



Interoffice Memorandum

March 29, 2023

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Timothy L. Boldig, Interim Director
Planning, Environmental, and Development Services
Department

CONTACT PERSON: Ted Kozak, AICP, Chief Planner
Zoning Division
(407) 836-5537

SUBJECT: May 2, 2023 – Appeal Public Hearing
Applicant: Bob Chopra for Blue Sky Towers
Appellant: Doreen Gall
BZA Case #SE-23-01-138, December 1, 2022; District 2

Board of Zoning Adjustment (BZA) Case # SE-23-01-138, located at 6448 Plymouth Sorrento Road, Apopka, FL 32712, in the A-1 Citrus Rural district, in District 2, is an appeal to the Board. The subject property is located on the west side of Plymouth Sorrento Road, north of Ondich Road, northeast of S.R. 429 and S.R. 453. The applicant is requesting a special exception to allow the construction of a 170 ft. high monopole communication tower and a variance to allow a residential distance separation of 591.7 ft. in lieu of 1,190 sq. ft.

At the December 1, 2022 BZA hearing, staff recommended approval of the special exception. The variance and the BZA also recommended approval of both the special exception and variance, subject to seven conditions.

The appellant, Doreen Gall, objects to the request due to the proposed location of the tower and the negative effects to the property.

At the February 21, 2023 Board meeting, the appeal Public Hearing was continued to the March 21, 2023 Board meeting at the request of the applicant. At the March 21, 2023 Board meeting, the appeal Public Hearing was continued to the May 2, 2023 Board meeting at the request of Commissioner Moore.

The application for this request is subject to the requirements of Article X, Chapter 2, Orange County Code, as may be amended from time to time, which mandates the disclosure of expenditures related to the presentation of items or lobbying of items before the Board. A copy is available upon request in the Zoning Division.

If you have any questions regarding this matter, please contact Ted Kozak at (407) 836-5537.

ACTION REQUESTED: Deny the applicant's requests or approve the applicant's requests with conditions. District 2

TLB:tk

Attachment

**PLANNING, ENVIRONMENTAL, AND DEVELOPMENT SERVICES DEPARTMENT
ZONING DIVISION PUBLIC HEARING REPORT**

May 2, 2023

The following is a public hearing on an appeal before the Board of County Commissioners on May 2, 2023 at 2:00 p.m.

APPLICANT: BOB CHOPRA FOR BLUE SKY TOWERS

APPELLANT: DOREEN GALL

REQUEST: Special Exception and Variance in the A-1 zoning district as follows:
1) Special Exception to allow the construction of a 170 ft. high monopole communication tower.
2) Variance to allow a residential distance separation of 591.7 ft. in lieu of 1,190 sq. ft.

LOCATION: 6448 Plymouth Sorrento Rd., Apopka, FL 32712, west side of Plymouth Sorrento Rd., north of Ondich Rd., northeast of S.R. 429 and S.R. 453. E. Colonial Drive, Orlando, FL 32826, north side of E. Colonial Dr., east of N. Alafaya Tr., northwest of S.R. 408.

TRACT SIZE: 22 acres

ZONING: A-1

TRACT: #2

PROPERTIES NOTIFIED: 46

BOARD OF ZONING ADJUSTMENT (BZA) HEARING SYNOPSIS ON REQUEST:

Staff described the proposal, including the location of the property, the site plan, elevations, landscape plan, and photos of the site. Staff provided an analysis of the six (6) Special Exception and Variance criteria and the reasons for a recommendation for approval since the proposed communication tower will be completely surrounded by public toll highways and nursery uses. Staff noted that no comments were received in favor of the application and one (1) comment was received in opposition to the application, in addition to several phone calls.

The applicant briefly discussed the request, the compatibility of the area and agreed with the staff recommendation.

There was no one in attendance to speak in favor of the request and three were in attendance to speak in opposition to the request.

The BZA discussed the distance separation requirements to the closest residences, the nursery operations of the adjacent properties and concerns about the tower's compatibility with the surrounding area. The BZA made a motion to deny the application, which failed by a tied 3-3 vote, with one absent. The BZA recommended approval of the Special Exception and Variance by a 4-2 vote, with one absent, subject to the seven (7) conditions in the staff report.

BZA HEARING DECISION:

A motion was made by Roberta Walton Johnson, seconded by Juan Velez and carried to recommend APPROVAL of the Special Exception request in that the Board finds it meets the requirements governing Special Exceptions as spelled out in Orange County Code, Section 38-78, and that the granting of the Special Exception does not adversely affect general public interest and APPROVAL of the Variance request in that the Board finds it meets the requirements of Orange County Code, Section 30-43(3); further, said approval is subject to the following conditions, (4 in favor, 2 opposed, and 1 absent):

1. Development shall be in accordance with the site plan and tower specifications received October 18, 2022, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. A permit for the communication tower shall be obtained within 3 years of final action on the application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.
5. All new communication towers shall be designed and constructed to accommodate at least one (1) other service provider.
6. The applicant for a new communication tower shall provide a notarized letter acknowledging that the communication tower is designed and will be constructed to accommodate at least one (1) other service provider.
7. All service providers shall cooperate in good faith with other service providers to accomplish co-location of additional antennas on communication towers which are existing, permitted, or otherwise authorized by Orange County, where feasible.

**Appellant Information**Name: Doreen GallAddress: 6318 Plymouth Sorrento Rd. Apopka FL 32712Email: dgall@live.com Phone #: _____BZA Case # and Applicant: SE-23-01-138 Bob Chopra for Blue Sky TowersDate of BZA Hearing: December 1, 2022

Reason for the Appeal (provide a brief summary or attach additional pages of necessary):

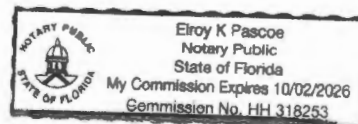
Received Public Hearing notice 11-21-22, which only
left eight business days before 12-1-22 having to find an
attorney. County and applicant had limited time to
prepare. I need to return counsel to protect my
investment.

Signature of Appellant: Doreen Gall Date: 12-13-22STATE OF FLORIDA
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this 13 day of DECEMBER, 2022 by
Doreen Gall who is personally known to me or who has produced Florida ID as
identification and who did/did not take an oath.
BY MEANS OF PHYSICAL PRESENCE

E. Pascoe
Notary Public Signature

Notary Stamp:



NOTICE: Per Orange County Code Section 30-45, this form must be submitted within 15 days after the Board of Zoning Adjustment meeting that the application decision was made.

Fee: \$691.00 (payable to the Orange County Board of County Commissioners)

Note: Orange County will notify you of the hearing date of the appeal. If you have any questions, please contact the Zoning Division at (407) 836-3111.

See Page 2 of application for the Appeal Submittal Process.

COUNTY OF ORANGE
STATE OF FLORIDA

-----X
In the Matter of the Application of:

Blue Sky Towers III, LLC

For Site Plan Approval, Special Exception and Variance

Premises: 6448 Plymouth Sorrento Road
Apopka, Florida

Parcel #: 01-20-27-0000-00-006

Case # SE-23-01-138
-----X

MEMORANDUM IN SUPPORT OF APPEAL

Respectfully submitted,

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Timothy Gall
Marcia Nesler
Jason SanPedro
Rebekah SanPedro
Leslie Diller

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Preliminary Statement

Blue Sky Towers III, LLC (*Blue Sky*) is a commercial site development company which seeks to construct a 170-foot seventeen (17) story cell tower in at 6448 Plymouth Sorrento Road, Apopka, FL 32712 in the heart of an A-1 Citrus Rural District consisting of nurseries and single family residences. In connection with this application, they seek a Special Exception and Variance from Orange County Zoning regulations. *Blue Sky* has submitted a letter of intent from T-Mobile indicating that they will collocate on the proposed tower. This 170-foot monopole tower would be wholly incongruous with the surrounding area, and would loom over this beautiful, quiet neighborhood.

It is undisputed that the erection of such tower requires a special exception and variance from the County zoning regulations. As set forth herein, granting *Blue Sky's* application for a special exception and variance to construct such a massive tower would not only violate the Orange County Code, it would inflict upon the nearby homes and surrounding community the precise types of adverse impacts the Code, and particularly its zoning provisions, was explicitly enacted to prevent.

In the otherwise pristine, rural location where *Blue Sky* wants to construct a massive seventeen story tower, the tower would not merely "*stick out like a sore thumb*," it would dominate the skyline for miles in all directions, and it would inflict severe and wholly unnecessary adverse aesthetic impacts upon the nearby homes and surrounding community.

Moreover, the irresponsible placement of such a facility at the proposed location would be greatly exacerbated by the fact that, as addressed herein below, the community would derive no benefit, whatsoever, from the installation.

This memorandum in opposition is being submitted by and on behalf of multiple

homeowners whose homes are situated adjacent to or in close proximity to the proposed site for *Blue Sky's* new cell tower.

As set forth herein below, *Blue Sky's* application must be denied because:

- (a) *Blue Sky* has failed to establish that granting the application would be consistent with requirements of the applicable Code;
- (b) granting the application would violate both the Code and its legislative intent;
- (c) the applicant has failed to establish that the proposed facility: (i) is *actually necessary* for the provision of personal wireless services within the County or (ii) that it is necessary that the facility be built at the proposed site.¹
- (d) the irresponsible placement of the proposed facility would inflict upon the nearby homes and community the precise types of adverse impacts which the Zoning Regulations were enacted to prevent; and
- (e) *Blue Sky* has not established how the denial of its current application would amount to an effective prohibition under the Telecommunications Act of 1996.

As such, it is respectfully submitted that *Blue Sky's* application should be denied in a manner that does not violate the Telecommunications Act of 1996 ("TCA").

POINT I

Granting *Blue Sky's* Application for its Proposed Wireless Telecommunication Facility at the Proposed Location Would Violate Both the Requirements of the Zoning Ordinance and the Legislative Intent Upon Which Those Requirements Were Enacted by the County

As set forth below, *Blue Sky's* application should be denied because granting the application would violate numerous requirements of the Orange County Code, especially those of the Zoning Ordinance.

- A. *Blue Sky's* Application Does Not Comply with the Requirements to Grant a Special Exception or Variance

¹ See Point III, *infra*.

Blue Sky's application must be denied because the application, and all of its supporting submissions, wholly fail to comply with the requirements and limitations of Sec. 30-43 (2) (Chapter 30 – Planning and Development) which grants the board of zoning adjustment the power to recommend the granting or denial of special exceptions. The recommendation of a denial may be made when the special exception is “not in harmony with the purpose and intent of the zoning ordinance.” Further, there shall be a finding that a recommendation to grant a special exception “*shall not adversely affect the public interest....*” Sec. 30-43(2)(d).

Section 30-43 (3)(i) as to the granting of variances requires that:

The board of zoning adjustment shall further make a finding that the granting of the variance ***shall be in harmony with the general purpose and intent of the zoning ordinance, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare....***
(Emphasis supplied)

Clearly the County legislature invested the board of zoning adjustment the power to grant ***and deny*** applications for special exceptions and variances where such application is for construction that is not in harmony with the purpose and intent of the zoning ordinance, will be injurious to the neighborhood or otherwise detrimental to the public welfare. Granting *Blue Sky's* application would be counter to the purpose and intent of the zoning ordinance because it will adversely affect not only the individual homeowners nearby, but would negatively change the character of the whole neighborhood. A 170 foot tower, (which will likely become a 190 foot tower, see discussion below), in this bucolic, rural neighborhood would loom over the entire neighborhood.

The criteria for a special exception enumerated in Sec. 38-78 requires that the proposed tower

- (1) be consistent with the County's comprehensive plan

- (2) *be similar and compatible with the surrounding area*
- (3) *shall not act as a detrimental intrusion and*
- (4) *shall be similar in characteristics* associated with the majority of uses currently permitted in the area.

A probable 190 foot, 19 story tower is in no way similar and compatible with the existing, surrounding neighborhood, and there can be no doubt that it would be a detrimental intrusion to those living there.

Stated goals and objectives of the Orange County 2010-2030 Comprehensive Plan require a denial of the request for special exception and variance. The applicable sections are as follows:

GOAL N1 Maintain the residential character of neighborhoods...

OBJ N1.1 Orange County shall ensure that future land use changes are compatible with or do not adversely impact existing or proposed neighborhoods.

GOAL N3 Improve the quality and appearance of existing and new neighborhoods.

OBJ N3.1 The integrity of neighborhoods shall be protected....

It cannot seriously be said that the erection of a 190 foot tower in a quiet, rural neighborhood is in keeping with the goals and objectives of the Comprehensive Plan nor Sec. 38-78 (1). Ensuring the integrity of the existing rural character of the neighborhood requires denial of *Blue Sky's* application.

Section 38-1427 governs the siting and construction of communication towers. Subsection (a) sets forth the County's legislative findings, intent and purpose. The most significant provisions state that the section is designed to:

....

(2) To *protect* residential areas and land uses from potential adverse impacts of communication towers;

(3) To minimize adverse visual impacts of communication towers through careful design, siting, landscape screening, and innovative camouflaging techniques;

...

(6) To consider the public health and safety of communication towers;

(7) To avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

In addition, subsection (n) sets forth standards and criteria for review of special exception requests in line with its intent and purpose. Because of well-founded concern over the erection of cell towers in residential neighborhoods, particularly with respect to the aesthetic and compatibility concern, the board “*shall consider and weigh the aesthetic impact and compatibility issues* ... when determining whether or not to grant special exception approval.”

(Sec. 38-1427(n)(1) and (7) *emphasis added.*) It must also be noted that the enunciated standards are *minimum standards*. (Sec. 38-1427(n)(8)).

Particularly important to *Blue Sky's* application are the standards detailed in Sec. 38-1427 (d)(2)(d) which particularize the “communication tower separation from off-site use or designated area.” Exhibit B to this section requires that for a monopole tower higher than 140 feet there must be a separation of 980 feet or 700% of the height of the tower, whichever is greater. In this case 700% of 170 feet would be 1190 feet. *Blue Sky's* application seeks approval of a separation of only 591.7 feet – only about *half* of the required separation. And it must be remembered that the tower could be extended to 190 feet without the necessity of any County approval. Not only does the failure to comply with required separation affect the aesthetics of the surrounding homes, but it has a very serious impact on safety. Structural failure, debris fall,

and fire are very real dangers associated with cell towers. These grave concerns have consequences for emergency personnel as well as for the people occupying nearby homes and buildings.

Under the circumstances, it is *more* than apparent that the proposed tower does not belong in this neighborhood.

As is set forth below, and as established by the admissible evidence submitted herewith, if the County were to issue *Blue Sky* its desired permit, the irresponsible placement of a wireless telecommunication facility at the proposed location would inflict upon the nearby homes and community the precise types of adverse impacts which the Telecommunications Tower provisions of the Code was specifically enacted to prevent.

It is clear that Orange County has created zoning regulations that permit site developers to erect cell towers only within a strict set of regulations. *Blue Sky* has failed to show, convincingly, that there is no other tower or collocation opportunity available, nor have they explained why collocation would be impractical. They have not submitted a detailed explanation of why a less intrusive site was not selected, nor satisfactorily demonstrated a hardship or any benefit that would result from the selection of a rural, *residential* site. Conclusory statements that no other sites were available are insufficient to warrant granting a special exception and variance.

B. *Blue Sky's Irresponsible Placement of its Proposed Wireless Facility Will Inflict Substantial Adverse Impacts On the Aesthetics and Character of the Area*

The proposed tower will be a "detrimental intrusion" to the community as envisioned by Sec. 38-78 (3). It is not compatible with the general intent and purpose of the zoning ordinance, nor is it similar in character with the neighborhood. (*Sec. 38-78 (2) and (4)*).

It is beyond argument that the irresponsible placement of *Blue Sky*'s proposed 170 (potentially 190) foot wireless telecommunications tower at the proposed location will cause the facility to *stand out like a sore thumb*, dominate the skyline, and inflict substantial adverse aesthetic impacts upon the nearby homes and rural countryside.

Blue Sky submitted various photographs of a balloon test conducted on November 8, 2022. None of the photographs indicate the addresses where the photos were taken. Most importantly, none of the photos are taken from the perspective of the homeowners who will be affected by the proposed tower. Therefore, none of these photos depict just how detrimental the proposed tower will be to this neighborhood.

Federal courts around the country, including the United States Court of Appeals for the Second Circuit, have held that significant or unnecessary adverse aesthetic impacts are proper legal grounds upon which a local government may deny a zoning application seeking approval for constructing a wireless telecommunication facility. *See Omnipoint Communications Inc. v. The City of White Plains*, 430 F.3d 529 (2d Cir. 2005); *T-Mobile Northeast LLC v. The Town of Islip*, 893 F.Supp.2d 338 (2012); *Crown Castle NG E. Inc. v. Town of Greenburgh, N.Y.*, 552 F. App'x 47, 50 (2d Cir. 2014).

"[The municipality] may consider a number of factors, including the height of the proposed tower, the proximity of the tower to residential structures, the nature of uses on adjacent and nearby properties, the surrounding topography, and the surrounding tree coverage and foliage. We, and other courts, have held that these are legitimate concerns for a locality." *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 994 (9th Cir. 2009) *See also Sprint Telephony PCS, L.P. v. Cty. of San Diego*, 543 F.3d 571, 580 (9th Cir. 2008) (stating that the zoning board may consider "other valid public goals such as safety and aesthetics"); *T-Mobile*

Cent., LLC v. Unified Gov't of Wyandotte County, Kan., 546 F.3d 1299, 1312 (10th Cir.2008) (noting that “aesthetics can be a valid ground for local zoning decisions”); and *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 494 (2d Cir.1999) (recognizing that “aesthetic concerns can be a valid basis for zoning decisions”).

C. Probative Evidence of the Actual Adverse Aesthetic Impacts Which the Facility Will Inflict Upon the Nearby Homes

As logic would dictate, and as federal courts have held, it is the homeowners who are best suited to accurately assess the nature and extent of the adverse aesthetic impacts upon their homes of an irresponsibly placed wireless telecommunication facility. This is especially true of homeowners whose property is adjacent or in close proximity to a proposed cell tower.

The United States Court of Appeals for the Second Circuit has recognized that when a local government is considering an application for a wireless facility, it should accept as direct evidence of the adverse aesthetic impacts that a facility would inflict upon nearby homes, statements, and letters from the actual homeowners—*i.e.*, because they are in the best position to know and understand the actual extent of the impact they stand to suffer. *See, e.g., Omnipoint Communications Inc. v. The City of White Plains*, 430 F.3d 529 (2d Cir. 2005).

Federal Courts have consistently held that adverse aesthetic impacts are a valid basis for denying wireless facilities applications. *Green Mountain Realty Corp. v. Leonard*, 688 F.3d 40, 53 (1st Cir. 2012); *Omnipoint Comm. Inc. v. City of White Plains*, 430 F.2d 529 (2d Cir. 2005); *VWI Towers LLC v. Town of N. Andover Pl. Bd.*, 404 F. Supp. 3d 456 (D. Mass. 2019).

Annexed collectively hereto as **Exhibit “A”** are letters from homeowners whose homes are adjacent to or are situated in close proximity to the proposed facility.

Within each of those letters, the homeowners personally detail the specific adverse aesthetic impacts that the proposed facility would inflict upon their respective homes. They have provided detailed and compelling explanations of the dramatic adverse impacts their properties would suffer if the proposed installation of a wireless telecommunication facility were permitted to proceed. They describe the reasons why they moved to their neighborhood and how they love their beautiful, rural surroundings. The erection of *Blue Sky's* cell tower would abrogate those reasons and destroy what's special about their homes, and their quality of life.

The specific and detailed impacts described by the adjacent and nearby property owners constitute "substantial evidence" of the adverse aesthetic impacts they stand to suffer because they are not limited to "generalized concerns" but instead contain detailed descriptions of how the proposed facility would dominate the views from their backyards, decks where they enjoy their morning coffee and entertain family and friends, their front yards, bedroom windows, living rooms, and "from all over" their properties, and "from every angle" therefrom. The Eleventh Circuit has determined that this type of specifically detailed aesthetic concern constitutes "substantial evidence" upon which a local board may deny an application to install a communications facility. *See, Michael Linet, Inc. v. Village of Wellington*, 408 F3d 757 (2005); *Preferred Sites, LLC v. Troup County* 296 F3d 1210 (2002); *Cellco P'ship v. City of Valdosta et al.*, 2021 WL 5773746 (M.D. Ga. 2021); *Wireless Towers, LLC v. City of Jacksonville*, 712 F.Supp.2d 1294 (M.D. Fla. 2010).

As detailed in the letters attached as **Exhibit "A"** the substantial adverse aesthetic impacts the proposed wireless facility's irresponsible placement would inflict upon the nearby homes are the precise type of injurious impacts that the County's zoning ordinance was specifically enacted to prevent.

Accordingly, *Blue Sky's* application should be denied in its entirety.

D. *Blue Sky's Balloon Simulation is Inherently Defective and Should be Disregarded Entirely*

In a hollow effort to induce the County to believe that the installation of the proposed 170-foot monopole tower *would not* inflict a severe adverse aesthetic impact upon the County, *Blue Sky* has submitted photographs of a balloon test which does not serve the purpose for which it has been purportedly offered.

The sole purpose for which local governments require applicants to submit photo-simulations of a proposed wireless telecommunication tower is to require applicants to provide the reviewing authority with a clear visual image of the actual aesthetic impacts that a proposed installation will inflict upon the nearby homes – homes with direct views of the facility and residential community.

Not surprisingly, as *Blue Sky* does here, applicants often seek to disingenuously minimize the visual impact within such submissions by *deliberately omitting* from any such photo simulations any images actually taken from the homes that would sustain the most severe adverse aesthetic impacts.

This, of course, is precisely what *Blue Sky* has done in the present case.

It has submitted a package of photo simulations but has not included any images taken *from the perspective of the homes which will suffer the most severe adverse aesthetic impacts*. In *Omnipoint Communications Inc. v. The City of White Plains*, 430 F3d 529 (2nd Cir. 2005), the United States Court of Appeals for the Second Circuit explicitly ruled that where a proponent of a wireless facility presents visual impact depictions wherein they “omit” any images from the actual perspectives of the homes which stand to suffer the most impacts from

the proposed installation, such presentations are inherently defective, and should be disregarded by the respective government entity that received it.

As was explicitly stated by the Federal Court:

the Board was free to discount Omnipoint's study because it was conducted in a defective manner. . . ***the observation points were limited to locations accessible to the public roads, and no observations were made from the residents' backyards much less from their second story windows. Id.***

Here, *Blue Sky*'s Simulation does not contain a single image taken from the perspective of any of the homes that stand to suffer the greatest aesthetic impact, including those homes belonging to the homeowners whose adverse aesthetic impact letters are attached hereto as **Exhibit "A."** Instead, it contains only photos taken from public roads, from perspectives particularly selected to minimize the appearance of the adverse aesthetic impact, and it in no way accurately depicts the images those homeowners will see each and every time they look out their bedroom, kitchen, or living room window, or spend time enjoying their backyard.

This is the exact type of "presentation" that the Federal Court explicitly ruled to be defective in *Omnipoint*. As such, *Blue Sky*'s Simulation is inherently defective and void of any evidentiary value under federal law. And while *Blue Sky* may disingenuously argue, as many applicants do, that they are limited to public areas when they take photos, neither *Blue Sky* nor anyone on their behalf, ever asked any of the affected homeowners for permission to take photos from their premises in order to depict the actual adverse effects the proposed tower would cause to these properties.

In accord with the federal court's holding in *Omnipoint*, *Blue Sky*'s visual impact analysis should be recognized as inherently defective and disregarded in its entirety.

E. The Proposed Installation Will Inflict Substantial and Wholly Unnecessary Losses in the Values of Adjacent and Nearby Residential Properties

In addition to the adverse impacts upon the aesthetics and residential, bucolic character of the neighborhood, such an irresponsibly placed wireless telecommunications tower in an area where it would be highly visible, especially from several residential homes, would inflict upon such homes a severe adverse impact upon the actual value of those residential properties.

As established by the evidence submitted herewith, if *Blue Sky* is permitted to install its proposed 170 foot tower, which is likely to be increased to a height of 190 feet (see Point II, *infra*), it would inflict upon the nearby homes dramatic losses in property value.

As has been recognized by federal courts, it is perfectly proper for a local zoning authority to consider as direct evidence of the reduction in property values that an irresponsibly-placed wireless facility would inflict upon nearby homes the professional opinions of licensed real estate brokers (as opposed to appraisers) who provide their professional opinions as to the adverse impact upon property values that would be caused by the installation of the proposed wireless facility *See Omnipoint, supra*. This is especially true when they possess years of real estate sales experience within the specific community and geographic area at issue.

To guard against the possibility that the irresponsible placement of a cell tower would adversely impact the property values of nearby properties, the County enacted the Communication Towers section of the Zoning Ordinance which explicitly seeks to minimize the negative impact of telecommunications and preserve the residential character and integrity of the community and prevent adverse impacts to surrounding homes.

Across the country, both real estate appraisers² and real estate brokers have rendered professional opinions that simply support what common sense dictates.

When wireless facilities are installed unnecessarily close to residential homes, such homes suffer material losses in value, typically ranging up to 20%.³

In the worst cases, facilities built near existing homes have caused the homes to be rendered wholly unsaleable.⁴

As evidence of the adverse impact that the proposed facility would have upon the property values of the homes that would be adjacent and/or in close proximity to it, annexed

² See e.g. a February 22, 2012 article discussing a NJ appraiser's analysis wherein he concluded that the installation of a Wireless Facility in close proximity to a home had reduced the value of the home by more than 10%, go to <http://bridgewater.patch.com/articles/appraiser-t-mobile-cell-tower-will-affect-property-values>

³ See, e.g., a report published in "The Empirical Economics Letters," 18(8): August 2019 ISSN 1681 8997 by Joseph Hale and Jason Beck concluded that the proximity of cell towers does have a negative effect on the sale prices of nearby homes.

See also, "Wireless Towers and Home Values: An Alternative Valuation Approach Using a Spatial Econometric Analysis," by Ermanno Affuso, J. Reid Cumings and Huubin Le, published in February of 2017. This study used a hedonic spatial autoregressive model to assess the impact of wireless communication towers on the value of residential properties. This report also concluded that the proximity of a cell tower has a negative impact on the sale process of nearby homes.

In a series of three professional studies conducted between 1984 and 2004, one set of experts determined that the installation of a Wireless Facility in close proximity to a residential home reduced the value of the home by anywhere from 1% to 20%. These studies were as follows:

The Bond and Hue - *Proximate Impact Study* - The Bond and Hue study conducted in 2004 involved the analysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Wireless Facility reduced price by 15% on average.

The Bond and Wang - *Transaction Based Market Study*

The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Wireless Facility reduced the price between 20.7% and 21%.

The Bond and Beamish - *Opinion Survey Study*

The Bond and Beamish study involved surveying whether people who lived within 100' of a Wireless Facility would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%.

⁴ Under FHA regulations, no FHA (federally guaranteed) loan can be approved for the purchase of any home which is situated within the fall zone of a Wireless Facility. See HUD FHA HOC Reference Guide Chapter 1 - hazards and nuisances. As a result, there are cases across the country within which: (a) a homeowner purchased a home, (b) a Wireless Facility was thereafter built in close proximity to it, and (c) as a result of same, the homeowners could not sell their home, because any buyer who sought to buy it could not obtain an FHA guaranteed loan. See, e.g., October 2, 2012 Article "...Cell Tower is Real Estate Roadblock" at <http://www.wfaa.com/news/consumer/Ellis-County-Couple--Cell-tower-making-it-impossible-to-sell-home--172366931.html>.

hereto as **Exhibit “B”** are letters setting forth the professional opinions of licensed real estate professionals, who are familiar with the specific real estate market at issue, and who submit their professional opinions that the installation of the proposed facility would cause property values of the affected homes to be reduced by as much as 25% and would make those homes more difficult to sell, even at reduced purchase prices.

Given the significant reductions in property values that the proposed installation would inflict upon the nearby homes, the granting of *Blue Sky*'s application would inflict upon the residential neighborhood the very type of injurious impacts that the County's Code was specifically intended to prevent.

Therefore, *Blue Sky*'s application should be denied.

POINT II

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 Allows *Blue Sky* to Increase the Height of the Facility Without Further or Prior Zoning Approval

The adverse impacts upon the nearby homes and the County as a whole would be substantial if the proposed tower were constructed at the 170 foot height currently proposed by *Blue Sky*. Unfortunately, once the tower is built, *Blue Sky* could *unilaterally* choose to increase the height of the tower to as much as 190 feet, and the County would be legally prohibited from stopping them. This is due to the constraints of the Middle-Class Tax Relief and Job Creation Act of 2012.

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 provides that notwithstanding § 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and *shall approve*, any eligible request for a

modification of an existing wireless facility or base station that does not substantially change the physical dimensions of such facility or base station. *See* 47 U.S.C. § 1455(a).

Under the FCC's reading and interpretation of § 6409(a) of the Act, local governments are prohibited from denying modifications to wireless facilities unless the modifications will "substantially change" the physical dimensions of the facility, pole, or tower.

The FCC defines "substantial change" to include any modification that would increase the height of the facility by more than ten (10%) percent of the height of the tower, plus the height of an additional antenna, plus a distance of ten (10) feet to separate a new antenna from the pre-existing top antenna, up to a maximum height increase of twenty (20) feet.

As set forth in Point III below, *Blue Sky* has not even established that the proposed 170 foot tower is actually needed to provide wireless coverage within the County, let alone one that is 190 feet high.

Thus, *Blue Sky*'s application should be denied.

POINT III

Blue Sky Has Failed to Proffer Probative Evidence Sufficient to Establish a Need for the Proposed Wireless Facility at the Location Proposed, or That the Granting of its Application Would Be Consistent With the Smart Planning Requirements of the County's Communication Towers Zoning Ordinance

The intent behind the provisions of the Communication Towers regulations was to promote "smart planning" of wireless infrastructure within the County.

Smart planning involves the adoption and enforcement of zoning provisions that require wireless telecommunication facilities to be *strategically placed* so as to minimize the number of facilities needed while saturating the County with complete wireless coverage (i.e., they leave

no gaps in wireless service) while avoiding any unnecessary adverse aesthetic or other adverse impacts upon homes and communities situated in close proximity to such facilities.

To determine if a wireless telecommunications facility would be consistent with smart planning requirements, sophisticated Boards require wireless carriers and/or site developers to provide direct evidentiary proof of:

- (a) the *precise locations, size, and extent of any geographic gaps in personal wireless services* that are being provided by a specifically identified wireless carrier, which provides personal wireless services within the respective jurisdiction, and
- (b) the *precise locations, size, and extent of any geographic areas* within which that identified wireless carrier suffers from a capacity deficiency in its coverage.

The reason such information is important to local boards is that without it, those boards are incapable of knowing: (a) if and to what extent a facility will remedy any *actual* gaps or deficiencies which may exist and (b) if the placement is in such a poor location that it would all but require that more facilities be built because the facility did not actually cover the gaps in service which actually existed, thereby causing an unnecessary redundancy in wireless facilities within the County.

In the present case, *Blue Sky* has failed to provide adequate hard data to establish that the placement of its facility is, in any way, consistent with the smart planning provisions. Therefore, *Blue Sky* has failed to provide actual probative evidence to establish: (a) the *actual location of gaps* (or deficient capacity locations) in personal wireless services within the County and (b) why or how their facility is the best and/or least intrusive means of remedying those gaps.

A. The Applicable Evidentiary Standard

Within the context of zoning applications such as the one filed by *Blue Sky* herein, the applicant is required to prove:

- (1) that a *significant* gap in the carrier's service exists and
- (2) that the proposed tower is the "least intrusive" means of closing that gap.

See, Celco, supra; T-Mobile South, LLC v. City of Roswell, 2016 WL 11745937 (N.D. Ga. 2016).

For a plaintiff to prevail on an effective prohibition claim, they must show both that a significant gap exists in wireless coverage and that its proposed facility is the least intrusive means to close that gap." *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630, 643 (2d Cir. 1999); *Prime Tower Dev., LLC v. Clayton County* 2020 WL 13573500 (N.D. Ga. 2020).

Notably, the burden is on the carrier to establish the existence of a *significant* gap in service.⁵

B. *Blue Sky* Has Failed to Submit Any Probative Evidence to Establish the Need for the Facility at the Proposed Height and Location

Blue Sky's application presents absolutely no hard data. Hard data is *probative evidence* that would establish: (a) there is an actual public need for the facility, which (b) necessitates the installation of a new facility, and (c) requires it to be built at the specifically chosen location, (d) on the specifically chosen site (as opposed to being built upon alternative

⁵ Please note that establishing a gap in wireless services is *not* enough to prove the need for a wireless facility; rather, the applicant must prove that "a significant gap" in wireless service coverage exists at the proposed location. *See, e.g., Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d 38, 50 (1st Cir. 2009); *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 731 (9th Cir.2005). Here, *Blue Sky* failed to proffer substantial evidence that a gap in wireless services exists—let alone that this purported gap is "significant" within the meaning of the TCA and established federal jurisprudence.

less-intrusive locations).

Without the proper data, it is impossible for the County to reasonably comply with the smart planning requirements set forth in its own Communication Towers ordinance. Furthermore, it severely hampers the County's ability to determine if the proposed location is the least intrusive means of providing personal wireless service to the community. Finally, without having the necessary information regarding where possible coverage gaps may or may not exist, it would be entirely irresponsible and illogical for the County to make a determination on *Blue Sky's* application, as they do not even know where, or whether, such facility is needed.

(i) The FCC Deems Propagation Maps to Be Unreliable

Recently, both the FCC and the California Public Utilities Commission have recognized the absolute need for hard data rather than the commonly submitted propagation maps, which can be easily manipulated to create over-exaggeration in need and significant gaps.

As is discussed within the FCC's July 17, 2020, proposed order, FCC-20-94, "[i]n this section, we propose requiring mobile providers to submit a statistically valid sample of on-the-ground data (i.e., both mobile and stationary drive-test data) as an additional method to verify mobile providers' coverage maps."⁶ The FCC defines drive tests as "tests analyzing network coverage for mobile services in a given area, i.e., measurements taken from vehicles traveling on roads in the area."⁷ Further within the FCC's proposed order, several commenting entities also agree that drive test data is the best way to ascertain the most reliable data. For example: (i) "City of New York, California PUC, and Connected Nation have asserted that on-the-ground data, such as drive-test data, are critical to verifying services providers' coverage data..."⁸ (ii)

⁶ See page 44 paragraph 104 of proposed order FCC-20-94.

⁷ See page 44 fn. 298 of proposed order FCC-20-94.

⁸ See page 45 fn. 306 of proposed order FCC-20-94.

California PUC asserted that ‘drive tests [are] the most effective measure of actual mobile broadband service speeds’;⁹ and (iii) “CTIA, which opposed the mandatory submission of on-the-ground data, nonetheless acknowledged that their data ‘may be a useful resource to help validate propagation data...’”¹⁰

California PUC has additionally stated that “the data and mapping outputs of propagation-based models will not result in accurate representation of actual wireless coverage” and that, based on its experience, “drive tests are required to capture fully accurate data for mobile wireless service areas.”¹¹

Moreover, proposed order FCC-20-94, on page 45, paragraph 105, discusses provider data. Specifically, the FCC states:

“The Mobility Fund Phase II Investigation Staff Report, however, found that drive testing can play an important role in auditing, verifying, and investigating the accuracy of mobile broadband coverage maps submitted to the Commission. The Mobility Fund Phase II Investigation Staff Report recommended that the Commission require providers to “submit sufficient actual speed test data sampling that verifies the accuracy of the propagation model used to generate the coverage maps. Actual speed test data is critical to validating the models used to generate the maps.”

Of greatest import, on August 18, 2020, the FCC issued a final rule in which the FCC found that requiring providers to submit detailed data about their propagation models will help the FCC verify the accuracy of the models. Specifically, 47 CFR §1.7004(c)(2)(i)(D) requires “[a]ffirmation that the coverage model has been validated and calibrated at least one time using on the ground testing and/or other real-world measurements completed by the providers or its vendor.”

The mandate requiring more accurate coverage maps has been set forth by Congress.

⁹ *Id.*

¹⁰ *Id.*

¹¹ <https://arstechnica.com/tech-policy/2020/08/att-t-mobile-fight-fcc-plan-to-test-whether-they-lie-about-cell-coverage/>

“As a result, the U.S. in March passed a new version of a bill designed to improve the accuracy of broadband coverage maps.”¹² “The Broadband Deployment Accuracy and Technological Availability (DATA) Act requires the FCC to collect more detailed information on where coverage is provided and to ‘establish a process to verify the accuracy of such data, and more.’”¹³

However, despite Congress’s clear intent to “improve the quality of the data,”¹⁴ several wireless carriers have opposed the drive test/real-world data requirement as “too costly,” or they refuse to share it, calling it “proprietary information.”

“The project – required by Congress under the Broadband DATA Act – is an effort to improve the FCC’s current broadband maps. Those maps, supplied by the operators themselves, have been widely criticized as inaccurate.”¹⁵

If the FCC requires further validation and more accurate coverage models, there is no reason Orange County should not do the same. For the foregoing reasons, dropped call records and drive test data are essential to the Board’s ability to render an informed decision on *Blue Sky*’s application.

(ii) Hard Data and the Lack Thereof

Across the entire United States, applicants seeking approvals to install wireless facilities provide local governments with *hard data*, as both: (a) actual evidence that the facility they seek to build is actually necessary and (b) actual evidence that granting their application would be consistent with smart planning requirements.

¹² <https://www.cnet.com/news/t-mobile-and-at-t-dont-want-to-drive-test-their-coverage-claims/>

¹³ *Id.*

¹⁴ *Id.*

¹⁵ [https://www.lightreading.com/test-and-measurement/Blue Sky-t-mobile-atandt-balk-at-drive-testing-their-networks/d/d-id/763329](https://www.lightreading.com/test-and-measurement/Blue-Sky-t-mobile-atandt-balk-at-drive-testing-their-networks/d/d-id/763329)

The most accurate and least expensive evidence used to establish the location, size, and extent of both *gaps* in personal wireless services, and areas suffering from *capacity deficiencies*, are two specific forms of *hard data*, which consist of: (a) dropped call records and (b) actual drive test data. Both local governments and federal courts consider hard data to ascertain whether a significant gap in wireless coverage exists at that exact location.

In fact, unlike “expert reports,” RF modeling, and propagation maps, all of which can easily be manipulated to reflect whatever the preparer wants them to show, *hard data* is straightforward and less likely to be subject to manipulation, unintentional error, or inaccuracy.

Dropped call records are generated by a carrier’s computer systems. They are typically extremely accurate because they are generated by a computer that already possesses all of the data pertaining to dropped calls, including the number, date, time, and location of all dropped calls suffered by a wireless carrier at any geographic location and for any chronological period.

With just a few keystrokes, each carrier’s system can print out a precise record of all dropped calls for any period of time at any geographic location. Thus, it is highly unlikely that someone could enter false data into a carrier’s computer system to materially alter that information.

In a similar vein, actual drive test data does not typically lend itself to the type of manipulation that is almost uniformly found in “computer modeling,” the creation of hypothetical propagation maps, or “expert interpretations” of actual data, all of which are so easily manipulated that they are essentially rendered worthless as a form of probative evidence.

Actual raw drive test data consists of actual records of actual recorded strengths of a carrier’s wireless signal at precise geographic locations.

(iii) *T-Mobile Has Substantial Coverage In the Area*

As is a matter of public record, T-Mobile maintains an internet website at the internet domain address of <http://www.t-mobile.com>.

In conjunction with its ownership and operation of that website, T-Mobile maintains a database containing geographic data points that cumulatively form a geographic inventory of T-Mobile's *actual current coverage* for its wireless services.

As maintained and operated by T-Mobile, that database is linked to T-Mobile's website and serves as the data source for an interactive function, which enables users to access T-Mobile's own data to ascertain both: (a) the existence of T-Mobile's wireless coverage at any specific geographic location, and (b) the level, or quality of such coverage.

T-Mobile's interactive website translates their *actual coverage data* to provide imagery whereby areas that are covered by T-Mobile's service are depicted in red, and areas where there is a lack (or gap) in coverage are depicted in white.

The website further translates the data from T-Mobile's database to specify the actual *coverage* at any specific geographic location. A true copy of a record obtained as a screenshot from T-Mobile's website¹⁶ on January 8, 2023, is attached as **Exhibit "C."** This Exhibit depicts T-Mobile's actual wireless coverage at and around the proposed site, 6448 Plymouth Sorrento Road, Apopka, Florida and reflects T-Mobile's own data showing no coverage gap in that area.

The stark contrast between the maps T-Mobile provides to its potential customers to sell them its services and the uncorroborated propagation maps submitted to this Board in order to sell their proposed tower illustrates the ease with which data can be manipulated to achieve a

¹⁶ <http://www.t-mobile.com>

particular objective. Hard data is not susceptible to such manipulation.

Blue Sky's submissions are entirely void of any probative hard data establishing that there is any need for the facility. As such, it is beyond argument that *Blue Sky* has wholly failed to "demonstrate and prove" that its facility is necessary for it to provide personal wireless services within the County.

(iv) *ExteNet Systems, Inc. v. Village of Flower Hill
And Flower Hill Board of Trustees*

On July 29, 2022, the Federal District Court for the Eastern District of New York issued an important decision that reiterates the holding in *Willloth*. While noting that "improved capacity and speed are desirable (and, no doubt, profitable) goals in the age of smartphones, ... they are not protected by the [TCA]." *ExteNet Systems, Inc. v. Village of Flower Hill*, No. 19-CV-5588-FB-VMS (E.D.N.Y. July 29, 2022). In the *ExteNet v. Flower Hill* case, the Board found significant adverse aesthetic and property values impact and, most importantly, no gap in wireless coverage and no need to justify the significant adverse impacts. Quoting *Omnipoint, supra*, the Court found that the lack of "public necessity" can justify a denial under New York law. "In the context of wireless facilities, public necessity requires the provider 'to demonstrate that there was a gap in cell service, and that building the proposed [facility] was more feasible than other options.'" *Id.* Further, the Judge held that "as with the effective prohibition issue, the lack of a gap in coverage is relevant here and can constitute substantial evidence justifying denial...And, since one reason given by the Board for its decision was supported by substantial evidence, the Court need not evaluate its other reasons."

The applicant bears the burden of proof and must show that there is a significant gap in service – not just a lack of 5G service. A cell phone is able to "downshift" – that is, from 5G to 4G or from 4G to 3G, etc. – if necessary to maintain a call throughout coverage areas. Unless

there is an actual gap, the call will continue uninterrupted. Therefore, there's only a significant gap when there is no service at all. *Flower Hill, supra*.

Similarly, in this instance, *Blue Sky* has failed to produce any evidence of a truly significant gap in wireless service. *Blue Sky* has failed to meet its burden, and thus their application should be denied.

POINT IV

To Comply With the TCA, *Blue Sky*'s Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith

The Telecommunications Act of 1996 requires that any decision denying an application to install a wireless facility: (a) be made in writing and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

A. The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a local government must issue a written denial which is separate from the written record of the proceeding, and the denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing court to evaluate the evidence in the record supporting those reasons. *See, e.g., Preferred Sites, supra; MetroPCS v. City and County of San Francisco*, 400 F.3d 715 (9th Cir. 2005).

B. The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. "Substantial evidence" means "less than a preponderance, but more than a scintilla." *Preferred Sites, supra*.

Review under this standard is essentially deferential, such that Courts may neither engage in their own fact-finding nor supplant a local zoning board's reasonable determinations. *See, e.g., American Towers, Inc. v. Wilson County*, Slip Copy 59 Communications Reg. P & F 878 (U.S.D.C. M.D. Tennessee January 2, 2014)[3:10-CV-1196].

To ensure that the County's decision cannot be challenged under the Telecommunications Act of 1996, it is respectfully requested that the County deny *Blue Sky's* application in a separate written decision, wherein the County cites the evidence upon which it based its final determination.

C. The Non-Risks of Litigation

All too often, representatives of wireless carriers and/or site developers seek to intimidate local zoning officials with either open or veiled threats of litigation. These threats of litigation under the TCA are, for the most part, entirely hollow.

This is because, even if they file a federal action against the County and win, the TCA does not allow them to recover compensatory damages or attorneys' fees, even when they get creative and try to characterize their cases as claims under 42 U.S.C. §1983.¹⁷

This means that if they sue the County and win, the County does not pay them anything in damages or attorneys' fees under the TCA.

Typically, the only expense incurred by the local government is its own attorneys' fees. Since federal law mandates that TCA cases proceed on an "expedited" basis, such cases typically last only months rather than years.

As a result of the brevity and relative simplicity of such cases, the attorneys' fees

¹⁷ See *City of Rancho Palos Verdes v. Abrams*, 125 S.Ct 1453 (2005), *Network Towers LLC v. Town of Hagerstown*, 2002 WL 1364156 (2002), *Kay v. City of Rancho Palos Verdes*, 504 F.3d 803 (9th Cir 2007), *Nextel Partners Inc. v. Kingston Township*, 286 F.3d 687 (3rd Cir 2002).

incurred by a local government are typically quite small compared to virtually any other type of federal litigation.

Conclusion

In view of the foregoing, it is respectfully submitted that *Blue Sky's* application for a Special Use Permit be denied in its entirety.

Dated: February 10, 2023

Respectfully Submitted,

Doreen Gall
Timothy Gall
Marcia Nesler
Jason SanPedro
Rebekah SanPedro
Leslie Diller

COUNTY OF ORANGE
STATE OF FLORIDA

-----X
In the Matter of the Application of:

Blue Sky Towers III, LLC

For Site Plan Approval, Special Exception and Variance

Premises: 6448 Plymouth Sorrento Road
Apopka, Florida

Parcel #: 01-20-27-0000-00-006

Case # SE-23-01-138
-----X

EXHIBITS IN SUPPORT OF APPEAL

Respectfully submitted,

Doreen Gall
Timothy Gall
Marcia Nesler
Jason SanPedro
Rebekah SanPedro
Leslie Diller

Exhibit List

- A Adverse Aesthetic Impact Letters
- B Real Estate Professional Opinion Letter re: Adverse Impact on Property Values
- C T-Mobile Website Coverage Map

EXHIBIT A

January 8, 2023

Doreen Gall

6318 Plymouth Sorrento Road

Apopka, Florida 32712

Dear Orange County Commissioners/Board of Zoning Adjustment,

Please consider the aesthetic impact a 170 foot-23 story eye-sore means to my daily life should you allow this variance and exception to pollute and intrude upon my adjacent property. First thing in the morning I gaze out my window and this communication tower will be there to greet me. I often enjoy a cup of coffee and a few minutes of the news as I look out my beautiful back yard and right there above the mature 30-40-foot trees I will see a 130 foot of metal protrusion scarring the skyline. I often go into the third bedroom to wish my grandchildren a good morning and open the drapes. There will be this metal monstrosity to obstruct their peace first thing in the morning as well. Soon it is time to take the dogs out for their morning walk and wonder if our neighbors' friendly horses might be nearby for a visit. My first step at the rear or garage door exit there will be this hideous structure boldly looming close to my property. Five days a week I will get into my car to leave for work and every Sunday for church and this structure will be unavoidably present following for approximately the first three miles of every commute to and from. We purchased this lovely home due to its rural characteristics and outdoor spaces. We enjoy family functions and outdoor dining year-round which could result in this tower being a constant unwelcome companion. Another small joy includes sitting outdoors and enjoying the brilliant sunsets from my deck with an iced tea or coffee. This daily, gift of color from nature will be cleaved in two by this proposed visual pollution every day of my life. Finally, the day will draw to a close and I can expect my evening walk to include the night sky chiseled in half by at least 130 foot above the tree line with an unsightly, unnatural structure. I have grave concerns on the negative aesthetic impact this poses to my daily quality of life. This is not consistent with the common good of the neighborhood or residents. I fear the negative impact this will have for my remaining years at this property not to mention the financial ramifications when it comes time to sell. This is especially alarming as I am within five years of retiring. I understand progress and change are coming and accept technology is necessary, yet this matter has not considered the best location only the self-serving needs of the applicant. If this was needed, I suspect the Carriers may be applying for permits. This is not however the case. This appears to be a financial driven decision that only benefits the landowner while providing no benefit to surrounding homeowners. I implore members to consider serving the needs of all constituents including those impacted, not a chosen few investors/applicants for fear of retribution. I do not disagree services are necessary, but nothing is more necessary than to choose the proper location. Does Unincorporated Orange County strategic planning include providing adequate coverage for citizens or approving every application without thought or consideration of placement? I suggest the equity and well-being all constituents and stakeholders are worthy of consideration.

Respectfully, Doreen Gall

January 8, 2023

Alexandrea Gall

6318 Plymouth Sorrento Road

Apopka, Florida 32712

Dear Orange County Commissioners/Board of Zoning Adjustment,

The aesthetic impact a 170 foot-eyesore will negatively impact many aspects of daily life in the event this variance and exception is allowed to be erected. Every time I look out my family's beautiful back yard I will see a 130 foot or more of metal protrusion above the trees as a permanent part of the skyline. I walk our dogs' multiple times per day and enjoy frequent outdoor activities with my children on the property. The sunsets are amazing and my budding astronomers often enjoy star gazing, constellation searching and learning about eclipses and stages of the moon. This metal structure will rip our sky in half and poses a negative aesthetic impact on the entire property. It will quite possible be seen for at least 3 miles and the location placement should be considered in a more suitable location.

Thank you, Alexandrea Gall

January 8, 2023

Destiny Gall

6318 Plymouth Sorrento Road

Apopka, Florida 32712

To Whom it May Concern

I am 13 years old and live with my mother, brother, Corgi named Daisy and my grandparents and their two Great Danes named Leo and Molly. I feel a 170-foot metal tower should not be erected in our backyard. Every time I look out my family's beautiful back yard I will see a 130 foot or more of metal sticking out above the trees. I walk our dogs' many times per day and enjoy frequent outdoor activities with my mother and brother on the property. The sunsets are beautiful. I like to star gaze, pick out constellations and learn about eclipses and stages of the moon. My mother will often set up our telescope and she has done whole eclipse parties including art activities and making cookies. My grandfather uses his grill a lot and we have many meals outside on patio. I am afraid this tower will be at every outdoor function, and I do not think it will look nice in my every view in the back and side yards. Please consider finding another spot to build this giant ugly tower.

Thank you, Destiny Gall

Marcia Hester
6501 Plymouth Sorrento Rd
Apopka, FL 32712

Jan. 7, 2023

To Mayor Deming, Commissioners
Nicole Wilson, Christene Moore, Mayra
Uribe, Maribel Gomez Cordero, Emily
Bonilla and Mike Scott and Case Planner,
Ted Kozak, Case Planner

The 170 foot proposed communication
tower at 6500 Plymouth Sorrento Road
would have a disastrous effect on
my property located at 6501 Plymouth
Sorrento Road, Apopka, FL 32712

The aesthetics of my beautiful land
would be ruined. The calming and
peaceful tranquility of this beautiful
land would be forever very desecrated.

The plans for the land to be used
for a park could never happen because
communication towers cannot be placed
at park entrances.

My land at 6501 Plymouth
Sorrento Road adjoins the park
property at 43 Rainey Road which
is open to the public but public
access is difficult. If the land at
6501 Plymouth Sorrento Road were
acquired by Orange County the park
would have easy access.

Therefore the tower should not be
allowed. These 63 acres could be a park.

Page 1 of 2

There are over 2 thousand trees mostly Live Oak Trees, beautiful rolling hills, two wooded creek areas and one small lake. There are Gopher tortoises which are endangered and Florida Scrub Jay birds which are endangered.

As you can now see there are many reasons the tower at 6500 Plymouth Sorrento Road, Apopka, FL. should not be allowed.

There are many other locations for a tower but there is only one location for this park.

The choice is yours, a park or a tower!

Sincerely,
Marcia Nesler
6501 Plymouth Sorrento Rd.
Apopka, FL 32712
phone 407 464 0722
mailing address
Marcia Nesler
PO Box 1447
Sorrento, FL 32776

N

Ms. Marcia Nesler
P.O. Box 1447
Sorrento, FL 32776

page 2 of 2

Jason SanPedro

6306 Plymouth Sorrento Rd
Apopka, FL 32712
407-516-4807
sp.pros@yahoo.com

7th January 2022

Board of Zoning Adjustment & Orange County Commissioners

County Commission Chambers
201 S. Rosalind Ave, 1st Floor
Orlando, FL 32801

To Whom it May Concern,

Take a step back with me to the fall of 2021. My family and I began a complete overhaul of our backyard, with the vision to give it a state park look. It started by ripping out our old pool deck and massive 17,000 gallon above/partially in ground solid aluminum frame swimming pool. Then the fun began with finding the perfect pavers to match with the current walkway. These particular pavers were no longer being produced new so we had to find used ones. After they were secured, we handled each one of the 2000+ bricks several times; from removing each one by hand from its original location, to stacking and then finally laying them down on a bed of 13 tons of hand compacted crushed concrete in our backyard.

This perfectly planned and positioned patio was then anchored with a few stately oak trees. These 20+ foot tall oaks were installed in their hand dug homes by us. They were placed with precision, giving thought to multiple perspectives. How will this look from this side of the patio or that side? How will it look as you're driving up? How will it look from the dining room window? How much shade will it give to this portion of our patio? Is this one too close, or is this too far? There are many other countless details but I will stop with these. Suffice it to say, we have created the look we were going for in our backyard with a lot of work.

To say we gave a lot of time and thought to this project would be a true understatement. This was a whole family project. From our youngest, who was 4 at the time to our oldest, who was 13. There is literal blood, sweat and tears that have recently gone into our backyard.

This obtrusive tower does not belong in our beautiful backyard. As we sit at our handmade cypress picnic table eating lunch, breakfast or dinner; I don't

want to see a cell phone tower. As we sit in our adirondack chairs enjoying a fire in our custom made burn pit; I don't want to see even a little bit of a cell phone tower. As we enjoy family get-togethers or birthdays or anything in our backyard; I don't want to see even the tip of some cell tower. I don't want to see it playing catch with my kids or fetch with my dogs. I don't want to see it towering over our patio or even peaking through the tip top of the trees as I'm out grilling. It doesn't belong within any scope of view of our backyard, or side yard, or front yard. And no, camouflaging it doesn't work either. As the saying goes, you can put lipstick on a pig but it's still a pig.

My entire, amazing family has worked too hard to create an environment to relax and enjoy for it to be taken over with or even the slightest view of any tower. And, we have spent too much money and work personally keeping our entire property looking good to catch a view of this monstrosity from any angle on our property.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason SanPedro", with a long horizontal flourish extending to the left.

Jason SanPedro

This letter is to address the adverse impact of a cell tower upon our rural community in Apopka, Fl. where we are considered the Agricultural Capital of the U.S.A. It is here where I reside on almost three acres of land, where myself and my neighbors are faced with the intrusion of an 170 ft. tall cell tower monstrosity looming high above our homes and treeline.

This rural, unincorporated section of NW Orange County, Fl. has been my residence for almost thirty years now, where we drive many extra miles to be in a natural setting. Our natural setting is also a home to a Sandhill Crane Preserve approximately 1/4 mi. from us, and what a shame to upset the delicate balance of nature for this protected species in the State of Florida. Also in question is the u-pick Blueberry Farm where I have bought many plants and the Worm Farm where I have purchased supplies to enrich my soil for gardening. This cell tower could be placed in open land which is very plentiful in this area and where no families property values would be compromised.

This tower is in no way conducive to our property values, rural setting and way of life and therefore this is why the neighbors and myself are lodging a full protest against it being placed here.

Sincerely,

Leslie R. Diller

EXHIBIT B

To Whom it may concern:

I have been a licensed real estate professional for over the past 10 years and currently own and operate a real estate brokerage. I am also a certified residential real estate appraiser. According to the Department of Business & Professional Regulations, there are less than 1% of licensees in the State of Florida that hold both licenses.

The primary focus of my practice has been Orange, Lake, Seminole and Volusia County. I am well versed in these areas for both selling real estate and as well as property evaluations for Federally related mortgage transactions.

In my professional experience, prospective buyers are concerned with the proximity of the property to cellular transmission equipment and prefer not to look at/purchase homes near such equipment. Consequently, this has an adverse effect on the marketability and value of the property. Although the direct impact/value varies from area to area, in my professional experience, I have seen homes adjacent to cellular transmission equipment sell for as much as 10%-15% less than homes not adjacent to such equipment. Moreover, due to low demand for such homes, it takes significantly longer for these homes to sell, even with reductions in sales price as some buyers are more concerned with the possible health related issues of living near such equipment. These problems are exacerbated in higher price point communities.

Thus, based on my experience, it is my professional opinion that the placement of a cellular transmission node/equipment in the area of Plymouth Sorrento Rd and Bosch Rd will substantially decrease the value of homes in the area and I expect there will be an increase in marketing times for these homes compared to homes not near such equipment.

Thank you for your consideration in this matter and should you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'EA H Shugan', with a long horizontal flourish extending to the right.

Elliot H. Shugan

Real Estate Broker/Owner BK3256356

State-Certified Residential Appraiser RD8565

The Shugan Group, Inc

Mobile: 352-262-1014

Email: Elliot@TheShuganGroup.com

----- Forwarded message -----

From: **Chris Sanford** <chris@stellarhsgroup.com>

Date: Tue, Feb 7, 2023, 2:48 PM

Subject: Send To BZA

To: <dgallanp@gmail.com>

Dear Board of Zoning Adjustments,

I am writing to express my strong opposition to the proposed installation of cell phone towers in our community. This issue is of great importance to me as a homeowner and a member of this community, and I cannot stress enough the negative impact that these towers will have on property values.

It is unacceptable that the interests of the telecommunications industry are being put ahead of the well-being of our community. The placement of these towers will not only be an eyesore, but it will also have a devastating impact on real estate values. Studies have shown that proximity to cell phone towers can lower property values by as much as 25 percent, which is unacceptable and simply cannot be tolerated.

I encourage the BZA to take immediate action to halt the installation of these towers and protect the interests of homeowners in our community. The BZA has a responsibility to consider the potential impact of their decisions on the health, safety, and well-being of the community, and I strongly believe that the placement of cell phone towers falls under this purview.

I urge you to reconsider the proposed placement of these towers and to instead seek alternative solutions that do not put the interests of the telecommunications industry ahead of the interests of the community. The residents of this community deserve better, and I will not stand idly by while our property values are negatively impacted.

Sincerely,



Chris Sanford

Licensed Realtor

Stellar Home Sales



 [407-285-9724](tel:407-285-9724)
 Chris@Stellarhsgroup.com
 Stellarhsgroup.com

[Create Your Own Free Signature](#)

EXHIBIT C



BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **DEC 01, 2022**

Commission District: **#2**

Case #: **SE-23-01-138**

Case Planner: **Ted Kozak, AICP (407) 836-5537**
Ted.Kozak@ocfl.net

GENERAL INFORMATION

APPLICANT(s): BOB CHOPRA FOR BLUE SKY TOWERS

OWNER(s): A M R NURSERY LLC

REQUEST: Special Exception and Variance in the A-1 zoning district as follows:

- 1) Special Exception to allow the construction of a 170 ft. high monopole communication tower.
- 2) Variance to allow a residential distance separation of 591.7 ft. in lieu of 1,190 sq. ft.

PROPERTY LOCATION: 6448 Plymouth Sorrento Rd., Apopka, FL 32712, west side of Plymouth Sorrento Rd., north of Ondich Rd., northeast of S.R. 429 and S.R. 453.

PARCEL ID: 01-20-27-0000-00-006

LOT SIZE: 22 acres

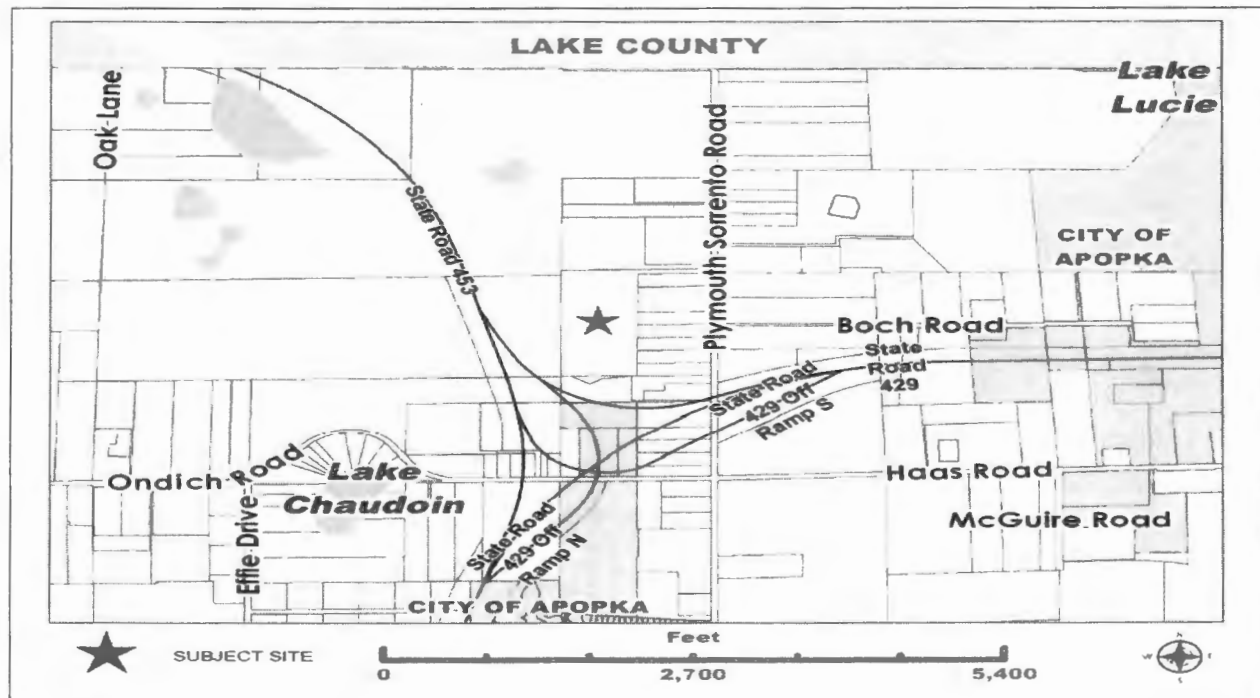
NOTICE AREA: 1,500 ft.

NUMBER OF NOTICES: 46

STAFF RECOMMENDATIONS

Approval, subject to the conditions in this report.

LOCATION MAP



SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	A-1	A-2	A-1	I-4	A-1
Future Land Use	R	R	R	IND	R
Current Use	Tree Nursery	Tree Nursery	S.R. 429, retention area	Tree Nursery, Single-Family Residential	S.R. 453

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located in the A-1, Citrus Rural district, which primarily allows agricultural uses, nurseries and greenhouses, as well as mobile homes and single-family homes on larger lots. A monopole communications tower is permitted by right or by Special Exception in the A-1 zoning district, depending on whether or not it meets a variety of requirements. The Future Land Use is Rural, which is consistent with the A-1 zoning district.

The subject property is 22 acres in size and is a conforming lot. The property consists of an approximate total of 5,620 square feet of building area utilized for the existing nursery operation with structures that were constructed in 1987 and 1988. There are also a number of existing greenhouses, which based upon aerials, appear to have been installed between 1987 and 2007. The property is bounded on the south side by the S.R. 429 toll highway, on the west side by a retention area and the S.R. 453 toll highway, on the north by nurseries and on the east by nurseries, single-family residences and Plymouth Sorrento Rd.

The subject request is to erect a 170 ft. high monopole communication tower, designed for multiple carriers and colocation opportunities, within an 80 ft. by 80 ft. leased compound facility at the northwest corner of the property. No buildings, trees or vegetation will be removed for installation.

Orange County Code Section 38-1427 provides performance standards for communication towers, including but not limited to, separation from off-site uses and distance separation between communication towers. Additional conditions related to permitted towers and those requiring a Special Exception are found in Section 38-79, conditions 32 and 143. Condition 32 allows a communication tower by-right in agriculturally and residentially zoned lands not located within a Rural Settlement. Condition 143 allows a monopole up to 170 ft. in height by right if there is co-location and distance separations are met, otherwise a Special Exception is required. Although it is being designed for colocation opportunities, the proposed tower will have no colocation at the time of installation, and therefore the applicant is requesting a Special Exception.

The proposed monopole tower complies with the required performance standards pertaining to setbacks, landscaping for the tower and the distance separation from the nearest tower. It is 1.75 miles (76,230 ft.) from the nearest lattice or guyed communication tower where a minimum of 2,500 ft. is required. However, the tower is proposed to be located 591.7 ft. from the nearest off-property residential use or district, where a minimum of

1,190 ft. requiring Variance #2. Based on staff analysis, there is limited impact to the nearest off-property residential uses since the nearest residences are homes used by the owners or employees of the adjacent nursery properties.

A balloon test was conducted on November 21st and 22nd, as required by the Orange County Code for Special Exception requests, which provided visual evidence that the proposal will have a limited aesthetic impact with respect to height and closeness of the communication tower in proximity to the nearest residential use or district.

As of the date of this report, no comments have been received in favor or in opposition to this request.

District Development Standards

	Code Requirement	Proposed
Max Height:	50 ft. building 170 ft. tower (if meets 6 standards)	170 ft. (Special Exception)
Min. Lot Size:	0.5 acres	22 acres

Building Setbacks (that apply to structure in question) (Measurements in feet)

	Code Requirement	Proposed
Front: Plymouth Sorrento Rd.	35 ft.	595 ft. (North)
Rear:	50 ft.	71 ft. (West)
Side:	10 ft.	70 ft. (North) 1,314 ft. (South)

STAFF

SPECIAL EXCEPTION CRITERIA FOR COMMUNICATION TOWERS

This request has been assessed based upon the six Special Exception criteria as set forth in Section 30-43(2) as well as the two additional criteria as set forth in Section 1427(n)(7) and as such staff recommends approval of the request.

Consistent with the Comprehensive Plan

The provision of telecommunication towers as conditioned through the Special Exception process is consistent with the Comprehensive Plan.

Similar and compatible with the surrounding area

The new communication tower will be located at the rear portion of the property farthest from the adjacent residential uses, over 30 feet from the nearest adjacent property line to the north, over 591 feet from the nearest residential use and over 1.75 miles from the nearest communication tower. It will be similar and compatible with the surrounding uses in the area since the proposed tower location is on a portion of the site that will minimize adjacent visual impacts.

Shall not act as a detrimental intrusion into a surrounding area

The proposed communication tower will be completely surrounded by public toll highways and nursery uses and will not negatively impact the surrounding area since the closest residences are homes located on the adjacent nursery properties and will be located at an adequate distance to minimize visual impacts and as such will not be a detrimental intrusion to the surrounding area.

Meet the performance standards of the district

With the approval of the requested Variance, the proposed communication tower will meet the performance standards of the district.

Similar in noise, vibration, dust, odor, glare, heat production

The proposed monopole tower will not generate noise, vibration, dust, odor, glare, or heat that is not similar to the existing nurseries in the surrounding area.

Landscape buffer yards shall be in accordance with Section 24-5 of the Orange County Code

The proposal will be located within a vacant portion of a developed site and no buffer yards are required. As required by Section 1427(d)(11) plantings will be required to be installed along the perimeter of the fenced tower compound.

Aesthetic Impact. View of a tower that is not camouflaged. Aesthetic impact shall take into consideration, but not be limited to, the amount of the tower that can be viewed from surrounding residential zones in conjunction with its proximity (distance) to the residential zone, mitigation landscaping, existing character of surrounding area, or other visual options proposed.

The tower is proposed to be located over 591 feet from the nearest residential use or district and over 1.75 miles from the nearest communication tower. Furthermore, as affirmed by the visuals provided by the conducted balloon tests, the tower location relative to the proximity of the closest residences, will have a limited aesthetic impact.

Compatibility. The degree to which the proposed tower is designed and located is compatible with the nature and character of other land uses and/or with the environment within which the tower proposes to locate. The proposed tower will be placed and designed to assist with mitigating the overall aesthetic impact of a tower and will be surrounded by nurseries and public rights-of-way.

VARIANCE CRITERIA**Special Conditions and Circumstances**

The special condition and circumstances are lack of other opportunities to locate a tower on the proposed property without the need for a Variance. Further, the closest residences are homes located on adjacent nursery properties, at a distance minimizing any potential visual impacts.

Not Self-Created

The request is not self-created since the applicant is not responsible for the location, size and configuration of property adjacent to residences used in conjunction with existing nursery uses.

No Special Privilege Conferred

Granting the Variance as requested will not confer special privilege since the nearest residence is utilized by a similar nursery operation.

Deprivation of Rights

Without the requested Variance, the owner would be deprived of the ability to erect a communication tower on the site in an appropriate location to minimize adjacent visual impacts.

Minimum Possible Variance

The requested Variance is the minimum possible to allow the installation of a maximum 170 ft. high tower while meeting all other performance standards for the district.

Purpose and Intent

Approval of the requested variances will be in harmony with the purpose and intent of the Zoning Regulations as the code is primarily focused on minimizing the impact that structures have on surrounding properties. The proposed will not be detrimental to the area, as affirmed by the visuals provided by the balloon test.

1. Development shall be in accordance with the site plan and tower specifications received October 18, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. A permit for the communication tower shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.
5. All new communication towers shall be designed and constructed to accommodate at least one (1) other service provider.
6. The applicant for a new communication tower shall provide a notarized letter acknowledging that the communication tower is designed and will be constructed to accommodate at least one (1) other service provider.
7. All service providers shall cooperate in good faith with other service providers to accomplish co-location of additional antennas on communication towers which are existing, permitted, or otherwise authorized by Orange County, where feasible.

C: Bob Chopra
3300 S. Orange Blossom Trl., Suite 106
Orlando, FL 32839



October 11, 2022

Blue Sky Towers, III LLC
Park Place West
325 Park Street, Suite 106
North Reading, MA 01864

RE: Proposed 170' Monopole, 6448 Plymouth Sorrento Road, Apopka, FL 32712 (Orange Co.)
Blue Sky Towers, III LLC Plymouth Sorrento Site (FL-00325)
Original Monopole Design by TAPP, Job No. 23522-296, dated August 18, 2022

Dear Mr. Laurette,

For the Blue Sky Towers, III LLC Plymouth Sorrento Cell Site, a 170' tapered monopole constructed of galvanized steel with a 4' lightning rod is proposed. The monopole is to be located within an 80' x 80' lease parcel area and is designed to support a total of four (4) cellular carriers. The proposed carrier elevations are 165', 155', 145' and 135'. (See attached tower profile) The proposed monopole is designed to support this loading with a 133 MPH ultimate wind speed (no ice) in accordance with the TIA-222-H, "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" and the 2020 Florida Building Code 7th Edition. The proposed monopole is designed by a Florida State Professional Engineer meeting the previously described criteria.

I hope this letter addresses any questions or concerns regarding the design / construction of the proposed 170' monopole. Please feel free to contact me with any questions.

Sincerely,

Michael T. De Boer, PE
Vice President of Engineering



3300 South OBT, Suite 106, Orlando, FL 32839

September 2, 2022

Orange County Zoning Division
Board of Zoning Adjustment
201 S. Rosalind Ave. 1st Floor
Orlando, FL 32801

**RE: 6448 Plymouth Sorrento Rd / Parcel ID# 01-20-27-0000-00-006 – Special Exception & Variance
Application for proposed 170' monopole communications tower site**

To Whom it May Concern:

My company is working as agents for Blue Sky Towers III, LLC in submittal of this BZA Application for the Special Exception & Variance requests on a proposed 170' communications facility site to be located at the above referenced address / parcel in Orange County, FL. As per BZA application requirements, please see the special exception and variance justification statements below:

Special Exception project narrative:

Blue Sky Towers III, LLC is proposing the installation of a 170' communications facility / tower site to provide much needed and improved coverage / E911 service in the northwestern part of Orange County / Apopka, FL for T-Mobile as the anchor tenant. The proposed tower height is requested as the maximum allowed permissible use in this A-1 zoning district with a special exception. The tower site is an 80'x 80' lease parcel located in the northwest corner of a 22.07 acre parent parcel. The lease parcel is set back 70' from the north, 1314' from the south, 595' from the east, and 71' from the west property lines. This meets the setbacks from property lines within this zoning designation. There is an active container nursery business that also operates on the parent parcel. Also, please note this part of the county is quite rural in nature and the impact on any residential properties will be minimal at best. Once constructed, the tower site will generate minimal traffic as the field operations staff for T-Mobile will visit the site approximately once every 4-6 weeks for maintenance. The site plans and survey submitted further detail the proposed installation of this tower and its proposed design.

Special Exception Criteria

- 1) ***The use shall be consistent with the Comprehensive Policy Plan.***
This application meets the requirements of Orange County LCD Sec 38-1427, Communication Towers and will be consistent with the Comprehensive Policy Plan.
- 2) ***The use shall be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development.***
The proposed communication tower site is compatible with the surrounding agricultural / rural areas and will be similarly situated as other tower sites located on these type of land uses.

- 3) ***The use shall not act as a detrimental intrusion into a surrounding area.***
The communication tower is a permitted use in the A-1 zoning district and will not be a detrimental intrusion into surrounding land uses.
- 4) ***The use shall meet the performance standards of the district in which the use is permitted.***
The submitted application meets the requirements of Orange County LDC Sec 38-1427, Communication Towers and as a permitted use within the A-1 zoning district.
- 5) ***The use shall be similar in noise, vibration, dust, odor, glare, heat producing and other characteristics that are associated with the majority of uses currently permitted in the zoning district.***
The proposed facility will not produce noise, vibration, dust, odor, glare, or heat.
- 6) ***Landscape buffer yards shall be in accordance with section 24-5 of the Orange County Code. Buffer yard types shall track the district in which the use is permitted.***
The tower site landscape buffer will be designed in accordance with Orange County Sec 38-1427 Communication Towers, with the required landscape buffer around the fenced area of the tower site.

Variance Justification Statement

Per Orange County LCD Sec 38-1427(d) (2), Communication Towers, Separation from off-site uses/designated area is as follows: For a monopole taller than 140', the proposed tower must be 980' or 700% (whichever is greater) from a single family residential unit, vacant single family zoned lands, or multi-family residential units. The proposed tower at 170' x 700% equals an 1190' separation from the above referenced property types. There are four (4) single family residences located to the east of the proposed tower site within this 1190' radius from which a *variance* is requested. The single family residences are located 592', 971', 589', and 1142' respectively, from the proposed tower site. The property to the west of the tower parcel is vacant land that belongs to the Central Florida Expressway Authority.

As for Sec 38-1427(d) (3) Separation distances between communications towers: A monopole between the heights of 80' to 170' must be a minimum of 2500' from the nearest lattice, guyed, or monopole (greater than 170' in height) tower types. There are no existing towers within this required distance per code, hence *no variance* is required for tower to tower separation.

Variance Criteria

Special Conditions and Circumstances

The proposed tower site is intended to serve the local residents and travelling public in and around the northwest Orange County / Apopka service areas. The proposed 170' monopole tower is the max permissible tower height allowed in this zone with a special exception. Although additional tower height would be beneficial for maximum coverage in this area, the requested tower height has been requested to provide the greatest public benefit without the proliferation of towers in this area.

Not Self-Created

The proposed 170' monopole tower is the max permissible tower height allowed in this zone with a special exception. The lease parcel has been placed in the northwest corner of the property with access that does not interfere with ongoing plant nursery business operations on the property. The lease parcel also abuts the vacant Central Florida Expressway owned parcel located to the west.

Approval of this request will not provide any special privilege since the private property adjacent to the tower lease parcel is similarly situated

Deprivation of Rights

Denying this request would deprive T-Mobile the ability to provide improved wireless and E911 coverage to the citizens of the northwest Orange County / Apopka areas as well as the travelling public that are in the vicinity.

Minimum Possible Variance

The request for the variance from tower separation to off-site uses/designated area is the *minimum* amount necessary to meet the permitted 170' monopole tower height in this zone.

Purpose and Intent

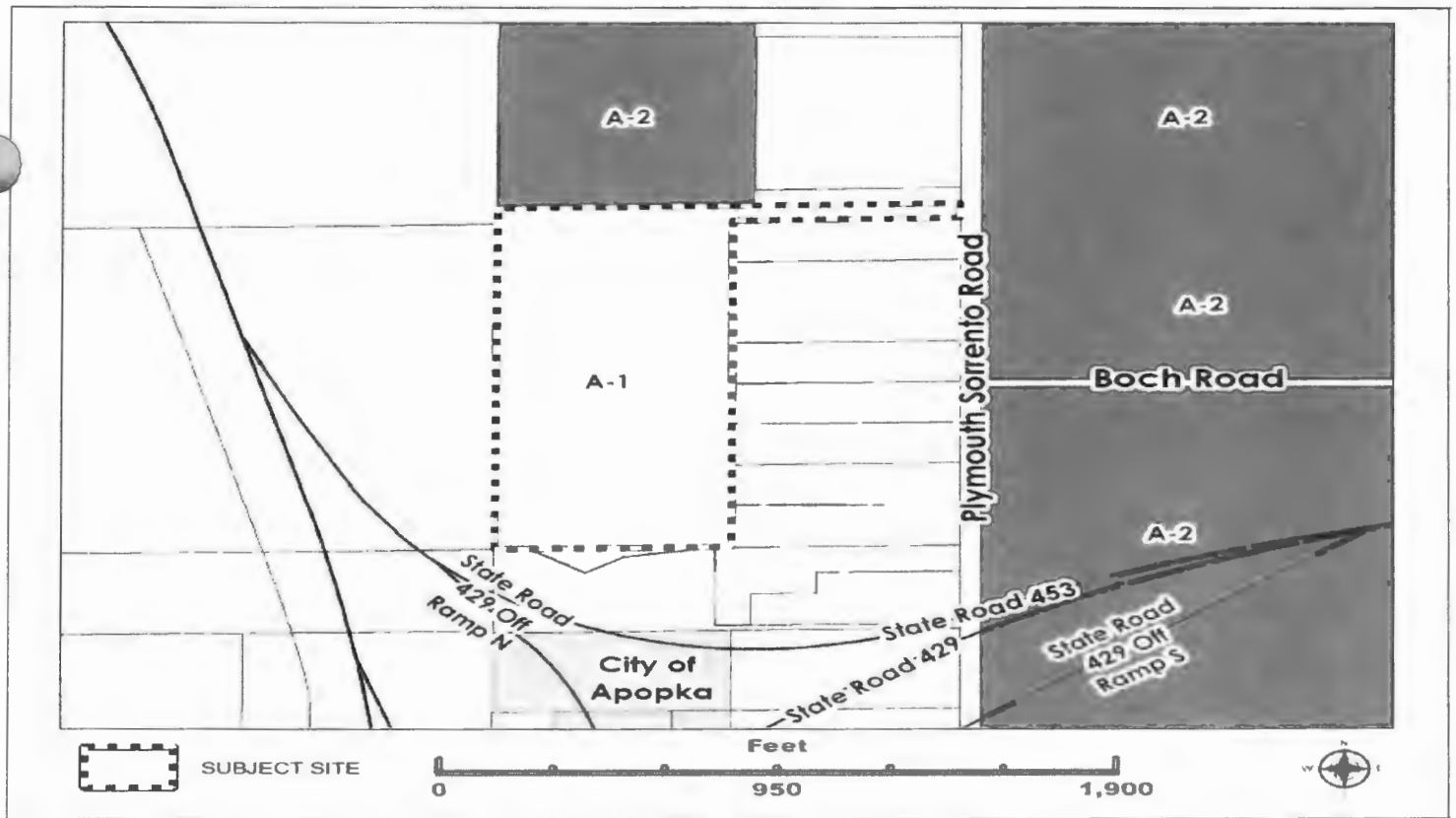
Approval of the requested variance would be in accord with the purpose and intent of the Zoning Regulations and will not be a harmful incursion on the surrounding area. The proposed tower will be a benefit to the local residents and travelling public in this area of Orange County.

Should you have any questions or need additional information, please feel free to contact me at 267-973-4228 or email at bchopra@sam-inc.com

Respectfully Submitted,

Bob Chopra, President
SAM, Inc

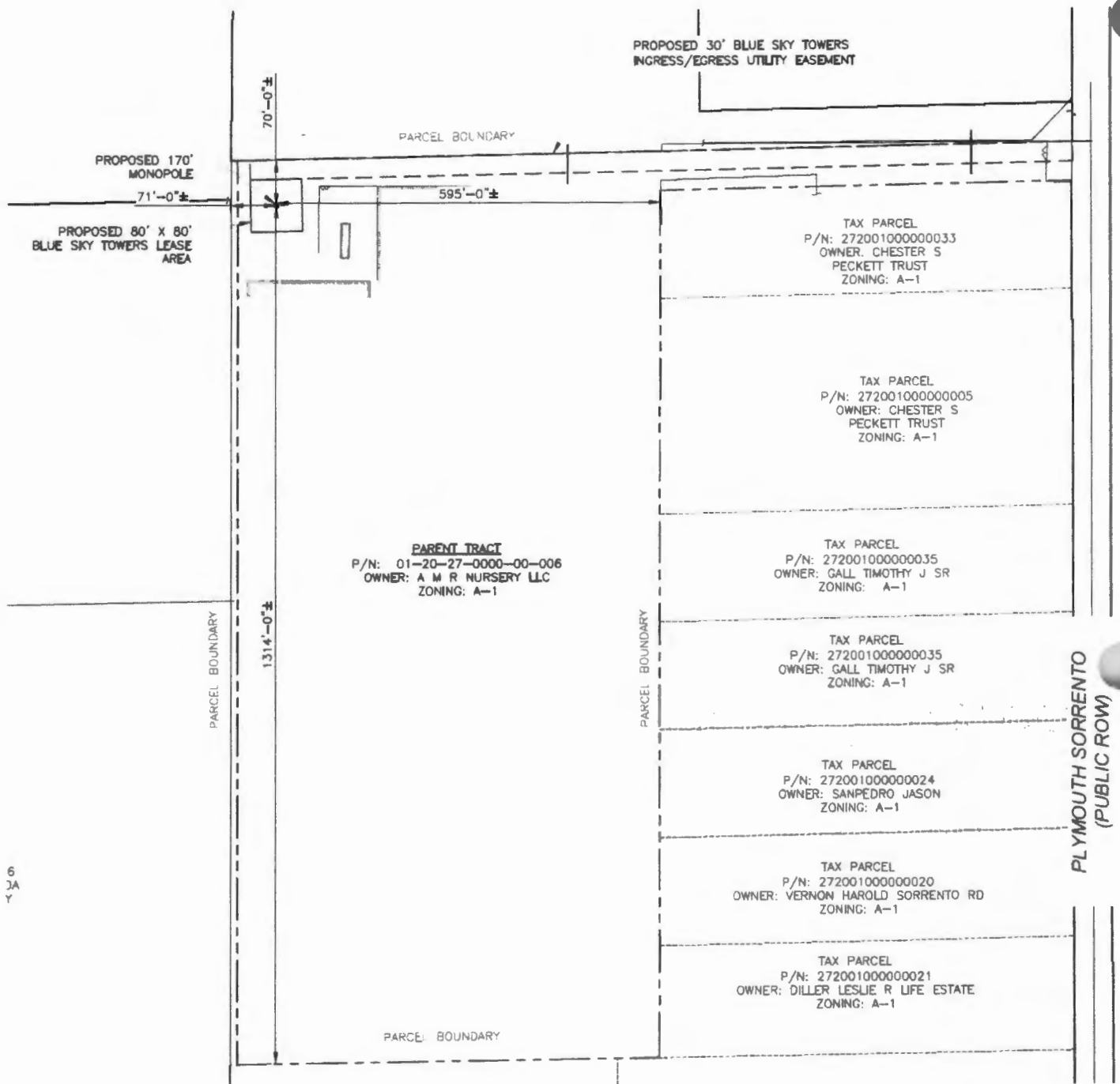
ZONING MAP

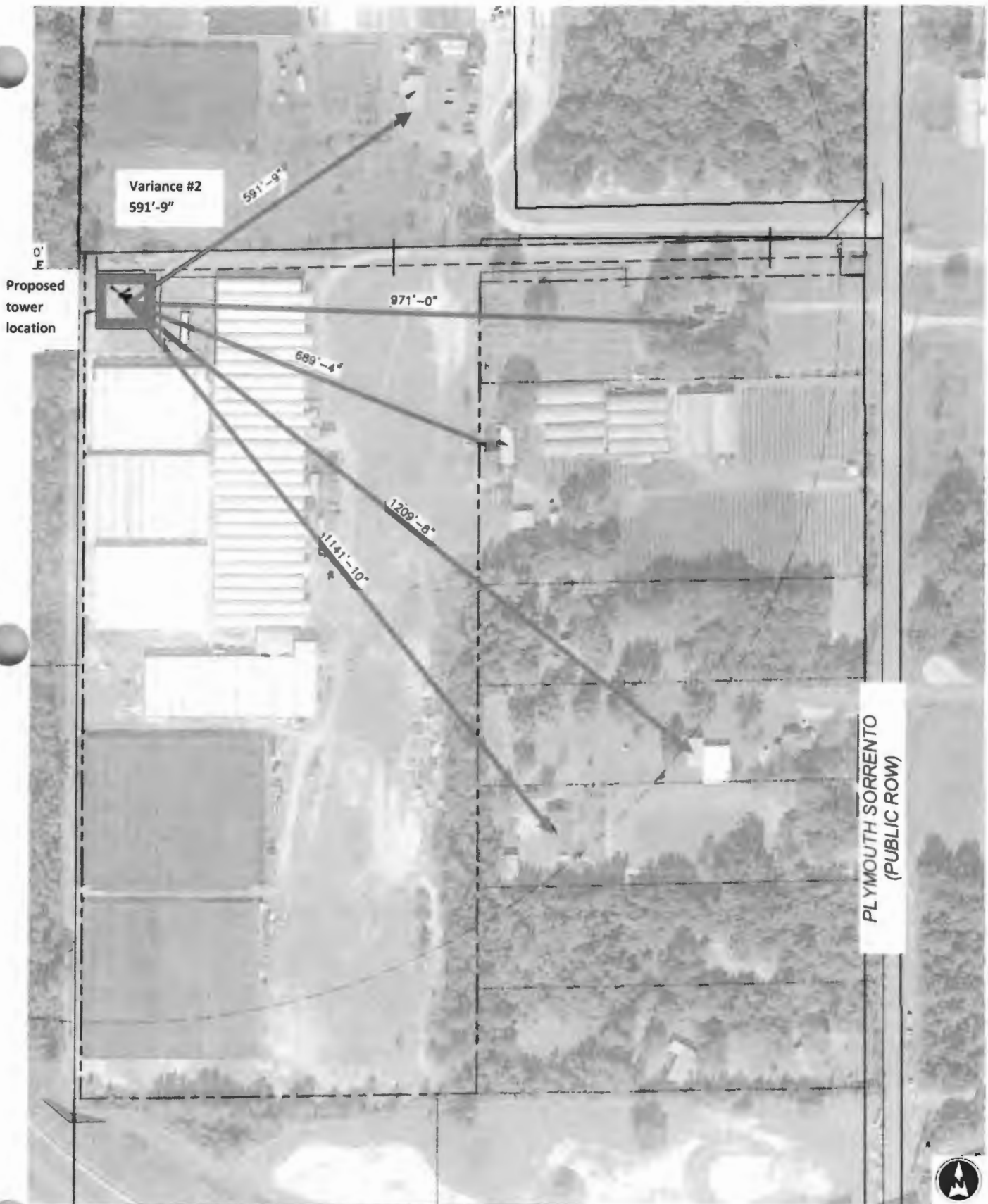


AERIAL MAP



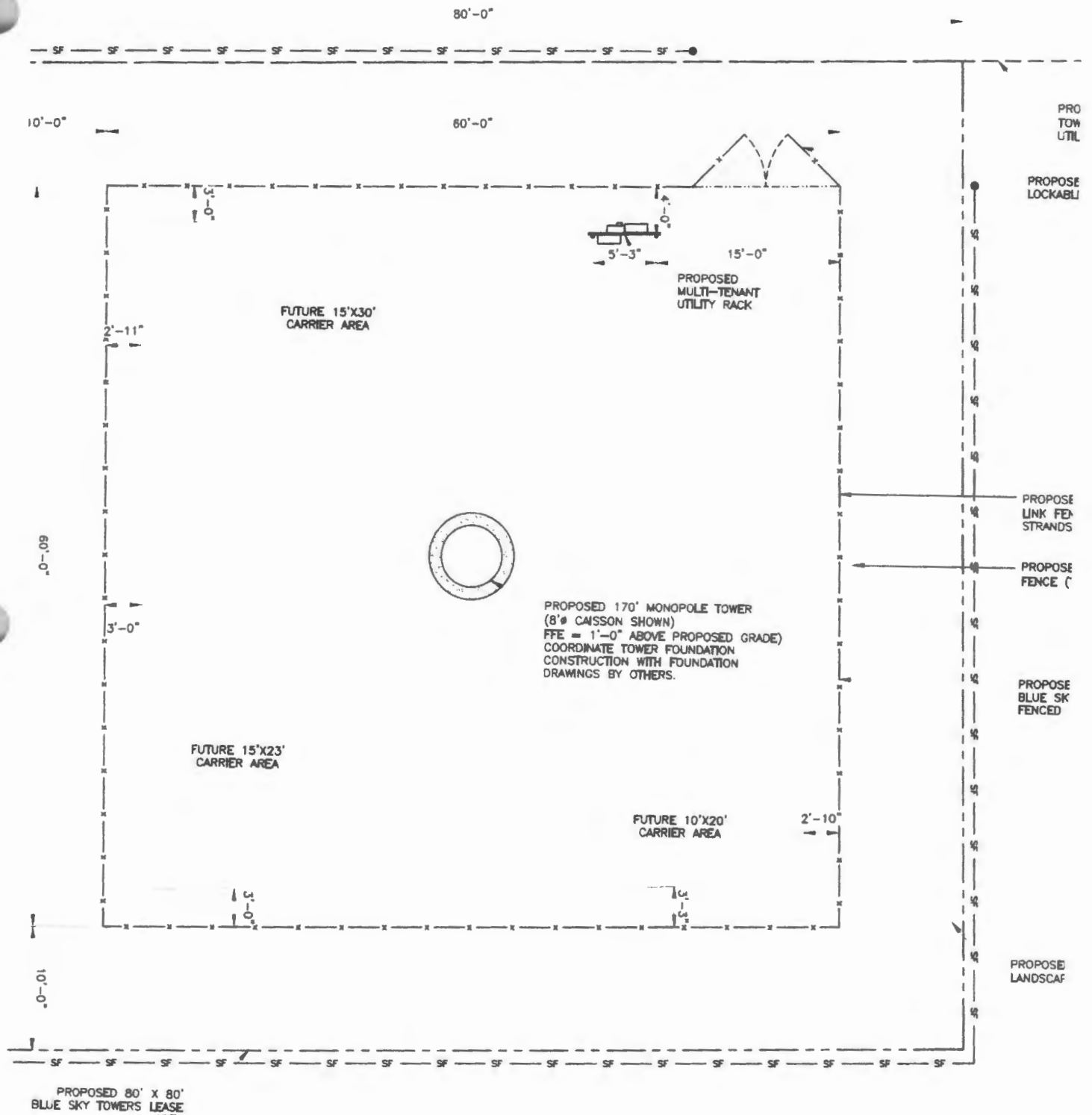
PARENT TRACT

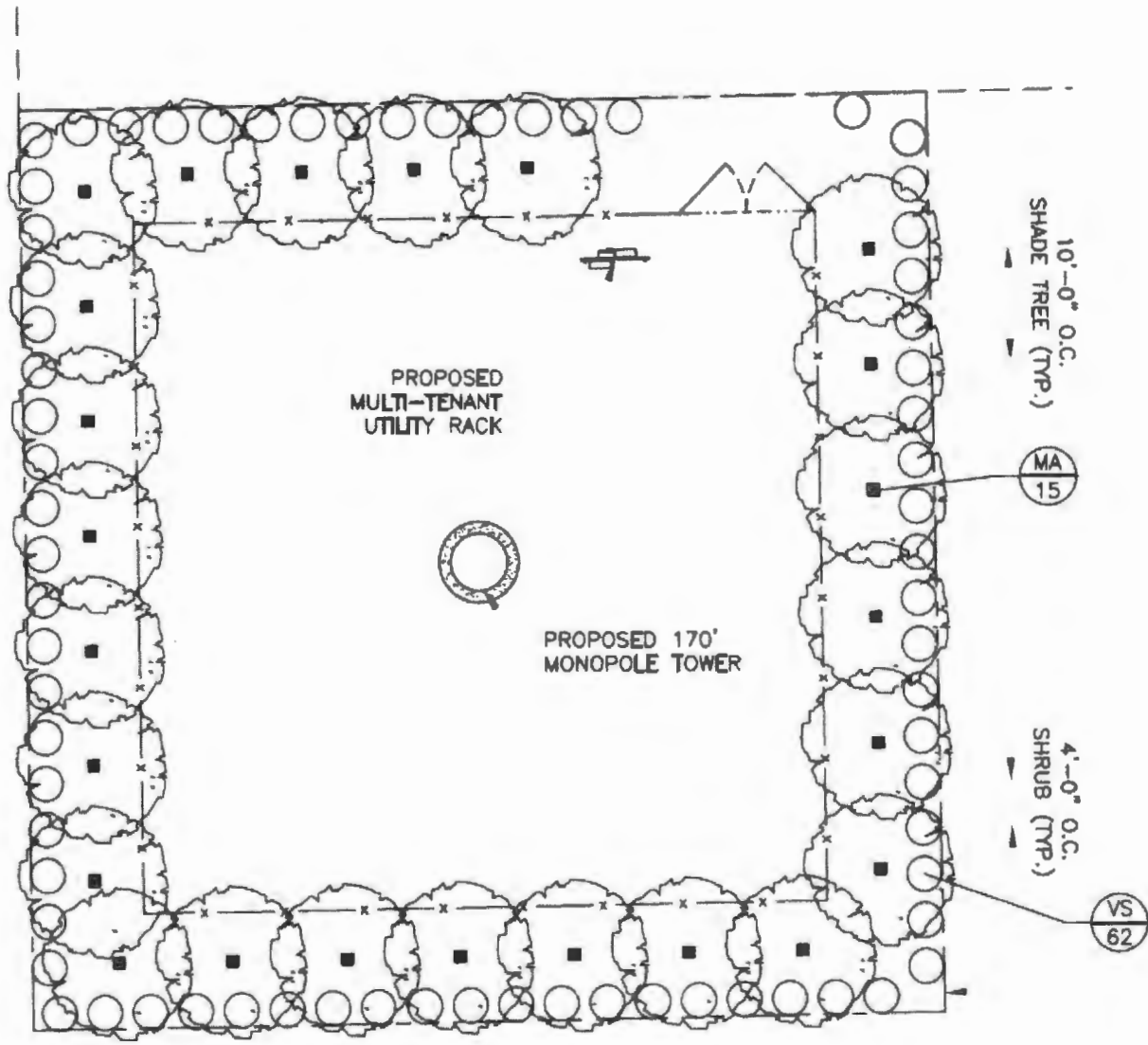






TOWER LOCATION LAYOUT

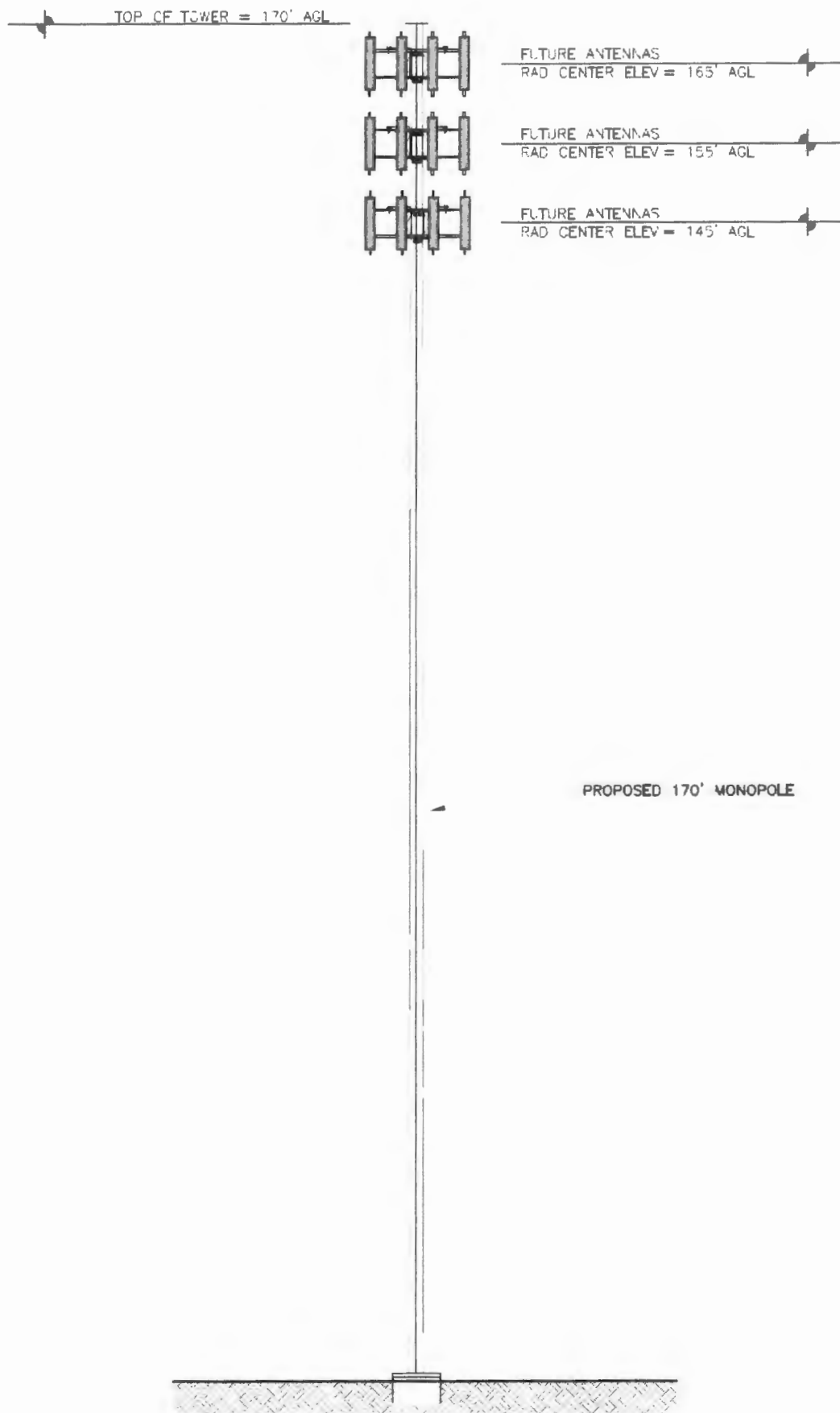




LANDSCAPE MATERIALS LIST

QTY	KEY	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS
15	MG	MAGNOLIA GRANDIFLORA	SOUTHERN MAGNOLIA	8' HT. 4" CAL. • 10' O.C.
62	VS	VIBURNUM SUSPENSUM	SANDANKWA VIBURNUM	MIN 7 GAL. 3' HT. • 48" O.C.
	SOD	PASPALUM NOTATUM	ARGENTINE BAHIA SOD	SQ.FT.
	MULCH	PINE BARK MULCH	PINE BARK MULCH	CU.YD..

TOWER ELEVATION





Front of property facing west from Plymouth Sorrento Rd.



Facing southeast at northwest property line towards proposed tower location, greenhouses in background



Facing northeast towards closest residence – 591 ft. from proposed tower at northwest property line



Facing south at east property line, S.R. 429 / S. R. 453 on-ramp in distance, adjacent nursery to left



Facing north towards proposed tower location in distance from southwest property line, with greenhouses



Facing west from southwest property line to S. R. 453 on-ramp

SITE PHOTOS



Facing northwest towards proposed tower in distance from southeast property line adjacent to S.R. 429



Facing southeast from Kelly Park Rd. to closest tower – 1.75 miles south