

April 25, 2018

Via Electronic Mail

Katye M. Jobe  
Smith Moore Leatherwood LLP  
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Suite 2800  
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Re: Response to comments from Smith Moore Leatherwood LLP on the proposed  
Draft Wireless Communications Initiative Master Plan and Ordinance

Dear Ms. Jobe,

Thank you for the recent comments provided to the Town of Chapel Hill Planning Department on the above-mentioned documents on behalf of T-Mobile. As you are aware the Town of Chapel Hill (Town), CityScape Consultants, Inc. (CityScape) and local wireless industry stakeholders are meeting to discuss the draft Ordinance on Thursday, April 26 at 3:30 pm. We thought it would be helpful to respond to your comments prior to this meeting so we may concentrate on any remaining items at the meeting.

The Town and CityScape are pleased to know the industry supports the Wireless Communications Initiative. The goal of the Draft Wireless Communication Initiative Master Plan is to inform the community on the history and fundamentals of wireless telecommunications deployment practices; prepare the community for continued deployment of macrocell towers and base stations; introduce and educate the community on the inclusion of small wireless facilities to traditional macrocell networks; and summarize regulatory ground rules for public policy relative to the wireless communications industry. The draft Ordinance is a response to this information and includes policy directives supported by Town citizenry, the Town of Chapel Hill Community Design Review Board and Planning Board.

Your letter dated April 13, stated that “trying to find a common regulatory framework, with common definitions, and common standards, for small cell systems/distributive antenna systems and traditional macro-cell towers is like the proverbial comparison of disparate “apples and oranges” and is generally unworkable; and that standards “relevant to one are not to the other”; and that “requirements for one, may, in fact, violate federal or state law if required of the other.”

CityScape does not agree with this statement because CityScape visions and plans for the big picture of wireless infrastructure deployment practices of the industry. Macrocell facilities (higher powered radio frequency transmission sites for coverage) and small wireless facilities (lower powered radio access points to boost network capacity) are not separate operating networks working independently of each other; but working together in unison provide a more robust and complete network. A comprehensive wireless network necessitates both macrocell facilities and small wireless facilities to develop such a robust and heterogeneous wireless network for the community.

Federal and state regulations are the backbone of the draft Ordinance. CityScape agrees the definition of base station is “awkward” as are many of the terms used in state and federal regulations but it comes directly from the Federal Communication Commission’s (FCC) Report and Order released October 21, 2014 in W.T. Docket 13-238 (2014 Report and Order).

The 2014 Report and Order specifically addresses (among many other items) ongoing questions related to Section 332(c)(7), the 2009 FCC Declaratory Ruling (Shot Clock); and implementation of Section 6409(A) of the Spectrum Act (47 USC §1455) intended to advance “wireless broadband service for both public safety and commercial users” (paragraph 135). The definitions in the 2014 Report and Order provided by the FCC are used almost verbatim in the draft Ordinance for the Town of Chapel Hill and are necessary in order for the Town to be consistent and compliant with the FCC’s goals, and the objectives and intent for implementing Section 6409(A) of the Spectrum Act; especially when it comes to allowing administrative approval for increases in height of existing eligible support structures (towers and base stations). The FCC’s definitions of tower and base station and the FCC’s treatment of said infrastructure is very clear regardless of whether the tower or base station is being used for macrocell transmission equipment, small wireless facilities (microcell, picocell, femtocell, oDAS) or any other type of equipment placed on towers and base stations or on the ground or rooftop for purposes of the transmission/reception of wireless communications. The FCC’s 2014 Report and Order does not separate, single out or create various definitions for specific types of antenna facilities because the emphasis is placed on what the transmission equipment is placed on without specificity of size of the actual antenna or the underlying land use on which it is placed. For this reason, it is imperative to address development standards of both macrocell facilities and small wireless facilities together in the same section of regulations in the Town’s draft Ordinance.

North Carolina General Statutes 160A is titled, “Cities and Towns”. All the Articles within 160A are enabling legislation for how and what cities and towns in North Carolina can operate as a local government in North Carolina. Article 19, “Planning and Regulation Development” enables local planning agencies to regulate land used through local land use development codes. In 2007 Article 19 was amended to add 160A-400.50-53 to add Part E. “Wireless Telecommunications Facilities”. This initial text was added thorough the approval of House Bill 831 in 2007 and was amended in 2013 with the approval of House Bill 664; and amended again in 2017 with the approval of House Bill 310. The placement of Part E in this Article of the North Carolina Statutes enables local

land use planning agencies to regulate wireless communication facilities through existing zoning practices. CityScape agrees it is not typical for local government to have specific zoning policies for land used in city or town right-of-way; but House Bill 310 provides for this inclusion in local zoning ordinances. For this reason, the use of right-of-way for wireless communications facilities is included in the Town's draft Land Use Management Ordinance (LUMO) ordinance amendments and not separated out and placed in a different section of the Town Code.

CityScape agrees with some of the comments expressed in the letter and offers suggested edits to the draft Ordinance attached and provides additional clarification following the outline of your letter below:

- a. It is not intended for the draft Ordinance to be “replete with subjective design standards”. A goal of the draft Ordinance is to allow the industry as much flexibility and creativity in meeting the design standards as possible. The Town recognizes the options for pole types is evolving quickly and does not want to narrowly describe or permit only one type of infrastructure allowable now and inadvertently exclude future design options as they become available to the industry. Additionally the Town knows that one type of tower or base station could be appropriate on one street and inappropriate on a different street. CityScape admits it is challenging to define concrete objective standards in policy without being too restrictive and the industry is challenged by the same task. Section 5 (B)(9) in the Small Wireless Facility Model Ordinance states, “Small Wireless Facilities and their associated Wireless Facilities shall be camouflaged, disguised, hidden, and/or blended in with the surrounding environment to the extent practicable.” Yet, the industry’s Model Ordinance does not define “extent practicable”, nor does the Model Ordinance specify who determines to the “extent practicable”. Clearly we both struggle with some of these phrases. CityScape is working on more objective language in the draft Ordinance. (See attached revised draft Ordinance for possible revisions.)
- b. Section 5.20.6(c) has the most subjective standards listed in the draft Ordinance; but this language is very close to what the industry agreed to many, many years ago when they worked with me and the League of Municipalities and Association of County Commissioners to develop a draft ordinance to be used as a base template for local governments statewide as a starting point for new wireless communication facility regulations. I assume over the years that draft template has likely been revised but CityScape maintains this text based on past acceptability by the local industry. Section 2.20.6(c) could be amended to be less subjective. (See attached revised draft Ordinance for possible revisions.)
- c. (i) CityScape is proposing clarifying language in the draft Wireless Communications Initiative Master Plan to address the spacing of small wireless facilities. (ii) CityScape does not use the term “stealth” to avoid any confusion or trademark issues because Stealth Concealment Solutions has a trademark on the term “stealth” which is why the word “concealed” is used throughout the draft Ordinance. A definition for concealed is provided in the draft Ordinance. (iii) The draft Ordinance does not require neutral host, rather the draft Ordinance

informs the industry of the Town's preference for neutral host facilities. Neutral host poles are available and are in operation in many municipalities in America and are a great option for right-of-way in local historic districts and other areas the Town desires to maintain low visual profiles and want to review neutral host options on a case-by-case basis. In various communities some neutral host facilities have no exposed boxes, antennas, or meters of any kind, thus a truly concealed facility. (iv) Section 5.20.9(d)(1)(F) is intended to provide the industry with the knowledge the Town desires to have as little loss of ground space in the already narrow rights-of-way throughout the Town. The list of options is intended to provide flexibility on the ground equipment options rather than just requiring that all ground equipment be vaulted. (v) The correct reference to the Section is 5.20.9(d)(1)(G) & (H). The Town's Design Review Board and Planning Board members considered these options and specifically indicated their preference not to have other wireless equipment associated with the small wireless facility exposed on towers or base stations.

- d. A balloon test is not required for any small wireless facility.
- e. Thank you for finding the inconsistency with the outline format. It is intended that non-concealed macrocell towers have a reduced visual profile. For this reason the Town promotes the use of flush-mounted antenna. (See attached revised draft for possible revisions to items a-e above.)

It is not the intent for "the Ordinance to create a false "straw man" of public safety concerns to discourage deployment of small cell facilities in the right-of-way and to justify unnecessarily restrictive requirements, in violation of House bill 310" as claimed by your firm. Public safety is paramount concern of local government for this infrastructure for both known and unknown hazards that may arise from placement of same. The same issue is NOT present for underground infrastructure as that does not have the potential of obscuring pedestrian/vehicle traffic, pedestrian safety regarding adjacency to traffic, potential for infrastructure impacts from third parties/vehicles and the adverse effects of same. Aesthetics is an important consideration, however public safety is the paramount issue with this infrastructure, which differs significantly from other ROW infrastructure. Another example would be electrical (grounding) safety, typically not an issue with utility lines where there is generally not power running up and down the pole vertically, as well as the structural stability of the new infrastructure.

Section 5.20.10 Special Use Wireless Communication Facility Approvals is not applicable to small wireless facilities that are administratively approvable. This section only applies to macrocell facilities. (See attached revised draft Ordinance for possible revisions.)

The Town of Chapel Hill has a fee schedule that lists all applicable permit fees in one central location. There is no precedent for fees to be listed by land use in the LUMO and the Town desires to maintain the current practice of listing all fees in the Fee Schedule. Furthermore, § 160A-296(a)(6) is in Article 15 Streets, Traffic and Parking; G.S. 160A-206(b) is in Article 9 Taxation; and G.S. 62-350 is in Article 17 Miscellaneous Provisions and it is more appropriate for the Town to address references to the applicability of these fees in other areas of the Town Code.

The draft Ordinance does not include a definition of “poles” because that definition is not in the 2014 Report and Order or in G.S. 160A-400.51; nor is the word “pole” used in the draft Ordinance. References are made to “utility pole” and the definition for “utility pole” is in G.S. 160A-500.51 and that definition is already in the draft Ordinance. However, CityScape found a typo in the definition to be corrected. (See attached revised draft Ordinance for possible revisions.)

It is the Town’s understanding the utility poles within the Town are owned by Duke Energy and the Town does not have any make-ready structures. For this reason, the make-ready provisions are not addressed in the draft Ordinance. However, the Town owns some traffic signal poles and perhaps other poles in the future. Therefore the draft Ordinance is proposed to be to reference “make-ready” work. (See attached revised draft Ordinance for possible revisions.)

CityScape has reviewed the Small Wireless Facility Model Ordinance and has determined that much of what is listed in the Model Ordinance is already included and/or addressed in the Town’s draft Ordinance. However a few development standards in the Model Ordinance could be included in the Town’s draft Ordinance. (See attached revised draft Ordinance for possible revisions.)

Lastly, every community is different and unique in virtually every facet of existence. It is because of uniqueness that citizens chose to live, work and reside in different cities, towns and counties. It should remain within the jurisdiction of each community to have their elected officials uphold the desires of their citizens. It is clear from poll responses that we received that wireless service is very important to residents and so is appearance.

Thank you for your interest in the Draft Wireless Communications Initiative Master Plan and Ordinance and we look forward to our meeting tomorrow.

Susan Rabold, CityScape Consultants  
Phil Mason, WCI Project Manager, Town of Chapel Hill