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Title: (Continued from June 4, 2019) - Discussion and Consideration of Amendments to Article 71 of the Lake County Zoning Ordinance, Regulations for the Placement of Communications Towers and Antennae
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6/25/2019	1	BOARD OF SUPERVISORS	approved	

MEMORANDUM

TO: HONORABLE BOARD OF SUPERVISORS

FROM: ANITA L. GRANT, County Counsel

DATE: June 25, 2019

SUBJECT: (Continued from June 4, 2019) - Discussion and Consideration of Amendments to Article 71 of the Lake County Zoning Ordinance, Regulations for the Placement of Communications Towers and Antennae

EXECUTIVE SUMMARY:

Staff is making a series of recommendations for your Board's consideration regarding communications tower placement in the County of Lake. The purpose of these recommendations is to establish guidelines for the siting of all wireless, cellular, and other telecommunications towers and antennae and to distinguish, where appropriate, between macro communications towers and small wireless facilities. The goal of these amendments are, to the extent allowed by the restrictions imposed upon local jurisdictions by federal law, to:

Encourage the location of towers in non-residential areas;

Encourage the joint use of new and existing tower sites among service providers;

Encourage the location of macro communications towers and antennae in non-viewshed areas;

Encourage the design and construction of towers, antennae, and wireless facilities to minimize visual impacts;

Enhance the abilities of telecommunications service providers to deliver services to the public effectively and efficiently.

Small Wireless Facilities are defined under federal law as facilities that meet the following conditions:

The facilities are mounted on structures 50 feet or less in height including their antennae;

The facilities are mounted on structures no more than 10% taller than other adjacent structures;

or

The facilities do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10%, whichever is greater.

The Order of the Federal Communications Commission issued in September of 2018, applies to small wireless facilities, but applies to all wireless communications permitting in certain respects. This order invokes an expansive interpretation of the 1996 Telecommunications Act provisions which preempt any local regulations that prohibit or have the effect of prohibiting wireless facilities. That interpretation is applicable to virtually all local interactions with wireless facilities with very limited exceptions. The FCC interprets “prohibit or have the effect of prohibiting” to mean any state or local requirement that materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment. The “gap in coverage” approach used by some courts has been rejected by the FCC such that no actual coverage gap has to be shown to demonstrate that a state or local action materially limits wireless service. An effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability to engage in any of a variety of activities when densifying a network, introducing new services or otherwise improving service capabilities. (Presentation by Rural County Representatives of California (RCRC) General Counsel Arthur Wylene on October 19, 2018.)

However, while aesthetic concerns for macro towers (those which exceed the parameters described above) must still be viewed in the very broad context of whether the requirements create an effective prohibition of wireless facilities, the aesthetic concerns themselves may be viewed somewhat more expansively than those for small wireless facilities. Therefore, concerns as to residential neighborhood aesthetics and viewshed may be different when addressing a macro communications tower than when addressing a small wireless facility. Recommendations from staff concerning Article 71 amendments will seek to address those distinctions.

As to macro communications towers:

The expansion of setbacks in residential areas for macro communications towers, expanded design criteria for macro communications towers, and more specific and clarified restrictions for the siting of macro towers in viewshed locations.

As to small wireless facilities:

The establishment of specific objective and reasonable regulations for small wireless facilities for design and location which includes provisions for concealment and/or screening, height and size, location, and mounting.

Staff will make a presentation to your Board on Tuesday, June 25, to highlight the specific changes recommended.

FISCAL IMPACT: ☒ None ☐ Budgeted ☐ Non-Budgeted

Estimated Cost:

Amount Budgeted:

Additional Requested:

Annual Cost (if planned for future years):

FISCAL IMPACT (Narrative): N/A

STAFFING IMPACT (if applicable): N/A

RECOMMENDED ACTION:

Discussion. Possible direction to staff.