ZONING BOARD OF APPEALS
STAFF REPORTS

October 6, 2016 @ 1:30pm
City Commission Chambers
MAYOR
Honorable Jeri Muoio

CITY COMMISSION
Commission President Sylvia Moffett - District 1
Commissioner Cory Neering - District 2
Commissioner Paula Ryan - District 3
Commissioner Keith James - District 4
Commissioner Shanon Materio - District 5

ZONING BOARD OF APPEALS MEMBERS
Ms. Rae Franks, Chairperson
Mr. Alan Steinberg, Vice Chairperson
  Mr. James Carman
  Mr. Monte Lambert
  Mr. Christopher Heggen
  Mr. Scott Holtz, First Alternate
Ms. Malaika C. Barlow, Second Alternate

Mr. Samuel Thomas, Senior Assistant City Attorney
Ms. Cindy Pazmino, Board Secretary
DATE: September 27, 2016

TO: Zoning Board of Appeals Members
    Samuel Thomas, Senior Assistant City Attorney

FROM: Development Services/ Planning Division

SUBJECT: Zoning Board of Appeals Meeting
    Thursday, October 6, 2016

Attached are the Planning Division’s Staff Reports and supporting information regarding applications for action before the City of West Palm Beach Zoning Board of Appeals. The Zoning Board of Appeals meeting will be held in the City Commission Chambers, City Hall, 401 Clematis Street, on October 6, 2016, beginning at 1:30 p.m.

If you have any questions or require additional information, please feel free to contact myself or the respective Project Manager via e-mail or telephone.

If you are unable to attend the meeting, please contact me at (561) 822-1441, or ajones-vann@wpb.org.

Angella Jones-Vann, AICP
Planning and Zoning Administrator

cc: City Commission
TIME: 1:30 p.m.

PLACE: Commission Chambers
City Center, 401 Clematis Street

I. Call to Order/Roll Call/Pledge of Allegiance

II. Minutes

III. Report from the Zoning Staff

IV. Remarks by the Chairperson

V. Declaration of Ex-parte Communication

VI. Public Hearing
   A. Swearing in of the Speakers
   B. Continued Cases
   C. Zoning Board of Appeals Cases
   D. Administrative Appeals
      1. **Zoning Board of Appeals Case No. 3344:** A request by Mary D. Solik, ESQ, on behalf of Verizon Wireless, for an administrative appeal of the Planning Division’s decision to deny Wireless Communication Facility Application No. 15-04, as described in the June 28, 2016 denial letter, written by Alana Wooten, Associate Planner.

         **Location:** The proposed location of the Verizon Tower is 3199 Cumberland Drive, within Commission District No. 2 – Cory Neering.

         **Case Manager:** Angella Vann, Planning and Zoning Administrator
         **Phone:** (561) 822-1441
         **E-mail:** ajones-vann@wpb.org

VII. Unfinished Business

VIII. New Business
IX. Other Business

Annual Meeting

X. Adjournment

All interested parties may appear at the above Public Hearing at the stated time and place and be heard with respect thereto. Please be advised that should any interested person seek to appeal any decision made by the Zoning Board of Appeals with respect to any matter considered at such hearing, such person will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which an appeal is to be based.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three working days prior to any proceeding, contact the City Clerk’s office, 401 Clematis Street, West Palm Beach, Florida 33401, {561) 822-1210}.

Exact legal descriptions of the property involved may be obtained from the Planning Division of the City of West Palm Beach.

PUBLISH: The Palm Beach Post
Monday, September 26, 2016
Zoning Board Attendance  
Fiscal Year 2015-2016

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<th>Alan Steinberg (Vice Chair)</th>
<th>James Carman</th>
<th>Monte Lambert</th>
<th>Christopher Heggen</th>
<th>Scott Holtz (1st Alt)</th>
<th>Malaika Barlow (2nd Alt)</th>
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Present: 7 6 5 6 6 4 1
Absent: 0 1 2 1 1 3 0

Attendance:

a: The absence of a member or alternate member from three (3) consecutive meetings without cause and the prior approval of the Chairperson shall be deemed cause for removal by the Mayor. The Planning & Zoning Administrator shall forward to the Mayor the name of any member who has been absent without cause and the prior approval of the Chairperson from three consecutive meetings.

b: Any member unable to attend a meeting must advise the Zoning Secretary or the Chairperson of such prior to the meeting. The absence of a member caused by a unique or unforeseeable event or occurrence shall be deemed with cause.

c: The Recording Secretary shall notify the members when a member has been absent from two (2) or more consecutive meetings. The Planning & Zoning Administrator shall also notify each member of his/her attendance record each year at the annual meeting.
Administrative Appeals
I. REQUEST

A request by Mary D. Solik, ESQ, on behalf of Verizon Wireless, for an administrative appeal of the Planning Division’s decision to deny Wireless Communication Facility Application No. 15-04, as described in the June 28, 2016 denial letter, written by Alana Wooten, Associate Planner.

The proposed location of the Verizon Tower is 3199 Cumberland Drive, within Commission District No. 2 – Commissioner Cory Neering.

II. RECOMMENDATION/REQUEST FOR RULING

The Planning and Zoning Division recommends that the Zoning Board of Appeals (ZBA) consider the information contained herein and determine that the Planning and Zoning Administrator was correct in concluding that the Verizon application is a collocation.
III. BACKGROUND

The City of West Palm Beach has experienced tremendous wireless telecommunication infrastructure growth in recent years. In September of 2009, the City engaged CityScape Consultants Inc., to evaluate the future wireless telecommunication needs, create a master plan and provide technical assistance to the Planning and Zoning Division in reviewing all applications for wireless facilities.

Verizon submitted an application to construct a communication tower at 3199 Cumberland Drive in the FPL easement on June 8, 2015. After working with CityScape and going back and forth with staff, Wireless Communication Facility application No 15-04 was denied by staff (see denial letter in the attached packet)

IV. STAFF’S RESPONSE

The following is CityScape’s response to the points outlined in the applicant’s justification letter for the administrative appeal (letter is part of the attached packet). Staff has included in Attachment I, Section 94-323 of the Zoning and Land Development Regulations showing where wireless communication facilities are permitted and explaining the different levels of review. Staff has included in the attached package copies of CityScape’s November 20, 2015 letter of determination and their December 3, 2015 opinion letter.

1. Verizon claims their initial submittal was never a "collocation" and that they agree the proposed facility is NOT a collocation - however in their 6-8-15 application form (2014 Wireless Communications Facility Application) (Attachment II) that they submitted, question 3, TYPE OF APPLICATION, the box for "Co-Location" is checked. Therefore, Verizon DID initially submit this as a proposed collocation application, contrary to what they assert in the Justification statement;

2. Upon examination of the construction drawings provided by Verizon with its initial application (marked received 9/14/15 by City) from Kimley-Horn, in particular page C-1 - the existing 82" "tower" (as identified on drawings) (drawings attached to the packet) is to be dismantled and a new 82' pole will be constructed, on top of which two 10' canisters will be mounted, making the total elevation 102 feet (see drawing C-2 in construction drawings). As such, the City considered this to be a "new tower" as the most applicable category of its zoning code. Had the existing tower remained and Verizon proposed mounting equipment without additional elevation on the existing tower, it may have been considered an attachment to high voltage transmission tower and may have been a Level 2 permit, but the proposed design takes it out from that category and puts it into Level III permit. It is likewise not mitigation because 102' is more than 115% of 82', which is the standard for a tower mitigation/Level II permit.

3. As a Level III proposed facility, the applicant must submit all of the required items under 94-336, which it did not - The appeal package attempts to cure this somewhat with an Affidavit claiming to have searched and considered alternative sites within one mile of the proposed facility, but fails to address the existing fire station location identified in the
City's Master Plan IMMEDIATELY ADJACENT to this location at 3035 Cumberland Drive. This failure to meet the hierarchy standards and other requirements of the City's regulations for submittal requirements of a Level III permit is fatal to the application and appeal.

4. As a result of the foregoing, Verizon's appellate argument that it is a LEVEL II concealed attachment to an alternative structure is DISPROVED by its own exhibits, which show the facility to be a new 102' structure that is replacing the existing 82' HVET tower, and subject to processing and adjudication as a Level III permit under City regulations.

As such, Cityscape would recommend denial of the appeal on the foregoing grounds.

Prepared and Respectfully Submitted by:

Anthony Lepore, CityScape Consultants, INC.
ATTACHMENT I

Sec. 94-323. - Permits.

(a) The placement or maintenance of new wireless communication facilities shall be permitted within the zoning districts only in accordance with the wireless communication permit indicated in the following table, and shall be subject to compliance with the land development requirements and permit or registration requirements of this Code. The placement or maintenance of wireless communication facilities in the public rights-of-way shall comply with the regulations in chapter 78 of this Code.

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<th>Zoning District</th>
<th>Amateur Radio Tower 25—50 feet in historic district; Satellite Earth Station &lt;1 meter diameter in historic district</th>
<th>Amateur Radio Tower &gt; 50 feet Satellite Earth Station &gt;1 meter diameter</th>
<th>Antenna Element Replacemt</th>
<th>Facilities to be located on WPB Master Plan designated sites</th>
<th>Concealed or Combinin g on Existing Tower</th>
<th>Collated Attached Antenna</th>
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*Non-concealed attached antennas are only allowed on high voltage electric power transmission towers and light stanchions not located in public rights-of-way except for DAS facilities.

**Concealed attached antennas are only allowed on non-residential parcels in SF districts and are expressly prohibited on a parcel used for residential purposes.

^Level II provided the mitigated facility does not increase the existing height. If there is a height increase, level III or IV permit shall be required.

(b) **Wireless communication permits.**

(1) **Level I wireless communication permit.** The wireless communication permit issued by the planning division to an individual, corporation, partnership, or other entity to engage in the creation of an amateur radio tower which exceeds twenty five feet in a historic district and fifty feet in non-historic districts in accordance with the provisions of F.S. § 166.0435, or a satellite earth station in excess of one meter in diameter, (or less than one meter in diameter if located in an historic district), or antenna element replacements. For installation within a local or national register historic district or designated site, a certificate of appropriateness is also required pursuant to section 94-49.

(2) **Level II wireless communication permit.** The wireless communication permit issued by the planning division to an individual, corporation, partnership, or other entity to engage in: (i) concealed attached antennas, (ii) non-concealed attached antennas on existing transmission towers and light stanchions (iii) collocation or combining on existing tower or facilities to be located on sites contained in the master plan, and excluding amateur radio towers, in accordance with the provisions of F.S. § 365.172(12); (iv) for DAS facilities outside of a public right-of-way (including a DAS Hub); (v) mitigation of existing tower; and (vi) for new concealed attached facilities. For installation within a local or national register historic district or designated site, a certificate of appropriateness is also required pursuant to section 94-49.

(3) **Level III wireless communication permit.** The Class B special use permit (Sb) issued by the planning division after review and approval by the zoning board of appeals (ZBA), or by the historic preservation board for property within an historic district, to an individual, corporation, partnership, or other entity to engage in the creation of new concealed towers, excluding amateur radio towers. For installation within a local or national register historic district or designated site, a certificate of appropriateness is also required pursuant to section 94-49.

(4) **Level IV wireless communication permit.** The Class A special use permit (Sa) issued by the planning division after review by the planning board and approval by the city commission, to an individual, corporation, partnership, or other entity to engage in the mitigation of existing tower facilities, creation of new broadcast facilities, non-concealed towers or non-concealed attached facilities, excluding amateur radio towers, and certain concealed attached antennas in certain zoning districts.
Sec. 94-322. - Siting communication facilities.

(a) Siting alternatives order. The preferred siting of a wireless communication facility within the city will be in accordance with the following siting alternatives order:

(1) a. Concealed attached antenna on public right-of-way/property.
   b. Collocated or combined on existing tower on public right-of-way property.
(2) a. Concealed attached antenna on private property.
   b. Collocated or combined on existing tower on private property.
(3) Non-concealed attached antenna.
   b. On private property.
(4) Mitigation of existing tower.
   b. On private property.
(5) Concealed freestanding tower.
   b. On private property.
(6) Non-concealed freestanding tower.
   b. On private property.

For attached, collocated, or combined antenna: The order of ranking preference, highest to lowest, is: (1)a., (2)a., (1)b., (2)b., (3)a., (3)b. Where a lower ranked alternative is proposed, the applicant must file relevant justification, including, but not limited to, an affidavit by a licensed engineer with documented expertise in radio frequency propagation, demonstrating that despite diligent efforts to adhere to the established hierarchy within the geographic search area, higher ranked options are not technically feasible, practical or justified given the location of the proposed wireless communications facility.
For mitigated or freestanding tower: The order of ranking preference from highest to lowest is: (4)a., (4)b., (5)a., (5)b., (6)a., (6)b.
Where a lower ranked alternative is proposed, the applicant must demonstrate higher ranked options are not technically feasible, practical, or justified given the location of the proposed wireless communications facility, and the existing land uses of the subject and surrounding properties within 300 feet of the proposed tower.

Facilities to be located in the public right-of-way. Facilities in the public right-of-way shall be governed by chapter 78, article XI, division 2 of this Code.
2014 WIRELESS COMMUNICATION FACILITY APPLICATION

PRE-SUBMITTAL REQUIREMENTS:

1. It is required that the applicant, or a representative, meet with a Planner prior to completing this application. Adequate time shall be provided prior to an application deadline.

2. The applicant shall fill out and sign the form below, and provide all materials listed on page 3 of this application.

3. The applicant or a representative shall schedule an appointment with a Planner to submit the application.

TYPE OF APPLICATION: New Tower ☐  New Antenna ☐  Co-Location ☑

PROJECT NAME:  Verizon 68880 FPL Villages of Palm Beach Lakes

PROJECT LOCATION:  Street Address: 3199 Cumberland Drive
                   City: West Palm Beach  State: FL  Zip Code: 33409

PROPERTY CONTROL NUMBER:  74 - 42 - 43 - 12 - 17 - 000 - 0110

PROPERTY OWNER:  Village of Palm Beach Lakes POA

APPLICANT:  Verizon Wireless

AGENT/CONTACT PERSON:  Vertical Property Solutions - Christy Bartolucci

PHONE NO.:  561-234-7070  FAX NO.:  561-880-8318  E-MAIL:  Christy@verticalpropertysolutions.com

MAILING ADDRESS:  Street Address: 9466 Wrangler Drive
                   City: Lake Worth  State: FL  Zip Code: 33467

I (WE) affirm and certify that I (WE) understand and will comply with the provisions and regulations of the City of West Palm Beach Zoning and Land Development Regulations. I (WE) further certify that the above statements and the attachments and Addendum made in any paper or plans submitted herewith are true to the best of my (our) knowledge and belief. Further, I (WE) understand that the application, attachments and fees become part of the Official Records of the Development Services Department - Planning Division and are not returnable. I (WE) also recognize that one or more deficiencies exist in the application, I (WE) will be notified of the deficiencies, and the department shall take no further action on the application until the required information is submitted. I (WE) understand that misrepresentation of information contained within this application may be cause to void any development approval associated with this application.

SIGNATURE OF APPLICANT: [Signature]
DATE:  6-8-15

IMPORTANT: All applications requiring a Class B Special Use shall be required to meet with the appropriate NEIGHBORHOOD ASSOCIATIONS and/or DISTRICT COMMISSIONERS as part of the review process. Please contact the Neighborhood Services Division (561) 822-1413 and/or the City Commission Office (561) 822-1390 to schedule necessary meetings. Please advise the Development Services Department - Planning Division (561) 822-1435, of the date, time, and location of such meetings, or for more information.
Wireless Communication Facility Application | Last Revised: 01.31.2014 | Page 2

**COMMERCIAL WIRELESS PROVIDER:** Verizon Wireless

**LESSOR/LICENSOR CONTACT INFORMATION:**

PHONE NO.: 561-618-1880 | FAX NO.: | E-MAIL: Bruce.Barber@FPLFiberNet.com

MAILING ADDRESS: Street Address: 810-B Charlotte Ave.

City: West Palm Beach | State: FL | Zip Code: 33401

New Tower: Yes ☑ No ☐ Structure Mounted: Yes ☑ No ☐ Co-Location: Yes ☐ No ☑

Replace Existing Tower: Yes ☐ No ☑ Replace/Upgrade Existing Antennas: Yes ☐ No ☑

Stealth Attached Antenna: Yes ☑ No ☐ New Stealth Antenna Support Structure: Yes ☐ No ☑

New Equipment Cabinets: Yes ☑ No ☐ Replace Equipment Cabinets: Yes ☑ No ☐

**FACILITY INFORMATION:**

Site Address: 3199 Cumberland Drive

Latitude (NAD83): 26.44.86 N | Longitude (NAD83): 80.06.7 W

Ground Elevation (AMSL) (ft): 15.6' | Total Height of Tower (AGL) (ft): 102'

RAD Center (ft): 97'

Structure Mount: Highest point of Structure (ft): 102' | Highest point of Antenna(s) (ft): 100'

Parcel Control Number: 74 - 42 - 43 - 12 - 17 - 000 - 0110

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<th>Current FLU</th>
<th>Describe Existing Use(s)</th>
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<td>WPB Plant</td>
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Total Property Area (acres): 1.28 | Lease Area (acres): Generator lease area “6x15”, equipment is pole mounted.

FCC Antenna Structure Registration Number (ASR) (if applicable): N/A

Please be aware that the City of West Palm Beach has a contract with CityScape Consultants to review all applications for Wireless Communication Facilities.
VERIZON'S JUSTIFICATION STATEMENT

JUSTIFICATION STATEMENT

Verizon Wireless is in receipt of the City's June 28, 2016 letter denying Verizon's Level II wireless communication permit application, referenced as WCF 15-04. A copy of the letter is attached for easy reference. Verizon Wireless now files an administrative appeal of this decision as provided for in Section 94-342(a)(5) of the City's Land Development Code ("LDC"). Set forth below is Verizon Wireless's Justification Statement as to why the application is due to be granted.

In response to the City's denial letter, Verizon disputes the City's conclusion that the Verizon application indicates that it is a collocation. The plans submitted by Verizon (additional copies submitted herewith) make clear that Verizon is proposing to attach a concealed antenna to an existing 82' FPL utility pole located on privately owned property. Collocation is defined term under the City's LDC. The definition of "Collocation" as set forth in LDC Section 94-331(a) Definitions, is as follows:

Collocation - The practice of installing and operating multiple antenna elements, which are owned or controlled by multiple wireless service providers, and/or radio common carrier licensees on the same tower, antenna support structure, or alternative structure using different and separate antenna, feed lines, equipment cabinets, generators and other radio frequency generating equipment.

The denial letter notes that the existing FPL utility pole does not currently contain any antennae, transceiver or other equipment which would meet the Code definition of collocation. Verizon is in agreement with this conclusion and has never maintained that it seeks approval for a collocation. The City's next conclusion, however, is problematic. The City staff then characterizes the existing FPL Utility pole as a "tower" and invokes the Code requirements for approval of new towers. This analysis is flawed, ignores the specifics of the request, and is in contravention of the LDC.

The City's LDC Section 94-331 contains several other definitions that are relevant to this analysis. They are as follows:

Alternative Structure- A structure that is not primarily constructed for the purpose of supporting antennas but on which one of more antennas may be mounted. Alternative structures include, but are not limited to, buildings, water tanks, light stanchions, pole signs, billboards, church steeples and high voltage electric power transmission towers.

Attached Antenna- An antenna element attached to an alternative structure.

Concealed- There are two types of concealed facilities:
1) antenna attachments and 2) freestanding antenna support
structures. A concealed attached antenna includes a structure which is not primarily constructed for the purpose of holding attachment antennas but on which one or more antennas may be mounted.

Verizon seeks approval for a concealed attached antenna on an alternative structure, an existing FPL electric transmission pole. The underlying property is zoned PD and Sec. 94-333 of the City’s LDC clearly provides that such a facility qualifies as a Level II wireless communication permit. Verizon Wireless is aware of the City’s Siting Alternatives Order as set forth in Sec. 94-332, as referenced in the City’s denial letter. The Verizon proposal, being a concealed attached antenna on an existing Alternative Structure on private property, is the second highest ranked preferred site for attached, collocated, or combined antennae, as set forth in the Ordinance. The first preferred location under the Ordinance is a concealed attached antenna on public right-of-way or property. The affidavit of Pavitra Jaiswal, submitted as part of the application and included herein, establishes that there are no existing towers or alternative structures of sufficient height located on public right-of-way or property located within the Verizon search area to meet the designed coverage objective. As such, Verizon has met its burden of proof on this hierarchy analysis.