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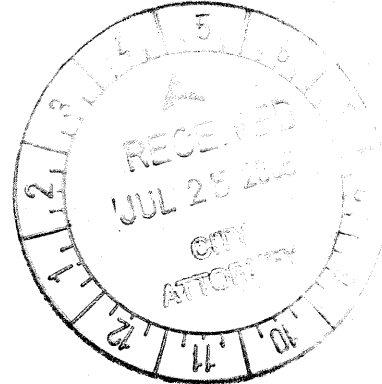
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July 22, 2005

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CLIENT/MATTER NUMBER
057134-0167

Mayor Pegeen Hanrahan
Commissioner Chuck Chestnut
Commissioner Warren Nielsen
Commissioner Ed Braddy
Commissioner Jack Donovan
Commissioner Rick Bryant
Commissioner Craig Lowe
City of Gainesville
P.O. Box 490 – Station 19
Gainesville, Florida 32601-0490



Re: Communications Tower Ordinance Amendment

Dear Mayor and City Commissioners:

This firm represents T-Mobile. We have had the pleasure of working with your City Planning Staff and with Attorney Crosby on the form and substance of your proposed telecommunications tower ordinance amendment. The August 4th due date of my first child prevents my presence in person at the first and second readings of this ordinance amendment. Please accept these written comments on the ordinance in lieu of my personal appearance.

Before I get into my comments on the ordinance, again let me express my appreciation for the cooperation and coordination we have received from your Planning Staff and from your Legal Department. They have made a sincere attempt to respond to industry concerns and comments about the ordinance and arrive at a proposal that meets everybody's needs. Despite the bridges that have been gapped, we still have concerns about certain text in the ordinance and its practical application.

Our primary concern is that it is not clear to us which tower applications are permitted uses (no public hearing process) and which tower applications must go through a special use permit process. For example, Section 30-98(f) addresses camouflage towers and provides that "new camouflage towers shall be permitted in all zoning districts except" single family and residential low zoning categories (emphasis added). Section 30-98(f)(1), continues, by providing for certain parameters for permitted camouflage towers, such as height and setbacks from property lines. The section continues on by providing that camouflage towers may be constructed in excess of the maximum heights listed above provided a special use permit is

issued. The plain language of this section is clear. Camouflage towers are permitted in multiple-family, office, and mixed use districts up to 80', and all other districts up to 110', except that in industrial districts they may be approved up to 130'. Any tower in excess of any of these given heights and any of those zoning districts must go through the special permit process. Section 30-98(f)(4), however, then provides for development plan approval for all camouflage towers. This section provides for development plan approval to be done in accordance with the review procedures for an intermediate review as set forth in Article VII, Division I of the Land Development Code. Article VII, Division I of the Land Development Code provides that intermediate review include a quasi-judicial administrative hearing on the application before the Development Review Board. The requirement for a quasi-judicial administrative hearing on an application that "shall" be permitted under Section 30-98 seems inconsistent with the plain language. Section 30-98 is internally inconsistent as well. Section 30-98(f)(4) also requires a neighborhood workshop consistent with the provisions of Section 30-350. Finally, Section 30-98 requires that proposed new camouflage towers be architecturally and aesthetically compatible, and that such a determination must be made at a public hearing. Section 30-98 does not say who is to conduct this public hearing and what criteria they are to use to arrive at their determination. It seems that although Section 30-98 provides that camouflage towers under the specified heights are permitted uses, they are still subject to public hearings and neighborhood workshops. If the application meets the criteria of Section 30-98, there is no basis for the Development Review Board to deny the application. Allowing neighborhood workshops and public hearings on applications on uses that "shall" be permitted only frustrates the public when they learn that their participation cannot affect the outcome. Either the use is permitted or it is not. If it is permitted, then no public hearings or quasi-judicial hearings are warranted.

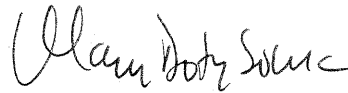
The same lack of clarity exists in Section 30-98(g)(8) which addresses new monopole towers. Section 30-98(g) provides that "new monopole towers that are not accessory to communications uses (MO-48), shall be permitted by right in I-1, I-2, and AGR zones". (emphasis added) The Section then contains certain height and setback parameters, just like the camouflaged tower section, and provides for special use permit approval for those towers that do not meet the criteria. Again, new monopole towers are subject to intermediate review procedures, the provisions for neighborhood workshops and citizen participation. This section also requires that a public hearing shall be held to consider all monopole wireless tower development plan applications despite Section 30-98(g)'s provision that certain towers are permitted by right in I-1, I-2, and AGR zones. If Section 30-98 provides that towers are permitted by right at or below certain height limitations, what purpose does the public hearing serve? The Code contains no criteria on which the application is to be evaluated and does not indicate what Board is holding the public hearing.

Because of these internal consistencies, an applicant cannot determine what is permitted and what is not. Nor can the reader determine what criteria will be used to evaluate the application and what Board will be reviewing it. Not only does this situation frustrate staff, applicants, and neighbors, it may be too vague to be enforceable under Florida law. We would respectfully request that development review process be reviewed and clarified and that all internal inconsistencies be removed.

Mayor Hanrahan
July 22, 2005
Page 3

Thank you for the opportunity to comment on the proposed ordinance.

Very truly yours,



Mary Doty Solik

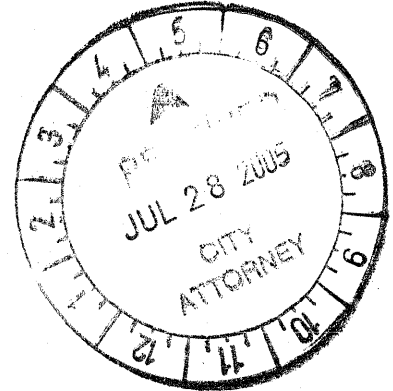
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July 25, 2005



VIA E-MAIL AND U.S. MAIL

City Commissioners
City of Gainesville
200 East University Avenue
Gainesville, FL 32601

Re: Proposed Amendment of the City's Land Development Code Regarding
Communication Towers and Antennas

Dear Commissioners:

On behalf of my clients, Nextel and Verizon Wireless, I have continued to work with your staff and the City Attorney's office on the proposed amendments to the portion of the City's LDC addressing communication towers and antennas. Although the effort has been very positive, there remain some issues staff has indicated are policy issues that only you can address. Therefore, I would like to present these issues to you in this letter and address them with you further at the first reading of the ordinance on August 8, 2005. There are four remaining issues, presented in the order they appear in the proposed ordinance.

First is the decision to just refer to the recently amended Florida statute on wireless facilities rather than directly indicating the City's collocation requirements and procedures. The proposed Section 30-98(d), on page 7 of the draft, states that "Collocation on any existing facility or structure shall be completed in accordance with the standards stated at s. 365.172(11), Florida Statutes, if and as applicable. All other collocations shall be reviewed in accordance with the provisions of subsection 30-98(h), and, if applicable, subsection 30-98(j)." A simple reference to the statute forces the staff and the public to secure a copy of the statute and attempt to interpret how a state-wide generally applicable statute applies specifically to sites in the city of Gainesville. Rather than this general, cumbersome process, it is suggested that the following language be included in the ordinance, which follows the statute, but also incorporates the City's provisions.

30-98(d) *Collocation*. Collocation on any existing facility or structure shall be completed in accordance with the ~~standards stated at s. 365.172(11), Florida Statutes.~~ following:

(1) Collocations on existing communication towers that meet the following criteria shall not be subject to the other provisions of this ordinance or the City's land development regulations, and shall not require a development order prior to the granting of a development permit. Such collocation shall be subject to only development permit review for compliance with applicable construction regulations under the City's Building Code. Regulations, restrictions, conditions, or permits placed on the first antenna placement or on the tower that limit the number of collocations or require review processes inconsistent with this subsection shall not apply to such collocations.

Collocations on existing communication towers that:

- a. Do not increase the height of the existing tower, as measured to the highest point of any part of the structure or any existing antenna attached to the structure;
- b. Do not increase the approved ground equipment compound; and
- c. In all aspects of the collocation, are of a design and configuration consistent with all of the applicable design and aesthetic regulations, restrictions or conditions, if any, applied to the first antenna placement on the tower or applied to the tower itself.

(2) Collocations on any existing structure that is not a communication tower, except those on a historic building, structure, site, or object, or in a historic district, that meet the following criteria shall not, except as specifically noted, be subject to the other provisions of this ordinance or the City's land development regulations and shall not require a development order prior to the granting of a development permit. Such collocation shall be subject to only a rapid review for compliance with this section and development permit review for compliance with applicable construction regulations under the City's Building Code. Regulations, restrictions, conditions, or permits placed on the first antenna placement or on the tower that limit the number of collocations or require review processes inconsistent with this subsection shall not apply to such collocations

Collocations on existing non-historic structures that:

- a. Do not increase the height of the existing structure, as measured to the highest point of any part of the structure or any existing antenna attached to the structure;

b. Do not increase the approved ground equipment compound, if any; and

c. In all aspects of the collocation, are of a design and configuration consistent with the visual compatibility requirements of paragraph 30-98(h)(2) and with all of the applicable design and aesthetic regulations, restrictions or conditions, if any, applied to the first antenna placement on the structure or applied to the structure itself, as part of the first antenna placement, that do not conflict with the visual compatibility requirements of paragraph 30-98(h)(2).

(3) If only a portion of the collocation does not meet the criteria of (1) or (2), above, where all other portions of the collocation meet the criteria, the compliant portion shall be reviewed as indicated in (1) or (2), above, as applicable, and the non-compliant portion of the collocation only shall be reviewed as a minor review under the provisions of paragraph 30-98(h)(3).

(4) All other collocations shall be reviewed in accordance with the provisions of subsection 30-98(h), and, if applicable, subsection 30-98(j).

The next issue concerns the prohibition of any type of new tower, including camouflaged towers, in the single family and residential zoning districts. This broad restriction, coupled with the height limitations, and further exacerbated by the setback requirements discussed below, is likely to result in large areas of the city being at risk for inadequate wireless services. This issue was addressed extensively in a letter, with accompanying graphics, sent to Dana Crosby in March, which is attached at the end of this letter. Staff has chosen to retain the prohibition of towers in these residential areas and to address the potential of a prohibition of service through the case-by-case option of the new amendment to the E911 statute. While this case-by-case method may work for the City of Gainesville, it invites inconsistent decisions and a struggle for each site.

If the City chooses to exclude all towers from single-family zoning, the City needs to be prepared to more readily accept requests for sites on non-single family zoned parcel as what they are – the only option – and to recognize that there is a significant chance that eventually there will be claims that service is being prohibited in these areas. If it is felt, on the other hand, that there needs to be at least some more options, the following changes are suggested:

Section 30-98(f) *Camouflaged towers*. Camouflaged towers shall be permitted in all zoning districts, ~~except for~~ In those zones in the single-family and residential-low land use categories (see Chart A, subsection 30-98), camouflaged towers shall only be permitted on property whose principal use is not single family residential use, including, but not limited to, properties with schools, churches, synagogues, parks, and golf courses, provided a special use permit is issued in accordance with Article VII, Division 5 of this chapter.

Section 30-98(f)(1) *Height*. The maximum height of camouflaged towers in single-family and residential-low zoning categories, multiple-family, office or mixed-use districts, as listed in Table A (which appears at the end of this subsection), is 80 feet. The maximum height of camouflaged towers in all other districts is 110 feet, except that in industrial districts a camouflaged tower may be a height of up to 130 feet. Camouflaged towers may be constructed in excess of the maximum heights listed above, provided a special use permit is issued in accordance with Article VII, Division 5 of this chapter.

The next issue has to do with setback standards for camouflaged and monopole towers. The proposed draft requires that both camouflage towers and monopole towers be set back from all property lines a distance equal to the height of the tower, regardless of what zoning or use is on the adjacent property. This significantly reduces the number of properties available for the placement of a tower. If the tower was placed in the middle of the property, a 105-foot tower would require an acre of land just to meet the setbacks. A 150 foot tower would require more than two acres, just to provide setbacks. Few property owners are going to be willing to allow a tower to be placed in the middle of their property, so the sites will have to be even larger. All for no clear benefit.

A larger setback may be understandably required for monopole towers, to provide a greater incentive to use camouflaged towers, but even then there should be an opportunity to request the tower within the setback distance, through a Special Exception process, as is allowed for other setbacks. There is no justification, however, for requiring such a setback for camouflaged towers. The ordinance cites that the setbacks are needed "for purposes of structural safety and aesthetics," but there is no support for this claim. Towers do not present any greater structural safety risks than any other structure. At most, a setback equal to the engineered fallzone for the tower should be required. From an aesthetics standpoint, a rigid setback of one times the tower height does not make a structure any more or any less aesthetically compatible. Protecting aesthetics is not accomplished by a rigid setback that has no relationship to the character of the site or the surrounding area.

We would ask that the setback requirements be modified as follows:

30-98(f)(2) *Setbacks*. ~~For purposes of structural safety and aesthetics, regardless of the zoning district in which a~~ A camouflaged tower is located, the tower shall be set back a distance of at least the height of the tower from any adjoining lot line of the greater of zoning district setbacks for a principal structure or the structure's designed fall zone, as certified by a Florida licensed engineer.

30-98(g)(2) *Setbacks*. For purposes of structural safety and aesthetics, regardless of the zoning district in which a monopole tower is located, the tower shall be set back a distance of at least 300 feet from the nearest property lines of any single-family, residential-low, multiple-family, office or mixed-use district. The tower shall be set back at least 100 percent of the height of the tower from any adjoining lot line. Monopole towers may be constructed within 300 feet of the nearest property lines of any single-family, residential-low, multiple-family,

office or mixed-use district or within the height of the tower from any adjoining lot line, provided a special use permit is issued in accordance with Article VII, Division 5 of this chapter.

The last issue has to do with a lack of clarity in the applicable review processes for new wireless facilities. Sections 30-98(f)(4), for camouflaged towers, 30-98(g)(8), for monopole towers, and 30-98(h)(3), for antennas and other wireless facilities, state, in various wording, that development plan approval shall be in accordance with the review procedures stated at Article VII, Division 1. A review of Article VII, Division 1 of chapter 30 shows a development review process with four levels of review. Where a project falls within the four levels is determined by section 30-159, "Criteria for determining level of review." None of the criteria presented in this section, which address factors such as the number of parking spaces, density of units, or square footage of building area, are directly related to the review of a tower. Therefore, there is no clear indication which process is applicable. It would seem to be much clearer and more helpful to the staff and the applicants to simply state which development review process is applicable to which type of wireless facility.

It is suggested that these sections be revised as follows:

30-98(f)(4) *Development plan approval*. Development plan approval for new uses-camouflaged towers shall be done in accordance with the intermediate review procedures stated at Article VII, Division 1 of this chapter, as applicable; the provisions for neighborhood workshops stated at section 30-350, Citizen participation; and with the requirements as listed below in subsection 30-98(m), submittal requirements. All proposed new camouflaged towers must be architecturally and/or aesthetically compatible with the surrounding community. To determine architectural and/or aesthetic compatibility with the surrounding community, a public hearing shall be held before the appropriate board on the development plan application. The base application fee for review of an application to construct a camouflaged tower shall be the same as the fee for intermediate plan review, plus the fee for the technical consultant, if necessary.

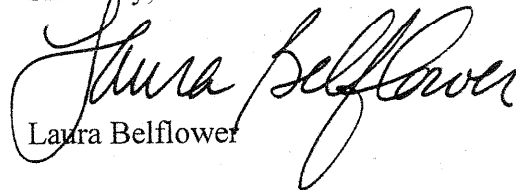
30-98(g)(8) *Development plan approval*. Development plan approval for new uses-monopole towers shall be done in accordance with the intermediate review procedures stated at Article VII, Division 1 of this chapter, as applicable; the provisions for neighborhood workshops stated at section 30-350, Citizen participation; and with the requirements as listed below in subsection 30-98(m), submittal requirements. A public hearing before the appropriate board shall be held to consider all new monopole wireless tower development plan applications. The base application fee for review of an application to construct a monopole wireless tower shall be the same as the fee for intermediate plan review, plus the fee for the technical consultant, if necessary.

30-98(h)(3) *Development plan approval*. Development plan approval shall be as a minor review, in accordance with Article VII, as applicable, and compliance with

the application requirements stated in paragraphs 30-98(m)(1), (6) and (11) are required prior to the issuance of a building permit for all new PWS antennas and collocated antennas that are not otherwise preempted pursuant s. 365.172(11), F.S.

We appreciate the opportunity to provide input for this important ordinance and I look forward to discussing the ordinance and these issues with you on August 8th.

Sincerely,



Laura Belflower

Law offices of

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March 21, 2005

VIA E-MAIL

Dana L. Crosby
Assistant City Attorney
City of Gainesville
200 E. University Avenue
Suite 425
Gainesville, Florida 32602-1100

Re: Comments on Proposed Revisions to Sec. 30-98., Communication Tower and
Antenna Regulations.

Dear Ms. Crosby:

You asked that I provide you information to support my concern that the City's proposed wireless ordinance may effectively preclude wireless services in certain parts of the City. Attached are two documents that I believe show that there is, in fact, reason for concern.

The first document shows, in the light gray circle, a focused look at the northwest portion of the city, which has a very high percentage of residential zoning. The proposed ordinance precludes even camouflaged towers from locating in the single family and residential low areas and significantly limits the heights of even camouflaged towers in other districts. This preclusion and the height limitations severely limit options. The attached graphic was based on hypothetical (but realistic) coverage from a PCS carrier. At the heights allowed, the hypothetical coverage would only realistically extend .5 mile for an 80-foot site, .7 miles for a 110-foot site and .85 miles for 130-foot industrial sites. Added to this is the need that the coverage areas overlap approximately twenty percent for adequate hand-offs. The requirement of a setback of 100 percent of the tower height from all property boundaries further limits the available options, especially in the southeast part of the subject area, where lots are too small to meet the setbacks. The graphic shows that even placing multiple towers at the maximum height on almost every zoned site (except parks and conservation areas), without regard to whether the site would actually be available, it is not possible for one carrier (whose coverage is shown in green) to cover all of the subject area. A second carrier (whose coverage is shown in yellow), who would have to be located lower on the tower and, therefore, would have a smaller coverage area, would

be able to cover even less of the area. A third carrier (shown in pink) would have almost no coverage in the area. Subsequent carriers in this example would not be able to serve the area. The second document shows that even by making parks that are not zoned single family or low density available as sites for towers, something the City seems to have been reluctant to do in the past, although the coverage situation is improved, the area is still not fully covered. Ten to thirteen sites to not even adequately cover an area of this size is more sites than the City would want to see and more sites than a carrier could afford to provide. The end result is that there would not be reliable service in the area, which, in my opinion, is a prohibition.

Although there is reason to be concerned that there are not enough non-residentially used parcels that are residentially zoned in the subject area, it is suggested that such properties may be a reasonable alternative for the City to consider. It is suggested that Section 30-98(d) be amended to read:

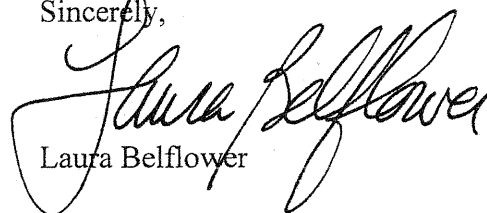
Camouflaged towers. Camouflaged towers shall be permitted in all zoning districts, ~~except for~~ In those zones in the single-family and residential-low land use categories (see Chart A, subsection 30-98) camouflaged towers shall only be permitted on property whose principal use is not single family residential use, including, but not limited to properties with schools, churches, synagogues, parks, and golf courses.

As indicated above, the extraordinary setback for camouflaged towers further decreases the available sites from which to provide wireless services. As we have indicated several times, there are no extraordinary setbacks, or even principal structure setbacks, for flagpoles, trees, light poles and other such tall uses and there is no justification for extraordinary setbacks for camouflaged towers. To address this issue, it is suggested that subsection 30-98(d)(2) be amended to eliminate extraordinary setbacks from camouflaged towers, as follows:

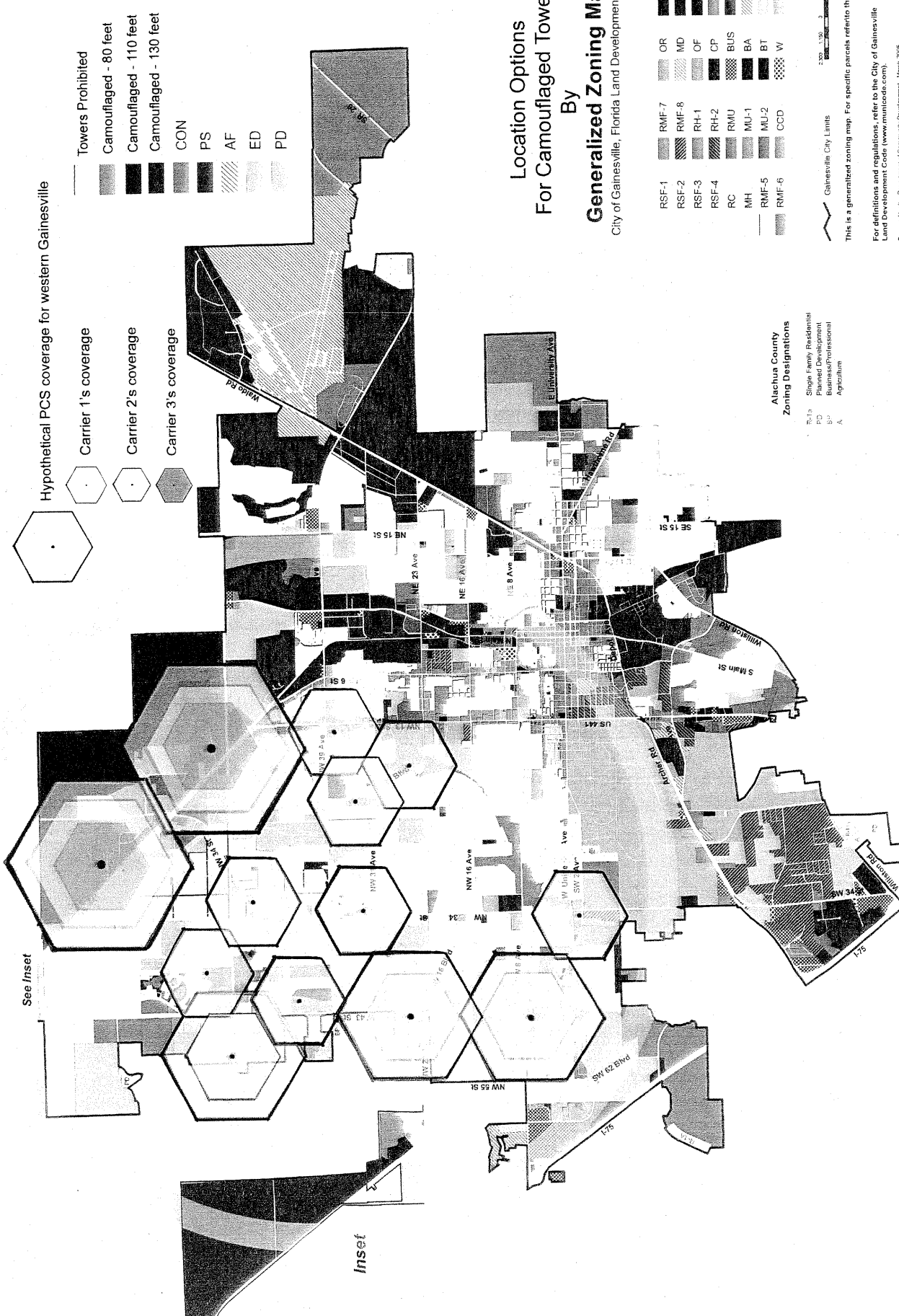
Setbacks. ~~Regardless of the zoning district in which a camouflaged tower is located, the~~ Camouflaged towers shall be set back a distance of at least the height of the tower applicable zoning district setback from any adjoining lot line.

We continue to be appreciative of the opportunity to participate in the City's drafting and review of your wireless ordinance. If there are any questions about this information, please do not hesitate to contact me.

Sincerely,


Laura Belflower

Cc: Mary Solik



Hypothetical PCS coverage for western Gainesville

- Towers Prohibited
- Camouflaged - 80 feet
- Camouflaged - 110 feet
- Camouflaged - 130 feet
- CON
- PS
- AF
- ED
- PD

- Carrier 1's coverage
- Carrier 2's coverage
- Carrier 3's coverage

Location Options By Generalized Zoning Map

City of Gainesville, Florida Land Development Code

- RSF-1
- RSF-2
- RSF-3
- RSF-4
- RC
- MH
- RMF-5
- RMF-6
- RMF-7
- RMF-8
- RH-1
- RH-2
- RMU
- MU-1
- MU-2
- CCD
- OR
- MD
- OF
- CP
- CON
- PS
- BA
- BT
- W
- I-1
- I-2
- AGR

Alachua County Zoning Designations

- R-1 Single Family Residential
- AP-1 Professional/Personal Services
- B-1 Business/Professional
- A Agriculture



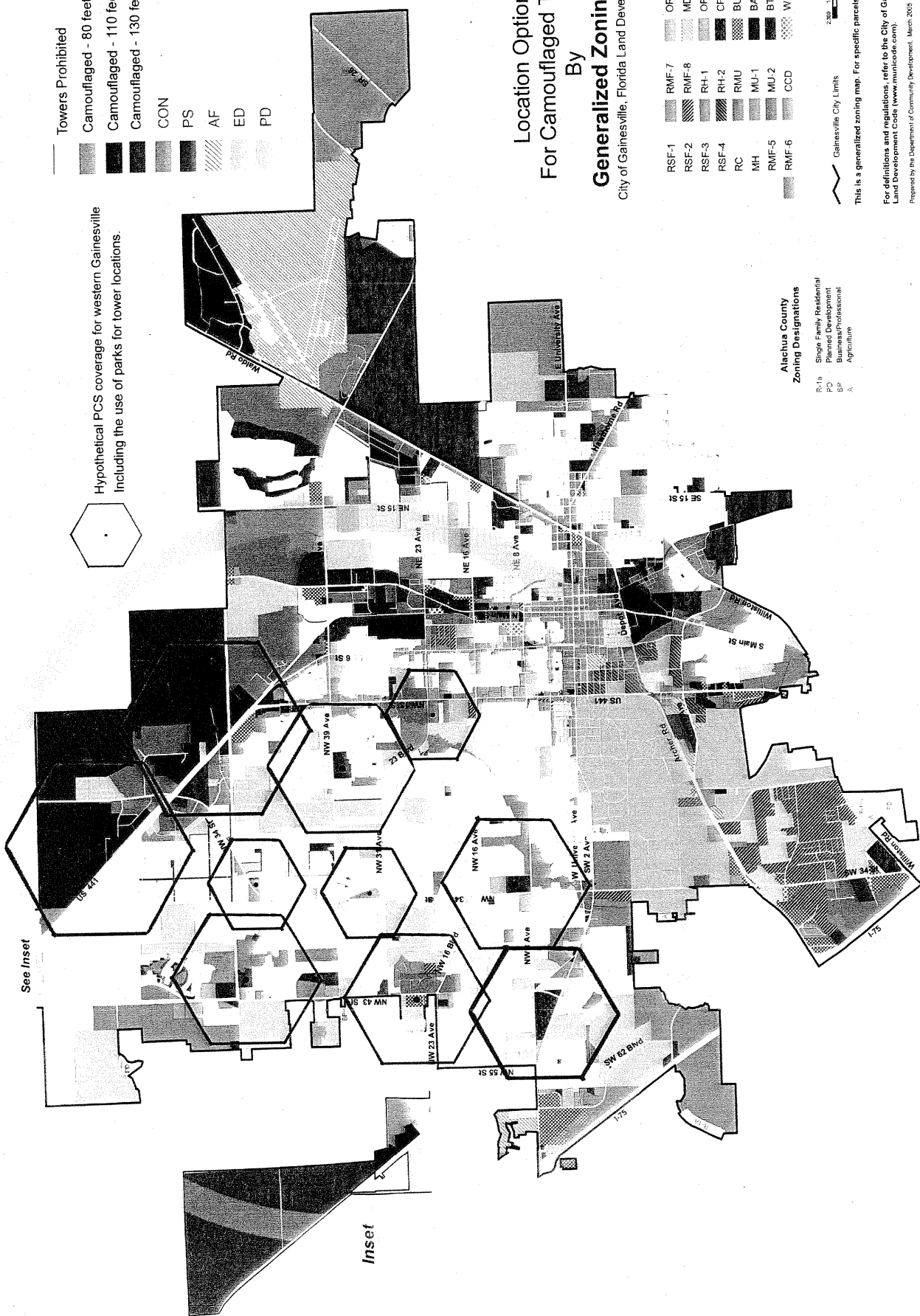
Gainesville City Limits

This is a generalized zoning map. For specific parcels refer to the City of Gainesville, Land D

For definitions and regulations, refer to the City of Gainesville Land Development Code (www.muniiscode.com)

Prepared by the Department of Community Development March 2005





Towers Prohibited

- Camouflaged - 80 feet
- Camouflaged - 110 feet
- Camouflaged - 130 feet
- CON
- PS
- AF
- ED
- PD

Hypothetical PCS coverage for western Gainesville
Including the use of parks for tower locations.

**Location Options
For Camouflaged Towers
By
Generalized Zoning Map**

City of Gainesville, Florida Land Development Code

- RSF-1
- RSF-2
- RSF-3
- RSF-4
- RC
- MH
- RMF-5
- RMF-6
- RMF-7
- RMF-8
- RH-1
- RH-2
- RMU
- MU-1
- MU-2
- CCD
- OR
- MD
- OF
- CP
- BUS
- BA
- BT
- W
- I-1
- I-2
- AGR
- CON
- PS
- AF
- ED
- PD

**Alachua County
Zoning Designations**

- R-1s Single Family Residential
- PD Planned Development
- BP Business/Professional
- A Agriculture



This is a generalized zoning map. For specific parcels refer to the City of Gainesville, Land D

For definitions and regulations, refer to the City of Gainesville Land Development Code (www.municode.com).

Prepared by the Department of Community Development, March 2005