

# TOWN OF CUTLER BAY

Mayor Paul S. Vrooman  
Vice-Mayor Edward P. MacDougall  
Councilmember Timothy J. Meerbott  
Councilmember Ernest N. Sochin  
Councilmember Peggy R. Bell

Town Manager Steve Alexander  
Interim Town Attorney Mitchell Bierman  
Interim Town Attorney Chad Friedman  
Town Clerk Erika Gonzalez-Santamaria

This meeting is open to the public. In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (305) 234-4262 for assistance no later than four (4) days prior to the meeting.

## LOCAL PLANNING AGENCY AGENDA

Wednesday, May 16, 2007

7:00 PM

Cutler Ridge Park

10100 Southwest 200<sup>th</sup> Street

Cutler Bay, Florida 33189

- I. **CALL TO ORDER, ROLL CALL**
- II. **PLEDGE OF ALLEGIANCE**
- III. **ADDITIONS, DELETIONS, AND DEFERRALS**
- IV. **CONSENT AGENDA**
  - A. March 21, 2007 – Minutes
- V. **PUBLIC HEARING: MOTION RECOMMENDING ADOPTION OF THE FOLLOWING ORDINANCE:**
  - A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA COMPREHENSIVELY UPDATING AND REVISING CHAPTER 33 "ZONING" ARTICLE IV "TOWERS, POLES AND MASTS" RELATING TO WIRELESS SUPPORTED SERVICE FACILITIES; AMENDING THE LIST OF THE PERMITTED USES IN THE RU-3M, RU-4, RU-4L, RU-4M ZONING DISTRICTS RELATING TO WIRELESS SUPPORTED SERVICE FACILITIES; AND PROVIDING FOR AN EFFECTIVE DATE.
  - B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING THE REQUEST OF SIRE USA CORP. FOR A REZONING FROM AU (AGRICULTURAL) TO RU-1 (SINGLE-FAMILY RESIDENTIAL) FOR PROPERTY GENERALLY LOCATED SOUTH OF S.W. 198TH STREET, NORTH OF S.W. 199TH STREET, EAST OF S.W. 87TH AVENUE, AND WEST OF S.W. 85TH AVENUE, AS LEGALLY DESCRIBED IN EXHIBIT "A," CONSISTING OF APPROXIMATELY 41,885 SQ. FT.; AND PROVIDING FOR AN EFFECTIVE DATE.

## **VI. ADJOURNMENT.**

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

**TOWN OF CUTLER BAY  
LOCAL PLANNING AGENCY MEETING  
MINUTES**

Wednesday, March 21, 2007

7:00 PM

Cutler Ridge Park

10100 Southwest 200<sup>th</sup> Street

Cutler Bay, Florida 33189

**I. CALL TO ORDER/ROLL CALL OF MEMBERS:** The meeting was called to order by the mayor at 7:05 p.m. Present were the following:

Councilmember Peggy R. Bell  
Councilmember Timothy J. Meerbott  
Councilmember Ernest N. Sochin  
Vice Mayor Edward P. MacDougall  
Mayor Paul S. Vrooman

Town Manager Steven Alexander  
Interim Town Attorney Mitchell Bierman  
Interim Town Attorney Chad Friedman  
Town Clerk Erika Gonzalez-Santamaria

**II. PLEDGE OF ALLEGIANCE:** The Mayor led the pledge of allegiance.

**III. ADDITIONS, DELETIONS, AND DEFERRALS:** None at this time.

**IV. CONSENT AGENDA:**

**A.** Councilmember Bell made a motion approving the minutes of the meeting of February 21, 2007. The motion was seconded by Councilmember Sochin and adopted by a unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

**V. PUBLIC HEARING: MOTION RECOMMENDING ADOPTION OF THE FOLLOWING ORDINANCE:**

**A.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 "ZONING" SECTION 33-20. "ACCESSORY BUILDINGS; UTILITY SHEDS; SWIMMING POOLS; FALLOUT SHELTERS; BOAT STORAGE" OF THE TOWN CODE OF ORDINANCES TO PROVIDE THAT SWIMMING POOLS SHALL BE COUNTED FOR PURPOSES OF LOT COVERAGE; AND PROVIDING FOR AN EFFECTIVE DATE.

Don O'Donniley, the Planning Director, gave an oral report and based on his memorandum on March 14, 2007, recommended approval of the ordinance.

The mayor opened the public hearing. There were no speakers.

Councilmember Meerbott made a motion to adopt staff's recommendation to approve. The motion was seconded by Councilmember Sochin and approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- B.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 "ZONING" OF THE TOWN CODE OF ORDINANCES RELATED TO PARKING; PROVIDING THAT OFF-STREET PARKING SHALL BE PERMITTED ONLY ON SURFACED PARKING AREAS; PROVIDING FOR THE MAXIMUM AREA PERMITTED FOR OFF-STREET PARKING AREAS WITHIN CERTAIN ZONING DISTRICTS; PROVIDING FOR SURFACED PARKING AREA MATERIALS FOR OFF-STREET PARKING; CREATING SECTION 33-132.1 "PARKING IN SWALE AREAS IN RESIDENTIAL ZONING DISTRICTS" PROVIDING FOR RESTRICTIONS AND REGULATIONS FOR PARKING IN THE SWALE AREAS WITHIN RESIDENTIAL ZONING DISTRICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Don O'Donniley, the Planning Director, gave an oral report and based on his memorandum on March 15, 2007, recommended approval of the ordinance.

The mayor opened the public hearing. Constantine Fuentes, 9640 Caribbean Boulevard, Tony Cappetta, 10105 Southwest 200 Street, Tony Cappetta, 9751 Haitian Drive, Robert McManus, 10380 Southwest 200 Street, Joy Cooper, 9651 Nassau Drive, Grant Smith, 8731 Southwest 185 Terrace, Thomas Groome, 9824 Southwest 195 Street, Arthur Nanni, 18843 Southwest 92 Avenue, J.J. Johnson, 9620 Jamaica Drive, Jeffery 10135 Southwest 200 Street, Adrian Alexandrino, 9760 Haitian Drive, Rose Cappetta, 10105 Southwest 200 Street, Mike Light, 8231 Southwest 192 Street, Miguel Montessino, 9900 Southwest 194 Street, Jim Shiver, 20020 Southwest 105 Avenue, Albert Merrill, 9930 Southwest 194 Street, Gary Bruscia, 9762 Southwest 190 Street, and Beth Parets, 19301 Holiday Road, addressed Council.

After long discussion, Councilmember Meerbott made a motion to adopt staff's recommendation to approve the ordinance. The motion was seconded by Councilmember Sochin and approved by a 3-2 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, and Mayor Vrooman voting Yes; Councilmember Meerbott and Vice Mayor MacDougall voting No.

**VI. ADJOURNMENT:** The meeting was officially adjourned at 8:00 p.m.

*Respectfully submitted:*

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*Erika Gonzalez-Santamaria, CMC  
Town Clerk*

*Adopted by the Town Local Planning Agency  
on this 16<sup>th</sup> day of May, 2007.*

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*Paul S. Vrooman, Mayor*

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.



## Office of the Town Attorney

Mitchell A. Bierman  
*Interim Town Attorney*

Chad S. Friedman  
*Interim Town Attorney*

# MEMORANDUM

To: The Honorable Mayor and Town Council

Cc: Steven J. Alexander, Town Manager  
R. Don O'Donniley, Planning Director

From: Mitchell Bierman, Interim Town Attorney  
Scott A. Robin, Interim Town Attorney

Date: May 10, 2007

Re: Cutler Bay Wireless Telecommunications Facilities Ordinance

The Town of Cutler Bay proposes a Wireless Telecommunications Facilities Ordinance ("Ordinance") and amends the Town Code to establish general guidelines for the placement of telecommunication towers and antennas in the Town to minimize their potential adverse impacts on the community. The Ordinance requires compliance with local, state and federal regulations including the Florida Building Code. Additionally, the Ordinance provides definitions, application and co-location requirements. The Ordinance is discussed in detail below.

- **Applicability** – While the Ordinance will apply to all future towers and antennas, it subjects pre-existing towers and antennas to specific requirements set forth in the Ordinance. Additionally, all pending applications are subject to any and all requirements under the Ordinance.
- **Definitions** - The Ordinance contains definitions to maintain consistency with current law and technology. The definitions include terms that provide enhanced understanding of the technology, construction, and public safety involved in the telecommunications industry.
- **Application Requirements** – The Ordinance sets forth an application process for the construction, installation, or placement of any Wireless Communications Facilities, including towers, antennas and equipment shelters within the Town. It enhances the ability of the providers of Telecommunications Services to provide such services to the community through an efficient and timely Application process. Such Application requirements include, but are not limited to, whether a proposed facility is a principal or accessory use, lot size, inventory of existing sites, engineering report, and certification that the proposed facility will not interfere with Public Safety Telecommunications.

- **Fees** – The Ordinance requires an Application for placement of a tower and antenna in the Town be accompanied by a non-refundable filing fee for processing.
- **Review Process** – The Planning Director or his/her designee is responsible for reviewing Applications for consistency with the Town’s comprehensive plan, land development regulations including this Ordinance, and compatibility of the proposed tower or antenna with the surrounding neighborhood. The Town must also hold a workshop for site plan approval. Upon review, the Planning Director must issue a recommendation to the Town Council. The Council considers such recommendation as well as additional factors presented by the Applicant or Town staff. The Council has the authority to approve or deny any Application that incorporates the factual basis for the Council’s decision.
- **Development Standards** – The Ordinance sets forth the placement and size restrictions for towers, antennas mounted on towers, structures or rooftops, utility or light poles, and equipment cabinets. The Ordinance also provides collocation incentives; hierarchy of siting alternatives and preferred zoning districts; public safety telecommunications interference standards; aesthetics to limit adverse impact on adjacent properties; lighting; setbacks; separation; height; noise; modifications or reconstruction of existing tower and antennas; signs; security fencing; licenses; parking; and outdoor storage requirements.
- **Removal of Abandoned Towers and Antennas** – The Ordinance attempts to minimize potential damage to property from towers and antennas by requiring any antenna or tower that is not operated for a continuous period of twelve (12) months to be considered abandoned. If an owner fails to remove any and all equipment, the Town may remove the equipment at the owner’s expense.
- **Protection of the Town and Residents** – The Town shall not enter into any lease agreement with a provider for use of Town-owned property unless the Town obtains indemnification and insurance from such provider. The Ordinance releases the Town from and against all liability and responsibility in or arising out of the construction, operation or repair of towers and antennas. An operator and its contractor or subcontractors engaged in work on the operator’s behalf, shall maintain comprehensive general liability.
- **Security Fund** – The Ordinance provides for a Security fund requiring providers establish a cash security fund or provide the Town with an irrevocable letter of credit in the same amount to secure the payment of removing an antenna or tower that has been determined to be abandoned or is not in compliance with the Ordinance. The amount to be provided for each tower is \$25,000; the amount for each antenna is \$5,000.

**ORDINANCE NO. 07-\_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA COMPREHENSIVELY UPDATING AND REVISING CHAPTER 33 "ZONING" ARTICLE IV "TOWERS, POLES AND MASTS" RELATING TO WIRELESS SUPPORTED SERVICE FACILITIES; AMENDING THE LIST OF THE PERMITTED USES IN THE RU-3M, RU-4, RU-4L, RU-4M ZONING DISTRICTS RELATING TO WIRELESS SUPPORTED SERVICE FACILITIES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Congress of the United States adopted the Telecommunications Act of 1996, providing federal regulation of wireless communications, a technology of wireless voice, video and data communications systems rapidly becoming available, requiring land use facilities that impact planning and zoning concerns of the Mayor and Town Council of the Town of Cutler Bay ("Town") and throughout the United States; and

**WHEREAS**, the Town finds that it is in the public interest to permit the siting of wireless telecommunications towers and antennas within its municipal boundaries; and

**WHEREAS**, the Town has received and expects to receive additional requests from telecommunications service providers to site wireless telecommunications towers and antennas within the municipal boundaries and is authorized by federal, state, and local law to regulate the siting of such telecommunications towers and antennas; and

**WHEREAS**, it is the intent of the Town to provide reasonable accommodation to, and to promote and encourage fair and reasonable competition among telecommunications service providers or providers of functionally equivalent services on a neutral and non-discriminatory basis; and

**WHEREAS**, the purpose and intent of this Ordinance is to establish appropriate locations in priority order of use, and, further, to develop the requirements and standards to permit the siting of wireless telecommunications towers and antennas within the municipal boundaries, with due consideration to the Town's zoning map, existing land uses and environmentally sensitive areas, including hurricane preparedness areas; and

**WHEREAS**, it is the intent of this Ordinance to encourage collocation among wireless telecommunications service providers and to enhance the ability of the providers to provide such services to the Town through an efficient and timely application process pursuant to Section 365.172, Florida Statutes, as amended; and

**WHEREAS**, any antenna and related equipment to service the antenna that is being collocated on an existing above-ground structure is not subject to land development regulation



pursuant to Section 163.3202, Florida Statutes, provided the height of the existing structure is not increased; and

**WHEREAS**, through these regulated standards, it is the intent of the Town to protect and promote the health, safety and general welfare of its citizens and residents, the traveling public and others in such manner that will minimize both the number of telecommunications towers and antennas and the adverse visual impact and other potential damage by these facilities by encouraging collocation and shared use of new and pre-existing telecommunications facilities, through incentives, careful design, engineering siting, landscape screening and innovative camouflaging techniques; and

**WHEREAS**, the Town Council, in its capacity as the local planning agency, has reviewed this Ordinance and recommends approval; and

**WHEREAS**, the Town finds that these changes are consistent with the Miami-Dade County's Comprehensive Development Master Plan, which now functions as the Town's Comprehensive Plan; and

**WHEREAS**, the Town finds it is in the best interest of the Town to amend the wireless provisions and procedures contained in the Miami-Dade County Code as made applicable to the Town by Section 8.3 of the Town Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:**

**Section 1.** **Findings.** The foregoing WHEREAS clauses are hereby adopted and incorporated herein as if fully set forth in this Section.

**Section 2.** **Repeal of Sections 33-63.2 and 33-63.3 of the Town Code of Ordinances.** Sections 33-63.2 "Wireless supported service facilities" and 33-63.3 "Co-location" of the Town Code of Ordinances are hereby repealed in their entirety as follows:

**~~Sec. 33-63.2 Wireless supported service facilities.~~**

~~(a) Permitted Districts and Criteria for Antennas.—~~

~~(1) Permitted Districts. Antennas used as part of a Wireless Supported Service Facility which are mounted on existing Structures shall be permitted in the following zoning districts subject to the criteria outlined below.—~~

~~(A) In hotels, motels, and apartment hotels in an RU-4A district; in all RU-5, RU-5A, OPD, in all business and industrial districts.—~~

~~(B) On multi-family residential buildings in an RU-4L, RU-4M, RU-4 and RU-4A district.—~~

~~(C) In any district on any structure lawfully being used for any of the following purposes, where the site is located at the intersection of section line roads, a transition area, or abutting a major roadway as depicted on the Land Use Plan Map of the Comprehensive Development Master Plan, or section center: public or private/nonpublic educational facilities on a site of 10 or more gross acres, hospitals, race tracks, stadiums, or public or private utilities.—~~

~~(2) *Criteria.* Antennas may be located on existing Structures with a height of thirty (30) feet or greater, so long as the Antennas do not extend (i) more than thirteen (13) feet above the highest point of the roof of a building as measured in accordance with the provisions of Section 33-1(17) or (ii) the highest point on the Structure as measured from the average elevation of the finished building site to the top of the structure.~~

~~(A) Except for Cylinder Type Antennas, Antennas shall be screened from view or wall mounted and shall not exceed nine (9) Sectors.~~

~~(B) Where wall mounted, Antennas shall not extend above the wall where located and shall be painted to match the supporting Structure. Wall mounted Antennas shall be limited to one (1) Sector per building elevation.~~

~~(C) Wall mounted Antennas not exceeding the height of the wall where located and painted to match the supporting Structure will be allowed on rooftop elevator bulkheads, rooftop enclosures for mechanical equipment, and rooftop Accessory Wireless Equipment Buildings in addition to (b)(2)(i), above, but shall be limited to one (1) Sector per elevation on the particular rooftop structure where they are placed.~~

~~(D) Where roof mounted:~~

~~1. Requests to install roof mounted Antennas shall be accompanied by a line of sight analysis for each building elevation. The line of sight analysis shall be as provided for in the sketches shown below as Figures 33-63.2(b)(2)iii and iv. In conducting such analysis, the width of the right-of-way shall be equal to the width of the right-of-way fronting the particular elevation.~~

~~**Figure 33-63.2(b)(2)iii**~~

~~**Figure 33-63.2(b)(2)iv**~~

~~2. Any Antennas or portion thereof above the line of sight will require screening. All required screening used in conjunction with such rooftop installations shall be architecturally compatible and harmonious in color and materials with the supporting structures and any existing or approved screening on the structure. Screening materials at corners shall be the same length and height on all corners.~~

**Section 3. Creation of the Town Wireless Telecommunications Facilities Ordinance.** The Town's Wireless Telecommunications Facilities Ordinance is hereby created as follows:

### **SECTION 33-63.2. INTENT.**

The regulations and requirements establish general guidelines for the siting of wireless telecommunications towers and antennas and are intended to accomplish the following purposes:

(a) protect and promote the public health, safety and general welfare of the residents of the Town;

(b) minimize residential areas and land uses from potential adverse impacts of towers and antennas;

(c) encourage the location of towers in non-residential areas and to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;

(d) minimize the total number of towers throughout the community by strongly encouraging the collocation of antennas on new and Pre-Existing Tower sites as a primary option rather than construction of additional single-use telecommunications towers;

(e) encourage users of telecommunications towers and antennas to configure them in a way that minimizes the adverse visual impact of the telecommunications towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;

(f) minimize potential damage to property from telecommunications towers and telecommunications facilities by requiring such structures be soundly designed, constructed, modified and maintained; and

(g) enhance the ability of the providers of telecommunications services to provide such services to the community through an efficient and timely application process. In furtherance of these goals, the Town shall at all times give due consideration to the Town's master telecommunications plan, comprehensive plan, zoning map, existing land uses, and environmentally sensitive areas, including hurricane preparedness areas, in approving sites for the location of telecommunications towers and antennas.

### **SECTION 33-63.3. GENERAL RULES OF INTERPRETATION AND DEFINITIONS.**

(a) *Interpretation.* In the absence of definitions, the standard dictionary meaning shall be utilized. In any event, the planning director shall have the right to interpret the terms contained in this subdivision. In construing the meaning of the subdivision, the following rules shall apply:

- (1) Words used in the present tense also include the future tense.
- (2) Words used in the singular number also include the plural and vice-versa.
- (3) The word "shall" is mandatory. The word "may" is permissible.
- (4) The word "development" shall refer also to "project" and the area in which a project takes place.
- (5) The words "used" or "occupied" shall be construed to include arranged, designed, constructed, altered, converted, rented, leased or intended to be used, intended to be occupied.
- (6) The word "lot" shall refer also to plot, parcel, tract and premises.
- (7) The word "building" shall refer also to structure, mobile home, dwelling and residence.
- (8) The words "area" and "district" may indicate and include the meaning "zone."
- (9) Except where specified, the provisions of this article shall be construed to mean the minimum standards, requirements and regulations adopted in pursuit of the purposes of this subdivision.

(b) *Definitions.* As used in this Ordinance, the following words, terms and phrases, when used in this subdivision shall have the meanings set forth below, and for the purpose of this Ordinance shall control over any other definitions contained in the Town's Code of Ordinances. Words not defined shall be given their common and ordinary meaning.

**“Accessory Use”** means a secondary use including a use that is not related to, incidental to, subordinate to and subservient to the main use of the property on which an antenna and/or telecommunications tower is sited.

**“Alternative Tower Structure”** means a design mounting structure that camouflages or conceals the presence of an antenna or telecommunications tower, for example, flag poles, man made trees, clock towers, bell steeples, light poles, utility poles and similar alternative designs. An antenna mounted on a utility pole shall be subject to all requirements as stated in this Ordinance.

**“Antenna”** means a transmitting and/or receiving device mounted on a telecommunications tower, building or structure and used in wireless telecommunications services that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies, wireless communications signals and other communications signals including directional antennas such as panel and microwave dish antennas, and omni-directional antennas such as whips, but excluding radar antennas, amateur radio antennas and satellite earth stations.

**“Applicant”** means any party submitting an Application within the meaning of this Ordinance.

**“Application”** means any proposal, submission or request to construct, operate, or maintain a telecommunications tower, equipment facility, wireless communications facility, or Antenna within the Town or seeks any other relief from the Town pursuant to this Ordinance.

**“Array”** means a group of up to twelve (12) Antennas that are either (i) mounted or side mounted on the rooftop of a building or rooftop structure(s); or (ii) directly or indirectly mounted on a telecommunications tower.

**“Backhaul network”** means the lines that connect personal wireless service facilities to one (1) or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

**“Broadcasting Facility”** means any telecommunications tower or Antenna built primarily for the purpose of broadcasting AM, FM or television signals.

**“Building Code”** means the Florida Building Code, as amended, the National Electrical Code, as amended, the National Electrical Safety Code, as amended, FCC regulations, as amended, and any other applicable federal, state, and local building code.

**"Building-Permit Review"** means a review for compliance with building constructions standards adopted by the Town and does not include a review for compliance with land development regulations.

**"Camouflaged Facility"** means a facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure in a manner that makes it not readily identifiable as a wireless communications facility. A camouflaged facility may or may not have a secondary function (e.g., bell tower, spire, flag pole, etc.). This term shall be synonymous with "stealth facility."

**"Carrier"** means a company licensed by the Federal Communications Council (FCC) that provides wireless services. A tower builder or owner is not a carrier unless licensed to provide personal wireless services.

**"Town"** means Cutler Bay, Florida, an incorporated municipality of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

**"Collocation"** means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent Antenna. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the Antennas.

**"Commercial Mobile Radio Services"** means, per Section 704 of the Telecommunications Act of 1996, any of several technologies using radio signals at various frequencies to send and receive voice, data and video.

**"County"** means Miami-Dade County, Florida, a chartered county of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

**"Equipment Facility"** means a room, cabinet, shelter, pedestal, build-out of an existing structure, building, or similar structure used to house ancillary equipment for a telecommunications tower or Antenna. Each such cabinet, shelter, or building shall be considered a separate equipment facility.

**"Essential Services"** means those services provided by the Town and other governmental entities that directly relate to the health and safety of its residents, including fire, police and rescue.

**"Existing Structure"** means a structure that exists at the time an Application for permission to place an Antenna on a structure is filed with the Town. The term includes any structure that can structurally support the attachment of an Antenna in compliance with applicable codes.

**"Extraordinary Conditions"** means subsequent to a hurricane, flood, or other natural hazard or subsequent to a defective finding on a previous inspection.

**“FAA”** means the Federal Aviation Administration.

**“FCC”** means the Federal Communications Commission.

**“Geographic Search Area”** means that initial circular area which has a radius of no less than one (1) mile designated by a wireless provider or operator for a new tower. The geographic search area shall be determined based upon engineering considerations including grids, frequency coordination and levels of service consistent with good engineering practices.

**“Guyed Tower”** means a telecommunications tower that is supported, in whole or in part, by guy wires and ground anchors.

**“Height”** means the distance measured from the ground level to the highest point of a telecommunications tower or other structure. For the purposes of measuring Height, the base pad and all Antennas or other attachments mounted on a structure shall be included in the measurements to determine overall Height.

**“Interference”** means the impairment of transmission or reception of any desired communications or radio frequencies within the Town. This term embraces electrical interference in all of its forms, including, without limitation, co-channel interference, interference from intermodulation products, and blanketing inference.

**"Historic Building, Structure, Site, Object, or District"** means any building, structure, site, object, or district that has been officially designated as a historic building, historic structure, historic site, historic object, or historic district through a federal, state or local designation program.

**"Land Development Regulations"** means any ordinance enacted by the Town for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, the Town’s comprehensive plan, or any other ordinance concerning any aspect of the development of land.

**“Lattice Tower”** means a telecommunications tower that is constructed to be self-supporting by lattice type supports and without the use of guy wires or other supports.

**“Microcell Facility”** A telecommunications facility consisting of an Antenna (as defined below) and related equipment which is located either on a telecommunications tower or affixed to a structure in some fashion for the provision of wireless services.

**“Microwave Dish Antenna”** means a dish-like Antenna used to link telecommunications sites together by wireless transmission and/or receipt of voice or data.

**“Monopole Tower”** means a telecommunications tower consisting of a single pole or spire self-supported on a permanent foundation, constructed without guy wires, ground anchors, or other supports.

**“Non-Use Variance”** means a grant of relief from the requirements of this Ordinance pursuant to the Town Code or a non-use variance permit.

**“Personal Wireless Services”** means Commercial Mobile Radio Services, unlicensed wireless services, and common Carrier wireless exchange access services, as defined under federal law, 47 U.S.C. §332(c)(7)(C), or as this definition may be amended from time to time, and includes but is not limited to, cellular, personal communication services, specialized mobile radio, enhanced specialized mobile radio, and paging service. Personal Wireless Services shall not be considered as Essential Services, public safety telecommunications, public utilities or private utilities.

**“Planning Director”** means the person and/or department designated by the Town responsible for the administration and enforcement of this Ordinance including, but not limited to, review and approval of an application as provided in this Ordinance.

**“Pre-Existing Tower”** means a telecommunications tower for which a building permit has been properly issued prior to the effective date of this Ordinance, including permitted telecommunications towers that have not yet been constructed so long as such approval is current and not expired.

**“Preferred Zoning Districts”** means the zoning districts within this Ordinance in which the Town provides a preference for the installation of Wireless Communications Facilities.

**“Pole”** means any utility, electricity, telephone, power or light pole, other than any pole owned by the Town.

**“Public Safety Telecommunications”** means any and all wireless communications to and from police, fire, and other emergency services operating within the Town.

**“Public Rights-of-Way” or “ROW”** means a public right-of-way, public utility easement, highway, street, bridge, tunnel, pier, waterway, dock, wharf, court, lane, path, or alley or any other property for which the Town is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the Town holds a property interest therein. “Public Rights-of-Way” shall not include private property. “Public Rights-of-Way” shall not include any real or personal property except as described above and shall not include Town buildings, fixtures, Poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way.

**“Roofline”** The overall ridge line of the structure which does not include cupolas, elevator towers, clock towers or other features that are permitted to exceed the maximum Height of the buildings

**“Rooftop”** means the exterior surface on the top of a building or structure.

**“Search Area”** means the geographic area, in which a wireless communications facility

must be located in order to provide FCC required coverage, as certified through an affidavit by a Radio Frequency engineer as to radio frequency waves or other such appropriate technical expert.

**“Self-Support Tower”** means a tapered structure broad at the base and more narrow at the top consisting of cross-members and diagonal bracing and without guyed support, also known as Lattice Towers.

**“Setbacks”** means the required distance from the telecommunications tower or Equipment Facility to the property line of the parcel on which the wireless communications facility is located.

**“Service Provider”** means any person or business entity wishing to locate a telecommunications tower or Antenna within the Town limits to provide Personal Wireless Services.

**“State of the Art”** means existing technology where the level of facilities, technical performance, capacity, equipment, components and Personal Wireless Service is equal to that developed and demonstrated to be as technologically advanced and generally available for comparable service areas in South Florida.

**“Stealth Facility or Tower” or “Stealth”** means any wireless communications facility or tower that is designed to blend into the surrounding environment. Examples of such facilities would include, but are not limited to, architecturally screened roof mounted Antenna, building-mounted Antenna painted to match the Existing Structure, Antenna integrated into architectural elements, Alternative Tower Structures or other similar structures.

**“Telecommunications Act”** means the Telecommunications Act of 1996, Pub. L No. 104-104, codified at 47 U.S.C., and as may be amended from time to time.

**“Telecommunications Services”** means the offering of telecommunication (or the transmission, between or among points, specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received), for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Personal wireless communication services shall not be considered as Essential Services, public utilities or private utilities.

**“Telecommunications Tower” or “Tower”** means any structure, and support thereto, designed and constructed primarily for the purpose of supporting one or more Antennas intended for transmitting or receiving Personal Wireless Services, telephone, radio and similar communication purposes, including Alternative Tower Structure, Lattice, Stealth, Monopole, and Guyed Towers. The term includes radio and television transmission telecommunications towers, microwave telecommunications towers, common-Carrier telecommunications towers, and cellular telephone telecommunications towers, among others. Poles are only a support structure and are not a telecommunications tower.



**“Whip Antenna”** means a cylindrical Antenna that transmits signals in 360 degrees.

**“Wireless Communications Facility”** means any equipment or facility used to provide Personal Wireless Service and may include, but is not limited to, Antennas, Towers, Equipment Facility, cabling, Antenna brackets, and other such equipment. Placing a Wireless Communications Facility on an Existing Structure does not cause the Existing Structure to become a Wireless Communications Facility. It also means Personal Wireless Services facilities, as defined under federal law, 47 U.S.C. §332(c)(7)(C), as this definition may be amended from time to time, and includes, but is not limited to, Antennas and radio-transmitting Telecommunications Towers, and associated facilities used to transmit telecommunications signals. Poles are only a support structure and are not a Wireless Communications Facility. An open video system is not a Wireless Communications Facility to the extent that it provides video services; a cable system is not a Wireless Communications Facility to the extent that it provides cable service.

#### **SECTION 33-63.4. APPLICABILITY.**

A. All new Wireless Communications Facilities and reconstruction or modifications to existing Wireless Communications Facilities in the Town shall be subject to the regulations in this Ordinance to the full extent permitted under applicable state and federal law.

B. Pre-existing Telecommunications Towers or Antennas shall not be required to meet the requirements of this Ordinance, other than the specific requirements set forth herein.

C. Broadcasting Facilities/Amateur Radio Station Operators/Receive Only Antennas. This Ordinance shall not govern any Broadcasting Facility or a Wireless Communications Facility owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only Antennas.

D. Pending Applications. This Ordinance shall apply to Applications for Wireless Communications Facilities, Telecommunications Towers, and Antennas as defined herein unless prohibited by applicable law.

E. Not Essential Services. The providing of Personal Wireless Services and the siting and construction of Wireless Communications Facilities shall be regulated and permitted pursuant to this Ordinance and shall not be regulated or permitted as Essential Services or Public Safety Telecommunications as defined herein.

F. Except for matters herein specifically reserved to the Town Council, the Planning Director shall be the principal Town official responsible for the administration of this Ordinance. The Planning Director may delegate any or all of the duties hereunder unless prohibited by applicable law.

G. AM Array. For purposes of implementing this Ordinance, an AM Array, consisting of one or more Tower units and supporting ground system which functions as one AM broadcasting Antenna, shall be considered one Tower. Measurements for Setbacks and

separation distances shall be measured from the outer perimeter of the Towers included in the AM Array. Additional Tower units may be added within the perimeter of the AM Array by right.

H. The Town may create an Application form as may be amended from time to time, for a person to apply for the construction, installation, or placement of a Wireless Communications Facility, Telecommunications Tower, or Antenna within the Town consistent with the terms of this Ordinance. The Town may create a different Application form for Collocation Applications.

**SECTION 33-63.5. APPLICATION REQUIREMENTS FOR WIRELESS COMMUNICATIONS FACILITIES.**

A. Unless exempted from these requirements as set forth below, or as otherwise required by state or federal law, permits shall be required for the installation of Wireless Communications Facilities, including Telecommunications Towers and Antennas, by Application submitted to the Planning Director.

B. The following information must be included in all Applications, including Applications for installations of Telecommunications Towers and Antennas but excluding Collocation Applications.

- (1) Current survey of the property.
- (2) Description of the Telecommunications Services currently provided and/or to be provided in the future by the Applicant over its Wireless Communications Facilities.
- (3) Location of the proposed facilities.
- (4) Identify the location of all overhead and underground public utility; telecommunication, cable, water, sewer, drainage and other facilities.
- (5) Identify the trees, structures, improvements, facilities and obstructions, if any, that Applicant proposes to temporarily or permanently remove or relocate.
- (6) Identify all applicable FCC licenses and approvals.
- (7) Statement that Applicant shall notify all other telecommunication providers of the permit Application at time Application is accepted by the Planning Director.
- (8) Any Application submitted to the Town for construction or installation of a Telecommunication Tower or Wireless Communications Facility shall demonstrate that the proposed structure conforms with the State of the Art or, alternatively, that State of the Art technology is unsuitable for the site involved. Costs of State of the Art technology

that exceed new Tower development shall not be presumed to render the technology unsuitable.

(9) Antennas and Towers may be considered a Principal Use on a vacant lot. In the event that there is an existing Principal Use on a lot, they may be considered as an Accessory Use. A different existing use of an Existing Structure on the same lot shall not preclude the installation of an Antenna or Telecommunications Tower on such lot.

(10) Lot Size. For purposes of determining whether the installation of a Telecommunications Tower or Antenna complies with the zoning provisions, including, but not limited to, Setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the Antenna or Telecommunications Tower may be located on leased parcels within such lot.

(11) An Inventory of Existing Sites. Each Applicant shall provide the Town with an inventory of its Pre-existing Telecommunications Towers and Antennas, and the Pre-existing sites of any other Telecommunications Towers, Antennas and Wireless Communications Facilities within a three (3) mile radius of the Town.

(12) For Applications for new Telecommunications Towers, the Applicant must provide information to demonstrate, pursuant to the procedures listed within this subsection, that no Pre-existing Tower Existing Structure, or State of the Art technology that does not require the use of new Telecommunications Towers or new structures, can accommodate or be modified to accommodate the Applicant's proposed Telecommunications Tower. Evidence submitted to demonstrate that no Pre-Existing Tower, Existing Structure or State of the Art technology is suitable may consist of an affidavit from an engineer licensed to practice in the State of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and Wireless Communications Facilities, determining or demonstrating the following:

(a) that Pre-Existing Towers or Existing Structures located within the Geographic Search Area do not have the capacity to provide reasonable technical service consistent with the Applicant's technical system, including but not limited to, applicable FCC requirements.

(b) that Pre-Existing Towers or Existing Structures are not of sufficient Height to meet applicable FCC requirements, or engineering requirements of the Applicant.

(c) that Pre-Existing Towers or Existing Structures do not have sufficient structural strength to support Applicant's proposed Antenna and related equipment.

(d) that the Applicant's proposed Antenna would cause electromagnetic/radio frequency Interference with Antennas on Pre-Existing

Towers, Antennas or Existing Structures, or the Antenna on the Pre-Existing Towers or structures would cause Interference with the Applicant's proposed Antenna.

(e) that the Applicant's proposed Antenna on a Pre-Existing Tower or Existing Structure would cause Interference with Public Safety Telecommunications.

(f) that the Applicant made diligent efforts but was unable to obtain permission to install or collocate the Applicant's Wireless Communications Facilities on Pre-Existing Towers or usable Antenna support located within a one (1) mile radius from the proposed site.

(g) that there are other limiting factors that render Pre-Existing Towers and Existing Structures unsuitable.

(13) The Engineering Report.

(14) If applicable, a copy of the executed lease agreement of the property where the Wireless Communications Facility and/or Tower will be located.

(15) Additional information that the Town may request consistent with this Ordinance and applicable law to process the Application. In the event the Town requests any additional information, the time in which an Application is processed shall be tolled pending receipt and further evaluation.

(16) Consultant Fee. The Town shall have the right to retain independent technical consultants and experts that it deems necessary to properly evaluate Applications for individual Towers. The consultant fee shall be based upon the hourly rate of the independent technical consultant or expert the Town deems necessary to properly evaluate Applications for Tower. The special fee shall be applied to those Applications requiring special review or evaluation. The special fee shall be reimbursed by the Applicant to the Town.

(17) To the extent not prohibited by applicable law, any Application for a Wireless Communications Facility shall also include:

(a) A certification from an engineer licensed to practice in the State of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and Wireless Communications Facilities that the proposed facility including reception and transmission functions, is not expected to interfere with or obstruct transmission to and from existing Public Safety Telecommunications facilities;

(b) A remedial action plan, subject to the Town's approval, that includes, but is not limited to, procedures to rectify any Interference or obstruction with

Public Safety Telecommunications, its plans to make all necessary repairs and/or accommodations to alleviate the Interference or obstruction, and a period of compliance.

(18) If the Applicant seeks relief from any regulation contained herein, the Applicant must provide the nature of the specific relief sought and the engineering justification to demonstrate that without such relief, applicability of the regulation would have the effect of prohibiting the provision of Personal Wireless Services.

C. Engineering Report. The Engineering Report shall be from an engineer licensed to practice in the State of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and Wireless Communications Facilities, and shall include:

(1) A site development plan of the entire subject property drawn to scale, including, without limitation:

(a) a tax parcel number, legal description of the parent tract and leased parcel, total acres, and Section/Township/Range of the subject property;

(b) the lease parcel fully dimensioned, including property lines, Setbacks, roads on or adjacent to the subject property, easements;

(c) outline of all existing buildings, including purpose (i.e. residential buildings, garages, accessory structures, etc.) on subject property;

(d) all existing vegetation, by mass or individually by diameter, measured for feet from the ground of each stand-alone tree on the subject property;

(e) proposed/existing security barrier, indicating type and extent as well as point of controlled entry;

(f) proposed/existing access easements, utility easements, and parking for the Telecommunications Tower;

(g) all proposed changes to the subject property, including grading, vegetation removal, temporary or permanent roads and driveways, storm water management facilities and any other construction or development attendant to the Telecommunications Tower;

(h) scaled elevation drawing of proposed Telecommunications Tower, including location of all mounts, Antennas, Equipment Facilities, fencing and landscaping;

(i) if applicable, on-site and adjacent land uses.

(2) If applicable, a narrative of why the proposed Telecommunications Tower cannot comply with the requirements of the Engineering Report.

(3) The type of Telecommunications Tower and specifics of design including, if appropriate, the following:

(a) equipment brochures for the proposed Tower such as manufacturer's specifications or trade journal reprints. These shall be provided for the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any;

(b) materials of the proposed Tower specified by generic type and specific treatment (i.e., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any;

(c) colors of the proposed Tower represented by a color board showing actual colors proposed. Colors shall be provided for the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any;

(d) dimensions of the Tower specified for all three directions: Height, width and breadth. These shall be provided for the Antennas, mounts, Equipment Facilities and security barrier, if any; and

(e) a visual impact analysis, with a minimum of two (2) photo digitalization or photographic superimpositions of the Tower within the subject property. The photo digitalization or photographic superimpositions shall be provided for all attachments, including: the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any for the total Height, width and breadth, as well as at a distance of 250 feet and 500 feet from all properties within that range, or at other points agreed upon in a pre-Application conference.

(4) Current wind-loading capacity and a projection of wind-loading capacity using different types of Antennas as contemplated by the Applicant. No Telecommunications Tower shall be permitted to exceed its wind loading capacity as provided for by the Florida Building Code.

(5) An affidavit from an engineer licensed to practice in the State of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and Wireless Communications Facilities stating that the proposed Telecommunications Tower, including reception and transmission functions, will not interfere with the visual and customary transmission or reception of radio, television or similar services as well as other wireless services enjoyed by adjacent residential and non-residential properties.

(6) An affidavit from an engineer licensed to practice in the State of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and Wireless Communications Facilities stating confirming compliance with all applicable Building Codes, associated regulations and safety standards. For all Towers attached to Existing Structures, the statement shall include certification that the structure can support the load superimposed from the Telecommunications Tower.

**SECTION 33-63.6. APPLICATION REQUIREMENTS FOR COLLOCATIONS.**

A. The following information must be included in all Collocation Applications.

(1) An engineering report, from an engineer licensed to practice in the State of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and Wireless Communications Facilities, that shall include:

(a) A statement of compliance with this Ordinance and all applicable Building Codes, associated regulations and safety standards as provided herein. The statement shall include certification that the Existing Structure can support the load superimposed from the Antenna(s).

(b) The type of Antenna and specifics of design including, if appropriate, the following:

(1) equipment brochures for the proposed Antenna such as manufacturer's specifications or trade journal reprints. These shall be provided for the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any;

(2) materials of the proposed Antenna specified by generic type and specific treatment (i.e., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any;

(3) colors of the proposed Antenna represented by a color board showing actual colors proposed. Colors shall be provided for the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any;

(4) dimensions of the proposed Antenna specified for all three directions: Height, width and breadth. These shall be provided for the Antennas, mounts, Equipment Facilities and security barrier, if any; and

(5) a visual impact analysis, with a minimum of two (2) photo digitalization or photographic superimpositions of the Pre-Existing Tower and proposed Antenna within the subject property. The photo digitalization or photographic superimpositions shall be provided for all attachments, including: the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any for the total Height, width and breadth, as well as at a distance of 250 feet and 500 feet from all properties within that range, or at other points agreed upon in a pre-Application conference.]

(c) Current wind-loading capacity and a projection of wind-loading capacity using different types of Antennas as contemplated by the Applicant. No Telecommunications Tower shall be permitted to exceed its wind loading capacity as provided for by the Florida Building Code.

(d) A certification that the proposed Antenna, including reception and transmission functions, is not expected to interfere with or obstruct transmission to and from existing Public Safety Telecommunications facilities or any other Telecommunications Services;

(e) A description of the geographical service area requirements; and

(f) If necessary, a remedial action plan, subject to the Town's approval, that includes, but is not limited to, procedures to rectify any Interference or obstruction with Public Safety Telecommunications, its plans to make all necessary repairs and/or accommodations to alleviate the Interference or obstruction, and a period of compliance.

(2) An Inventory of Existing Sites. Each Applicant shall provide the Town with an inventory of its Pre-existing Telecommunications Towers and Antennas, and the Pre-existing sites of any other Telecommunications Towers, Antennas and Wireless Communications Facilities within a three (3) mile radius of the Town.

(3) A copy of the executed lease agreement of the Tower where the Wireless Communications Facility and/or Antenna will be collocated; and

(4) Additional information that the Town may request consistent with this Ordinance and applicable law to process the Application. In the event the Town requests any additional information, the time in which an Application is processed shall be tolled pending receipt and further evaluation.

### **SECTION 33-63.7. INSTALLATIONS ON MUNICIPAL PROPERTY.**

A. Applications for a Wireless Communications Facility on property owned, leased or otherwise controlled by the Town, except for Public Rights-of Way, shall require a Lease Agreement approved by the Town Council and executed by the Town and the owner of the



proposed Wireless Communications Facility. The Town may require, as a condition of entering into a Lease Agreement, the dedication of space on the facility for Public Safety Telecommunications purposes, as well as property improvement on the leased space. Any dedications and improvements shall be negotiated prior to execution of the lease.

(1) No lease granted pursuant to this Ordinance shall convey the exclusive right, privilege, permit or franchise to occupy or to use the public lands of the Town for delivery of Personal Wireless Services or any other purpose.

(2) No lease granted pursuant to this Ordinance shall convey any right, title or interest in the public lands other than a leasehold interest, and shall be deemed only to allow the use of the public lands for the limited purposes and term stated in the lease. No lease shall be construed as a conveyance of a title interest in the property.

(3) Any and all Collocations or placements of Antennas on a Wireless Communications Facility that is located on property owned, leased or otherwise controlled by the Town, except for Public Rights-of-Way, shall require a separate lease agreement with the Town as well as full compliance with the requirements of this ordinance for such Collocations and placements of Antennas.

(4) Pursuant to applicable law, the Town may contract with a third party to administer Town-owned property for purposes of developing Town-owned sites, consistent with the terms of this Ordinance. Except as specifically provided herein, the terms of this Ordinance, and the requirements established thereby, shall be applicable to all Telecommunication Towers or Personal Wireless Service facilities to be developed or Collocated on Town-owned sites.

(5) Town-owned property is exempt from the minimum distance separation and Height requirements set forth herein.

**SECTION 33-63.8. APPLICATION FEES AND PROCESS.**

**A. Filing Fee.**

(1) All Applications shall be accompanied by the applicable non-refundable filing fee. The applicable filing fee shall be submitted to the development review committee with the Application. The following table lists the applicable Application and inspection fees:

<u>Type of Application</u>	<u>Fee</u>
Telecommunications Tower	\$8,000
Antenna Collocation	\$4,000
Antenna-not-Located-on-Telecommunications-Tower	\$4,000
Modification of a Wireless Communications Facility	\$4,000
Non-Use Variances	\$4,000
Cooperation	\$4,000
Inspection	\$1,000

The Town Council may amend the amount of the filing fees from time to time by Resolution. The annual inspection fee of one thousand dollars (\$1,000.00) is due the Town at the time of inspection.

(2) Cost Recovery. The purpose of the filing fee is to defray the Town's costs in processing the Application. All reasonable expenses incurred by the Town in considering and processing the Application, including, but not limited to, consulting and legal costs, shall be off-set from the filing fee. If, however, the expenses exceed the amount of the filing fee, to the extent not prohibited by applicable law, the Applicant shall pay the difference within thirty (30) days of the date it receives notice of such additional expenses. If the additional fees are not received by the Town within thirty (30) days of the date of notice, the Town shall notify such Applicant and the Applicant shall pay an additional late fee at the rate of eighteen (18%) percent per annum of the amount unpaid or underpaid, provided, however, that such rate does not exceed the maximum amount allowed under the applicable law. In such case, the rate will be the maximum allowed by law. If the Town does not receive said fee in total within sixty (60) days of the date of notice, the Town shall notify the Applicant in writing and may revoke any approval.

B. Applicants regulated by this Ordinance may request a pre-Application conference with the Town. Such request shall be submitted with a non-refundable fee of Five Hundred Dollars (\$500.00) to reimburse the Town for the cost and fees incurred by the conference.

C. Unless otherwise authorized by state or federal law, no person shall construct, install or maintain a Wireless Communications Facility within the Town without the Town's approval pursuant to this Ordinance.

D. The Planning Director shall review the Application for consistency with the Town's Comprehensive Master Development Plan, Land Development Regulations including this Ordinance, and compatibility of the proposed Wireless Communications Facility with the surrounding neighborhood. For Applications that are not subject to the Town Council's approval pursuant to this Ordinance, the Planning Director shall issue a written decision either granting or denying an Application. The Planning Director shall not grant an Application for a proposed Wireless Communications Facility that will interfere with any Public Safety Telecommunications, or is otherwise not in compliance with this Ordinance. In the event the Planning Director denies an Application, the Planning Director shall set forth the reasons for denial in writing.

E. An Applicant shall attend a zoning workshop for site plan approval and to address any deficiencies contained in Applications regardless of whether or not such Applicant is subject to the Town Council's approval pursuant to this Ordinance and subject to applicable law.

F. Notification of completeness. The Planning Director shall notify the Applicant within twenty (20) business days after the date the Application is submitted as to whether the Application is, for administrative purposes only, properly completed and has been properly submitted in accordance with the requirements set forth above. However, such determination

shall not be deemed as an approval of the Application. Such notification shall indicate with specificity any deficiencies which, if cured, could make the Application properly completed.

G. For Applications that are subject to the Town Council's approval pursuant to this Ordinance, the Planning Director shall issue a recommendation in writing to the Town Council. In the event that the Planning Director determines that a proposed Wireless Communications Facility subject to the Town Council's approval pursuant to this Ordinance will interfere with any Public Safety Telecommunications, or is otherwise not in compliance with this Ordinance, the Planning Director shall recommend that the Town Council deny the Application and shall set forth the reasons for denial in writing.

H. The Town Council shall consider any part of the Application, the Planning Director's recommendation, and any additional evidence presented by the Applicant, Town staff and the public. If the Applicant wishes to have a court reporter record the Council meeting, the Applicant may do so at the Applicant's expense and shall furnished a copy of the transcript to the Town within two weeks of the Council meeting, at the Applicant's expense.

I. The Town Council's decision either approving or denying an Application shall be by resolution. Any decision of the Town Council to deny an Application shall authorize the Planning Director to set forth in writing the Town Council's reasons for the denial. It is the intent of this Section to establish a procedure for compliance with the "written decision" and "substantial evidence" requirements of the Telecommunications Act, 47 U.S.C.§332(c)(7)(B)(iii).

(1) The Town Council's written reasons for denial of an Application may include, but are not limited to, compatibility with the surrounding neighborhood or lack thereof, compliance or non-compliance with this Ordinance or any other provision of the Town Code, or any lawful reason.

(2) The Town Council's written reasons shall incorporate by reference the complete Application, minutes of public hearings, and any recommendations and findings by the Planning Director and/or the Town Council.

(3) If an Application is denied because the proposed facility does not meet the requirements of this Ordinance, the Applicant may file an Application for a Non-Use Variance.

J. The Town shall grant or deny each properly completed Application for a Collocation based on the Application's compliance with this Ordinance, Town Code, state law, or federal law, as amended. This timeframe shall not apply to an Application for Collocation on Town owned property.

K. The Town shall grant or deny each properly completed Application for any other Wireless Communications Facility based on the Application's compliance with this Ordinance and any other applicable law, including but not limited to the Town Code. This timeframe shall not apply to an Application for Wireless Communications Facilities on Town-owned property.

L. An Application is deemed submitted or resubmitted on the date the Application is received by the Town. If the Town does not notify the Applicant in writing that the Application is not completed in compliance with the Town's regulations within 20 business days after the date the Application is initially submitted or additional information resubmitted, the Application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination shall not be deemed as an approval of the Application. If the Application is not completed in compliance with the Town's regulations, the Town shall so notify the Applicant in writing indicating with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, make the Application properly completed. Upon resubmission of information to cure the stated deficiencies, the Town shall notify the Applicant, in writing, within the normal timeframes of review, but in no case longer than 20 business days after the additional information is submitted, of any remaining deficiencies that must be cured. However, if Applicant does not cure the Application deficiencies within 20 business days after receiving the notice of deficiencies, the Application shall be considered withdrawn or closed.

M. The timeframes specified in his section may be extended because the Town's procedures generally applicable to all other similar types of Applications require action by the Town Council and/or Development Review Committee and such action has not taken place within the specified timeframes. Under such circumstances, the Town Council shall either grant or deny the Application at its next regularly scheduled meeting.

N. The Town may request, but not require, a waiver of the timeframes by the Applicant, except that, with respect to a specific Application the Town may require a one-time waiver in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the Town.

O. The Town may enter into an entry and testing agreement with the Wireless Communications Facility owner, Applicant and/or operator, in a form approved by the Town Attorney, without approval of the Town Council.

P. Extension and waiver. Where action by the Town Council or any other Town agency is required on an Application for a permit taken pursuant to this section, the Planning Director may by letter to the Applicant extend the timeframe for a decision until the next available scheduled date of the Council or agency as to whether to grant or deny an Application for a permit taken pursuant to this Ordinance. Notwithstanding the foregoing, the Applicant may voluntarily agree to waive the timeframes set forth above.

Q. Emergency extension. The Town may declare a one time waiver of the time frames set forth for Application decisions in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities in the Town.

R. Appeal.

(1) If an Application is denied by the building official or Planning Director for noncompliance with the requirements of this Ordinance then the Applicant may appeal

this decision to the Town Council within 30 days after receiving the written decision. The Town Council, after a public hearing, shall make the final decision by resolution.

(2) If a permit is denied, or conditions imposed, then the Town Council shall consider the action taken upon review of the following factors:

(a) The technical and practical necessity for the installation of the Telecommunication Tower or Wireless Communications Facility.

(b) Alternative measures or modifications that could be made to preserve the character of the neighborhood and to prevent aesthetic blight if installation were permitted.

(3) If Application is denied by the Planning Director for reasons other than non-compliance with this Ordinance, excluding Florida Building Code, then the Applicant may appeal the decision directly to the Town Council, which shall make the final decision within forty-five (45) days of the denial, by resolution.

(4) If the Town Council ultimately denies the Application, the Town Council's resolution ordering the denial shall incorporate the Application, the minutes of public meetings, along with written findings by Town staff, the planning and zoning board, and/or the Town Council explaining the basis for the denial.

S. Nonconforming towers. Any Telecommunication Towers in existence in the Town upon the effective date of this Ordinance that are nonconforming with the terms and provisions of this section shall have five (5) years from the effective date of this Ordinance to bring said Tower into compliance, or upon the change of ownership of the leasehold interest upon which the Tower is located, whichever shall occur first.

T. Regardless of whether a permit is required for the installation of the Telecommunication Tower or Wireless Communications Facility, separate building permits for structural or electrical work, pouring concrete or other work may be required as provided in the Florida Building Code, as amended.

### **SECTION 33-63.9. COLLOCATION.**

A. It is the intent of the Town to encourage Collocation of Antennas on Existing Structures and Pre-Existing Towers. Except as provided herein, all Towers shall have the capacity to permit multiple users. At a minimum, Monopole Towers shall be able to accommodate two (2) users and, at a minimum, Lattice or Guyed Towers shall be able to accommodate three (3) users.

B Collocation Incentive. To encourage such Collocation, the Planning Director may approve an Application submitted to Collocate Antennas on an Existing Structure, Pre-Existing Tower, or a Stealth Facility, consistent with this Ordinance. The specific Collocation Applications indicated in the sub-sections below shall be subject to approval or denial by the

Planning Director. All other Applications shall be subject to approval or denial by the Town Council.

C. Exemptions for Collocation. Any Antenna and related equipment to service the Antenna that is being Collocated on an above ground Existing Structure is not subject to Land Development Regulations of the Town Code if the following criteria are met:

- (1) The Existing Structure already contains an established Antenna and related equipment;
- (2) The Existing Structure is not non-conforming and may pursuant to Florida law be expanded; and
- (3) The Height of the structure containing the Antenna and related equipment would not be increased by the addition of Antenna and related equipment.

Notwithstanding the exemption provided for in this section, construction of the Antenna and related equipment is subject to review by the Planning Director and any other Town department or agency for compliance with the Town's design standards; and life safety codes, including but not limited to Building Codes; conditions or requirements in any existing permits, agreements, or approvals. Moreover, this section shall not relieve the permit holder for or owner of the Existing Structure or property of compliance with any applicable condition or requirement of a permit, agreement, or Land Development Regulation, including but not limited to any aesthetic requirements, or law.

D. Collocation Applications Requiring only Planning Director Approval.

(1) Collocations on Towers, including nonconforming Towers are subject to only Building-Permit Review, which may include a review for compliance with this section, if they meet the following requirements:

- (a) The Collocation does not increase the Height;
- (b) The Collocation does not increase the ground space area, commonly known as the compound, approved in the site plan for Equipment Facilities and ancillary facilities, except as allowed under this Ordinance; and
- (c) The Collocation consists of Antennas, Equipment Facilities, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial Antennas placed on the Tower and to its accompanying Equipment Facilities and ancillary facilities and, if applicable, applied to the Tower supporting the Antennas. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the applicable Land Development Regulations in effect at the time the initial Antennas placement was approved.

(2) Such Collocations are not subject to any design or placement requirements of Land Development Regulations in effect at the time of the Collocation that are more restrictive than those in effect at the time of the initial Antennas placement approval, to any other portion of the Land Development Regulations, or to public hearing review. Such Collocation Applications are not subject to the Town Council's approval and shall be decided by the Planning Director.

E. Other Collocation Applications Requiring only Planning Director Approval.

(1) Except for a Historic Building, Structure, Site, Object, or District, the following Tower Collocation Applications on all other Existing Structures shall also be subject to no more than a Planning Director review if they meet the following requirements:

(a) The Collocation does not increase the Height;

(b) The Collocation does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;

(c) The Collocation consists of Antennas, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional Collocations on the Existing Structure or procedural requirements, other than those authorized by this section of the Ordinance at the time of the Collocation Application; and

(d) The Collocation consists of Antennas, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with sub-section (c) and were applied to the initial Antennas placed on the structure and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the Antennas.

F. If only a portion of the Collocation does not meet the requirements of any of the above sub-sections, such as an increase in the Height or a proposal to expand the ground space approved in the site plan for the equipment enclosure, where all other portions of the Collocation meet the requirements of this subsection, that portion of the Collocation only may be reviewed by the Town Council. A Collocation proposal under this subsection that increases the ground space area, otherwise known as the compound, approved in the original site plan for Equipment Facilities and ancillary facilities by 400 or more square feet or 50 percent or more of the original compound size, shall, however, be reviewed as if it were a new Wireless Communications Facility.

G. The replacement of or modification to a Wireless Communications Facility, except a Tower, that results in a Wireless Communications Facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the Town, shall be deemed an Application for Collocation.

H. The owner of the Pre-Existing Tower on which the proposed Antennas are to be collocated shall remain responsible for compliance with any applicable condition or requirement of a permit or agreement, or any applicable condition or requirement of the Land Development Regulations to which the Pre-Existing Tower must comply, including any aesthetic requirements, provided the condition or requirement is not inconsistent with this section.

**SECTION 33-63.10. INTERFERENCE WITH PUBLIC SAFETY TELECOMMUNICATIONS.**

A. To the extent not inconsistent with applicable federal law, all providers of Personal Wireless Services and all owners and/or operators of Wireless Communications Facilities, Towers, and Antennas shall comply with the following:

(1) Any Wireless Communications Facility, Tower, or Antenna that causes Interference with the operations of Public Safety Telecommunications services, shall, after receiving notice, rectify the Interference immediately or, to the extent not inconsistent with applicable law, cease transmitting signals (go off the air) at once.

(2) In the event that the Wireless Communications Facility, Tower, or Antenna interferes with Public Safety Telecommunications, it shall be the responsibility of the owner and/or operator that creates the Interference to make all necessary repairs and/or accommodations to alleviate the problem at its expense. The Town shall be held harmless in this occurrence.

(3) In the event that a provider of Personal Wireless Services and/or an owner and/or operator of Wireless Communications Facility, Tower, and/or Antenna interferes with Public Safety Telecommunications, once it ceases transmission of signals (goes off the air) and rectifies the Interference, it may not continue to resume providing Personal Wireless Services until it receives approval from the Town.

(4) To the extent not inconsistent with applicable law, if a provider of Personal Wireless Services or the owner or operator of a Wireless Communications Facility, Tower or Antenna refuses to stop the Interference or to cease transmitting signals as required herein, the Town may file a complaint with the FCC for resolution and/or seek an injunction against it pursuant to Florida Statute § 843.025 that makes it unlawful for any person to deprive a law enforcement officer of his or her radio or to otherwise deprive the officer of the means to summon assistance, or pursue any other remedy authorized by applicable law. Any person who is found to have violated this Section shall be punished as provided by applicable law.



**SECTION 33-63.11. DEVELOPMENT, ZONING, BUILDING, AND INSPECTION REQUIREMENTS FOR WIRELESS COMMUNICATIONS FACILITIES.**

A. General Regulations. The standards listed in this Section apply specifically to all Antennas, Towers and Wireless Communications Facilities, except those owned by the Town, located on property owned, leased, or otherwise controlled and approved by the Town or as otherwise specified herein. The Town reserves the right to modify or waive the requirements for use on public property. The Town shall not be required to provide access to Town property.

B. The construction, maintenance, operation and repair of Wireless Communications Facilities are subject to the regulatory supervision of the Town to the full extent permitted by applicable law, and shall be performed in compliance with all laws, ordinances and practices affecting such facility including, but not limited to, zoning codes, building codes, and safety codes, and as provided in this Ordinance. The construction, maintenance, operation and repair shall be performed in a manner consistent with applicable industry standards, including the Electronic Industries Association.

C. All Telecommunication Towers and Antennas must meet or exceed current standards and regulations of the FAA, the FCC, including emissions standards, and any other agency of the local, state or federal government with the authority to regulate Towers and Antennas prior to issuance of a building permit by the Town. If such applicable standards and regulations are revised and require that existing facilities adhere to such revised standards, then the owners of Telecommunications Towers and Antennas governed by this Ordinance shall bring such Towers and Antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring Towers and Antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the Telecommunications Tower, Antenna or Wireless Communications Facility at the owner's expense.

D. To ensure the structural integrity of Telecommunications Towers installed, the owner shall construct and maintain Telecommunications Tower in compliance with the Florida Building Code, and all other applicable codes and standards, as amended from time to time. A statement shall be submitted to the Town by a licensed engineer certifying compliance with this section upon completion of construction and/or subsequent modification. Where an Existing Structure, including Poles, is requested as a Stealth Facility, the facility, and all modifications thereof, shall comply with all requirements as provided in this Ordinance and all other applicable standards as may be amended from time to time. Following the issuance of a building permit, the Town shall require an analysis of a soil sample from the base of the Telecommunications Tower site.

E. Telecommunications Towers, Wireless Communications Facilities and Antenna owners shall submit an annual report to the Planning Director within the last thirty (30) days of the Town's fiscal year, each year, including, but not limited to:

(1) A Summary of any and all complaints of Interference with Public Safety Telecommunications within the Town that includes remedial measures that were taken to rectify or eliminate Interference, and any other information which may be reasonably required to monitor the Telecommunication Towers and Antenna owner's compliance with this Ordinance; and

(2) A Certification of the Wireless Communications Facilities, Towers or Antenna's structural and electrical integrity.

F. The Town reserves the right to conduct periodic inspection of Wireless Communications Facilities, Towers, and Antennas at the owner's expense, to ensure structural and electrical integrity and compliance with this Ordinance. The owner of the Wireless Communications Facilities, Towers, or Antennas may be required by the Town to have more frequent inspections should there be an emergency, Extraordinary Conditions or other reason to believe that the structural and electrical integrity of the Wireless Communications Facility, Tower, or Antenna is jeopardized. There shall be a maximum of one inspection per year unless emergency or Extraordinary Conditions warrant additional inspections. The owner of Wireless Communications Facility, Tower or Antenna may be required by Town to have more frequent inspections should there be reason to believe that the structural and electrical integrity of the Tower is jeopardized. If, upon inspection, the Town concludes that a Wireless Communications Facility, Tower, or Antenna fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner, the owner shall commence work within thirty (30) days to bring such Wireless Communications Facility, Tower, or Antenna into compliance with such standards. Failure to bring such Wireless Communications Facility into compliance within sixty (60) days of notice shall constitute grounds for requiring the removal of the facility at the owner's expense. The Town reserves the right to require additional inspections if there is evidence that a Tower or a Wireless Communications Facility has a safety problem or is exposed to Extraordinary Conditions. During the inspection, the Planning Director will ensure structural and electrical integrity and compliance with the Florida Building Code, as amended, the Code of the Town, as amended, and other applicable codes and regulations. Additionally, Towers shall be inspected once every five (5) years by a Florida licensed engineer, at the Tower owner's expense, and the results submitted to the Planning Director. Tower owners shall also submit a report to the Town certifying structural and electrical integrity every two (2) years. The report shall be accompanied by a non-refundable fee of two hundred dollars (\$200.00) to reimburse the Town for the cost of review. Based upon the results of the inspection, the Planning Director may require repair or removal of a Wireless Communications Facility or Tower.

G. Wireless Communications Facilities in Residential Areas. The Town prohibits the placement of a Telecommunications Tower and Antennas in a residential area or residential zoning district unless the Applicant demonstrates to the satisfaction of the Town that it cannot reasonably provide its Personal Wireless Service to the residential area or zone from outside the residential area or zone. In such a case, the Town and the Applicant shall cooperate to determine an appropriate location for an Antenna of an appropriate design within the residential area or zone. The Applicant shall reimburse any and all reasonable costs and expenses incurred by the Town for this cooperative determination, including attorney's fees. Such Application for

cooperation shall be accompanied by an Application fee in the same amount as for a new Tower. The cooperation Application shall not be subject to the timeframes contained in this Ordinance for granting and denying Applications.

H. Hierarchy of Zoning Districts and Siting Alternatives. Development of a Wireless Communications Facility shall be permitted in the following Preferred Zoning Districts and in accordance with the following siting alternatives hierarchies.

(1) The Preferred Zoning Districts order of ranking is from highest (a) to lowest (g). Where a lower ranked alternative is proposed, the Applicant must demonstrate in its Application that higher ranked options are not available. The availability of a less expensive lease on a lower ranked site is not sufficient in and of itself to justify using the lower ranked alternative where a higher ranked alternative is otherwise available.

- (a) GP
- (b) GU
- (c) IU-1 and IU-C
- (d) BU-3, BU-2, BU-1A, and BU-1
- (e) PAD, UCD and AU;
- (f) RU-4; and
- (g) Any other zoning district in accordance with 33-63.11 (G) above.

(2) The order of ranking is from highest (a) to lowest (g). Where a lower ranked alternative is proposed, the Applicant must demonstrate in its Application that higher ranked options are not available. The availability of a less expensive lease on a lower ranked site is not sufficient in and of itself to justify using the lower ranked alternative where a higher ranked alternative is otherwise available.

- (a) Collocation on existing Stealth Tower on Town-owned property in a Preferred Zoning District.
- (b) Collocation on existing Telecommunications Tower on Town-owned property in a Preferred Zoning District.
- (c) Collocation on Existing Structures on Town-owned property in a Preferred Zoning District
- (d) Collocation on existing Telecommunications Tower in a Preferred Zoning District.
- (e) Attachment of Antenna on a current Wireless Communications Facility in a Preferred Zoning District.
- (f) New Stealth Tower in a Preferred Zoning District.
- (g) New Telecommunications Tower in a Preferred Zoning District.

(3) On property owned by the Town, the Town shall authorize the Application and use of Town property after the Applicant executes a lease agreement acceptable to the Town. The Town shall have no obligation whatsoever to execute such lease even if the Applicant can meet the criteria set forth herein.

I. Unmanned Communication Buildings.

(1) Minimum Setbacks. Unmanned communication buildings shall comply with the Setback requirements of the zoning district where such buildings are situated.

(2) Size limitations. An unmanned communication building shall be a permanent structure not to exceed two hundred fifty (250) square feet in floor area. More than one (1) unmanned communication building may be permitted on a site; provided, however, that the total square footage of such buildings, added together, does not exceed five hundred (500) square feet. If the site contains more than one (1) building, the required distance separation between the buildings may be excused.

**SECTION 33-63.12. STANDARDS FOR TELECOMMUNICATIONS TOWERS.**

A. Minimum standards. Except where a Non-Use Variance is granted, every Telecommunications Tower must meet the following minimum standards:

(1) The Height of a Telecommunications Tower shall not exceed one hundred (100) feet. Tower Height shall be measured from the crown of the road of the nearest public street.

(2) All Telecommunication Towers shall be designed and constructed with the capability of supporting a minimum of two (2) Collocation connections. At a minimum, Self-Support/Lattice or Guyed Towers shall be able to accommodate three (3) users.

(3) Telecommunication Towers or Antennas shall be approved by the Federal Aviation Administration (FAA), Miami-Dade County Aviation Authority or other appropriate agency prior to issuance of a building permit by the Town and comply with section 33-63.8. of this code. Prior to the issuance of a building permit by the building division and/or Planning Director, the Applicant shall provide evidence that the Telecommunication Towers or Antennas are in compliance with FAA regulations. Where an Antenna will not exceed the highest point of the Existing Structure upon which it is to be mounted, such evidence shall not be required.

(4) All proposed Telecommunication Towers shall comply with current radio frequency emissions standards of the Federal Communications Commission.

(5) All Telecommunication Tower sites must comply with the landscaping requirements of the Town in force at the time the Application for a Telecommunication Tower site plan approval is submitted to the Town. An eight-foot fence or wall constructed in accordance with the Town Code, as measured from the finished grade of the site, shall be required around the base of any Tower and may be required around any accessory building or structures.

(6) Landscaping, consistent with the requirements of the Town Code, as amended, shall be installed around the entire perimeter of the fence or wall, encircling the

leased premises on which said Telecommunication Tower shall be placed. Additional landscaping may be required around the perimeter of the fence or wall and around any or all anchors or supports if deemed necessary to buffer adjacent properties. The Town Council, upon site plan review, may require landscaping in excess of the above requirements as is deemed reasonably necessary in order to enhance compatibility with adjacent residential and nonresidential land uses. Landscaping shall be installed on the outside of the perimeter wall.

(7) Landscaping, consistent with the requirements of the Town Code, as amended, shall be installed around any accessory buildings or structures. In addition to the Town's landscaping requirements, at a minimum the following landscaping shall be provided: (i) A row of shade trees at least eight (8) feet in height, at a maximum distance of ten (10) feet apart, shall be planted around the perimeter of the fence; (ii) A continuous hedge at least thirty (30) inches in height at planting and capable of growing to a height of thirty-six (36) inches within eighteen (18) months shall be planted on the outside of the perimeter of the fence and tree line; (iii) All landscaping shall be properly maintained to insure good health and viability; and (iv) In locations where the impact of the Wireless Communications Facility would be minimal, the Planning Director may waive or reduce the landscaping requirements.

(8) Telecommunication Towers shall only be located on leased premises larger than twenty-five hundred (2,500) square feet.

(9) Warning signs for high voltage and trespassing.

(a) No signs, including commercial advertising, logo, political signs, flyers, flags, or banners, but excluding warning signs, shall be allowed on any part of an Antenna or Tower. Any signs placed in violation of this section shall be removed immediately at the facility owner's expense.

(b) If high voltage is necessary for the operation of the Telecommunication Tower, associated equipment, or Backhaul Network or any accessory structures, "HIGH VOLTAGE---DANGER" warning signs shall be permanently attached to the fence or wall and spaced no more than forty (40) feet apart.

(c) "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall and spaced no more than forty (40) feet apart.

(d) The height of the lettering of the warning signs shall be at least twelve (12) inches in height. The warning signs shall be installed at least five (5) feet above the finished grade.

(e) The warning signs may be attached to freestanding Poles if the content of the sign may be obstructed by landscaping.

(10) Mobile or immobile equipment not used in direct support of a Tower facility shall not be stored or parked on the site of the Telecommunication Tower, unless repairs to the tower are being made.

(11) The minimum Setbacks shall conform to the zoning districts where the Towers are situated. Notwithstanding the above, the Planning Director of the Town may require minimum Setback requirements for properties zoned industrial, up to twenty-five (25) feet from the rear yard and front yard, and fifteen (15) feet from the side yards, as measured from the base of the Tower or from the guy wire anchor, whichever is closest to the property line or Right-of-Way when, in his or her discretion, he or she believes said Setbacks to be necessary in the interest of protection and safety of the public. The Planning Director may administratively reduce the minimum Setbacks required in the paragraph above, depending on the type of Tower to be used, i.e., a Monopole Tower versus a Guyed Tower.

(12) All Telecommunication Towers shall be located no closer than one hundred (100) percent of the Height of the Tower from residential areas or districts, as measured on a straight line from the two (2) closest points between the nearest residential zoning district line and the nearest point of the proposed Tower structure.

(13) The minimum distance separation between an existing Tower and a proposed Tower shall be no less than one mile. When a Stealth/Camouflaged Facility or Tower is proposed to be used by the Applicant, or an Existing Tower or Structure that serves another purpose, i.e., Poles, then, in that event, the Planning Director, after administrative review, may reduce the minimum separation as set forth above up to fifty (50) percent of said minimum separation, providing that the proper landscaping and/or buffering is put in place at the direction of the Planning Director of the Town.

(14) All buildings and other structures to be located on the same property as a Telecommunications Tower shall conform with the Setbacks established for the underlying zoning district.

(15) Any requests which deviate from the aforementioned regulations shall be subject to a special land use process.

(16) Each Application for a Wireless Communications Facility may be required to include written approval or a statement of no objection from other state agencies that may regulate Wireless Communications Facility siting, design, and construction.

(17) Removal of abandoned or unused facilities. A provider who has determined to discontinue its operations or part of its operations in the Town must either:

(a) Remove its own facilities.

(b) Provide information satisfactory to the director that the provider's obligations for its equipment in the Public Right-of-Way or public easement or

private property under this division have been lawfully assumed by another provider; or

(c) Submit to the Planning Director a proposal and instruments for transferring ownership of its equipment to the Town. If a provider proceeds under this clause, the Town may, at its option:

(1) Assume ownership of the equipment with a ten (\$10.00) dollar nominal consideration, or

(2) Require the provider, at its own expense, to remove it, or

(3) Require the provider to post a bond in an amount sufficient to reimburse the Town for reasonably anticipated costs to be incurred in removing the equipment. Equipment of a provider who fails to comply with the preceding paragraph and which, for twelve (12) months, remains unused shall be deemed to be abandoned. Abandoned equipment is deemed to be a nuisance. The Town may exercise any remedies or rights it has at law or in equity, including, but not limited to (i) abating the nuisance, (ii) taking possession of the equipment and restoring it to a useable condition, or (iii) requiring removal of the equipment by the provider or by the provider's surety under the bond required by section 33-63.16 herein. Telecommunication Towers being utilized for other purposes, including but not limited to light standards and power Poles, may be exempt from this provision.

(18) Signs and advertising. The use of any portion of a Tower for signs or advertising purposes including company name, banners, streamers, etc., shall be strictly prohibited.

(19) Accessory buildings or structures. All accessory buildings or structures shall meet all building design standards as listed in this Code, and in accordance with the provisions of the Florida Building Code. All accessory buildings or structures shall require a building permit issued by the building division and/or Planning Director.

(20) Colors. Except where superseded by the requirements of other county, state, or federal regulatory agencies possessing jurisdiction over Telecommunications Towers, Telecommunications Towers shall be painted or constructed in neutral colors, designed to blend into the surrounding environment such as non-contrasting gray, earth tones of appropriate shades of green, or such other colors as determined by the Planning Director.

### **SECTION 33-63.13. STANDARDS FOR ANTENNAS.**

A. Minimum standards.

(1) Antennas on Rooftops or building mounted shall be permitted as an Accessory Use in all Preferred Zoning Districts except in the residential zoning districts, subject to the procedure and requirements provided elsewhere in this Ordinance, as follows:

(a) No commercial advertising shall be allowed on an Antenna;

(b) No signals, lights, or illumination shall be permitted on an Antenna, unless required by the Federal Communications Commission or the Federal Aviation Administration;

(c) Any related unmanned equipment building shall not contain more than two hundred fifty (250) square feet of gross floor area or be more than ten (10) feet in Height;

(d) If the equipment building is located on the roof of the building, the area of the equipment building shall not occupy more than twenty-five (25) percent of the roof area;

(e) Antennas, and related equipment buildings, shall be set back a minimum of twenty (20) feet from the edge of the building or rooftop, located or screened to minimize the visual impact of the Antenna upon adjacent properties and shall be of a material or color which matches the exterior of the building or structure upon which it is situated; and

(f) Antennas shall only be permitted on buildings which are at least fifty (50) feet tall. Antennas may be placed on buildings less than fifty (50) feet tall if the Planning Director determines that public safety needs warrant the Antenna.

(2) Building Rooftop Stealth Antennas may not extend more than twenty (20) feet above highest point of a roof. Stealth Antennas attached to but not above Rooftop structures shall be exempt from this provision. Antennas may exceed twenty (20) feet above the roof if the Planning Director determines that public safety needs warrant additional Height.

(3) Building Rooftop non-Stealth Antennas may not extend more than ten (10) feet above highest point of a roof. Stealth Antennas attached to but not above Rooftop structures shall be exempt from this provision. Antennas may exceed twenty (20) feet above the roof if the Planning Director determines that public safety needs warrant additional Height.

C. Antenna types. To minimize adverse visual impacts, Stealth Antenna types shall be preferred. If a non-Stealth Antenna is proposed, the Application shall be required to demonstrate, in a technical manner acceptable to the Planning Director, why the Stealth Antenna (i.e. an Antenna incorporated into the architecture of the building or fully screened from view



from sight proximate to the Antenna) cannot be used for the particular Application. This does not preclude a combination of the various types of Antenna.

D. Antenna dimensions. Antenna dimensions shall be reviewed by the Planning Director as required by existing technology. A statement shall be submitted, prepared by a professional registered engineer licensed to practice in the state, and competent to evaluate Antenna choices, to certify the need for the required dimensions.

(1) Whip (omni-directional) Antennas and their supports must not exceed fifteen (15) feet in Height and three (3) inches in diameter and must be constructed of a material or color which matches the exterior of the building.

(2) Microwave Dish Antennas located below sixty-five (65) feet above the ground may not exceed six (6) feet in diameter. Microwave Dish Antennas located sixty-five (65) feet and higher above the ground may not exceed eight (8) feet in diameter. Ground-mounted dish Antennas must be located or screened so as not to be visible from abutting public streets or adjacent properties.

(3) No more than five (5) dish Antennas shall be installed on a Monopole Tower.

E. Aircraft hazard. Prior to the issuance of a building permit by the building division and/or Planning Director, the Application shall provide evidence that the Telecommunications Towers or Antennas are in compliance with FAA regulations. Where an Antenna will not exceed the highest point of the Existing Structure upon which it is to be mounted, such evidence shall not be required.

F. Non-Use Variances. The location of a new Antenna in any zoning district other than the Preferred Zoning Districts specified in Section 33-63.11, shall be prohibited unless approved as a Non-Use Variance by the Planning Director and Town Council.

#### **SECTION 33-63.14. USE OF PUBLIC RIGHTS-OF-WAY.**

A. No Telecommunications Towers or Equipment Facilities may be installed or placed in Public ROW, with the exception that Antennas and its associated Equipment Facility may be placed on any Pole that has been already installed or placed in the ROW, with the consent of the Pole owner, subject to the standards in this Section.

B. Development Standards.

(1) Any Antenna to be installed in the ROW, and its accompanying Equipment Facilities, shall be subject to all site plan review and permitting requirements of the Town. No more than one Service Provider may locate Antennas on a single Pole.

(2) When installing an Antenna on a Pole, any and all associated Equipment Facility shall not be placed on the ground in the ROW.

(3) When installing an Antenna on a Pole, any and all of the Antenna associated Equipment Facility shall be placed in any of the following areas:

(a) Underground in the ROW;

(b) On an adjacent property, with the consent of the property owner, provided that all the wiring is underground; or

(c) On the Pole itself.

(4) Before installing any Antenna on any Pole already installed in the ROW, an Applicant must complete the Antenna Application pursuant to this Ordinance and must also comply with the other applicable sections of this Ordinance. An Application pursuant to this section shall not be deemed a Collocation Application.

(5) No Antenna may be installed under this section until the Applicant fully complies with all the indemnification and insurance requirements of this Ordinance.

(6) An Antenna may be mounted on an existing Pole, with the consent of the Pole owner, provided the Height of the Antenna does not extend more than ten (10) feet above the top of such Pole. An existing Pole may be modified, replaced or rebuilt to accommodate an Antenna so long as the Height of such Pole is not increased by more than ten (10) feet from its existing Height.

### **SECTION 33-63.15. REPLACEMENT OR MODIFICATION OF A WIRELESS COMMUNICATIONS FACILITY.**

A. A Telecommunications Tower that is modified or reconstructed to accommodate the Collocation of an additional Antenna shall be of the same Telecommunications Tower type as the existing Telecommunications Tower, unless the Town allows reconstruction as a Monopole pursuant to this Section.

B. An existing Telecommunications Tower may be modified or rebuilt to a taller Height to accommodate an additional Antenna. Such modification or rebuild of the Telecommunications Tower shall require the approval of the Town Council. The new Height shall comply with the requirements of this Ordinance.

C. A Telecommunications Tower that is being rebuilt to accommodate an additional Antenna and which requires movement onsite from its existing location shall require an Application for a new Tower. After the Telecommunications Tower is rebuilt to accommodate Collocation, only one Telecommunications Tower may remain on the site. A relocated onsite Telecommunications Tower shall continue to be measured from the original Telecommunications Tower location for purposes of calculating separation distances between Towers pursuant to this Section. The relocation of a Telecommunications Tower pursuant to this Section shall not be deemed to cause a violation of the separation requirements contained herein.

D. Modification of Existing Wireless Communications Facility. Minor modification of a Wireless Communications Facility shall not require an additional approval so long as the modification does not change the Height of the Telecommunications Tower, enlarge the Antenna Array, enlarge the Equipment Facility and does not involve any Collocation. All other modifications shall require approval.

E. An Pre-Existing Tower, including a nonconforming Tower, may be structurally modified to permit Collocation or may be replaced through no more than administrative review and Building-Permit Review, and is not subject to public hearing review, if the overall Height of the Tower is not increased and, if a replacement, the replacement Tower is a Monopole Tower or, if the Pre-Existing Tower is a Stealth Tower, the replacement Tower is a like-Stealth Tower.

F. Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas. Legal nonconforming Telecommunications Towers or Antennas that are damaged or destroyed may be rebuilt subject to Section 33.30(c) of the Town Code. Building permits to rebuild the facility shall comply with the then applicable Building Codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if the permit expires, the Telecommunications Tower or Antenna shall be deemed abandoned as specified in Section 33-63.12. herein.

#### **SECTION 33-63.16. INDEMNIFICATION, INSURANCE AND SECURITY FUNDS.**

A. Indemnification. The Town shall not enter into any lease agreement for Town owned property until and unless the Town obtains an adequate indemnity from such provider. The indemnity must at least:

(1) Release the Town from and against any and all liability and responsibility in or arising out of the construction, operation or repair of the Wireless Communications Facility.

(2) Indemnify and hold harmless the Town, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the Town or any third party arising out of, or by reason of, or resulting from or of each Wireless Communications Facility operator, or its agents, employees, or servants negligent acts, errors, or omissions.

(3) Provide that the covenants and representations relating to the indemnification provision shall survive following the term of any agreement and continue in full force and effect for at least one year following the termination of the party's agreement as to the party's responsibility to indemnify.

(4) In no event shall the Town indemnify a Service Provider and/or the owner or operator of a Wireless Communications Facility.

B. Insurance. The Town shall not grant or approve an Application for the installation of a Tower, Antenna and/or Wireless Communications Facility and shall not enter into any lease agreement for Town owned property until and unless the Town obtains assurance that such Applicant or lessee (and those acting on its behalf) have adequate insurance. At a minimum, the following requirements must be satisfied:

(1) A Wireless Communications Facility owner shall not commence construction or operation of the facility without obtaining all insurance required under this Section and approval of such insurance by the Town Manager, nor shall a Wireless Communications Facility operator allow any contractor or subcontractor to commence work on its contract or sub-contract until all similar such insurance required of the same has been obtained and approved. The required insurance must be obtained and maintained for the entire period the Wireless Communications Facility is in existence. If the operator, its contractors or subcontractors do not have the required insurance, the Town may order such entities to stop operations until the insurance is obtained and approved.

(2) Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the Town. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage.

(3) These certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days prior written notice has been given to the Town. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Town may amend its requirements pertaining to insurance from time to time and may require additional provisions pertaining to such insurance in a lease.

(4) In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the lease agreement with the Town, then in that event, the Wireless Communications Facility operator shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period.

C. Comprehensive General Liability. A Wireless Communications Facility operator and its contractors or subcontractors engaged in work on the operator's behalf, shall maintain adequate insurance to cover liability, bodily injury and property damage in the amount to be determined by the Town at the time of Application. Exposures to be covered include premises, operations, and those certain contracts relating to the construction, installation or maintenance of the Wireless Communications Facility. Coverage shall be written on an occurrence basis. Certificates of insurance reflecting evidence of the required insurance shall be filed with the Town.

D. Prior to any construction, every Service Provider, whether on public or private property within the Town, shall establish a cash security fund, or provide the Town with an irrevocable letter of credit subject to the Town Attorney's approval, in the amount specified in an agreement, permit, or other authorization as necessary to ensure the provider's faithful performance of construction and compliance with this Ordinance. The minimum amount of the Security Fund for each Telecommunications Tower shall be Twenty-five Thousand Dollars (\$25,000) and the minimum amount for each Antenna shall be Five Thousand Dollars (\$5,000).

E. In the alternative, at the Town's discretion, a Service Provider may, in lieu of a cash security fund or letter of credit, file and maintain with the Town a bond in the same amounts as required in subsection A. The provider and the surety shall be jointly and severally liable under the terms of the bond. The bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the Town Attorney; and shall provide that: "This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the Town, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

F. The rights reserved by the Town with respect to any Security Fund or bond established pursuant to this Section are in addition to all other rights and remedies the Town may have under this Ordinance, a lease, or at Law or equity.

G. Any person, firm or corporation who knowingly breaches any provision of this Ordinance shall upon receipt of written notice from the Town be given a time schedule to cure the violation. Failure to commence to cure the violation within thirty (30) days and to complete cure, to the Town's satisfaction, within sixty (60) days, or such longer time as the Town may specify, shall result in revocation of any permit or license and the Town shall seek any remedy or damages to the full extent of the law. This shall not preclude other penalties allowed by law.

H. In addition to revoking any permit or license for violation of this Ordinance, the Town may enforce this Ordinance pursuant to the Local Government Code Enforcement Act, Chapter 162, F.S., as amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

**Section 4. Severability.** If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

**Section 5. Conflict.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 6. Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
Town Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
SOLE USE OF THE TOWN OF CUTLER BAY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN PASTORIZA  
COLE & BONISKE, P.A.  
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman \_\_\_\_\_  
Vice Mayor Edward P. MacDougall \_\_\_\_\_  
Councilmember Peggy R. Bell \_\_\_\_\_  
Councilmember Timothy J. Meerbott \_\_\_\_\_  
Councilmember Ernest N. Sochin \_\_\_\_\_



## Planning & Zoning Department

R. Don O'Donniley, AICP  
Planning Director

# MEMORANDUM

To: Steven Alexander, Town Manager

From: Don O'Donniley, AICP, Planning Director

Date: May 10, 2007

Re: SIRE USA Corporation  
Rezoning of Property from AU (Agriculture) to RU-1 (Single Family Residential)  
Located West of SW 85<sup>th</sup> Avenue between SW 198<sup>th</sup> and SW 199<sup>th</sup> Streets

Application No.: 07-04

## REQUEST

Rezoning of property from AU (Agricultural) to RU-1 (Single Family Residential)

### **Parcel Information and Legal Description:**

The request encompasses what is now six legally platted parcels totaling approximately 41,885 square feet and bounded by SW 198<sup>th</sup> Street to the north, theoretical SW 85<sup>th</sup> Avenue to the east, SW 199<sup>th</sup> Street to the south and the east property line of Saint Timothy Lutheran Church.

Or as further described:

Lots 10, 11, 12, 22, 23 and 24 of Block 1, of "Silver Pines" according to the plat thereof as recorded in Plat Book 25 at Page 45 of the Public Records of Miami-Dade County, Florida.

## **BACKGROUND AND ANALYSIS:**

### **Background**

SIRE USE Corporation filed a request for a District Boundary Change (Rezoning) from AU to RU-1 for the subject parcels on March 1, 2007.

The surrounding properties are zoned RU-1, except to the west on the rest of the block which is zoned AU and is St. Timothy Lutheran Church facility. Single family homes have been developed on parcels to the northeast, east and southeast. The property to the south is currently undeveloped while the property to the north is currently an FPL transmission facility and which is heavily buffered with vegetation.

### **Analysis**

1. **Consistency with the Comprehensive Development Master Plan**

The Adopted 2005 and 2015 Land Use Plan designates the subject properties as **Low Density Residential**. This density range is typically characterized by detached single family residential units. Clustering, and a variety of housing types may, however, be authorized. The residential densities allowed in this category shall range from a minimum of 2.5 to a maximum of 6.0 dwelling units per gross acre.

This application is **consistent** with the Town Comprehensive Development Master Plan and the Land Use designation of the surrounding properties.

2. **Zoning**

The following Sections of the Town Zoning Code are relevant to this request.

**Chapter 33 Zoning Code of the Town of Cutler Bay**

Article XIV. RU-1, SINGLE-FAMILY RESIDENTIAL DISTRICT

Section 199. Uses permitted.

No land, body of water and/or structure shall be used or permitted to be used and no structure shall be hereafter erected, constructed, moved, reconstructed, structurally altered or maintained for any purpose in a RU-1 District which is designed, arranged or intended to be used or occupied for any purpose other than the following, unless otherwise specifically provided herein:

- (1) Every use as a one-family residence, including every customary use not inconsistent therewith, including a private garage.

\* \* \*

Note: Other provisions of this zoning district would not change but the request is consistent with the RU-1 Single-Family District

Section 41. Setbacks--Application of tables.

The minimum lot area and dimensions of sites and setbacks shown by tables in this article shall apply to the districts indicated.

Front building lines for all structures shall be set back from the nearest highway right-of-way according to sections on official right-of-way plan and minimum widths and tables in this article. The setback from all side and rear property lines shall be not less than ten (10) percent of the average width of the lot, provided such setback is not less than five (5) feet, but in no case shall such setback requirements exceed seven and one-half (7 1/2) feet, except where greater distance is required for a specified district by tables in this article and for corner lots.

Section 49. Table of minimum widths, area of lots; maximum lot coverage, and minimum building sizes.

The minimum width and area of lots, the maximum lot coverage, and minimum building sizes shall be in effect for the districts enumerated in the following table:

TABLE INSET:



<i>District</i>	<i>Families</i>	<i>Min. Width</i>	<i>Min. Lot Area (Sq. Ft.)</i>	<i>Max. Lot Coverage (% of Lot Area)</i>	<i>Min. Bldg. Size (Cu. Ft.)</i>
RU-1	1	New sub.-75'	7,500	35% for subdivisions platted on or before March 8, 2002; 40% for subdivisions platted after March 8, 2002	8,500

Section 50. Table of setback lines in residential and estate districts.

The minimum setback distances and spacing requirements in residential and estate districts shall be as follows:

TABLE INSET:

<i>District/Families</i>	<i>Front (Ft.)</i>	<i>Rear (Ft.)</i>	<i>Between Buildings (Ft.)</i>	<i>Interior Side (Ft.)</i>	<i>Side Street (Ft.)</i>
RU-1: One	25 for subdivisions platted on or before March 8, 2002; for subdivisions platted after March 8, 2002, 15 for 50% of the lineal footage of the width of the house and 25 for balance; except 20 for attached garages	25 for subdivisions platted on or before March 8, 2002; for subdivisions platted after March 8, 2002, 15 for 50% of the lineal footage of the width of the house and 25 for balance	--	10% lot width min.--5' max.--7 1/2'	15

Section 311. Town of Cutler Bay Town Council – Authority and Duties

[The following summarizes the intent of this Section as it relates to factors in considering a rezoning]

The Town Council shall take into consideration, among other things, the extent to which:

(1) The development permitted by the application, if granted, conforms to the Comprehensive Development Master Plan for the Town of Cutler Bay, Florida; is consistent with applicable area or neighborhood studies or plans, and would serve a public benefit warranting the granting of the application at the time it is considered;

***The application is consistent with the CDMP.***

(2) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the environmental and natural resources of the Town of Cutler Bay, including consideration of the means and estimated cost necessary to minimize the adverse impacts; the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the natural and human environment; and whether any irreversible or irretrievable commitment of natural resources will occur as a result of the proposed development;

***The approval of this request will not have an adverse impact on the environmental and natural resources of the Town.***

(3) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the economy of the Town of Cutler Bay;

***The approval of this request will not have an adverse impact on the economy of the Town.***

(4) The development permitted by the application, if granted, will efficiently use or unduly burden water, sewer, solid waste disposal, recreation, education or other necessary public facilities which have been constructed or planned and budgeted for construction;

***The approval of this request will not have an adverse impact on the necessary public facilities.***

(5) The development permitted by the application, if granted, will efficiently use or unduly burden or affect public transportation facilities, including mass transit, roads, streets and highways which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, streets or highways.

***The approval of this request will not have an adverse impact on the necessary public transportation facilities.***

This request is **consistent** with the current zoning of the surrounding properties.

At the time of application for site development the applicant shall be required to adhere to the minimum lot size requirements, unless a variance from the Town Code is requested and approved. Currently, based on the parcel size of 41,885 square feet, approximately 5 dwelling units would be allowed.

### **3. Environmental Resources Management**

Potable Water Supply and Wastewater Disposal:

Public water and sanitary sewers can be made available to the subject property. Therefore, connection of the proposed development to said systems shall be required in accordance with Code requirements.

Existing public water and sewer facilities and services meet the Level of Service (LOS) standards set forth in the Comprehensive Development Master Plan. Furthermore, the proposed development order, if approved, will not result in a reduction in the LOS standards subject to compliance with the conditions required by DERM for this proposed development order.

Notwithstanding the foregoing, in light of the fact that the County's sanitary sewer system has limited sewer collection, transmission, and treatment capacity, no new sewer service connections can be permitted, unless there is adequate capacity to handle additional flows. Consequently, final development orders for this site may not be granted if adequate capacity in the system is not available.

Stormwater Management:

A Surface Water Management Individual Permit from DERM shall be required for the construction and operation of the required surface water management system. This permit shall be obtained prior to site development, final plat or public works approval of paving and drainage plans. The applicant shall contact DERM (305-372-6789) for further information regarding permitting procedures and requirements.

All stormwater shall be retained on site utilizing properly designed seepage or infiltration drainage structures. Drainage must be provided for the 5-year/1-day storm event with full on-site retention

of the 25-year/3-day storm. Pollution Control devices shall be required at all drainage inlet structures.

Site grading and development shall comply with the requirements of Chapter 11C of the Code.

Any proposed development shall comply with County and Federal flood criteria requirements. The proposed development order, if approved, will not result in a reduction in LOS standards for flood protection set forth in the CDMP subject to compliance with the conditions required by DERM for this proposed development order.

Wetlands:

Although the subject property is located within a designated wetland basin, the subject property does not contain jurisdictional wetlands as defined by Chapter 24-5 of the Code. Therefore a Class IV Wetland Permit will not be required.

The applicant is advised that permits from the Army Corps of Engineers (305-526-7181), the Florida Department of Environmental Protection (561-681-6600) and the South Florida Water Management District (800-432-2045) may be required for the proposed project. It is the applicant's responsibility to contact these agencies.

Tree Preservation:

The subject property contains tree resources; Section 24-49 of the Code requires the preservation of tree resources. A Town tree removal permit is required prior to the removal or relocations of any trees. A tree survey showing all the tree resources on-site will be required prior to reviewing the tree removal permit application. The applicant is advised to contact DERM staff for permitting procedures and requirements prior to development of site and landscaping plans.

Concurrency Review Summary:

A concurrency review for this application has been completed and it has been determined that the same meets all applicable LOS standards for an initial development order, as specified in the adopted CDMP for potable water supply, wastewater disposal and flood protection. Therefore, the application has been approved for concurrency subject to any comments and conditions contained herein.

This concurrency approval does not constitute a final concurrency statement and is valid only for this initial development order as provided for in the adopted methodology for concurrency review. Additionally, this approval does not constitute any assurance that the LOS standards would be met by any subsequent development order applications concerning the subject property.

In summary, the application meets the minimum requirements of Chapter 24 of the Code.

#### **4. Public Works**

Public Works has no objection to this application.

This land requires platting in accordance with Chapter 28 of the Miami-Dade County Code. The road dedications and improvements will be accomplished thru the recording of a plat.

The application meets the traffic concurrency criteria for an initial development order. It will generate approximately 3 vehicle trips in the PM daily peak hour period. The traffic distribution of these trips to the adjacent roadways reveals that the addition of these trips does not exceed the acceptable level of service of the following roadways:

<u>Station</u> <u>Location</u>	<u>LOS</u>	<u>LOS</u>
--------------------------------	------------	------------

		<u>(Present)</u>	<u>(w/ Appl.)</u>
9174	SW 87 Ave. s/o SW 184 St.	E	E
9592	Old Cutler Rd. sw/o SW 184 St.	F	F
9594	Old Cutler Rd. sw/o Franjo Rd.	F	F
9114	Caribbean Blvd. e/o HEFT	F	F

This request constitutes an Initial Development Order only, and one or more traffic concurrency determinations will subsequently be required before development will be permitted.

## **5. Schools**

Policy 1.6 of the Educational Element of the Town’s Comprehensive Development Master Plan states that: “School Board comments shall be sought and considered on comprehensive plan amendments and other land use decisions which could impact the school district, as provided for in Chapter 236.193(2) F.S.”

Also, pursuant to the state-mandated and School Board approved Interlocal Agreement, local government, the development community and the School Board are to collaborate on the options to address the impact of proposed residential development on public schools where the proposed development would result in an increase in the schools’ FISH percent utilization (permanent and relocatable), in excess of 115%. This figure is to be considered only as a review threshold and shall not be construed to obligate the governing agency to deny a development.

Additionally, at its April 13, 2005 meeting the Board approved School District criteria that would allow District staff to make recommendations on residential zoning applications that impact public schools beyond the 115% of FISH capacity threshold (Review Criteria).

In accordance with the Review Criteria established by the Board, the School District would request that the applicant continue to meet to mitigate the impacts of the proposed rezoning.

### **RECOMMENDATION:**

**Approval, subject to the impact requirements of the Miami-Dade County School Board.**

### **CONDITIONS:**

None

### **Attachments**

ORDINANCE NO. 07-\_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING THE REQUEST OF SIRE USA CORP. FOR A REZONING FROM AU (AGRICULTURAL) TO RU-1 (SINGLE-FAMILY RESIDENTIAL) FOR PROPERTY GENERALLY LOCATED SOUTH OF S.W. 198TH STREET, NORTH OF S.W. 199TH STREET, EAST OF S.W. 87TH AVENUE, AND WEST OF S.W. 85TH AVENUE, AS LEGALLY DESCRIBED IN EXHIBIT "A," CONSISTING OF APPROXIMATELY 41,885 SQ. FT.; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Chapter 33 "Zoning," of the Town Code of Ordinances (the "Town Code"), Sire USA Corp. (the "Applicant") has applied to the Town of Cutler Bay (the "Town"), for approval of a rezoning from AU (Agricultural) to RU-1 (Single-Family residential), for the properties legally described in Exhibit "A" (the "Property") (Application 07-04); and

**WHEREAS**, staff recommended approval of the requested rezoning in its report, dated May 9<sup>th</sup>, 2007; and

**WHEREAS**, public notice was provided in accordance with law; and

**WHEREAS**, this Ordinance was heard and recommended by the Town Council, in its capacity as the Town's Local Planning Agency; and

**WHEREAS**, after due notice and hearing, the Town Council finds this Ordinance to be consistent with the Town Code and the Miami-Dade County Comprehensive Development Master Plan, which now functions as the Town's Comprehensive Plan.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:**

**Section 1. Findings.** The foregoing Whereas clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

**Section 2. Approval of Rezoning.** Pursuant to Chapter 33 "Zoning" of the Town Code, the Property, legally described in Exhibit "A," is hereby rezoned from AU (Agricultural) to RU-1 (Single-Family Residential).

**Section 3. Recording.** The Town, or the Applicant if so requested by the Town Clerk, shall record this Ordinance at the Applicant's sole expense in the Public Records of Miami-Dade County, Florida.

**Section 4. Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
Town Clerk

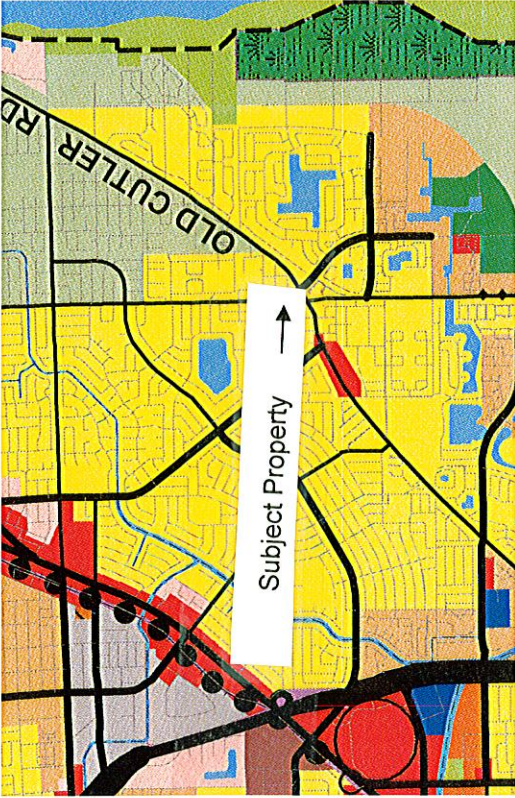
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
SOLE USE OF THE TOWN OF CUTLER BAY:

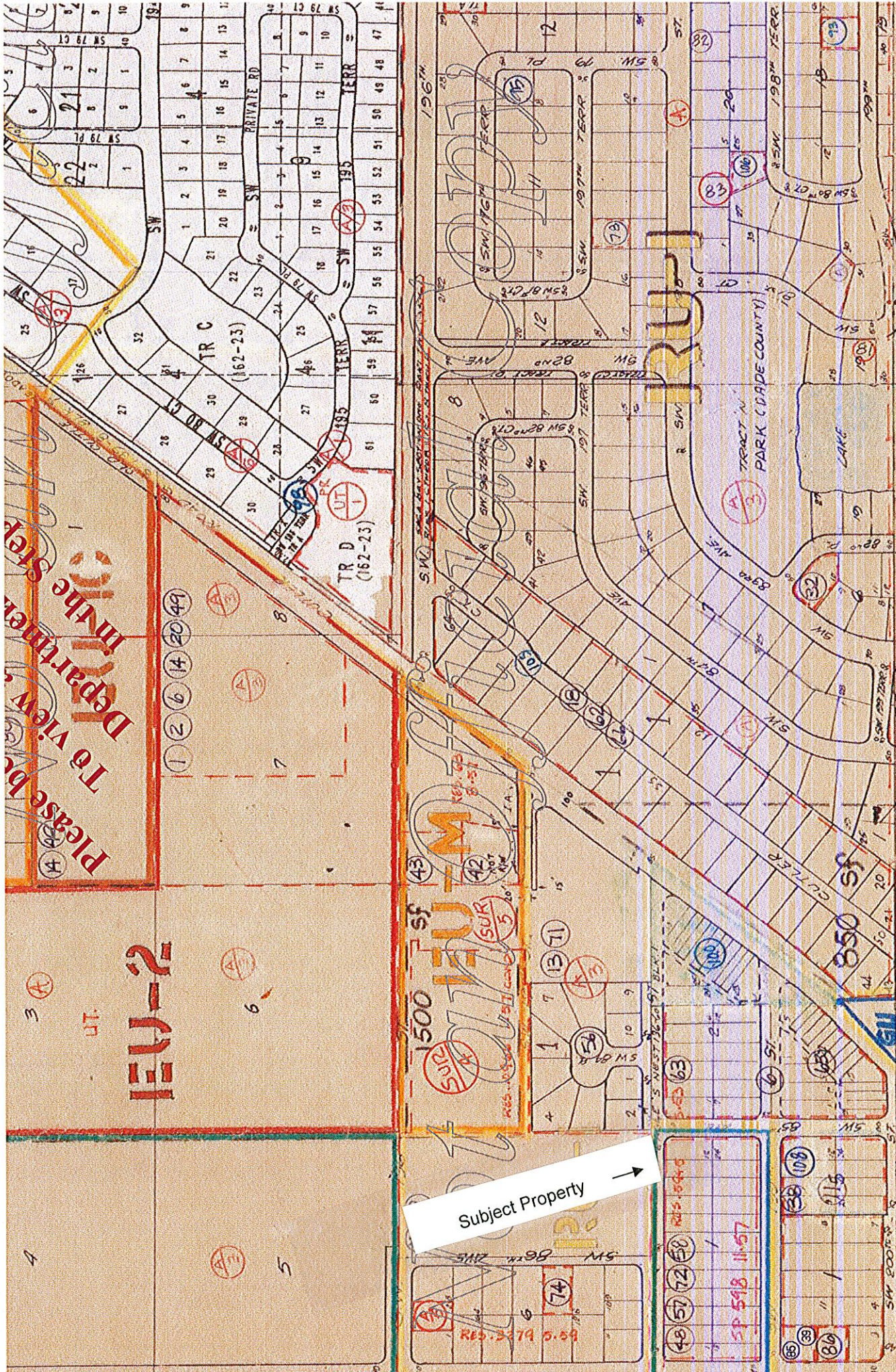
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WEISS SEROTA HELFMAN PASTORIZA  
COLE & BONISKE, P.A.  
Interim Town Attorney

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	_____
Vice Mayor Edward P. MacDougall	_____
Councilmember Peggy R. Bell	_____
Councilmember Timothy J. Meerbott	_____
Councilmember Ernest N. Sochin	_____





Please bring this to view at the Department of Public Works

1EU-2

Subject Property →

UT

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1500 SF

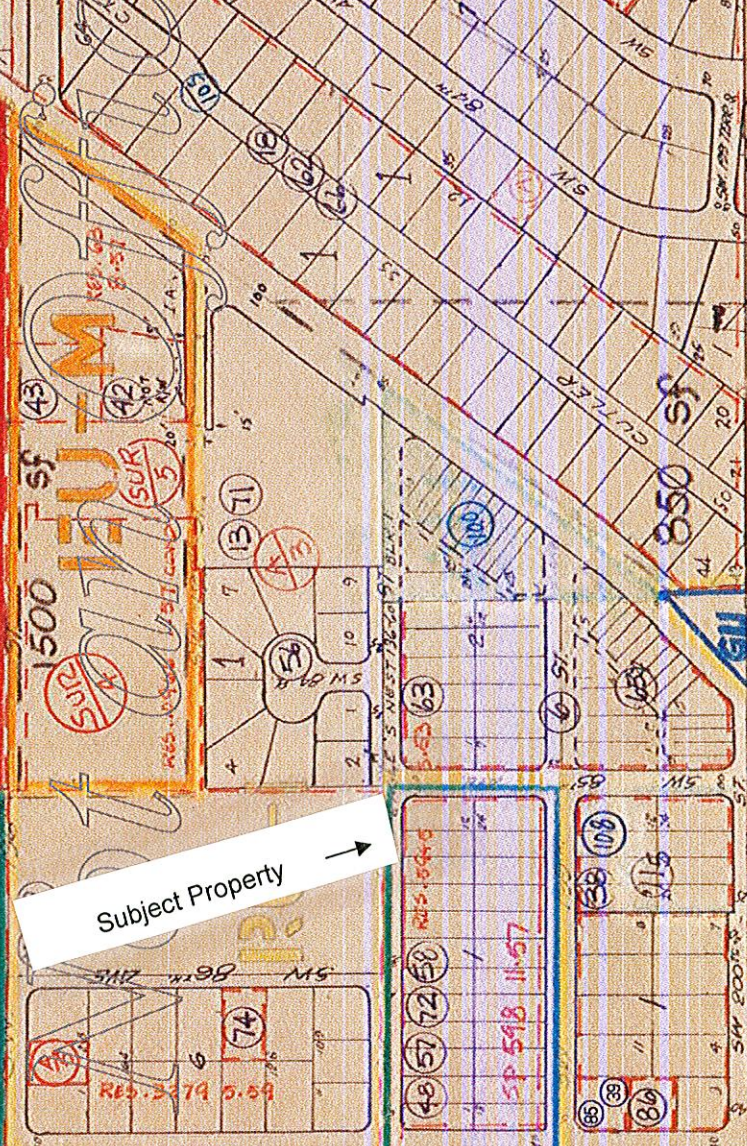
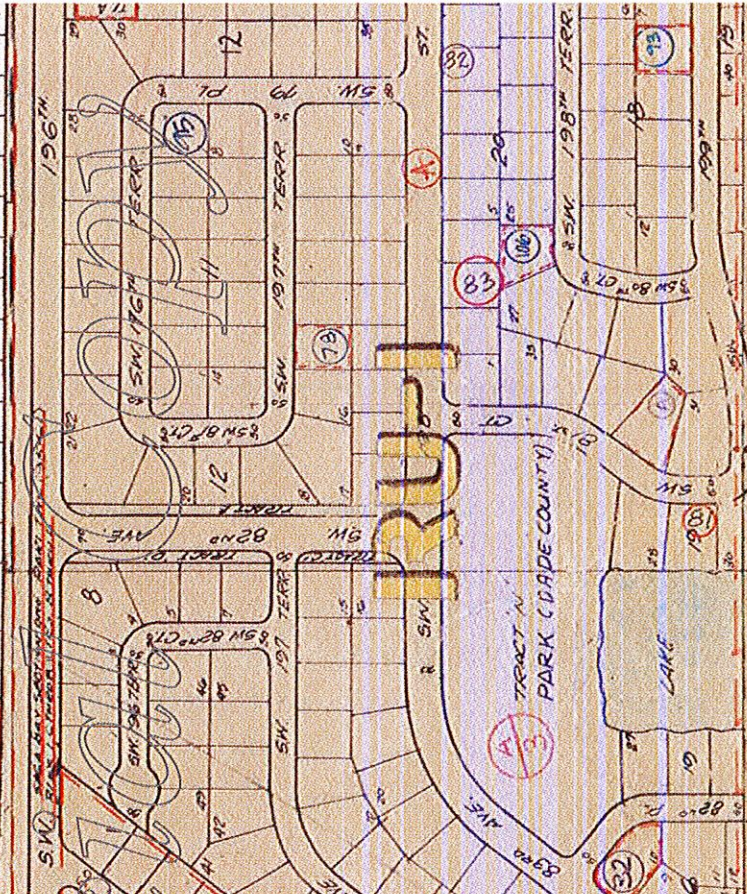
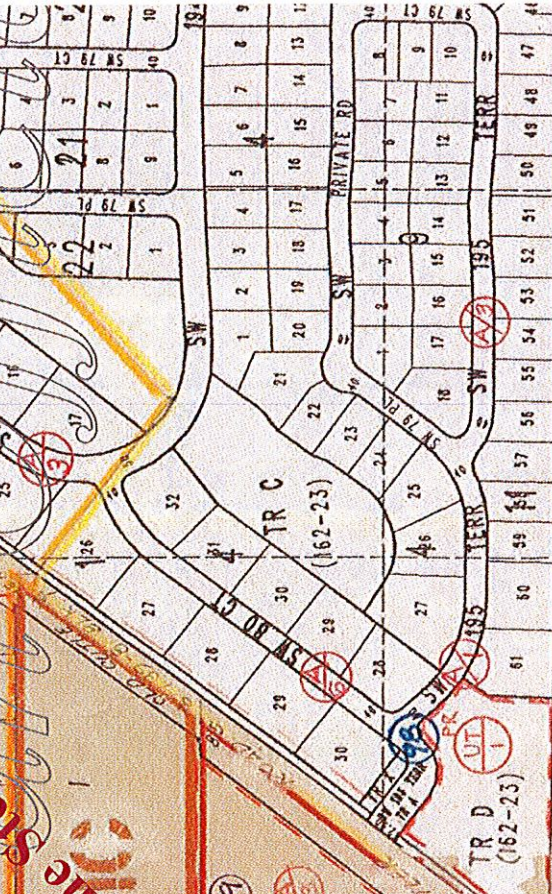
850 SF

IRU

1500 SF (SUK) 5

RES. 5440  
SP 598 11-57

RES. 5440  
SP 598 11-57









**Hearing Number:** 07-04

**Applicant Name:** SIRE USA Corporation

**Location:** West of SW 85<sup>th</sup> Avenue between SW 198<sup>th</sup> and 199<sup>th</sup> Streets

**Size of property:** +/- 41,885 square feet

**Request:** Rezoning from AU (Agricultural) to RU-1 (Single Family Residential)

**Hearing Location:** Cutler Ridge Park, 10100 SW 200<sup>th</sup> Street

**Hearing Date:** May 16, 2007

**Hearing Time:** 7:00 p.m.

Plans are on file with the Town and may be examined at Town Hall. These plans may be modified at the public hearing.

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