poles or towers.
- CDM Smith - Schedule
  - We expect some adjustments to the Master Schedule once our Design Build firm is under contract, we have more information on P3 agreements, and co-funding options are established. Construction start is anticipated Spring 2019.

**Pole Materials Information**

Additional information by Waterleaf regarding concrete, fiberglass, steel and aluminum pole types will be shared with the Town Commission during the presentation.

**Staff Recommendation**

None, informational only.



# Utilities Undergrounding Project Update

**Town Commission Regular Workshop Meeting  
April 15, 2019**



# Utilities Undergrounding Update

## Discussion Items:

- Project Updates
- Current new Federal Communications Commission (“FCC”) Regulations
- Town Development Codes
- Budget for GMD Lighting / Fiber components
- Additional Lighting for sections of GMD



# Project Updates

## **Design-Build Master Contract: Wilco Electrical, LLC**

- Near completion with Town Attorney and Procurement Offices

## **Staging Area and Phase 1 Material Delivery:**

- Cortez Road Staging Area Agreement signed and complete
- Phase 1 materials delivery NTP to be issued to FPL

## **Frontier and Comcast Work:**

- Frontier anticipates starting Phase 1 work -- May through June  
Moving customers off copper
- Comcast continues re-design effort for budget consistency



# Project Updates, cont.

**P3 Agreements:** Waterleaf International, LLC, and Pinpoint Holdings, LLC, documents in progress.

**Waterleaf two (2) RF studies in progress:**

- 35-ft. GMD, 25-ft. Neighborhoods.
- 25-ft. GMD, 15-ft. Neighborhoods.
- Island testing took place weekend of March 30<sup>th</sup>

**Waterleaf in contact w/ 4 major wireless carriers:** Positive feedback and interest.



# Current New FCC Regulations

## Declaratory Ruling and Order (FCC-CIRC 1809-02) September 2018

- Right-of-Way (ROW) and outside of the ROW use
  - Rules clarify that local governments may charge a fee that is “fair and reasonable compensation”
  - FCC defined as the local government’s reasonable approximation of costs;
- States and local governments cannot explicitly or implicitly (de facto) prohibit small cell facilities;
- States and local governments have continued authority to issue construction permits for small wireless facilities when construction involves roads and other public ROWs;





# Current New FCC Regulations, cont.

States and local governments have ***the authority to regulate aesthetics:***

- Reasonable, no more burdensome than those applied to other types of infrastructure deployments, and published in advance.
- Stealth designs or other means of camouflage, the size of equipment, the color of paint, minimum spacing requirements for wireless installations
- Other details that may assist in avoiding an intangible public harm of unsightly or out-of-character deployments;



# Current New FCC Regulations, cont..

- Small wireless facilities “shot clock” was modified to 60 days for co-location on preexisting structures and 90 days for new builds.

## What about the State “carve out” for qualifying coastal communities?

- While this exemption may carve the Town out of the applicability of existing state law, there is not a similar exemption that carves the Town out from the federal legislation and rules.



# Town Development Codes

## 158.200 Personal wireless service facilities

(B) Hierarchy of personal wireless service facility preferences...

(1) An antenna located on or in an existing building, whether or not a co-location (see subsections [158.201\(A\)\(2\)](#), (3) and (5)).

(2) The co-location of an antenna on an existing freestanding facility (see subsection [158.201\(A\)\(4\)](#)).

(3) Facilities primarily mounted on existing utility poles and/or light fixtures, such as DAS or similar applications (see subsection [158.201\(B\)](#)).

(4) Freestanding facilities (see subsection [158.201\(C\)](#)).



# Town Development Codes, cont.

## 158.200 Personal wireless service facilities

### E) Generally applicable review procedures and timeframes.

(1) The Planning & Zoning official shall notify the applicant for a personal wireless service facility within **20 days** after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and has been properly submitted in accordance with the requirements of this Zoning Code. An application for personal wireless service facility is deemed properly completed and properly submitted when it is verified that the information contained within the application is true, accurate, and contains all applicable information needed to make a determination as to the merits of the request. Such notification shall indicate with specificity any deficiencies which, if cured, could make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the Town shall again have **20 days** to notify the applicant, in writing, of any remaining deficiencies that must be cured. If the applicant does not cure the deficiencies within **30 days**, the application shall be considered withdrawn and closed.

(2) An application is deemed submitted or resubmitted on the date the application is received by the Town. If the town does not notify the applicant in writing that the application is not completed in compliance with this Zoning Code within **20 days** after the date the application is initially submitted or resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted.

(3) Applications for a co-location shall be processed within **45 days** after an application has been properly completed and properly submitted. Applications for new personal wireless service facilities, including freestanding facilities, shall be processed within **90 days** after an application has been properly completed and properly submitted.

(4) The timeframes stated in this subsection may be extended or tolled by mutual agreement of the Town and applicant.



# Town Development Codes, cont..

## **158.201 Personal wireless service facility development standards**

### *(A) Antennas.*

(7) Standards applicable to all antennas.

(a) All antennas must be at least 30 feet from ground level.

(b) An antenna and its ancillary facilities must meet all applicable requirements of the Florida Building Code.

(c) The antenna equipment shelter/cabinet must have a sign in close proximity which is readable from a distance of at least five feet, in accordance with FCC regulations, which notes the owner of the equipment and the name and telephone number of the person to contact to report an emergency or situation when notification is warranted.

(d) All additional requirements of State, Federal and local law must be adhered to.



# Town Development Codes, cont...

## **158.201 Personal wireless service facility development standards**

(B) Personal wireless service facilities primarily mounted on existing utility poles and/or light fixtures.

(1) Personal wireless service facilities primarily mounted on existing utility poles and/or light fixtures, including but not limited to, DAS and/or small cell applications, are permissible in all Zoning Districts provided the following criteria are met:

(c) Any ancillary equipment located in a right-of-way:

1. Shall be attached to a utility pole and/or light fixture and painted the same color as the utility pole and/or light fixture; and
2. Shall not exceed three feet in height, two foot in width, and one foot in depth.

(e) The top of any associated equipment shall not exceed 50 feet in height.

# Town Development Codes, cont....

## 158.201 Personal wireless service facility development standards

could reasonably be found and/or blend with the surrounding area, such as a light fixture or tree. Examples of acceptable and unacceptable free-standing facilities are provided in the following graphics:

1. *Examples of acceptable freestanding facilities:*



Graphic C.



Graphic D.



Graphic E.

2. *Examples of unacceptable freestanding facilities:*



Graphic F.

158.201



Graphic G.

(b) Ancillary equipment must meet the following criteria:

1. Shall be no wider than seven feet;
2. Shall be no longer than 13 feet;
3. Shall not exceed the height limitations for mechanical equipment as provided by this Zoning Code;
4. May be located within a required side or required rear yard, provided, that it shall be no closer than ten feet to any lot line;
5. Shall be included in lot coverage and non-open space calculations for the site, including the pad;
6. Shall be located on a concrete pad, unless required to be elevated due to FEMA regulations;
7. Shall be screened from view by landscaping, architectural features, or a combination of both, and designed in a manner which minimizes nuisance impacts, such as noise and odor. Screening shall be at least equal to the height of the ancillary equipment on all sides and shall be maintained in good order;
8. Shall meet the requirements of section 158.148 "Intersection visibility"; and
9. Shall be set back from any existing residential dwelling at least one foot for every foot in height of the facility (dwellings located on the same parcel as the structure are excluded).

(c) The top of any freestanding facility and ancillary equipment shall not exceed the maxi-

mum height established for the zoning district in which the facility is located, as measured from base flood elevation, but in no case shall the height exceed 50 feet.

(d) For any freestanding facility that utilizes lighting, the lights must meet all applicable federal, state, and local regulations regarding shielding of lighting to protect sea turtles.

(e) The freestanding facility, its components, ancillary equipment, and screening must be maintained in good order. Failure to maintain the freestanding facility, its components, ancillary equipment, and screening shall constitute a violation of this chapter.

(2) The special exception application must be made in conjunction with the site plan review requirements set forth in this Zoning Code. An application shall include the following information:

(a) The name of the applicant(s) and whether each applicant is an individual, partnership, limited partnership, limited liability corporation, professional corporation, professional association, governmental entity, or some other type of legal group or association;

(b) A complete and accurate description of the proposed freestanding facility, including where necessary, a scale drawing or model of the proposed freestanding facility;

(c) If applicable, documentation of any contract, license, lease, letter of understanding, agreement in principle, or other type of agreement with a personal wireless service provider for use of the freestanding facility and a summary of the agreement or arrangement;

(d) The proposed location of the freestanding facility together with both a legal description of the location, and a map in sufficient detail to indicate the location with precision;

(e) Proof that the property owner, if different from applicant, authorizes the installation of the facilities.

(f) The zoning/land use designation for the proposed freestanding facility;



# Town Development Codes, cont.....

## Future Town Code revisions:

As Waterleaf International, LLC completes the RF Studies and further clarifies material options, the Town will use the information to support updating the Code including minimum aesthetic requirements as they relate to height, spacing, material, style etc.





# Current Budgets

We are providing current budgets assigned to the GMD referendum.



# Adopted 18/19 Budget for GMD

**\$23,419,928**

**UC/GMD-PROJECT MGMT/ADMN SUPPORT "SOFT COSTS"**

\$2,127,850

**UC/GMD-UTILITY CONVERSION  
"UNDERGROUNDING"**

\$16,342,084

**UC/GMD-FIBER OPTIC**

\$1,837,994

**UC/GMD-STREET LIGHTS**

\$3,112,000



# Contingency Amounts Included for Budget Line Items for GMD

**UC/GMD-PROJECT MGMT/ADMN SUPPORT “SOFT COSTS”**

\$ 500,000

**UC/GMD-UTILITY CONVERSION  
“UNDERGROUNDING”**

\$1,000,000

**UC/GMD-FIBER OPTIC**

\$ 0

**UC/GMD-STREET LIGHTS**

\$ 0



# Street Lighting for GMD

***\$3,112,000***

Original estimate was representative to lighting all of GMD.

Now that we have received approval to reduce the proposed street lighting to just the (2) intersections and (5) mid-block crossings, and additional locations identified by Commission, estimate can be reduced\*

\* For example, ballpark estimate \$1 million based on pole assumptions and locations consistent with the street lighting maps shared with this presentation



# Street Lighting Justification Study

FDOT “Street Lighting Justification Study” recommended lighting the (2) intersections and (5) mid-block crossings to current standards.

At prior Workshop Meetings the Commission added additional locations to be illuminated.

The following slides indicate the planned lighting for both the FDOT and Town identified locations.

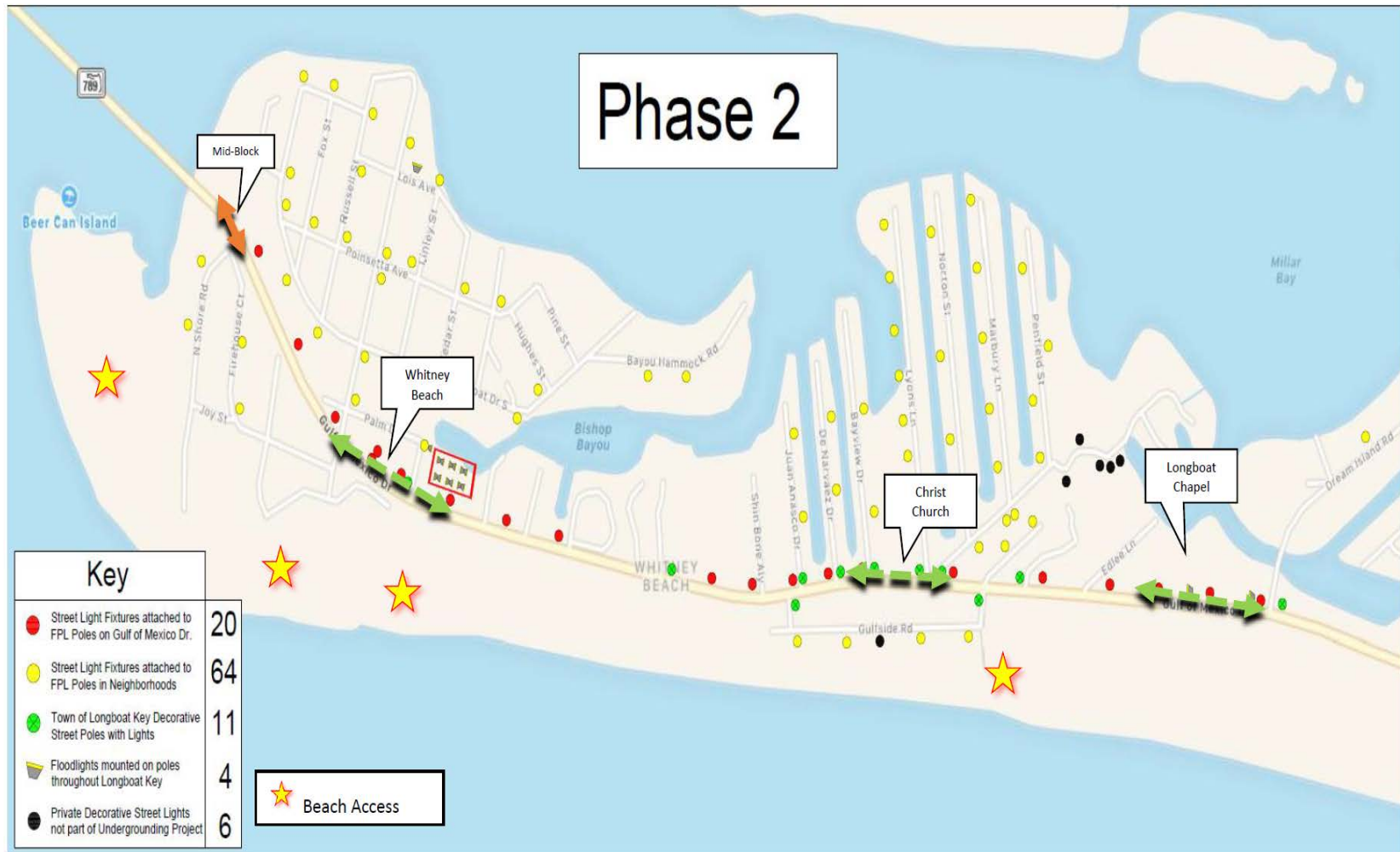


# Phase 1





# Phase 2





# Phase 3





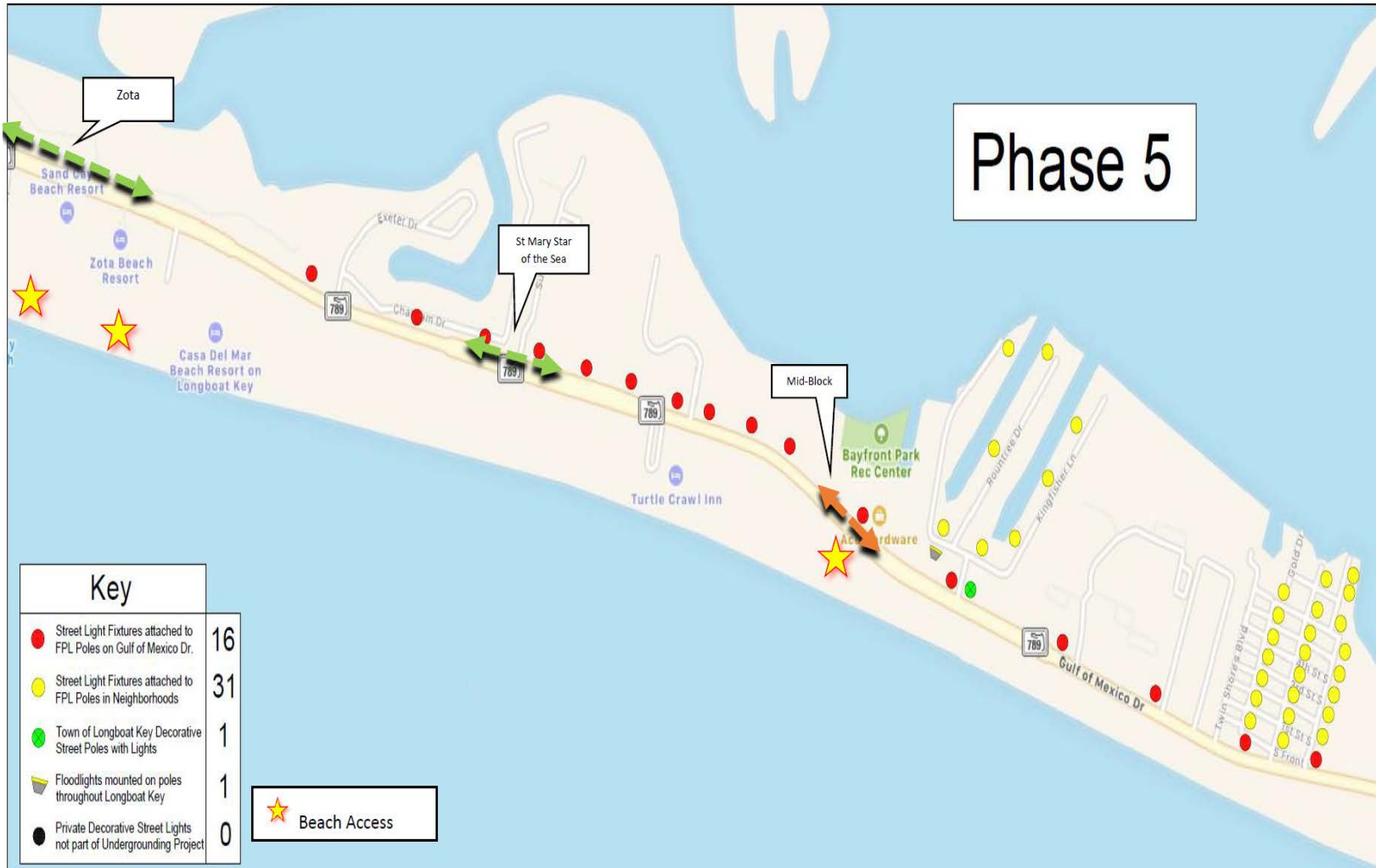


# Phase 4





# Phase 5





# Use of GMD Lighting & Fiber Funds

## Bond Counsel clarification:

- With respect to any excess funds from the original street lighting estimate, the Town has some flexibility on GMD with respect to application of cost savings.

Expenditure of cost savings must be consistent with GMD ballot question:

- Shall Town of Longboat Key be authorized to issue revenue bonds ... to finance undergrounding electrical, communications, fiber optics and other utilities and installation of street lighting relating to Gulf of Mexico Drive...?

Rule of thumb for using project cost savings: expenditure allowed if applied to underground facilities OR above ground street lighting

## Examples:

- Permissible: underground fiber optics facilities related to backhauling; enhanced street lighting including pedestrian street lighting options
- Not allowed: above-ground cellular poles or towers....*nor related equipment.*



# Pole Material Discussion

- Some Town citizens have expressed aesthetic concerns regarding concrete poles.
- Primary concern is in regards to diameter of these poles.
- Fiberglass is a potentially viable alternative
- Direct bury capability.
- Some potential concern regarding UV fading from a maintenance perspective.

**All material options provide choices of colors.**

**Waterleaf presentation**



# Pole Specifications

Specification	Concrete	Steel*	Aluminum*	Fiberglass	Concrete Foundation*
Ground Level Diameter (25')	9"	6"	6"	11"	12"
Ground Level Diameter (35')	11"	8"	8"	13"	14"
Excess Capacity EPA (35')	11 Sq. Ft.	4 Sq. Ft.	0 Sq. Ft.	1 Sq. Ft.	N/A
Excess Capacity Summary	High	Medium	Low	Low	N/A
Pole Cost	\$2,276	\$2,199	\$2,634	\$1,475	N/A
Cost Factor	1.0	1.0	1.1	0.6	2.0
Fade Potential	No	Yes	Yes	Yes	N/A
Surface Maintenance	None	Paint	Paint	None	N/A

Cost information based on representative quotes. Final amount may differ.

Cost information includes cost of pole material and shipping. Lighting fixture and install not included

Information based on representative quote per type. Final results may be slightly different.



# Pole Photos

**Concrete**



**Steel**





# Pole Photos (cont.,

**Aluminum**



**Fiberglass**

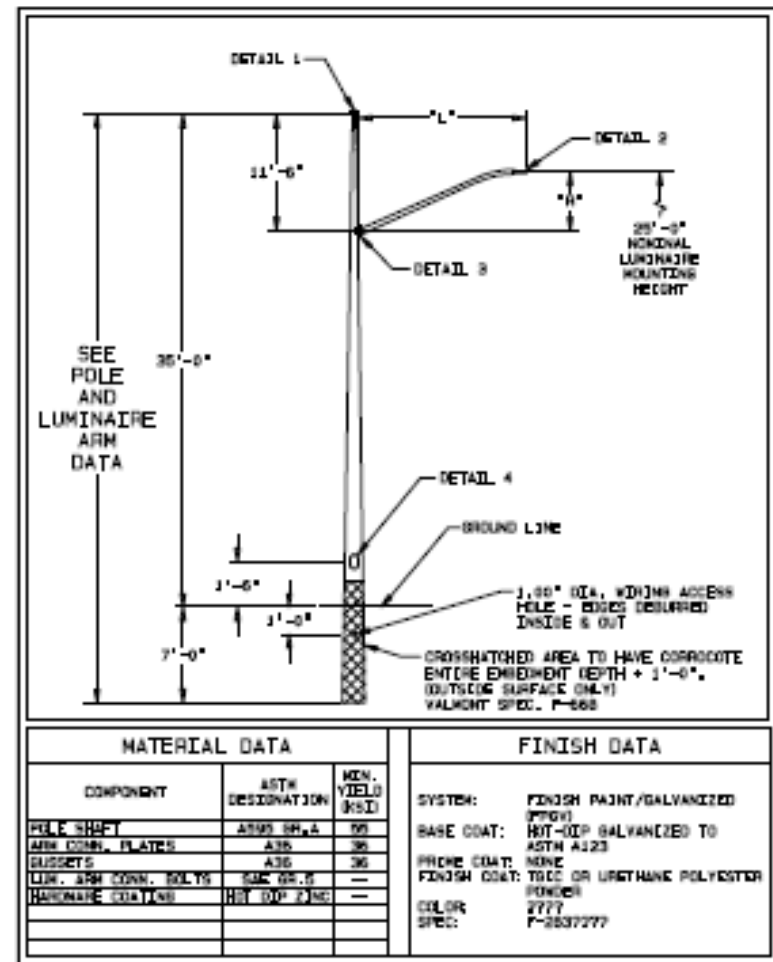
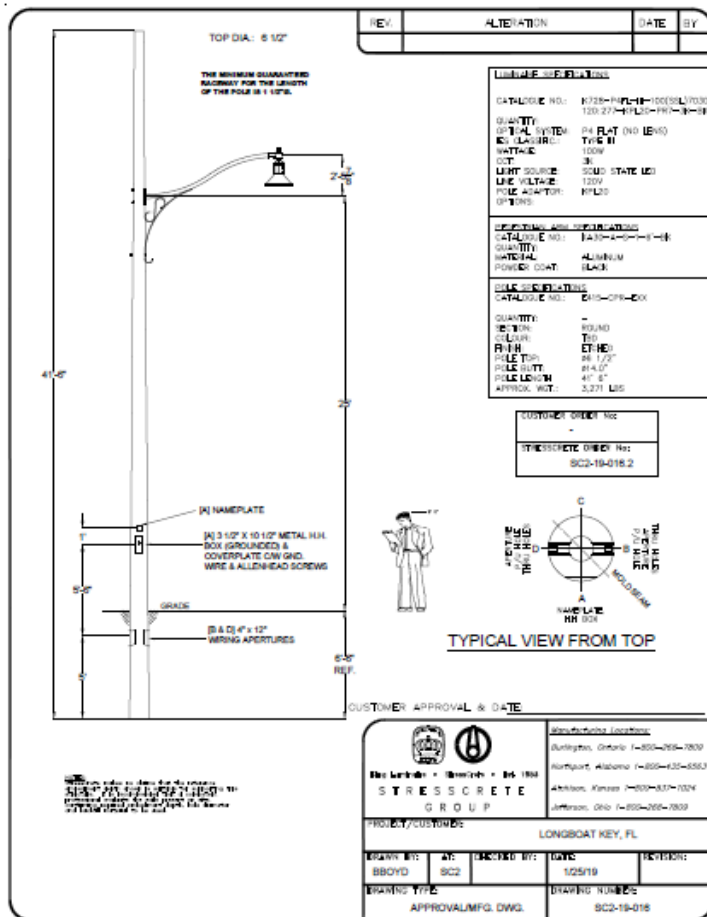




# Pole Drawings

## Concrete

## Steel

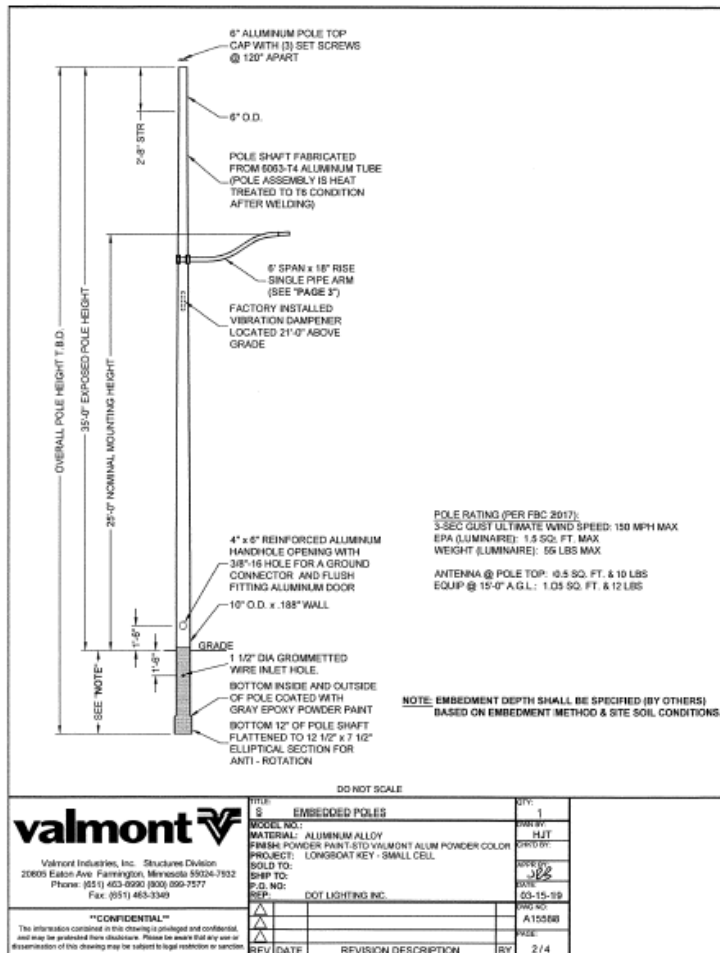




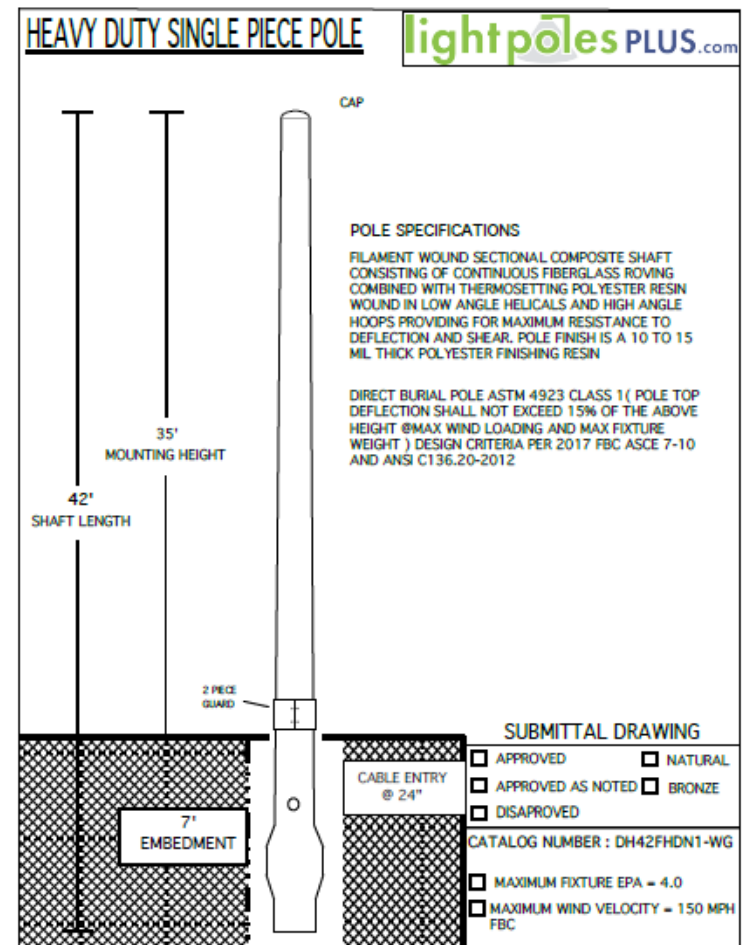


# Pole Photo Drawings

## Aluminum



## Fiberglass





# Pole Material Discussion

## Next Step:

- Further analysis with Waterleaf to bring back pole material recommendations for Town Commission consideration at a future meeting.



## Wireless Coverage Analysis Status

- Completed drive test of existing coverage for each wireless carrier
- Completed CW drive test to measure signal for sample small cells
  - Completed tests at 3 locations (North, Central, and South)
  - Completed tests at 3 heights at each location (35', 25', and 15')
  - Test simulated a small cell at that location.
  - Measurements indicate how fast signal drops off with local clutter / vegetation
  - Tested both higher and lower frequency bands to cover a range.
- Received post processed results from drive test data.
- Loading data into coverage modelling software to calibrate
- Software used to predict coverage at other locations, heights, and frequencies.



# Wireless Coverage Analysis

## Next Step:

- Upon completion of the two (2) RF Studies and associated analyses by Waterleaf, bring the results to the commission for a final decision on pole heights on GMD and the neighborhoods.



# PERSSON, COHEN & MOONEY, P.A.

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Reply to: Lakewood Ranch

## MEMORANDUM

TO: Town Commission

FROM: Maggie Mooney, Town Attorney

DATE: April 5, 2019

RE: Applicable Laws Governing Small Cell Wireless Facilities within the Town

The purpose of this Memorandum is to provide a high level overview of the applicable laws governing wireless facility infrastructure within the Town. This Memorandum will discuss generally the three levels of regulations relating to small cell wireless facilities at the federal, state and local levels.

Due to recent rulemaking activity by the Federal Communications Commission (FCC), questions have arisen relating to the scope of the FCC's rule amendments regarding small cell wireless facilities within the Town. There has been a clear movement by the FCC and members of Congress to streamline federal standards to promote the installation of small cell wireless facilities nationwide. In September 2018, the FCC issued a Declaratory Ruling and Order (FCC-CIRC 1809-02) clarifying the scope of the federal pre-emption within the Communications Act over small cell facility infrastructure. The FCC's ruling essentially established certain timing and fee standards that the wireless carriers can rely upon regardless of the jurisdiction they are deploying facilities in across the United States. More specifically, the FCC's ruling provided:

Lakewood Ranch  
6853 Energy Court  
Lakewood Ranch, Florida 34240

Venice  
236 Pedro Street  
Venice, Florida 34285

1. The amount of fees that state and local governments can charge wireless companies for use of government property within the public rights-of-way (ROW) and for processing an application or permit for a small cell facility (inside and outside of the ROW). Specifically, the rules clarify that local governments may charge a fee that is “fair and reasonable compensation,” which the FCC defined as the local government’s reasonable approximation of costs;
2. States and local governments cannot explicitly or implicitly (de facto) prohibit small cell facilities;
3. States and local governments have continued authority to issue construction permits for small cell wireless facilities when construction involves roads and other public ROWs;
4. States and local governments have the authority to regulate aesthetics when such aesthetic regulations are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and published in advance. Among the aesthetic requirements the FCC mentioned as being reasonable included: stealth designs or other means of camouflage, the size of equipment, the color of paint, minimum spacing requirements for wireless installations, and other details that may assist in avoiding an intangible public harm of unsightly or out-of-character deployments;
5. A modified “shot clock” schedule that provides for shorter deadlines for local and state governments to process applications for small wireless facilities and non-small wireless facilities (large cell towers). For small wireless facilities the shot clock was modified to 60 days for collocation on preexisting structures and 90 days for new builds. The FCC emphasized that failing to act within the federal shot clock periods constitutes a prohibition on the provisions of service [which is not permitted].

In addition to the above federal regulations, state law also regulates the processing and timing of applications for small cell wireless facilities. In 2017, the Florida legislature adopted the Advanced Wireless Infrastructure Deployment Act (Florida Statutes 337.401(7)) which prohibited local governments from regulating collocations of wireless equipment on utility poles and public ROWs, and significantly restricted how local governments could regulate small wireless facilities deployment. This Act allows wireless providers to both collocate and install small wireless facilities on, under, within or adjacent to certain utility poles or wireless support structures within certain ROWs. Current Florida law also includes its own shot clock and applies a 60-day deadline for reviewing applications for siting small wireless facilities. Notwithstanding these regulations, the statute contains a “carve out” that exempts from these regulations certain qualifying coastal communities (like the Town of Longboat Key) that were in the process of undergrounding utilities. While this exemption may carve the Town out of the applicability of existing state law, there is not a similar exemption that carves the Town out from the federal legislation and rules. Furthermore, the 2019 Florida Legislative Session is currently underway and there is pending legislation (CS/CS/HB 693) that proposes additional amendments to the Advanced Wireless Infrastructure Deployment Act. As presently drafted, CS/CS/HB 693 continues to erode a local government’s

ability to regulate the placement of communications equipment in the public ROW. However, the present draft legislation appears to continue to exempt certain qualifying coastal communities (like the Town of Longboat Key) from the Advanced Wireless Infrastructure Deployment Act's applicability. This pending state legislation will need to be monitored closely until the conclusion of the Legislative Session on May 3, 2019.

In addition to the above described federal and state regulations, the Town's existing Zoning Code also regulates the installation of small cell facilities within the Town. Specifically, the Zoning Code sets forth the Town's application and review processes (including timeframes) for the review of collocation and small cell facility applications. Copies of Sections 158.200 and 158.201 of the Town's Zoning Code are attached. The Town's Zoning Code includes specific timeframes for processing small cell facility applications which are consistent with the FCC's recently modified shot clock timeframes. The Zoning Code also provides aesthetic criteria for the concealment of any such small cell facility, a hierarchy for personal wireless service facilities preferences, and photographic examples of acceptable and unacceptable small cell facilities. See, Section 158.201.

The above described federal, state and local regulations are being monitored, considered and discussed during the ongoing Town-wide undergrounding and small cell facility project discussions. For example, it is anticipated that future Zoning Code changes will be brought to the Town Commission for consideration to incorporate additional aesthetic standards for small cell facilities into the code. The timing of the anticipated additional legislation for inclusion within the Town's Zoning Code will likely be forthcoming following the Town Commission's policy decisions on small cell facility standards with respect to the overall design, equipment, and "look" of such facilities. Because these sections relate to the Town's Zoning Code, ordinance modifications will require at least a total of three (3) meetings/hearings before the Town's Planning and Zoning Board and the Town Commission.

If there are questions or comments regarding this Memorandum, please do not hesitate to contact me.

## **158.200 - Personal wireless service facilities.**

(A) *Purpose and legislative intent.* Federal and state laws recognize the town's authority to regulate the placement, construction, and modification of personal wireless service facilities. The town recognizes that personal wireless service facilities play an important and complex role in the community. The intent of this section is to ensure that the placement, construction or modification of personal wireless service facilities is consistent with the town's land use policies and balances the community needs. This section strives to establish a fair and efficient application process, mitigate impacts of personal wireless service facilities, provide a high quality of service that is technically viable and meets the current industry standards of service, and protect the health, safety and welfare of the residents and visitors of the town.

(B) *Hierarchy of personal wireless service facility preferences.* The town has established the hierarchy set forth below for personal wireless service facilities, with (1) being the most preferred and (4) being the least preferred. More preferred facilities require fewer approvals and are subject to fewer restrictions.

(1) An antenna located on or in an existing building, whether or not a co-location (see subsections 158.201(A)(2), (3) and (5)).

(2) The co-location of an antenna on an existing freestanding facility (see subsection 158.201(A)(4)).

(3) Facilities primarily mounted on existing utility poles and/or light fixtures, such as DAS or similar applications (see subsection 158.201(B)).

(4) Freestanding facilities (see subsection 158.201(C)).

(C) *Prohibited personal wireless service facilities.* Self-supporting lattice towers, guyed towers, and all freestanding facilities not meeting the requirements of subsection 158.201(C) are prohibited.

(D) *Priority determination.* If the proposed personal wireless service facility is not one of the three highest priorities listed, a detailed explanation and technical justification shall be provided as to why each of the higher priority facilities was not selected. This must include documentation that any existing personal wireless service facility (whether owned by the applicant or not) located within a two-mile radius of the proposed location is physically and/or technically unable to support collocation of additional personal wireless service equipment, that the existing facility is insufficient, or that the existing facility does not meet the engineering requirements of the applicant.

(E) *Generally applicable review procedures and timeframes.*

(1) The planning and zoning official shall notify the applicant for a personal wireless service facility within 20 days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and has been properly submitted in accordance with the requirements of this Zoning Code. An



application for personal wireless service facility is deemed properly completed and properly submitted when it is verified that the information contained within the application is true, accurate, and contains all applicable information needed to make a determination as to the merits of the request. Such notification shall indicate with specificity any deficiencies which, if cured, could make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the town shall again have 20 days to notify the applicant, in writing, of any remaining deficiencies that must be cured. If the applicant does not cure the deficiencies within 30 days, the application shall be considered withdrawn and closed.

(2) An application is deemed submitted or resubmitted on the date the application is received by the town. If the town does not notify the applicant in writing that the application is not completed in compliance with this Zoning Code within 20 days after the date the application is initially submitted or resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted.

(3) Applications for a co-location shall be processed within 45 days after an application has been properly completed and properly submitted. Applications for new personal wireless service facilities, including freestanding facilities, shall be processed within 90 days after an application has been properly completed and properly submitted.

(4) The timeframes stated in this subsection may be extended or tolled by mutual agreement of the town and applicant.

(5) The final decision approving or denying an application shall be in writing and supported by "substantial evidence" pursuant to the Telecommunications Act, 47 U.S.C. § 332(c)(7)(B)(iii).

(6) Applications must demonstrate that no portion of any abutting, adjoining, or nearby residentially zoned property will be exposed to radio frequency (RF) emissions exceeding the federal safety limits for RF emissions. Once installation has been completed for any personal wireless service facility, a post-construction RF energy testing study must be conducted and submitted to the town demonstrating that the personal wireless service facility complies with this provision and all federal safety standards for RF energy exposure.

(F) *Variances, waivers and departures.* Variances, waivers, departures or other methods of relief from the provisions of the Code shall not be granted for personal wireless service facilities.

(G) During a declared emergency within the town, the town manager is authorized to allow the placement and operation of temporary personal wireless service facilities within any zoning district for a period not to exceed 90 days. Placement and operation of temporary personal wireless service facilities beyond the 90-day limit may be granted by the town commission if deemed necessary for the health, safety, and welfare of the public due to extended disruption in services after a declared emergency.

(Ord. 97-23, passed 11-3-97; Amd. Ord. 04-09, passed 7-12-04; Amd. Ord. 07-23, passed 9-10-07; Ord. 2009-11, passed 12-7-09; Ord. 2012-08, passed 7-2-12; Ord. 2013-18, passed 6-30-14; Ord. 2016-12, passed 7-5-16)

**158.201 - Personal wireless service facility development standards.**

*(A) Antennas.*

- (1) An application for an antenna, whether or not a co-location, shall include the following information:
  - (a) The name of the applicant;
  - (b) Whether the applicant is an individual, partnership, limited partnership, limited liability corporation, professional corporation, professional association, governmental entity, or some other type of legal group or association;
  - (c) A complete, thorough and accurate description of the proposed antenna, including where necessary, an elevation drawing or model of the proposed antenna showing the view from north, east, west and south;
  - (d) The type of existing building on which the antenna is proposed to be located;
  - (e) Certification that the proposed antenna will comply with applicable Federal Aviation Administration requirements under 14 C.F.R. s. 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use;
  - (f) The proposed use of the antenna;
  - (g) The proposed location of the antenna with a map in sufficient detail to indicate the location with precision;
  - (h) The applicant shall provide proof that the property owner, if different from applicant, authorizes the installation of the facilities;
  - (i) The zoning/land use designation of the site for the proposed antenna;
  - (j) The height of the proposed antenna;
  - (k) Where applicable, a lighting plan, that is consistent with all federal, state and local requirements;
  - (l) Documentation that the proposed antenna and any appurtenances will withstand wind speeds as set forth in the Florida Building Code;
  - (m) A plan detailing the steps to visually blend the proposed antenna with surrounding buildings, facilities and features;
  - (n) The estimated completion date for constructing and/or locating the antenna, and any ancillary equipment.
- (2) An antenna classified as an initial (rather than co-location) antenna, located on a rooftop, a rooftop antenna platform, or the exterior of a building shall meet the following minimum criteria:

- (a) It is located in the INS, R-3MX, R-4MX, R-6MX, MUC-1, MUC-2, MUC-3, OI, C-1, C-2, C-3, M-1, T-3, or T-6 zoning districts;
- (b) It is located on or in one of the following:
  1. A rooftop of an existing building in excess of 40 feet in height;
  2. A rooftop antenna platform located on a roof of an existing building in excess of 40 feet in height; or
  3. The exterior of an existing building in excess of 40 feet in height.
- (c) The height of the antenna shall not exceed 15 feet above the highest point of the building; and
- (d) The antenna shall be camouflaged. An antenna shall be deemed to be camouflaged if the antenna and any ancillary equipment are concealed from view by way of enclosure or through a blending of the antenna and ancillary equipment with the architectural design and appearance, color and scale of the building to which it is attached. An example is provided below:



Graphic A.

- (3) An antenna located inside a building is permitted provided it is not visible from any surrounding properties or roadways and no portion of the antennae is recognizable or discernible from the exterior of the building. Architectural features concealing the antennae must be consistent with the architecture of the building to which they are attached. The architectural features shall not exceed the height restrictions for the zoning district in which they are located, except as allowed by this Code. The setback for any architectural features concealing an antenna from any residentially zoned property must be at least one foot for every foot in height of the architectural features (dwellings located on the same parcel as the antenna are excluded). An example of an acceptable architectural feature concealing an antennae located inside a building is provided below:



Graphic B.

- (4) An antenna classified as a co-location located on an existing freestanding facility shall meet the following minimum criteria:
  - (a) The antenna does not increase the height of the freestanding facility to which it is to be attached, except as allowed in subsection 158.201(C), as measured to the highest point of any part of the freestanding facility or any existing antenna attached to the freestanding facility;
  - (b) The ground space area, if any, previously approved for equipment enclosures and ancillary facilities is not increased; and
  - (c) The antenna and its ancillary facilities meet all requirements as established in subsection 158.201(C).
- (5) An antenna classified as a co-location located on an existing building shall meet the following minimum criteria:
  - (a) The height of the antenna does not exceed 15 feet above the highest point of the building;
  - (b) The ground space area, otherwise known as the compound, if any, previously approved for equipment enclosures and ancillary facilities is not increased;
  - (c) The antenna and its ancillary facilities are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the building for initial antennas;
- (6) If only a portion of an application for a personal wireless service facility classified as a co-location does not meet the requirements of subsections (4) or (5) above, the noncompliant portion of the co-location application shall be reviewed as an initial antenna, under subsection (2) and the compliant remainder of the co-location application shall be reviewed in accordance with subsections (4) or (5), as applicable. A

co-location application that complies with subsections (4) or (5), except that it is proposing to increase the equipment ground compound approved in the original site plan for equipment enclosure and ancillary facilities by no more than a cumulative amount of 400 square feet or 50 percent of the original ground equipment enclosure size, whichever is greater, may continue to be reviewed as a co-location.

(7) Standards applicable to all antennas.

(a) All antennas must be at least 30 feet from ground level.

(b) An antenna and its ancillary facilities must meet all applicable requirements of the Florida Building Code.

(c) The antenna equipment shelter/cabinet must have a sign in close proximity which is readable from a distance of at least five feet, in accordance with FCC regulations, which notes the owner of the equipment and the name and telephone number of the person to contact to report an emergency or situation when notification is warranted.

(d) All additional requirements of state, federal and local law must be adhered to.

(8) The review and approval of an application for an antenna under this section is by site plan exemption pursuant to section 158.100 and building permit review, except as an initial installation where existing buildings are proposed to be architecturally modified to conceal an antennae. Existing buildings that are proposed to be architecturally modified to conceal antennae must follow the site plan approval process pursuant to section 158.095.

*(B) Personal wireless service facilities primarily mounted on existing utility poles and/or light fixtures.*

(1) Personal wireless service facilities primarily mounted on existing utility poles and/or light fixtures, including but not limited to, DAS and/or small cell applications, are permissible in all zoning districts provided the following criteria are met:

(a) The applicant shall provide proof that the owner of the utility pole and/or light fixture authorizes the installation of the facilities.

(b) The applicant shall provide proof that the property owner, if different from applicant, authorizes the installation of the facilities.

(c) Any ancillary equipment located in a right-of-way:

1. Shall be attached to a utility pole and/or light fixture and painted the same color as the utility pole and/or light fixture; and

2. Shall not exceed three feet in height, two foot in width, and one foot in depth.

(d) Any ancillary equipment not located in a right-of-way is permissible by site plan exemption and must meet the following criteria:

1. Shall be no wider than seven feet;
2. Shall be no longer than 13 feet;
3. Shall not exceed the height limitations for mechanical equipment as provided by this Zoning Code;
4. May be located within a required side or required rear yard, provided, that it shall be no closer than ten feet to any lot line;
5. Shall be included in lot coverage and non-open space calculations for the site, including the pad;
6. Shall be located on a concrete pad, unless required to be elevated due to FEMA requirements;
7. Shall be screened from view by landscaping, architectural features, or a combination of both, and designed in a manner which minimizes nuisance impacts, such as noise and odor. Screening shall be at least equal to the height of the ancillary equipment on all sides and shall be maintained in good order. Failure to maintain fences, walls or landscaping shall constitute a violation of this chapter;
8. Shall meet the requirements of section 158.148 "Intersection visibility"; and
9. Shall be set back from any existing residential dwelling at least one foot for every foot in height of the facility (dwellings located on the same parcel as the structure are excluded).

(e) The top of any associated equipment shall not exceed 50 feet in height.

(2) The review and approval of an application for an antenna under this section is by site plan exemption pursuant to section 158.100 and building permit review.

*(C) Freestanding facilities.*

(1) Freestanding facilities and their ancillary equipment shall be permissible by site plan review and special exception granted by the planning and zoning board in all zoning districts except in Island Preserve (R-1IP), Open Space - Passive (OS-P), Open Space - Conservation (OS-C), and Single-Family (R-1SF, R-2SF, R-3SF, R-4SF, R-6SF) districts, provided the following criteria are met:

(a) The freestanding facility shall be designed so as to mimic a structure or natural feature that could reasonably be found and/or blend with the surrounding area, such as a light fixture or tree. Examples of acceptable and unacceptable freestanding facilities are provided in the following graphics:

1. *Examples of acceptable freestanding facilities:*



Graphic C.



Graphic D.



Graphic E.



2. *Examples of unacceptable freestanding facilities:*



Graphic F.



Graphic G.

(b) Ancillary equipment must meet the following criteria:

1. Shall be no wider than seven feet;
2. Shall be no longer than 13 feet;
3. Shall not exceed the height limitations for mechanical equipment as provided by this Zoning Code;
4. May be located within a required side or required rear yard, provided, that it shall be no closer than ten feet to any lot line;
5. Shall be included in lot coverage and non-open space calculations for the site, including the pad;

6. Shall be located on a concrete pad, unless required to be elevated due to FEMA regulations;
  7. Shall be screened from view by landscaping, architectural features, or a combination of both, and designed in a manner which minimizes nuisance impacts, such as noise and odor. Screening shall be at least equal to the height of the ancillary equipment on all sides and shall be maintained in good order;
  8. Shall meet the requirements of section 158.148 "Intersection visibility"; and
  9. Shall be set back from any existing residential dwelling at least one foot for every foot in height of the facility (dwellings located on the same parcel as the structure are excluded).
    - (c) The top of any freestanding facility and ancillary equipment shall not exceed the maximum height established for the zoning district in which the facility is located, as measured from base flood elevation, but in no case shall the height exceed 50 feet.
    - (d) For any freestanding facility that utilizes lighting, the lights must meet all applicable federal, state, and local regulations regarding shielding of lighting to protect sea turtles.
    - (e) The freestanding facility, its components, ancillary equipment, and screening must be maintained in good order. Failure to maintain the freestanding facility, its components, ancillary equipment, and screening shall constitute a violation of this chapter.
- (2) The special exception application must be made in conjunction with the site plan review requirements set forth in this Zoning Code. An application shall include the following information:
- (a) The name of the applicant(s) and whether each applicant is an individual, partnership, limited partnership, limited liability corporation, professional corporation, professional association, governmental entity, or some other type of legal group or association;
  - (b) A complete and accurate description of the proposed freestanding facility, including where necessary, a scale drawing or model of the proposed freestanding facility;
  - (c) If applicable, documentation of any contract, license, lease, letter of understanding, agreement in principle, or other type of agreement with a personal wireless service provider for use of the freestanding facility and a summary of the agreement or arrangement;
  - (d) The proposed location of the freestanding facility together with both a legal description of the location, and a map in sufficient detail to indicate the location with precision;

- (e) Proof that the property owner, if different from applicant, authorizes the installation of the facilities.
  - (f) The zoning/land use designation for the proposed freestanding facility;
  - (g) The height of the proposed freestanding facility;
  - (h) The projected collapse zone certification that in the event of fall or collapse of the freestanding facility, said freestanding facility would not damage or negatively impact the real or personal property of the surrounding property owners;
  - (i) Documentation demonstrating compliance with the provisions of subsection 158.201(C)(1);
  - (j) A detailed plan for landscaping any ancillary ground equipment, in such a manner that the landscaping will shield the equipment from the view of adjoining parcels and/or public rights-of-way, noting that the landscaping shall be native, xeriscape plants only;
  - (k) A detailed preventive maintenance program that meets minimum maintenance program standards for which the applicant is to remain solely responsible. The town will not be responsible for monitoring the maintenance program;
  - (l) Certification that the proposed equipment will comply with applicable Federal Aviation Administration requirements under 14 C.F.R. § 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use;
  - (m) The estimated completion date for the location and/or construction or modification of each of the freestanding facilities and any ancillary equipment;
  - (n) The identity and location of any land-line backhaul network to each freestanding facility location, if applicable;
  - (o) Whether the applicant, within a two-mile radius of the proposed location, has ever had any permit (or similar or equivalent authorization) revoked, rescinded, canceled or terminated which authorized the placement, construction, and/or modification of personal wireless service facilities, and, if so, what were the reasons surrounding such revocation;
  - (p) The proposed equipment shall not interfere with or obstruct public safety telecommunications facilities in accordance with the applicable rules of the Federal Communications Commission; and
  - (q) All applicable provisions of this Zoning Code and the Florida Building Code shall be met.
- (3) In evaluating the application for a special exception for a freestanding facility, in addition to the findings of subsection 158.126(A), the planning and zoning board shall consider and evaluate the above application criteria and the following, with the intent of

balancing the reasonable allowance of a freestanding facility to provide personal wireless service in the area with the protection of the aesthetics of the area from adverse visual impacts:

- (a) The proposed location of the freestanding facility, including the zoning/land use designation of the site and abutting properties;
- (b) The proposed height of the freestanding facility;
- (c) The number and location of freestanding facilities and structures over 40 feet in height already existing within a 500-foot radius of the proposed freestanding facility;
- (d) The distance of the proposed freestanding facility to the nearest single-family residence measured from the freestanding facility to the boundary of the nearest single-family residence;
- (e) The proposed aesthetics of the freestanding facility and whether it visually blends in with surrounding buildings, structures and existing vegetation;
- (f) The potential impacts on property values of nearby or surrounding single-family properties.

(4) Upon granting site plan approval and special exception permit for the construction of a freestanding facility, the town reserves the right to inspect placement, construction and modification of such freestanding facility and ancillary equipment for the life of the facility. Any modification, relocation, rebuilding, repairing, in any way without the issuance of all applicable approvals and permits will be deemed a violation of the permit and result in the removal of the freestanding facility and ancillary equipment.

(5) Removal of freestanding facility and ancillary equipment. The town may require, upon notice with a reasonable opportunity to cure, the immediate removal of a freestanding facility and ancillary equipment if:

- (a) It has been abandoned for a period in excess of six months;
- (b) It falls into such a state of disrepair that it becomes an unsafe structure or becomes a public nuisance;
- (c) It is modified, relocated, or rebuilt without the issuance of all applicable approvals and permits;
- (d) The special exception has been revoked.

*(D) Insurance and security requirements.*

*(1) Insurance for freestanding facilities located on town-owned property or public rights-of-way.*

(a) A freestanding facility owner or operator shall not commence construction or operation of the facility without obtaining all insurance required hereunder and approval

of such insurance by the town manager, nor shall a owner or operator allow any contractor or subcontractor to commence work on its contract or subcontract until all such insurance has been obtained and approved. The required insurance must be obtained and maintained for the entire period the freestanding facility is in existence. If the owner or operator, its contractors or subcontractors do not have the required insurance, the town may order such entities to stop operations until the insurance is obtained and approved. The following coverage, at a minimum, shall be maintained:

1. Public liability: \$1,000,000.00 per occurrence;
2. Property damage: \$1,000,000.00 per claim; and
3. Umbrella liability: \$2,000,000.00.

(b) The policies shall be written on forms acceptable to the town, placed with an insurance carrier approved and licensed by the State of Florida Office. Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the town prior to issuance of a building permit.

(c) All policies of insurance required to be maintained shall name the Town of Longboat Key as an additional insured. All policies shall contain a provision that coverage afforded under the policy will not be canceled without at least 30 days prior written notice to the town.

(2) *Security fund.* A bond, cash security fund or irrevocable letter of credit in a form acceptable to the town, shall be provided to the town by the owner or operator to secure the cost of removing any personal wireless service facility permitted under this section should the owner or operator fail to remove the personal wireless service facility as required by this Zoning Code. The amount of the bond, cash security fund, or letter of credit to be provided shall be \$5,000.00 for each freestanding facility.

(Ord. 2013-18, passed 6-30-14; Ord. 2016-12, passed 7-5-16)

**End of Agenda Item**