
LAND DEVELOPMENT CODE AMENDMENT

PETITION

PL20180003474

ORIGIN

Growth Management
Department (GMD)

HEARING DATES

BCC TBD
CCPC TBD
DSAC TBD
DSAC-LDR 12/18/2018

SUMMARY OF AMENDMENT

This amendment adds communication towers as a conditional use in the Rural Fringe Mixed Use District (RFMUD) Sending Lands as an essential service.

LDC SECTION TO BE AMENDED

2.01.03 Essential Services
2.03.08 Rural Fringe Zoning Districts

ADVISORY BOARD RECOMMENDATIONS

DSAC-LDR
TBD

DSAC
TBD

CCPC
TBD

BACKGROUND

On November 13, 2018, the Board of County Commissioners (Board) directed staff to draft an ordinance to address Communication Towers in the RFMUD Sending Lands (See Exhibit A).

Currently, communication towers are not allowed as permitted or conditional uses within the Rural Fringe Mixed Use District (RFMUD)-Sending Lands. Therefore, communication towers are prohibited in the RFMUD-Sending Lands.

However, the US Telecommunications Act of 1996 (47 USC 332) states that local governments “shall not prohibit or have the effect of prohibiting the provision of personal wireless services” (Section 332(c)(3)(7)(B)(i)(II))

This LDC amendment would ensure compliance with the US Telecommunications Act of 1996 by defining communications towers as an essential service and allowing communications towers as a conditional use in the RFMUD-Sending Lands.

Corresponding cross-references to this new conditional use are also added to LDC section 2.03.08.

FISCAL & OPERATIONAL IMPACTS

There are no anticipated fiscal or operational impacts associated with this amendment.

GMP CONSISTENCY

To be provided by Comprehensive Planning Staff.

EXHIBITS: A) Executive Summary Approved by BCC

Amend the LDC as follows:

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2.01.03 - Essential Services

Essential services are hereby defined as services designed and operated to provide water, sewer, gas, telephone, electricity, cable television or communications to the general public by providers which have been approved and authorized according to laws having appropriate jurisdiction, and government facilities. Essential services are allowed in any zoning district subject to the following conditions:

* * * * *

G. Conditional uses. The following uses require approval pursuant to section 10.08.00 conditional uses:

- 1. Conditional essential services in every zoning district excluding the RFMU district sending lands, CON districts, NRPAs, and RLSA designated HSAs and FSAs. In every zoning district, unless otherwise identified as permitted uses, and excluding RFMU district Sending Lands, CON districts, and NRPAs, the following uses shall be allowed as conditional uses:
 - a. Electric or gas generating plants;
 - b. Effluent tanks;
 - c. Major re-pump stations sewage treatment plants, including percolation ponds, and water aeration or treatment plants,
 - d. Hospitals and hospices;
 - e. Government facilities, including where not identified as a permitted use in this section, safety service facilities such as including law enforcement, fire, emergency medical services; and
 - f. Conservation Collier lands which provide for permitted, nondestructive, passive natural resource based recreational and educational activities, when such sites require major improvements to accommodate public access and use. These major improvements shall include, but are not limited to: parking areas of 21 parking spaces or more; nature centers; equestrian paths; biking trails; canoe and kayak launch sites; public restroom facilities, greater than 500 square feet; signage beyond that allowed in sections 2.01.03 A.9. and 2.01.03 B.1.e. of this Code and other nondestructive passive recreational activities as identified by the County Manager or designee. The provisions for Conservation Collier lands in this Code do not affect the underlying zoning districts or land use designations in any district where Conservation Collier lands are established, such that no expansion or diminution of the various zoning district conditional uses is intended or implied by these provisions, except as stated above for major improvements. Oil and gas field development and production as defined

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and regulated in this Code remains a conditional use on or beneath Conservation Collier lands established in zoning districts providing for oil and gas field development and production as a conditional use, subject to subsection 2.03.09 B.1.c.i.

2. Conditional essential services in RFMU sending lands, NRPAs, CON districts, and RLSA designated HSAs and FSAs. Within RFMU District Sending Lands, NRPAs, CON districts, and the RFLA designated HSAs and FSAs subject to the limitations set forth in section 4.08.08 C.2., in addition to the essential services identified as allowed conditional uses in subsection 2.01.03 G.1. above, the following additional essential services are allowed as conditional uses:

- a. Sewer lines and lift stations necessary to serve a publicly owned or privately owned central sewer system providing service to urban areas; or the Rural Transition Water and Sewer District, as delineated on the Urban-Rural Fringe Transition Zone Overlay Map in the Future Land Use Element of the GMP, when not located within already cleared portions of existing rights-of-way or easements;
- b. Safety Services limited to law enforcement, fire, and emergency medical services; and
- c. Oil and gas field development and production, as defined and regulated in this Code, remains a conditional use on or beneath Conservation Collier lands established in the CON zoning district subject to subsection 2.03.09 B.1.c.i.

3. Additional conditional uses in residential, and estate zoned districts, and in RFMU receiving and neutral lands. In residential, agricultural, and estate zoned districts and in RFMU Receiving and neutral lands, in addition to those essential services identified as conditional uses in section 2.01.03 G.1. above, the following essential services shall also be allowed as conditional uses:

- a. Regional parks and community parks;
- b. Public parks and public library facilities;
- c. Safety service facilities;
- d. Other similar facilities, except as otherwise specified herein.

4. Additional conditional uses in the RFMU sending lands. The following essential services shall be allowed as conditional uses:

- a. Communications towers, subject to all applicable provisions of LDC section 5.05.09.

~~4.~~ 5. Conditional uses that include the installation of structures:

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- a. Where structures are involved other than structures supporting lines or cables, such structures shall comply with the regulations for the district in which they are located, or as may be required on an approved site development plan under section 10.02.03. In addition, the structures shall conform insofar as possible to the character of the district in which they are located as to development standards, as well as architecture and landscaping, with utilization of screening and buffering to ensure compatible with the surrounding and nearby existing and future uses.
- b. Within the RFMU district sending lands, NRPAs, Conservation Districts, and the RLSA HSAs and FSAs, structures supporting the conditional use shall be located so as to minimize any impacts on native vegetation and on wildlife and wildlife habitat.
- c. Essential services shall not be deemed to include the erection of structures for commercial activities such as sales or the collection of bills in districts from which such activities would otherwise be barred. Unstaffed billing services, which are accessory uses to the normal operations of the essential service, may be permitted.

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2.03.08 – Rural Fringe Zoning Districts

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A. Rural Fringe Mixed-Use District (RFMU District).

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- 4. RFMU sending lands. RFMU sending lands are those lands that have the highest degree of environmental value and sensitivity and generally include significant wetlands, uplands, and habitat for listed species. RFMU sending lands are the principal target for preservation and conservation. Density may be transferred from RFMU sending lands as provided in LDC section 2.03.07 D.4.c. All NRPAs within the RFMU district are also RFMU sending lands. With the exception of specific provisions applicable only to NBMO neutral lands, the following standards shall apply within all RFMU sending lands:

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- a. Allowable uses where TDR credits have not been severed.

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(3) Conditional Uses.

- (a) Those essential services identified in LDC section 2.01.03 G.2 and 4.

DRAFT

Text underlined is new text to be added

~~Text strikethrough is current text to be deleted~~

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3 b. Uses allowed where TDR credits have been severed.
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7 (2) Conditional uses:
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9 (a) Those Essential Uses identified in LDC section 2.01.03 G.2 and 4.
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Exhibit A – Executive Summary Approved by BCC

11/13/2018

EXECUTIVE SUMMARY

Recommendation to direct staff to bring back for a public hearing an ordinance amending the Land Development Code to modify the definition of essential services in LDC Section 2.01.03 to include communications towers, and to allow communication towers as a conditional use within the Rural Fringe Mixed Use District-Sending Lands, and to allow applications for such communication towers to be processed under the proposed new zoning standards while the LDC amendment process is pending.

OBJECTIVE: To seek approval from the Board of County Commissioners (Board) to advertise and bring back for public hearing an ordinance to amend the Land Development Code (LDC) to modify the definition of essential services to include communications towers, and to allow communication towers as a conditional use within the Rural Fringe Mixed Use District-Sending Lands, and to allow applications for such communication towers to be processed and approved under the proposed new zoning standards while the zoning change is in progress.

CONSIDERATIONS: Currently, communication towers are not allowed as permitted or conditional uses within the Rural Fringe Mixed Use District (RFMUD)-Sending Lands. Therefore, communication towers are prohibited in the RFMUD-Sending Lands. To ensure compliance with the US Telecommunications Act of 1996 (47 USC 332), county staff is proposing this LDC amendment that would define communications towers as an essential service and allow communications towers as a conditional use in the RFMUD-Sending Lands. Section 332(c)(3)(7) of the Act states:

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof-

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities

Exhibit A – Executive Summary Approved by BCC

11/13/2018

shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

Staff is requesting approval to advertise, and bring back for public hearing, after vetting through the advisory bodies, an ordinance approving the attached LDC amendment, and authorization to allow applications for such communications towers to be processed and approved under the proposed LDC amendment while the zoning change is in progress.

FISCAL IMPACT: Cost of advertising for the LDC amendment is estimated at \$3,250.

GROWTH MANAGEMENT IMPACT: There is no growth management impact associated with this action.

LEGAL CONSIDERATIONS: This item is approved as to form and legality. A simple majority vote is needed for this item, but the LDC amendment when it comes back will require an affirmative vote of four. (HFAC)

RECOMMENDATION: That the Board of County Commissioners:

1. Direct staff to bring back for public hearing, after vetting through the advisory bodies, an ordinance amending LDC Section 2.01.03 to define communications towers as an essential service and allow communication towers as a conditional use within the RFMUD Sending Lands
2. Authorize the expenditure of funds for advertising said LDC amendment; and
3. Authorize staff to process applications for such communication towers while the zoning change is in progress.

Prepared By: Jeremy Frantz, AICP, LDC Manager, Growth Management Department

ATTACHMENT(S)

1. Draft LDC Amendment (PDF)