

MINUTES OF THE MEETING OF THE BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

5:00 PM

The Board of County Commissioners of Brevard County, Florida, met in regular session on April 4, 2013 at 5:00 PM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

Call to Order

Attendee Name	Title	Status	Arrived
Robin Fisher	Commissioner District 1	Present	
Chuck Nelson	Commissioner District 2	Present	
Trudie Infantini	Commissioner District 3	Present	
Mary Bolin Lewis	Vice Chairman/Commissioner District 4	Present	
Andy Anderson	Chairman/Commissioner District 5	Present	

ZONING STATEMENT

The Board of County Commissioners acts as a Quasi Judicial body when it hears requests for rezonings and Conditional Use Permits. Applicants must provide competent substantial evidence establishing facts, or expert witness testimony showing that the request meets the Zoning Code and the Comprehensive Plan criteria. Opponents must also testify as to facts, or provide expert testimony; whether they like, or dislike, a request is not competent evidence. The Board must then decide whether the evidence demonstrates consistency and compatibility with the Comprehensive Plan and the existing rules in the Zoning Ordinance, property adjacent to the property to be rezoned, and the actual development of the surrounding area. The Board cannot consider speculation, non-expert opinion testimony, or poll the audience by asking those in favor or opposed to stand up or raise their hands. If a Commissioner has had communications regarding a rezoning or Conditional Use Permit request before the Board, the Commissioner must disclose the subject of the communication and the identity of the person, group, or entity, with whom the communication took place before the Board takes action on the request. Likewise, if a Commissioner has made a site visit, inspections, or investigation, the Commissioner must disclose that fact before the Board takes action on the request. Each applicant is allowed a total of 15 minutes to present their request unless the time is extended by a majority vote of the Board. The applicant may reserve any portion of the 15 minutes for rebuttal. Other speakers are allowed five minutes to speak. Speakers may not pass their time to someone else in order to give that person more time to speak.

INVOCATION

The invocation was given by Rob Medina, Director of Community Relations for U.S. for Congressman Bill Posey.

PLEDGE OF ALLEGIANCE

Commissioner Mary Bolin Lewis led the assembly in the Pledge of Allegiance.

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ITEM II.E., TRUDIE INFANTINI, DISTRICT 3 COMMISSIONER REPORT, RE: MELBOURNE HIGH BULLDOG SOCCER TEAM

Commissioner Infantini recognized the Melbourne High Bulldog Soccer team, and Coaches Rosie Lord and Cassandra Gonyer; and stated this is the fourth time the team has won the Class 4A State Finals.

The captain of the team expressed thanks to the Commission for recognizing the team; and stated she feels blessed to be a part of the team, as it was truly the best year of her life, and is thankful for everybody.

Coach Lord introduced the seniors on the team.

Commissioner Fisher pointed out the seniors have two championships.

Commissioner Infantini stated a resolution will be brought to the school for display, and congratulated the team for an excellent job representing Melbourne High School.

ITEM II.G., REPORT, RE: ANDY ANDERSON, DISTRICT 5 COMMISSIONER

Chairman Anderson stated this afternoon there is a bus parked out front with a picture of former County Commissioner Joe Wickham, who is like a founder father; he has a park and a road named after him; and he expressed his thanks to the Wickham family and to Mr. Palmer Collins, which is the artist who designed the picture on the bus.

PUBLIC HEARING, RE: TABLED ITEM AND PLANNING AND ZONING BOARD RECOMMENDATIONS OF MARCH 4, 2013

Chairman Anderson called for a public hearing to consider Planning and Zoning recommendations of March 4, 2013, as follows:

ITEM V.B. I. (13PZ-00001) - HAYES MEATS, INC. - (JAKE WISE, P.E.) - REQUESTS A CUP FOR ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION IN CONJUNCTION WITH A RESTAURANT IN A BU-1 ZONING CLASSIFICATION ON 0.87 ACRE. LOCATED ON THE SOUTH SIDE OF FORTENBERRY RD., APPROX. 380 FT. WEST OF PLUMOSA ST. (285 FORTENBERRY RD., MERRITT ISLAND)

Commissioner Nelson stated he wants to make sure this is in conjunction with the restaurant, with maximum of 50 seats, being recommended by the Planning and Zoning Board.

There being no objections, the Board approved the request by Hayes Meats, Inc., as recommended by the Planning and Zoning Board.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
SECONDER:	Chuck Nelson, Commissioner District 2
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

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ITEM V.C., ORDINANCE, RE: AMENDMENT TO CHAPTER 62 OF ORDINANCES CODE TO ENACT THE FARMTON MIXED ZONING OVERLAY CLASSIFICATION (SECOND READING)

There being no objections, the Board adopted Ordinance No. 2013-10, amending Chapter 62, "Land Development Regulations", Code of Ordinances of Brevard County, Florida; amending Article VI, Division 4, Subdivision IX, Special Classifications; specifically amending section 62-1574, creating the Farmton Mixed Use Zoning Overlay Classification; providing for conflicting provisions; providing for severability; providing for area encompassed; providing an effective date; and providing for inclusion in the Code of Ordinances of Brevard County, Florida.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
SECONDER:	Robin Fisher, Commissioner District 1
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.A.1., PUBLIC HEARING, RE: (12PZ-00086) - FRATERNAL ORDER OF EAGLES AERIE #4257, INCORPORATED - (CHARLES BERNARDO-CLEARVIEW TOWER COMPANY, LLC) - REQUESTS A CUP FOR A TOWER & ANTENNA IN A BU-1 ZONING CLASSIFICATION ON 3,500 SQ. FT., MORE OR LESS. LOCATED ON THE EAST SIDE OF N. COURTENAY PARKWAY, APPROXIMATELY 280 FEET SOUTH OF MUSTANG WAY

Cynthia Fox, Planning and Zoning Manager, stated the Board may recall this item; it was tabled from the February 7, 2013 meeting; the tower consultant is present for any additional information the Board may want; it is the same application heard on February 7, 2013; it is actually the second application received for this parcel because of a westward shift of location; and that is the reason for it being heard today.

Chairman Anderson inquired if the Board has any questions for the consultant or does it want to hear from the applicant. Commissioner Nelson responded he wants to hear from the applicant.

Chairman Anderson stated he has several speaker cards from the applicant; and he inquired if any comments need to be made. Kim Rezanka, Law Firm of Dean, Mead, representing Clearview Tower Company, LLC, responded Jack Rupert will not be speaking today, unless the Board has questions for him; stated Charles Bernardo, Consultant, and Craig Donaldson, Director of RF Engineering Director of MetroPCS will speak, because Mark Gowans, Engineering Manager of MetroPCS, who previously spoke February 7, 2013, is having surgery today.

Ms. Rezanka provided the Board a handout with facts that had changed; she stated on February 7, 2013, the Item was tabled for the Pine View Park to be looked at for a possible site; she mentioned she was cut short of time and was not able to make her closing argument on the heard testimony two months ago; and stated she is also providing the Board with an additional handout of minutes. She stated yesterday she met with Commissioner Nelson, he told her that he had thought the applicant, Mr. Gowans, and the CityScape Consultants, Inc. Engineer said the tower could move one-half of a mile; and the minutes are showing it was one-quarter of a mile, which is the reason for her providing the Board with the minutes handout. She stated Planning and Zoning recommended approving this on January 7, 2013; the Board had CityScape Consultants, Inc. Engineer's report saying there is a need only at 80 feet; Mr. Gowans had stated 150 feet is needed; they both are saying it needs to be within one-quarter mile of the site; and evidence was provided that there are no other sites that would meet the

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setbacks because of the commercial zone. She went on to say moving the tower 107 feet west was talked about, but the minutes say 170 feet, and she does not recall saying that; stated it would be further away from residential and apartments, but closer to Courteney Parkway; the packet provided to the Board includes three pages of the School Board minutes of November 9, 2012, explaining the potential school closures; and its concern about cell towers being a risk. She stated she has argued that Code has been met; there is no standard for aesthetics in the Code; the need has been shown; she had previously stated 80 feet does not allow for the two locations; Code requires ability for two co-locations, in addition to not allowing for two locations, as required by Code; it is apparent from the meeting minutes that Commissioner Nelson did not like the location and preferred waiting until the master plan is developed; and the Code to be changed to allow for an overlay district and for towers at government-managed lands. She stated petitions had previously been provided to the Board in the prior application; there is a petition today that will be provided from the residents of Catalina Isles; recently a letter was submitted, but she does not know who wrote it or when it was written; she cannot cross-examine it; and the petition does say a tower taller than 150 feet is wanted by the School Board, but it could not be at Merritt Island High School. She stated a petition was circulated by the Fraternal Order of Eagles Aerie #4257, Incorporated; and it is their property that would be leased; the petition has 270 signatures in favor, and 114 of those were MetroPCS users who said they need better service. She advised the Pine View Park is more than one-quarter mile away and is surrounded by single-family residents; Pine View Park does not work and is the only Park in the area, plus it is government land; stated the maximum height for government-managed lands is 35 feet; a variance is very limited, according to Code, Section 62-2101.5, Subsection 3, if mandated by the State or a federal agency for environmental regulation, if it abuts an IU or IU-1 zoned parcel, or if it abuts combinations of industrial, commercial, or PIP; and the Pine View Park does not meet the criteria. She mentioned having conversations with Christine Lepore, Assistant County Attorney, about using Pine View Park; stated Ms. Lepore told her there has to be a public need, or an Emergency Management, and then it could be located on government-managed lands; Emergency Management does not have a need for a cell tower, which the antenna could only be 35 feet; 35 feet does not meet the standards needed; and it would have to be competitively bid. She indicated that process somewhat defeats the entire application process for a cell phone tower and it is unduly restrictive under the Telecommunications Act. She advised the Home Depot application had quite a bit of controversy; it was denied by the Board in January 2002; and the reason for its denial was the proposed location was too close to neighboring residential properties, which is what would happen if this tower was located at Pine View Park or anywhere other than the commercial zone of Courtenay Parkway. She added, it was also denied because of the general conditions of Code, Section 62-1901C; stated she did not cover those in her presentation; but she thinks it is somewhat relevant because she does not know why the Board had denied the request; and if the Board denies the request today, she would like for the Board to tell her why. She advised the general standards were met, but the only specific standards of 'F', is for screening covered by the Landscaping Code, and 'I', for the height requiring the character of the area; the character area is a major, commercial roadway with tall street signing and lighting; and she believes it is compatible with the height and Code provided for this Conditional Use in the zoning Code for towers, in excess of 200 feet. She reiterated Home Depot looked at 19 other sites; one of the sites was just north and east of the site MetroPCS is looking at; it was deemed to be, too close to other residential properties; and MetroPCS has tried to move far away from residential properties as it could. She stated three pages of the CityScape Consultants, Inc. Report, dated December 6, 2012, is showing the consultant opined there is a need for a wireless facility in this general area; page two, says that MetroPCS cannot utilize the Circuit City tower, which had evidence submitted by Ralph Perrone, that he thought it could be used; the CityScape Consultants, Inc. Said it would not work; and Mr. Gowans had previously stated in February that the Circuit City tower would not work for them as well. She stated the handout she provided the Board has an email dated February 7, 2013, from Rick Edwards, CityScape Consultants, Inc., and she underlined a few things that she wants the Board to note; in the

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middle of the page, by an asterisk, it says, the coverage area is calculated from input data, which was not provided and is legally not allowed to ask for; Mr. Edwards does not have the information that MetroPCS has to say what it needs; he agreed that 150 feet would work well, and that the equal treatment of Section of Part 704 of the TCA. She advised she previously mentioned before that she had submitted the entire Circuit City's packet showing similarities in the application; and denying it would be discriminatory. She stated there is an email stating, "A rule of thumb without knowing the exact parameters of their transmission would work at 80 feet"; and a rule of thumb to her is admitting that there is not enough evidence, or not the same evidence, that MetroPCS had. She added, the next email in the packet has Mr. Edwards agreeing the towers need to meet the federal mandate requirements for emergency services. She stated next in the packet are two pages of the May 31, 2012, minutes from the hearing for the Circuit City application; she previously mentioned that it was only for Florida High Speed Internet; AT&T came in with a needs letter and was intending to co-locate at the same height as the Florida High Speed Internet, plus the circles provided were not as great, as the coverage amounts MetroPCS had provided; and the only person that had testified was the applicant, Mr. Chapman, Mr. Perrone, and the attorney that was opposing it because she had been denied at Home Depot. She mentioned Commissioner Fisher had said the reason Home Depot was denied is because it was too close to residential; Commissioner Nelson voted against it because it was too close to residential; Commissioner Fisher and Chairman Anderson said there is no perfect site for a cell tower; and stated she would like the Board to remember that when it is voting, there is no perfect site, and it is based on the need and the TCA. She pointed out Section 365.172 in the Emergency Communication E 9-1-1 Statute, Subsection 12(d)(2), says "a local government has 90 business days in which to approve or deny an application, or it is automatically to be approved"; stated the application submitted on November 9, 2012, had a calendar showing it should of been approved or denied by March 26, 2013; and by Code, it is automatically approved and can apply for a building permit. She noted speaking with the County Attorney's Office; they disagree with her because of an Ordinance about applying two times a year; the applications initially were returned; she advised that Scott Knox, County Attorney, had opined to go ahead and apply; a refund was not given; and the application was submitted on November 9, 2012. She read aloud from the Code, "An application is deemed submitted or resubmitted on the date the application is received by the local government. The Local government does not notify the applicant in writing that the application is not complete, or in compliance with the local government regulations, within 20 business days after the date the application is initially submitted, the application is deemed to be properly completed and properly submitted"; and stated the applicant was never notified that the application was not complete or in compliance. She pointed out the packet she provided the Board has an email from Cynthia Fox, Planning and Zoning Manager, indicating it has been the County's policy that once the application is deemed complete once the County has received the consultant's report; she stated this application was the only application of six cell tower applications that the County had a consultant for; she does not know if that is a policy; the applicant's report was on December 6, 2012; and the County is saying the application was not deemed complete or submitted until December 7, 2012, which does not comport the facts before the Board. She added, in the packet is an email from Ms. Lepore, talking about the 90-day business shot clock, how the application was returned, and about the application coming back. She advised the first 11x17 document is the first page of the initial site plan package; it is dated November 8, 2012, and was submitted with the package; mentioned 'old' is written on the top of the right-hand side of the page; the site plan was resubmitted because there was a scrivener's error in the State plan coordinates; Charles Bernardo will explain what the State plan coordinates are; and that in no way diminished anyone's knowledge of where this tower was to be, because there is a boundary survey showing exactly where it was going to be. She went on to say there also was the ad legal description and sketch provided on November 9, 2012; stated she believes the application was completed on November 9, 2012; and the County had missed the 90 days to deny it. She stated she is requesting approval of the monopole application at 150 feet; the standards have been met; the need is proven; 80 feet will not work; the application is similar to

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the approved application for Circuit City; and it is discriminatory not to approve this application. She added, there is no competent, substantial evidence to overcome Clearview's prima facie case of the right to a Conditional Use Permit; she asked the Board to not impose a moratorium making them wait until the master plan and the land development code is approved, which can take up to six months to a year to finalize; and the only applicant to do the master plan is CityScape Consultants, Inc. She added, it is unfair to require the applicant to wait; and the shot clock was missed by the County; and she is asking the Board for its approval of the application.

Charles Bernardo, Clearview Tower Company, LLC, provided the Board a handout. He stated Ms. Rezanka asked him if he would address Pine View Park; the park consists of three parcels; two of them are for the park, the north parcel is fenced separately, and all three are owned by Brevard County; if the southern portion is used there would be .92 of the tower height for a setback; and the Code requires five times the tower height for a setback. He pointed out it would be 138 feet from someone's backyard, with a tower on the south portion of the park, in the center of the property, 245 feet to west, and 238 feet to the east. He stated in the County-owned middle parcel, it would be 108 feet to residentially-zoned property on the east and 138 feet on the west, with tower setback west at .92 of the tower height and east .72 of the tower height; Code calls for five times the tower height; and there probably would have to be a 30-foot pole in order to meet setbacks in that location. He pointed out the north parcel has the Dennis Sawyer Cemetery located on it; there is no interest in going there, but if the setbacks are similar to the east and west, then north to multi-family would be 230 feet; and in no direction from any portion of the three parcels of the park could they come close to meeting the setbacks at the proposed location. He stated the handout provided shows the parcel; he zoomed out in order to show the Board the setbacks because they were expediently larger than the ones for the park; to the west is the smallest setback of 629 feet to residentially-zoned property; to the north is 2,230 feet; to the east is 872 feet; to the south is 3,890 feet to single-family residential; and in 12 years, he has done 1,800 sites in Florida and has never done a tower site of 108-foot setback to a residence. He added, Clearview Tower Company, LLC, tries to go in at appropriate locations; stated the park location proposed by Commissioner Nelson would impact the surrounding neighborhood greatly; and he thinks if the residents knew a proposed tower is wanted at the park, there would be quite a few people present today opposing it. He concluded the site Clearview Tower Company, LLC, has proposed is superior; the setbacks are expediently larger; and the park is not suitable for a tower. He stated he was told by staff that the State's plane coordinates are used by Mosquito Control, which are required and on the site plan, but are not usually a requirement in areas for re-zoning; the flight maps are done with the State control system coordinates, that takes the curvature of the Earth out and makes it a flat map, and that makes it easier to figure when making calculations; coordinates were submitted to the Federal Aviation Administration (FAA); and the submitted survey and site plan are accurate, and should have no bearing whatsoever. He added, the coordinates were for 107 feet to the east; the site plan company did not switch out the new site plan; as soon as it was learned that there was a mistake, it was corrected; there is no issue to not approve the tower; and Mosquito Control needs to add it to their map.

Craig Donaldson, MetroPCS North Florida Regional RF Director, stated he has been with MetroPCS for 10-plus years and he is present today to explain to the Board the need of the tower at its proposed location; a tower at this location has been needed for coverage in the area since 2007, because coverage in the area is not as good as it needs to be; there are towers outside of two miles from this location; but this site location is definitely needed. He went on to say there are a lot of customers in the proposed area; there are a lot of complaints received from the area; as subscriber, growth increases, the need for coverage also increases; the only way to improve coverage in the geographical area is to add a cell tower; and MetroPCS is trying to meet the needs and keep its customers. He stated needs for customers are a lot different now than in 2007; MetroPCS is a mobile service provider who competes with other mobile providers; most mobile users now use their handsets inside; when cell phones first came out

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they were mostly for mobile use; many people now do not have house phones anymore; and is the reason why they need this tower at the proposed location. He stated the tower needs to be at 150 feet because of the way the towers are designed and placed geographically; there is not enough coverage in the area; and to have it efficiently put at a site in the area to cover as much area as possible, ideally 150 feet there is no need for an additional site. He stated the higher a tower is, the higher the antenna is above ground, and the more coverage can be provided to the customers on the ground; and if the tower is lower, many customers would not be provided with proper service. He mentioned the demographics are different than other carriers; there are numerous complaints; there are tools that measure signal levels in the area; and there is a definite need for a tower at the proposed location.

Commissioner Nelson inquired what makes this site the only site. Mr. Donaldson responded a location has been looked for since 2007; stated different locations had been looked at; due to the cost of a tower, he would go on an existing structure that meets MetroPCS's need; and the proposed area is the best area for MetroPCS and there is no existing structure that meets the need. Commissioner Nelson stated the denial mentioned previously by the attorney for a previous site, ended up moving to the Circuit City site after moving it 1,700 feet, and was later approved after testimony was heard; and he inquired how it can be that it is the only place. Mr. Donaldson responded he is not familiar with the testimony; and he inquired if that is specific to MetroPCS's request. Commissioner Nelson responded no; and stated testimony was received that it could not move. Mr. Donaldson went on to say when a location of a tower is wanted, a map is looked at; a circle is drawn with a quarter of a mile to a mile in diameter to see if the scanning done of the area allows for a tower to work in the location; and if it is moved out of that location, two locations may be needed.

Commissioner Nelson confirmed it is one-quarter of one mile to one mile. Mr. Donaldson advised it really depends on the actual height approved; stated if there is need for great height, then there is more levity; if there is a lower height, he is not propagating as much; and not being able to move out of his effected coverage. Commissioner Nelson stated there could be one mile range of a tower height that would serve that same area; and it does not have to be at this site. Mr. Donaldson stated if MetroPCS is not at the proposed location, he would need another tower in another location within the vicinity, or a higher height; in the design he is trying to work within his budget; it costs a lot of money to build a site; they pay rent; and he is trying to find the best location at the best height to serve as much as possible, because that saves money for MetroPCS, and it provides the best coverage for the customers. Commissioner Nelson stated those are all issues that are not relevant to decision making; it does not meet the criteria, nor is it a good decision for the community; and the Board has a land-use decision to make. Mr. Donaldson stated he is not familiar with the Home Depot and Circuit City references; and he inquired if those could be shown to him because he does not have a document specifying those specific locations. Commissioner Nelson stated the key elements brought into it was based on height; it does not have to be at the proposed location. Mr. Donaldson stated there needs to be a location for the tower; and randomly dropping a tower somewhere does not work.

Commissioner Fisher inquired how many customers MetroPCS has in the proposed area. Mr. Donaldson responded 114 signed a petition, but as far as Melbourne, he does not have a count; and in the region, he estimated 75,000.

Mr. Bernardo clarified out of the 270 people who signed the petition from the Fraternal Order of Eagles Aerie #4257, Incorporated; and 114 people living or working in the general area of the proposed site uses MetroPCS.

Commissioner Fisher inquired how many people a 100-foot tower covers, versus 150 feet. Mr. Bernardo responded distance has to be used, not people, because it is a radio frequency signal; it is radiated signal; and only distance is used. He added, the present tower is two miles to the

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northwest; stated general search ranges are generally one-quarter of a mile to one mile; in different areas they are different sizes; in rural areas the search range is up to one mile; in urban areas the search range is smaller because of covering more people with density; and the closer the people are, the closer the towers are going to be to give coverage they need to use voice, data, and text.

Commissioner Fisher inquired if 80 to 100 feet could serve the need in the area. Mr. Donaldson responded if there is a tower at another height, it is going to improve coverage for a certain amount of people, but it would not meet the coverage objectives based on a specific height in a general area; if there is no specific height or location, he is going to need more than one tower to cover customers; even though customers are mobile, they are still using their handsets inside; and covering the immediate area cannot be done, because MetroPCS uses a site to cover and handoff to other sites as well, which is why they are asking for 150 feet. Commissioner Fisher inquired if part of the height requirement bounces the signal off that to another tower. Mr. Donaldson reiterated it depends on rural versus urban; stated the sites are about two and one-half miles apart; if this were Orlando, it would be one mile apart; the more subscribers there are, capacity becomes a concern; more sites are needed; and this is needing only one site in the proposed area. Commissioner Fisher inquired if MetroPCS could go on the Circuit City 80-foot tower site and get a signal if this request is denied. Mr. Donaldson responded negative; stated there has to be enough distance away from an existing site to make it work; there is already coverage there; and he would be spending money to put a site where there is no need. He added, he is trying to solve the problem he has with customer complaints of degraded service in the specific area; he is concerned about E 9-1-1; there is not good coverage in the area; and there is already coverage at the Circuit City site.

Commissioner Fisher inquired how far the Circuit City site is. Mr. Bernardo responded approximately 7,000 feet. Commissioner Fisher stated about one and one-half mile away.

Commissioner Fisher inquired if the Circuit City site would help MetroPCS's clientele. Mr. Donaldson responded it would improve where there is already coverage; but it is not going to improve coverage where it is degraded in the proposed location.

Commissioner Nelson inquired if the petition was done inside the Fraternal Order of Eagles Aerie #4257, Incorporated. Mr. Bernardo responded affirmatively; and stated many residents from Catalina Isles belong to the Eagles. Commissioner Nelson advised that is not the point; the point is that there were also some people at the Eagles that signed the petition who were from Rockledge and Melbourne, and other parts of the community; and he inquired if the Eagles is benefiting from the rent for the space. Mr. Bernardo responded negative; stated the Eagles is a non-profit group; and yes, the Eagles would benefit from the rent. Commissioner Nelson stated it would be in the Eagles best interest to have the income from this source. Mr. Bernardo replied affirmatively; stated on the residents list there were many people who were not residents of the area, only renters; there were units having four to five people on the petition; and it probably evens out between the two petitions, as far as the people that are actually using their phones and having the problems. Commissioner Nelson stated the point is that it is in the best interest of an organization to have the income coming in. Mr. Bernardo advised it would be the same for the County and the Parks and Recreation Department. Commissioner Nelson advised their views are going to be different because he does not know that it ever had to be located in a park; he stated he said, "For example, the County had that park location"; and if Mr. Bernardo wants to discuss what he drew, it was a worst case scenario in each of those parcels even though there are three parcels. Mr. Bernardo clarified he drew the tower in the middle of the parcel, and south of the cemetery. Commissioner Nelson stated Mr. Bernardo did not look at the two parcels as being a single County park; and looked at the parcels as three individual parcels, and not based on location. Mr. Bernardo explained he used the Property Appraiser's information showing three separate parcels; stated the setbacks are measured by the property

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line; if there is one folio number, the property line is going to be measured to that property line, and not if all three parcels are owned; but it does not matter because the Eagles owns one tract, and he measured to that property line.

Chairman Anderson advised Commissioner Nelson to only ask questions because this is not a debate. Commissioner Nelson stated the Board needs to be reminded that this is a public hearing; and it is the only opportunity he has to get things into the record. Chairman Anderson pointed out it is fine to ask questions; this is not a public debate; and he, himself, is trying to learn. Commissioner Nelson remarked the applicant is doing the debating. Chairman Anderson stated he is not being argumentative; he wants the Board to get back on track because there are still speakers who want to speak; and he stressed to everyone to keep it cordial. Commissioner Nelson replied if he is offered the same courtesy, he will.

Commissioner Nelson stated he is trying to talk about the parcel provided and put into evidence by Ms. Rezanka; he went on to say the site identified is literally sitting on the edge of the tract owned by the Eagles, and did not go to the center of the Eagles parking lot and draw anything from there. Mr. Bernardo clarified the handout Commissioner Nelson is looking at is not what he provided the Board. Commissioner Nelson stated the parcel owned by the Eagles that is leased for the tower purposes, sits right on the edge of the Eagles parcel. Mr. Bernardo clarified that it was originally drawn in the middle of the parcel towards the east; stated it was relocated to the west; and after meeting with Commissioner Nelson, it needed to provide more distance from multi-family. Commissioner Nelson stated there is a line running east/west on the boundary map that he is looking at; and asked if Mr. Bernardo would come forward to look at the boundary map of the parcel. Mr. Bernardo pointed out where the end of the parcel is located. Commissioner Nelson inquired if it is all one parcel. Mr. Bernardo responded it is all one folio number; and pointed out the east boundary on the boundary map. Commissioner Nelson indicated a parcel has four sides; and pointed out the northern boundary piece of the parcel. Mr. Bernardo clarified it is the northern boundary of the rear parcel.

Commissioner Infantini felt the debating back and forth is not right. Commissioner Nelson replied he is not sure where Commissioner Infantini had gained her knowledge on a land use decision making; and stated it is germane to this discussion. Commissioner Infantini disagreed. Commissioner Nelson suggested Commissioner Infantini could leave. Commissioner Infantini advised she knows that she may leave; but stated she chooses to stay.

Mr. Bernardo stated the adjacent parcel is zoned commercial and is not a residential parcel.

Chairman Anderson advised Commissioner Nelson that if he is trying to get the Board to understand something, he needs to get to that point. Commissioner Nelson replied he is trying to get it into the record; but he keeps being interrupted by one of his fellow Commissioners.

Chairman Anderson advised the Board will move to hear the speaker cards; and stated Commissioner Nelson and Mr. Bernardo may continue their discussion later.

Christopher Coleman, Law Firm of Schilinger and Coleman P.A., stated he was present before the Board some months ago looking for a tower on the Babcock parcel, which is immediately adjacent to this parcel: and he is present today on behalf of SCI Towers. He stated some time ago SCI Towers was rejected; the Home Depot application was also rejected; all of the tower companies were given a list of places to potentially go; and his client is the one who built the Circuit City tower. He added, he was not in attendance at the last meeting, but he did have the opportunity to watch it online; it is interesting that the applicant is arguing discrimination against carriers, and not tower companies; and the TCA provides for discrimination against carriers, not tower companies. He mentioned they are not arguing about the Board allowing AT&T to go in this place; they are arguing with the Board to allow a tower to be there; and that the Board has

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to allow their tower be there. He stated he does not agree with that interpretation; he believes it is carriers, not towers, and if the Board wanted to apply the discrimination of towers, then it should be treating this application the same as his client's request for a tower in the same area, and deny it because the Board made his client move to the Circuit city site. He pointed out Commissioner Fisher had raised some very good points; stated he would like to cross-examine Mr. Donaldson because of comments made about there being a lot of customers in the area, but he presented no evidence of how many customers; they get a lot of complaints in the area due to poor coverage, but he has not stated how many complaints relative to how many customers; and there are tools to measure signal levels showing levels of derogation in the territory. He went on to say there was no analysis of whether or not if they went on the Circuit City site at 185 feet and it covered more area; they merely say that 80 feet in that location would not work, although the expert says it would, and that in his report he indicated he could not give the Board accurate information because these carriers keep their information proprietary; and he inquired how the Board can determine the veracity of their experts coming forward and promising their need. He added, MetroPCS has not provided any information regarding how a recent merger with T-Mobile affected their service, or any T-Mobile towers; stated the merger was effective at the end of 2012; and MetroPCS now has all of those T-Mobile locations available. He mentioned the tower would have five bays, Circuit City has six bays, which totals 11 bays; stated there are only five carriers serving Brevard County; he is not sure why 11 bays are needed; and it is going down to four carriers when MetroPCS finishes merging with T-Mobile. He mentioned the criteria of Code is there are no existing or approved towers or structures located within the required geographic area, and meeting the needs of applicants engineering requirements. He referenced the February 7th meeting when Mr. Gowans said it would not be a reasonable use of resources to overlap a little; stated Mr. Gowans did not say it would not work, but he was concerned with the expense of coax and some other things; he reiterated that in Code element 'B' of Section 62-1953G5, states no existing or approved towers or structures are not at sufficient height to meet the applicants engineering requirement; and that expert was not familiar with the location, the 185 feet tower, how many customers it would cover, or how far it would cover the hole they have. He continued to tell the Board the Code says the existing or approved towers or structures do not have sufficient structural strengths to support applicants proposed antenna-related equipment; there is nothing from the applicant referencing that; the Circuit City tower is constructed, but there is nothing on it yet; and he finds it hard to believe that it would not have sufficient structural integrity to carry another carrier. He stated the applicants proposed antenna would cause electromagnetic interference in the antenna on the existing approved towers or structures; he reiterated there are no other carriers on the tower; they all have licenses granted from the FCC; the FCC does not allow for interfering with each other; and the tower allows for numerous carriers. He inquired if he may extend his time to speak.

Chairman Anderson responded if there is no objection from the Board.

Commission Bolin Lewis stated she has no objection.

Chairman Anderson approved extra time for Mr. Coleman to continue.

Mr. Coleman went on to say another element is the owner saying they are the last person on there and they want \$10,000 a month to be on the tower; it is fiscally onerous for them, but there has been no testimony that they even talked to the tower owner as to what heights and prices are available, or anything else of whether or not it would meet their needs. He commented the applicant demonstrates there are other limiting factors that render, or exist; the approved tower structure is unsuitable, as documented by a qualified and licensed professional electrical engineer, not merely a MetroPCS representative; and Code says it has to be a licensed electrical engineer. He added, he thinks there needs to be data with a tool spectrum analysis done and a map provided with an overlay, which is what has been discussed doing with the master plan; he is hopeful in the process, the Board compels the carriers to provide information

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and not only take their word that there is insufficient coverage; and it is clear to him the applicant failed to meet their burden of finding another tower. He stated need is a conclusion-free statement needed to establish with facts; none of that has been done; they have not provided the number of customers, analysis of coverage, and number of complaints where the tower would be if at 185 feet, and what the coverage should be; and he suggested the Board deny the application.

Commissioner Fisher inquired if MetroPCS has a signed lease. Ms. Rezanka responded there is a needs letter, a letter of intent, and the engineer saying it is needed; and stated no carriers have a signed lease until the tower is built.

Commissioner Fisher stated one of the reasons Circuit City was chosen, and the reason to want to have a master plan, is the Board was lead to believe that there was going to be a tenant on the site, and there was a need for it; the tenant did not come through; and he heard today there is no tenant on the site.

Mr. Coleman clarified there is no current carrier on it, but there are two tenants that are under lease for that tower; the tower build had recently been completed; and the tenants have not put the stuff on it yet.

Commissioner Fisher stated requests are being approved on speculation; and he inquired if the Board is in a position to approve towers like that. Ms. Lepore responded no, they have to prove there is a need with substantial and competent evidence, which is difficult because evidence has not been provided, or knowing exactly what information had been provided; applicants think coming before the Board is sufficient; and the Board has zoning authority to require more.

Commissioner Infantini responded if the tower at Circuit City is 185 feet. Mr. Coleman clarified the Circuit City tower is 175 feet.

Commissioner Infantini stated she likes the overlapped circles of coverage shown on the coverage map; and she has not seen compulsory evidence showing the need. She stressed she does not want towers popping up in every neighborhood unless there is justification for them; stated she is unsure if there is contradictory evidence showing the facts of all the customers; and she does not know if there is testimony showing the need better.

Commissioner Bolin Lewis inquired if park parcels 258 and 290 could be considered as one parcel when measuring for the setbacks. Ms. Fox responded affirmatively.

Lee Chapman, Owner of Circuit City Tower, stated one thing that compelled him to come before the Board today is the last time he was before the Board, there was a lot of misrepresentation of him being dishonest or unethical in his presentation; and he is not going to stand for that. He stated the question is what is substantial competent evidence; AT&T's search rings were centered right where this tower is and at Home Depot; and there is evidence of AT&T's willingness to move onto the Circuit City tower. He advised he has not seen any evidence of them wanting 175 feet on the Circuit City tower; the location could provide a lower height pointing to the south to break the levels up, and not having as much overlap; and charts are created to show amperage heights. He informed the Board of Verizon having signed a lease to go on the same site as AT&T; stated an optimal site is being looked for by MetroPCS, which is the reason for him looking into the Perrone property to begin with, but it was not the optimal site for the Circuit City tower, and the need could not be proved. He advised the Board he agrees with Mr. Coleman's assessment about the notion of discrimination; it is not discriminatory when everyone has been pushed out of the area; but it would be discriminatory to say it is okay when other people have been denied.

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Jere Gillan stated he is present today to express concerns of the tower by the Catalina Isles homeowners; he noted the referenced letter Ms. Rezanka received is from Beth Le Sieur and her husband; and he provided the Board a petition of signatures from the residents of Catalina Isles requesting the Board to disapprove the waivers requested to install a 150 feet cellular tower on the property owned by the Fraternal Order of Eagles Aerie #4257, Incorporated at 1050 N. Courtenay Parkway, Merritt Island, because the design and height of the proposed cell tower structure being an eyesore to the community, the degrading property values in surrounding areas, plus the need for additional poles. He went on to say residents understand that cellular towers are necessary and the federal regulations cannot deter their installation; stated there are other locations; the distance a cellular tower covers in town is one-half of one mile, two miles in rural; but this location is 7,000 feet from the Circuit City location, which is within two miles. He advised the original petition submitted to the Zoning Board was signed by 69 homeowners, and 42 of those signatures were from homeowners in Catalina Isles; and the submitted petition today totaled 139 homeowners against the cellular tower. He added, when soliciting for signature on the petition the homeowners had to be affected by the shadow of the tower in order to be eligible to sign the opposing petition; the 114 MetroPCS customers not receiving good service do not live in Catalina Isles; and the apartments that are close by cannot be counted because they are not homeowners. He advised the Board he previously had worked on cell towers because he is retired from AT&T; he showed the Board a picture of a tower with five tiers, and ears, with birds on it; he mentioned food is served at the Eagles and at the McDonald's close by; and when the birds move in, there is no way to clean up the mess left from the animals at the proximity. He explained where he lives in comparison to the Eagles location; stated when he is in his backyard watching the sun go down, he will be looking at a 175 feet tower between he and the sunset; and he inquired if the Board would be happy with a tower 300 or 400 feet away from their homes.

Beth Le Sieur stated her husband wrote the letter in question by Ms. Rezanka; her husband and daughter went around their neighborhood collecting signatures; they collected 139 taxpaying Catalina Isles resident signatures who think the tower is too close to Catalina Isles; and it is an eyesore to her residential community and the entire Courtenay Parkway corridor. She stated she understands MetroPCS needs an optimal resolution; she thinks the needs of the residents should be represented; and the only reason a tower in the form of a flagpole was mentioned at the school was residents were trying to be reasonable for if the need is proven, it needs to be passed, be aesthetically pleasing, and beneficial for the community. She advised the petition was not meant to be exclusive to the tower being at the school or else the signatures do not count, but the residents of Catalina Isles were trying to help meet this process; and she sees no need to make it happen at all.

Chairman Anderson inquired if he should allow the applicant to cross-examine a speaker that presumed to be an expert. Ms. Lepore responded she does not see any harm in allowing it.

Chairman Anderson stated it is up to the speakers who spoke whether they want to be cross-examined or not; and he cannot compel them to speak because he is not a judge and does not have authority.

Ms. Lepore stated if testimony is provided whether it be fact-based or expert-based, they can be questioned to establish the truth and veracity.

Ms. Rezanka inquired how is Mr. Gillan allowed to represent the Catalina Isles Homeowners Association. Mr. Gillian replied he lives there. Ms. Rezanka inquired how far he lives from the proposed site. Mr. Gillan responded after going past the proposed site down Mustang Way, turn right on Becora Avenue, and about seven houses into Catalina Isles, straight ahead on the canal. Ms. Rezanka inquired if he is located on the canal. Mr. Gillan responded affirmatively. Ms. Rezanka inquired if there are several canals. Mr. Gillan responded affirmatively. Ms.

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Rezanka inquired how many feet he is away. Mr. Gillan responded approximately 400 feet. Ms. Rezanka stated he is not within the 750-foot setbacks. Mr. Gillan inquired if the setback of where the position of the tower is within 750 feet. Ms. Rezanka responded not on the Catalina Isle's side.

Mr. Bernardo explained the first home to the east is 873 feet; and Mr. Gillan lives at the curve of Montego Bay.

Ms. Rezanka inquired if Mr. Gillan is aware the School Board does not want cell towers on its property. Mr. Gillan responded he has heard that; and stated he has not been to any of the School Board meetings. Ms. Rezanka inquired if he is okay with the site at the high school. Mr. Gillan replied behind the high school there are trees and a trailer park; and all of those individuals view would be blocked of anything in the area of the high school. Ms. Rezanka inquired if a tree would block his view. Mr. Gillan replied affirmatively, if it were located at the corner of the baseball field. Ms. Rezanka inquired if a flagpole at the Fraternal Order of Eagles Aerie #4257, Incorporated is acceptable. Mr. Gillan responded affirmatively.

Ms. Rezanka inquired why a taller tower was requested. Ms. Le Sieur replied she never said that; and stated if she did, she did not mean to. Ms. Rezanka stated in the letter it says to pursue a taller, aesthetically pleasing tower. Ms. Le Sieur stated she believes at the first Planning and Zoning Board meeting she attended in November, it was 80 feet versus 150 feet talked about, and for more companies to be located on it; and stated her thought was to have one aesthetically taller tower. Ms. Rezanka inquired if she wrote the petition. Ms. Le Sieur replied her neighbor across the street wrote it; she proofread it; and her husband and daughter are the ones who got most of the signatures. Ms. Rezanka stated the petition says they want a taller, aesthetically pleasing tower. Ms. Le Sieur stated if Ms. Rezanka wants to dwell on the word taller, that is her right to do so, but she thinks the spirit of the petition speaks for itself; and she does not want to quivel over one word. Ms. Rezanka inquired if Ralph Perrone had any input in writing the petition. Ms. Le Sieur responded not at all. Ms. Rezanka inquired how far she lives from the proposed site. Ms. Le Sieur responded she is one of the first single-family residents at the end of Mustang Way. Ms. Rezanka inquired if she would be acceptable with a flagpole. Ms. Le Sieur replied she had been told before that that was an impossibility; stated all of the sudden it is now a possibility; she is a bit irate over that, because her family and a lot of other people's families went through a lot of trouble to do this when it was said, it is an impossibility before. Ms. Rezanka clarified she did not say it was ever an impossibility; and stated that she is unsure who is being referenced. Ms. Le Sieur pointed out it was the representatives of Clearview Tower Company, LLC who said that it was not a possibility before in other meetings; stated she has watched the meetings online to be up-to-snuff on what is being said; it lends to facts of need and ability to be done; and she thinks there should be some kind of standard for this. Ms. Rezanka mentioned there are experts who testified that there is need there; and she inquired if a flagpole is acceptable. Ms. Le Sieur responded she would like to allow the individuals who are far more informed than she is to make that decision; and reiterated someone from Clearview Tower Company, LLC did say, that was not a possibility because of the way the monopole is constructed, and that it would not allow enough carriers to make it financially viable. Ms. Rezanka inquired if she is authorized to represent the Catalina Isles Homeowners Association. Ms. Le Sieur responded she did not say that she did; stated she is a homeowner that is putting efforts into this; and she is also representing 139 others.

Ms. Rezanka inquired if she could ask Mr. Chapman a couple of questions; and advised for the record, since he is declining her inquiry, it violates the due process of not being allowed to cross-examine a witnesses.

Chairman Anderson advised he misspoke earlier by concluding that Mr. Coleman is an expert; and stated he wanted to clear it up for the record.

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Ms. Rezanka inquired if he is one of the owners of Florida High Speed Internet. Mr. Coleman responded affirmatively. Ms. Rezanka inquired if Florida High Speed Internet was the only tenant at the time SCI Towers submitted its application. Mr. Coleman responded that he has no idea. Ms. Rezanka inquired if AT&T presented any evidence to the Board, for this tower at any time. Mr. Coleman responded that he has no idea. Ms. Rezanka inquired when AT&T became interested in this location. Mr. Coleman responded that he has no idea. Ms. Rezanka inquired if SCI Towers had any leases at the time this was approved on May 31, 2012. Mr. Coleman responded that he has no idea. Ms. Rezanka inquired if there are currently two leases signed by tenants at this location. Mr. Coleman replied that is his understanding. Ms. Rezanka inquired if he knew for sure. Mr. Coleman responded no. Ms. Rezanka inquired if he was told that. Mr. Coleman replied he cannot reveal what he had been told, because of attorney-client privileges. Ms. Rezanka inquired if he reviewed any leases. Mr. Coleman stated that would be attorney-client privilege, as well. Ms. Rezanka disagreed. Mr. Coleman stated they can agree to disagree. Ms. Rezanka inquired if he had reviewed the application for Clearview Tower Company LLC. Mr. Coleman responded negative. Ms. Rezanka inquired if he is aware there is a needs letter and a coverage map submitted. Mr. Coleman responded affirmatively. Ms. Rezanka inquired if he knows what evidence is needed, or what has been presented to the Board. Mr. Coleman stated he watched today's presentation, and a prior presentation. Ms. Rezanka inquired if he is aware the documents in the record are considered evidence, and do not have to be presented at this hearing today. Mr. Coleman replied he understands.

Chairman Anderson inquired if Mr. Chapman can be compelled to speak for the record. Ms. Lepore responded there is no authority for such.

Commissioner Infantini stated she does not think he said anything that was facts it was just his opinion of how he felt.

Chairman Anderson stated Ms. Rezanka made a statement that he cannot control who comes up or not.

Ms. Rezanka asked if she could rebut. Chairman Anderson responded affirmatively.

Mr. Bernardo stated Commissioner Fisher asked if the lease was in hand to do with a carrier for this location; he has represented numerous carriers; he has worked at two different carriers; their legal department typically does not approve signing of a lease of the site if it is not zoned for a tower; and some of them even require a building permit before they will sign a lease. He went on to say in the beginning, all a person has is a needs letter and they have propagation maps; usually when it is done, they lease the ground, come to the Board for the zoning, and they have full control of it as it is their tower; they may have another carrier sign a lease with them; and as a tower company, it is not customary to have signed leases in hand. He added, leases are five years with seven five-year options, so the legal department will not commit to 40 years unless it is a legal use of the property.

Commissioner Fisher stated one of his concerns is that based on what Mr. Bernardo just said, he is asking the Board to approve a cell tower site without a tenant; he is arguing if there is a real need or not; there is an implied need; this is an intent that they might go there if it is zoned; but at this point in time when it is in front of the Board, there is not really a client. Mr. Bernardo advised if the Board would like protection on that, a condition could be put in that required they submit a building permit, and submit a signed lease with a carrier to the County; and they have no issue with that whatsoever. Commissioner Fisher stated Circuit City's was built without tenants; and the Board could find itself doing that with every individual carrier.

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Ms. Rezanka stated going back to the presentation of February 7th, they presented ample evidence of needs; there is the need letter from MetroPCS, and the poor coverage map was presented. She pointed out the blue and red is bad; it shows the location of the other Metro provider; they have coverage where Circuit City is; there has been testimony that they need this tower in the middle of all their towers to clear their coverage gap; the County's expert said there is a need in this area; and she reiterated there is ample evidence of need. She advised the question is whether it should be at 80 feet or 150 feet; the RF Engineers, Mark Gowin and Mr. Donaldson, said they had looked at the information; they said 150 feet gets the best they can get; it clears up the coverage gap; it does not clear it up completely; but they cannot get that far, and 150 feet is reasonable based on the residential setbacks that have to be met. She explained if they do not have 150 feet and have 80 feet, they will need another tower in this area; then there will be two towers; and if the idea is not to have towers, then the County should want the 150-foot tower. She noted, she has only been in front of the Board with this item; she has looked at the County's filed and presented Board evidence; the Home Depot Tower was Capital Telecom; in that file there was a Verizon letter and AT&T letter of need; and she does not know what testimony was heard, she had not read the minutes. She went on to say in the Circuit City case, the SCI towers, and a different company, they were all cell tower companies not carriers; the Board had only Florida High Speed Internet, which she showed the Board on February 7th, they are like a tiny little player in this whole world of cell phone or data providers; and the Board approved that at 180 feet. She added, AT&T did not submit a needs letter until April 2012; the Board approved it May 31, 2012; AT&T did not provide evidence at a hearing before the Board for the Circuit City site; and she believes they have provided much more, and the Board has required much more, of them than it did for Circuit City. She noted it is discriminatory if the Board does not approve this; they have had engineers at the hearings both here and Planning and Zoning; and Circuit City had no engineers. She advised as to the park, the Minutes say, "Commissioner Nelson directed staff to look at a park within one-quarter mile of this area." She stated staff looked at it, but did not provide the Board anything; her client provided it to them; if the Board wants the tower in the middle, there will still be the residential setback problems; and the 60-foot pine trees will have to be taken down, which is probably the only buffer in the area. She pointed out it makes no sense to put it in the park as it is not zoned properly; it will not be zoned properly for a good long time until the Board does a master plan and until the GML Code is changed; and she stressed there is no other place for the tower. She stated this is not a spec tower; Mr. Edwards said it is not a spec tower, they have a need, it is in his report; the residents said it is too close; the County's Code allows for the Condition Use process; and they did not make it up. She stated the Conditional Use Law is if they meet the County's standards, and those conditions are in place to help them meet the standards, then they should be approved unless there is substantial competent evidence that says they did not meet the Code; there has been no substantial competent evidence; there have been neighbors outside of the setbacks complain saying it would devalue their property; and there is no evidence before the Board that says it would devalue their property. She commented on Mr. Coleman's statement that she conceded they did not meet the standards. She explained that is not what she said; she said she did not go through all of the general standards because it is in their application; it is in the package; and the Board knows this stuff as it does it all of the time. She stated she could go through it, but it does not apply. She went on to say all of this stuff is in the Code; they meet the Code; she only referenced those two issues because they may be an issue to the County; it has been stated the Board can deny it on height; and she disagrees as it is discriminatory. She went on to say Mr. Coleman testified as one of the owners of Florida High Speed Internet, Mr. Perrone testified who has the lease, and they do not want this tower built because they see it as competition. She added, Mr. Chapman testified before the Board on March 31st; he did not say much or provide any evidence; he told the Board there was no objection and asked its approval; and the Board did approve it. She requested that the Board approve the item at 150 feet; and if the County had design standards or conditions, such as having a tenant before building the tower, that is fine with the applicant. She asked the Board to

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approve the item at 150 feet because they meet the Code, it is discriminatory not to, and they believe it was already approved because the shot clock has run.

Commissioner Nelson stated their expert testified a quarter of a mile to a mile. Ms. Rezanka stated she does not see that in the minutes. Commissioner Nelson stated he just did; he said during his testimony today, that he could move it between one-quarter of a mile; he asked the expert that question; it was part of what his question to him was; and he is at a loss to understand how this is the only site. Ms. Rezanka stated the expert should be brought back up to testify because she heard it differently; Commissioner Nelson's question was very confusing to her as she kept hearing statements instead of questions; and she does not know if the expert feels it could go 80 feet, a mile away, or 150 feet. Commissioner Nelson stated his testimony was based on height it could change. Ms. Rezanka stated the expert said he needed 150 feet to cover the coverage gap; and she asked to let the expert talk as she heard what she heard and Commissioner Nelson heard what he heard.

Commissioner Nelson inquired what his reference was to height as it relates to the quarter-mile movement up to a mile. Mr. Donaldson stated that was in reference to when they actually release a search area to a site development team to find a location; what they do, as far as engineers, is they find the most optimal location at a reasonable height to cover the most subscribers they can; they cannot put a tower exactly where they want it, so they draw a physical ring, maybe a quarter of a mile or half a mile around a location, just to have that site development person looking at the area; and this is at the initial starting of finding a location for a site. He went on to say depending on where he engineers that site, the actual height of the antennas will affect the actual coverage; if it is higher on the tower, it will cover more; and if it is lower on the tower, it will cover less. Commissioner Nelson inquired if a mile circle was initially drawn. Mr. Donaldson advised he personally did not, he would have to look at it. Commissioner Nelson inquired if there was any effort to look within the mile circle; and stated based on what Mr. Donaldson just said, there could be a height of 150 or 180 feet. Mr. Donaldson stated they started looking for this tower in 2007; he was not here, he is a director; he went to the location and drove around; he does not have the answer to the exact ring size they did in 2007; but he can get the information.

Commissioner Nelson inquired on the park site, the issues of setbacks aside, if they were on that location if the tower could be set on a location at a certain height and still get the same coverage. Mr. Donaldson advised it will not be the same coverage; and it is not where they need it or where their customers need it. Commissioner Nelson inquired how far their site is from the park site. Mr. Donaldson stated he does not know. Commissioner Nelson inquired how Mr. Donaldson can say he would not have the same coverage if he does not know the distance.

Ms. Rezanka stated they believe they park is over 1,750 feet away from the preferred site, or .40 of a mile.

Commissioner Nelson stated he would like the County's consultant to come forward. Ms. Rezanka stated she would reserve for a rebuttal at the end. Commissioner Nelson stated he was sorry, but he thought Ms. Rezanka was finished. Ms. Rezanka advised she was finished, but if the consultant is going to speak, she should have the opportunity to rebut.

Commissioner Nelson stated Mr. Edwards indicated at the last meeting that he thought they need about 80 feet, but it could be 100 feet. Richard Edwards, CityScape Consultants, representing Brevard County, advised the 80 feet was developed based on not having their exact information, it was based on the cost 2-3-1 formula used in propagation for PPS services, and based on their site from the condo to the south rooftop mount, and he thinks they have a tower to the north. He added, at 80 feet, it did reach the handoff requirements under standard

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cell development. He stated as for the 100 feet, what he suggested was the 80 feet would work from the Eagle's site, but if it moved across the street, which was their recommendation, to the school, it would need to be 100 feet. Commissioner Nelson inquired if they had looked at the park site since the Board had not asked them to. Mr. Edwards responded no. Commissioner Nelson inquired if Mr. Edwards' consideration at this point in time is for doing consulting for the overlay. Mr. Edwards responded affirmatively. Commissioner Nelson advised it was indicated to him by staff that the issue the Board is dealing with in terms of tower locations regarding being so far along that the discussion does not matter; and inquired what Mr. Edwards' answer was that to the question. Mr. Edwards stated he does not remember, but the County is under-constructed in infrastructure. Commissioner Nelson inquired if Mr. Edwards expects the Board will see numerous future requests for towers based on technology increasing, whether it is the televisions being wireless, or whatever the different purposes may be. Mr. Edwards responded affirmatively. Commissioner Nelson inquired if this is only the beginning; with Mr. Edwards responding the County is about 35 percent built, and there will be additional facilities located in close proximity of where this is being proposed in the future. Commissioner Nelson inquired if Mr. Edwards had not looked at the park site or anything else in that area other than the school as a potential location for this Board to consider. Mr. Edwards responded affirmatively.

Ms. Fox stated there is one Code clarification she wanted to make; Ms. Rezanka spoke that the County's Code requires at least two carriers; it does, but it is where it is feasible; and if the Board, for instance, were to approve a tower at a lower height, if it is not feasible to have two or three carriers, that would be acceptable in the Code.

Ms. Rezanka inquired what does 'more feasible' mean under the Code. Ms. Fox stated she can read the section to her. She stated it is in 62-1953(g)(6), and she will paraphrase; all commercial towers must be constructed to permit co-location by other providers; new communications towers should designate constructed both construction electrically to provide sufficient excess capacity over the initial loading; and to permit at two other comparable communication providers to use the approved tower, where feasible, and subject to reasonable terms. She stated the term 'where feasible' as it applies to co-location means that utilization of a tower by another party would at the time of its utilization comply with sound engineering principles, would not materially degrade or impair communication tower utilization by existing users, would not unduly burden the tower structurally, and would not otherwise materially adversely impact existing users; reasonable terms for use of a communication tower that may be proposed by the owner include a requirement for reasonable rent or fees, taking into consideration the capitalized cost of the communication tower and land, and incremental costs 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; and such amount is also consistent with the rates paid by other providers with comparable tower sites. She went on to say the point is, the intent of the Code is not that they require three carriers so the applicant needs to make sure it is built of a height so they can have three carriers; and that is not the intent of the Code in that section.

Ms. Rezanka inquired if based on that definition or explanation of 'feasible', if a 200-foot tower being build, would be feasible, at the location suggested by Clearview Towers. Mr. Edwards responded he was not listening. Ms. Rezanka advised it is an argument issue. She inquired how many requests would Mr. Edwards anticipate between SR 520 and SR 528 between the rivers in the foreseeable future. Mr. Edwards responded between the Indian River and Banana River and SR 520 and SR 528 there will be two to three more in that area in the next five to eight years. Ms. Rezanka inquired if this proposed tower were taller, if it is possible there would be fewer applications. Mr. Edwards advised no, because it is all going to come down to proximity; and it all depends on the population and the density. He went on to say a number of people think they can put a taller tower up and serve the area; the problem with that is a single tower can only handle 'X' amount of carriers per 'X' amount of simultaneous phone calls per

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carrier; and that is all limited by the wide band used, broad band, wireless, texting, photographs, and anything that takes up more specter; a taller tower trying to cover more area, does not work; and that is why it is called cellular, it has to reduce the areas. Ms. Rezanka inquired if Mr. Edwards knows how many users are in the area described. Mr. Edwards responded he would have no idea. Ms. Rezanka inquired if there are more users in that area it would drive up the need for more towers. Mr. Edwards stated he did not say that at all; he said as users increase and the more time spent on phone calls; in the future televisions and such will be streamed; cell towers will be used; and it will require more towers. Ms. Rezanka inquired when the master plan would be complete and adopted by the County. Mr. Edwards stated it depends on the speed of the County. Ms. Rezanka inquired if he had a contract by the end of the month, how long it would take. Mr. Edwards advised they have always been ahead of schedule; and developing a master plan and having it adopted are two different things. Ms. Rezanka stated her question was how long it would take Mr. Edwards to develop the master plan. Mr. Edwards advised 60 days. Ms. Rezanka inquired if it would then have a public hearing process. Mr. Edwards advised that would be including the public hearing process. Ms. Rezanka inquired how long it would take Mr. Edwards to develop a project to get to the Board assuming he had a contract. Mr. Edwards replied 45 days easily; she is asking questions that are so tough to answer; his board can be done in 45 days, but there is a lot more involved. She inquired what other master plans Mr. Edwards had developed. He advised Indian River, Lee, and Seminole Counties, and Palm Coast, Davie, and Homestead. Ms. Rezanka inquired if he and his company do development codes to go along with his master plans. Mr. Edwards responded he thinks it is part of the process. Ms. Rezanka inquired if he anticipates being able to do that in 45 days also.

Commissioner Nelson stated Ms. Rezanka is interrogating, not asking questions. Ms. Rezanka advised she is trying to get a time frame.

Commissioner Bolin Lewis stated Mr. Edwards is saying what he estimates the time would be to do it, but he is not taking into consideration he will have five commissioners calling him; and the time should be tripled if the Board is involved.

Ms. Rezanka advised that is her point; it is going to take a long time to develop a master plan and get the overlay; and they should not have to wait. She went on to say there is no perfect site for a cell tower.

Commissioner Fisher inquired how many clients Ms. Rezanka has that is in need, customers that need a better signal that is not getting connected right now. Ms. Rezanka stated Mark Gowins could probably have answered that question, but he is having surgery on his hip. Commissioner Fisher inquired if someone from MetroPCS could tell the Board how many people need to be connected tomorrow. Ms. Rezanka advised it is done by the coverage map, and they have a coverage problem, they have complaints. Commissioner Fisher inquired if they had one complaint or 100 complaints. Ms. Rezanka stated she does not think it is the proper analysis; it is a coverage issue, a gap issue, which everyone has testified to; and it is proprietary information under E 9-1-1. She noted she does not think they have to provide it; and they do not have it here. Commissioner Fisher stated they have not shown the Board there is a need. Ms. Rezanka stated they have shown it by the coverage map and the consultant says there is a need. Commissioner Fisher stated there are people who are currently customers who can actually connect today. Ms. Rezanka stated 114 people signed a petition and said they need better service. Commissioner Fisher stated they are still connected. Ms. Rezanka stated she does not know, but there is a coverage gap. Commissioner Fisher stated there is a difference between a coverage gap and saying a person can connect or cannot connect.

Commissioner Fisher inquired if what the consultant is saying is they would like to connect better, not that they do not connect. Mr. Donaldson stated it is a complicated question.

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Commissioner Fisher inquired if he could have at least two bars. Mr. Donaldson replied it depends on where he is; there are issues where they do have customer complaints; there are prediction maps in front of the Board that show coverage with the site and without the site; a lot of the customers use the handsets inside; and there are people who want to use their service all of the time. He went on to say it is a coverage issue as far as using applications on handsets; there might be situations where a person is outside where a call can be made; but their customers do not like to drop calls, and they want to be able to receive calls.

Chairman Anderson inquired if he is a MetroPCS customer and he needs to call 9-1-1 in Merritt Island, will he get 9-1-1; stated he does not care if people can text or have streaming web, that is not his concern; and further inquired if they can connect to 9-1-1. Mr. Donaldson advised it varies; and depending on where a person is, like inside of a building, it is a definite possibility. Chairman Anderson inquired if MetroPCS had complaints where a person was unable to connect to fire or police, that has been documented somewhere. Mr. Donaldson stated there have been complaints where there is no coverage, so if there are zero bars on the phone, a person will not connect to 9-1-1.

Commissioner Infantini stated it does happen; she appreciates the whole thing about needing coverage; the hurdle she is running into is she does not want a cell tower everywhere; she wants people to have coverage; but she does not feel it has been proven that MetroPCS will be able to provide that necessary coverage if they are at a tower that is in existence. She inquired where the Circuit City tower is located. Mr. Donaldson advised his engineers did look at that location; they are in the business to make money; as far as MetroPCS, they will ask to put a cell site in a place where they need it; based on their customers, the Circuit City location does not work for MetroPCS; and they serve a specific demographic. He added, based on the coverage map and business needs, they would not ask for a tower if they would not have users; there is a need; they do have trouble tickets; he physically went out there and knows there is a need; and the main concern is they do not have the coverage they need.

Commissioner Fisher inquired if MetroPCS has the small towers to put in homes. Mr. Donaldson advised they do not offer micro-cell. Commissioner Fisher advised his carrier gave him a micro-cell tower for \$50; and a person has to have Wi-Fi internet.

Chairman Anderson requested the Assistant County Attorney go over the federal legislation that protects the companies from having to disclose information to local government so informed decisions cannot be made.

Assistant County Attorney Christine Lepore stated the way the Statute is written, it starts off with saying that the Board cannot require this information and then it starts with exceptions, and the exception is when the Board is making land use decisions; it requires that information when it is directly related to the issues of co-location, tower height, and location of new towers; and the Board is just listening to the interpretation of that Statute by cell towers. She went on to say both the State and federal law specifically preserve the local zoning authority to the Board.

Commissioner Nelson asked Ms. Lepore to explain the timing issue for the record.

Ms. Lepore stated there is a disagreement of how the second application was submitted; there was an application submitted on the 9th; it had information from an old application; there was also the new Ordinance amendment providing a two-year process for towers in the future; in response to that, staff sent a letter to Ms. Rezanka advising of the rejection of the application, it was incomplete, and they were not going to process it; and after that, discussion ensued over the next few weeks whether it should be considered or not. She went on to say ultimately staff decided they would consider it; on December 7th Ms. Rezanka submitted the additional

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information that was not provided in the November 9th application; and that is where staff gets the December 7th date.

Ms. Rezanka stated the evidence in the records shows completely opposite of what Ms. Lepore just said; she pointed out the County rejected it without valid reasons and sent it back to them; the County Attorney said they would take it back to process as they said they would; and she disagreed with that.

Commissioner Nelson stated cell towers are some of the frustrating things the Board deals with because of the nature of the federal law, County Codes, and the fact it is a process where the applicant tells the Board what it needs to believe; the Board has addressed that problem by going to the overlay process to create a better balance of information and a better review of what those needs are, and not have it be as much market-driven as community-driven; and that is what is happening for the most part. He went on to say he has not seen evidence he believes is sufficient of the height needing to be 150 feet; the County's consultant has said there is no indication, and Commissioner Fisher has tried to get information as to the number of carriers, complaints, and those kinds of things to do that, so the height issue has not been adequately addressed to his satisfaction; until it is determined this is the only location for the tower, he cannot look his constituents in the face; and there are other options out there. He stated based on the evidence, it does not prove the height needs to be 150 feet, the aesthetics, and the redevelopment agency could not agree if it should or should not be there, and he does not see this as something that the Board needs to approve.

There being no further objection, the Board denied the Fraternal Order of Eagles Aerie #4257, Incorporated - requesting a Conditional Use Permit (CUP) for a tower and antenna in a BU-1 zoning classification on 3,500 square feet, more or less, and located on the east side of N. Courtenary Parkway, approximately 280 feet south of Mustang Way; and directed the County Attorney to prepare a Findings of Fact.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Robin Fisher, Commissioner District 1
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM II.C., REPORT, RE: ADMINISTRATIVE REZONING AT 2900 PARRISH ROAD, TITUSVILLE

Commissioner Fisher stated he has something he forgot to bring up to the Board. He advised the Planning and Development Department found out there were some Future Use Land mapping errors, and because technology these days are more important now than what was back then. He advised there is a mapping error at 2900 Parrish Road, in Titusville, for Light Industrial classification; he asked the Board if it is okay for the County to move forward to correct that error; and asked staff to elaborate a little bit more.

Cindy Fox, Planning and Zoning Manager, stated there is a piece of property that has had industrial zoning since zoning was created in 1958, and there is a portion of the property that when the Comprehensive Plan was adopted in 1988, a little triangle was left out; and staff would like to solve that for the property owner.

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Chairman Anderson asked if staff needed a motion; with Ms. Fox responding staff needs direction pursuant to a Future Land Use Policy 15.1 to administratively initiate that action.

Commissioner Nelson inquired if staff is going to change it or does it now have to go through a process to change. Ms. Fox explained staff will have to bring it back to the Board, it is just like a public hearing process.

The Board directed staff to initiate administrative rezoning on a portion of property located at 2900 Parrish Road, Titusville, pursuant to Future Land Use Policy 15.1.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Robin Fisher, Commissioner District 1
SECONDER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

By consensus of the Board, the meeting adjourned at 7:14 p.m.

ATTEST:

SCOTT ELLIS, CLERK

ANDY ANDERSON, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA