



**Minutes**  
**Town of Lake Park, Florida**  
**Special Call Commission Meeting**  
**Monday, March 21, 2016, 6:00 PM**  
**Town Commission Chamber, 535 Park Avenue**

The Town Commission met for the purpose of a Special Call Commission Meeting on Monday, March 21, 2016 at 6:05 p.m. Present were Mayor James DuBois, Vice-Mayor Kimberly Glas-Castro, Commissioners Erin Flaherty, Michael O'Rourke and Kathleen Rapoza, Commissioner-Elect Anne Lynch, Town Manager John O. D'Agostino, Attorney Thomas Baird, and Town Clerk Vivian Mendez.

Town Clerk Mendez performed the roll call and Mayor DuBois led the pledge of allegiance.

**RESOLUTION(S) – ACCEPTING ELECTION RESULTS:**

**1. Resolution No. 13-03-16 Accepting the Certified Results of the Municipal Election**

Town Manager D'Agostino explained the item.

Mayor DuBois allowed Commissioner Rapoza the floor. Commissioner Rapoza apologized to the Commission regarding an error she made during the March 16, 2016 Marina Business Plan (Resolution 12-03-16) agenda item. She stated that she supports the Marina study, but while in the discussion phase of the agenda item, became off track by the Mayor's comments, and Commissioner O'Rourke's comments. She thought that they were inserting the Mayor's conditions into the plan, which she did not want the plan to change. This was the cause of her vote of Nay. She stated that her vote would not change the fact that the Marina plan passed by majority, but "for the record" would appreciate that the Commission grant her a reconsideration and state that her vote listed as Aye.

Mayor DuBois asked Attorney Baird if the action could be taken by consensus. Attorney Baird stated that if a member of the prevailing side would like to bring up that Resolution for reconsideration then a member may do so. If there were a majority support to reconsider the vote of the Commission, then they could take the item up again and the members could cast their vote, as they deem appropriate.

Commissioner O'Rourke was not sure what to reconsider. He recapped that at the March 16, 2016 Commission meeting a motion was made where the Mayor asked for some conditions to be added to that Resolution. He stated that he did not agree with the proposed changes and withdrew his motion. He explained that a new motion was made with considerations made by the Mayor and a vote.

Vice-Mayor Glas-Castro explained that the motion passed 3/2. Attorney Baird asked if the Town Clerk could read the motion from the March 16, 2016 meeting. The

Commission could then decide if they wanted to reconsider the vote that they took at that meeting.

Town Clerk Mendez stated that the final motion was made by Vice-Mayor Glas-Castro to approved Resolution 12-03-16 as amended which included rescinding any spaces save for storage at the ramp, other than the overnight storage that the Marina currently has, and asked that a maintenance contractor request for proposal (RFP) for the boatlift. Commissioner Rapoza seconded the motion.

Commissioner O'Rourke asked if the motion passed or failed. Town Clerk Mendez explained that the motion passed 3/2 with Commission Flaherty, Vice-Mayor Glas-Castro, and Mayor DuBois voting in favor. Attorney Baird explained that if Commissioner Flaherty wishes to make a motion to reconsider the vote then he may do so.

**Motion: Commission Flaherty moved to reconsider the vote from the March 16, 2016 Commission meeting pertaining to Resolution 12-03-16; Vice-Mayor Glas-Castro seconded the motion.**

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Flaherty	X		
Commissioner O'Rourke		X	
Commissioner Rapoza	X		
Vice-Mayor Glas-Castro	X		
Mayor DuBois	X		

Motion passed 4-1.

Attorney Baird explained that now the Commission would reconsider.

**Motion: Vice-Mayor Glas-Castro moved to approved Resolution 12-03-16 with the amendment to eliminate the storage in the parking spaces as outlined by the Mayor in the previous meeting and to include a maintenance contract for the boatlift; Commissioner Flaherty seconded the motion.**

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Flaherty	X		
Commissioner O'Rourke		X	
Commissioner Rapoza	X		
Vice-Mayor Glas-Castro	X		
Mayor DuBois	X		

Motion passed 4-1.

Commissioner Rapoza thanked Palm Beach County Sheriff's Office District 10 for enforcing the Panhandling Ordinance throughout the Town. Mayor DuBois thanked Commissioner Rapoza for her three (3)-years of service to the Town.

**Motion: Commissioner O'Rourke moved to approve Resolution No. 13-03-16; Commissioner Flaherty seconded the motion.**

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Flaherty	X		
Commissioner O'Rourke	X		
Commissioner Rapoza	X		
Vice-Mayor Glas-Castro	X		
Mayor DuBois	X		

Motion passed 5-0.

**SWEARING IN CEREMONY:**

**2. Swearing in Ceremony for Commissioners Conducted by the Town Clerk.**

Town Clerk Mendez swore-in each of the Commissioners.

**3. SELECTING A VICE-MAYOR:**

**Motion: Commissioner O'Rourke nominated Kimberly Glas-Castro as Vice-Mayor; Commissioner Flaherty seconded the nomination.**

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Flaherty	X		
Commissioner O'Rourke	X		
Commissioner Lynch	X		
Vice-Mayor Glas-Castro	X		
Mayor DuBois	X		

Motion passed 5-0.

**RESOLUTION:**

**4. Resolution No. 14-03-16 Designation of Signatories for Town Bank Accounts.**

**Motion: Commissioner Flaherty moved to approve Resolution No. 14-03-16; Vice-Mayor Glas-Castro seconded the motion.**

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Flaherty	X		
Commissioner O'Rourke	X		
Commissioner Lynch	X		
Vice-Mayor Glas-Castro	X		
Mayor DuBois	X		

Motion passed 5-0.

**PUBLIC COMMENT:**

**1. Sue Duchene** – Asked the Commission for an update regarding the summer camp program. Mayor DuBois explained that the summer camp program was canceled due to no Parks & Recreation Director on staff. He explained that the direction given to the Town Manager D’Agostino was to speak with neighboring communities that could host Lake Park children in their programs at a subsidized expense. He explained that Club 100 Charities hosts a summer program at the Bethlehem Haitian Baptist Church.

Ms. Duchene asked if progress was made since the announcement at the last meeting. Mayor DuBois explained that he was not aware of any progress. Town Manager D’Agostino explained his outreach efforts to the Village of North Palm Beach. He explained that the Town’s website contains a link to summer camps programs in the area. He explained that the Town was willing to supplement a portion of the summer camp expense for Lake Park resident children that met certain criteria. Ms. Duchene asked the Commission to concentrate on offering a program in the Town for the children.

**QUASI-JUDICIAL HEARING(S):**

**5. Site Plan Application for a Proposed 125-foot Stealth “Yard Arm” Telecommunication Tower at the Lake Park Harbor Marina.**

**Open Public Hearing:**

Mayor DuBois opened the public hearing.

Town Attorney Baird explained that the Federal Government preempted part of the Commission’s discussion making authority as it pertains to the placement of cell towers to this extent. Federal Statute 47 U.S. C.S. Section 332 (c) (7) (b) (4) limits the Town’s regulation of placement of cell towers based on environmental effects of radio frequency emissions. He explained that the Commission may hear comments, or testimony offered to them in regards to the radio frequency emissions that occur because of cellular towers, however, the Federal Government has directed that the information not be taken into consideration as part of approval or denial of a cell tower. According to State and Federal Law the Commission’s decision, regarding the placement of the cell tower, was to be limited to the land development and zoning issues. He noted that in the staff report the Federal regulations are referenced, as well as staff’s analysis of the cell tower, bases upon (and limited to) land development and zoning issues.

Attorney Baird explained that the question regarding Commissioner Anne Lynch’s ability to vote evening since she had been a member of the Planning & Zoning Board member when the cell tower application came before them. He stated that Commissioner Lynch voted with the Planning & Zoning Board and made a recommendation to the Commission, which would be considered tonight. He contacted the Attorney General’s Office, as well as the State Commission on Ethics and did his own analysis of the legal statutes and laws that apply in this situation. Under Florida Law Elected Commissioner are required to vote on a matter that comes before them, unless there was a voting conflict. Under interpretation of voting conflict, which was defined by the Florida Attorney General and State Commission on Ethics both indicate that voting conflict are

situation that would inure to the special financial gain or loss of the person voting. He gave an example regarding bias, which was not a basis for the Commissioner to not cast a vote or abstain from voting. Based upon the opinions of the State Commission on Ethics and the Attorney General, he was of the opinion that Commissioner Lynch must cast a vote this evening for or against the applicant before the Commission unless there was a financial conflict of interest.

Town Attorney Baird swore in all witnesses.

Ex-parte Communication Disclosure:

Commissioner Lynch disclosed that she was a Planning & Zoning Board member when the application for the cell tower was heard. She disclosed that she would consider the comments and opinions of the applicant, staff and the public tonight and would keep an open mind on the testimony, opinion, and comments expressed by the public, applicant, and staff. She disclosed that she would make a decision based on what she heard this evening.

Commissioner O'Rourke disclosed that he had spoken with Curtis Lyman, Mrs. Lyman, Bob Shelton, and many other residents and listened to their concerns about the application. He disclosed that he informed residents that he could not take an opinion at that time.

Vice-Mayor Glas-Castro disclosed that she received emails (the majority from 301 Lake Shore Drive residents), most recently from Brenda Swanson, Joanne Robin, Diane Bernhard, Carl McBride, and Richard Harvey, including people that could not attend this evening's meeting because they were out of Town or traveling, and people that were attending the meeting. She disclosed that the information shared with her would not affect her opinion, she would be open to the testimony, and facts presented tonight and would listen with an unbiased objective mind during the proceedings.

Mayor DuBois disclosed that he had not met or discussed with anyone. He disclosed that he met with Curtis Lyman before Mr. Lyman was the Party Intervener. He stated that he keeps an open mind on all applications.

Commissioner Flaherty disclosed that he had received numerous emails from the public. He disclosed that he has taken the time to read each email thoroughly and would echo what each Commissioner has disclosed. He disclosed that he has had no verbal communication with anyone.

Mayor DuBois explained the hearing process and set the order of business as follows: staff presentation, applicant presentation, interveners presentation, Commissioner questions of staff, applicant, or intervener, then public comment, rebuttal or closing arguments from staff, applicant, or intervener, then a motion, second, debate and a vote on the floor. He asked the public to consider what people were saying with respect and civility and expected everyone would. He stated that everyone giving testimony had worked hard on this application. He stated that the Commission had gathered for this

business meeting and asked that the business meeting have no interruptions. He turned the meeting over to Community Development Director Nadia DiTommaso.

Staff Report:

Community Development Director DiTommaso presented the staff report. She described what was included in the Special Call Commission meeting agenda packet. She outlined staff's review of the application, (see page 4 of Exhibit "A"). She outlined three (3) additional site plan criteria's that were considered (see page 8 of "Exhibit "A"). She outlined staff recommendation of denial (see page 10 of Exhibit "A").

Applicant Report:

Mr. Scott Richards, CEO of RG Towers introduced himself. He stated that cellular carriers, such as RG Towers were trying to plug the gap in areas like Lake Park for the past 10-years. He stated that T-Mobile had engaged in a lease with 501 Lake Shore Drive in 2008 to place a tower on the rooftop. He stated that they looked initially to go on rooftops to prevent building a new tower. He pointed out that there was a monopole tower outside of Town Hall for over 25-years. He referenced the revenue stream, and numerous deals with other municipalities with each deal being economically different. He stated that the 50/50 deal that was made with the Town was more than other municipalities have received in Palm Beach County.

Mr. Josh Long, introduced himself as the certified Land Use Planner with the Gunster Law Firm. He stated that Mr. John Little with Gunster Law Firm was present. He presented a presentation (see Exhibit "B"). He stated "for the record, that the application does comply with the Town's Comprehensive Plan and the Land Development Regulations, specifically section 74-65 through the following documents provided to the Town. The Site Plan, Compound Plan, Notes Plan, Elevation Plan, Wood Fence Detail Plan, Trench Detail Plan references through sheets C1-C7, Electric Plans referenced through sheets E1-E6, Landscaping Plan referenced through sheet L1, Irrigation Plan referenced through sheet IR-1 prepared by Michael Phillips registered Engineer and Jason Rinard Landscape Architect of Cal Trop Telecom signed and sealed on January 14, 2016 and received by the Department of Community Development on January 19, 2016. And the following documents; the tower Technical Reports, visual analysis, and the photo simulations we hereby submit and request that all these materials be included in the record of this Quasi-Judicial proceeding". He stated that they had extra materials for the Town if they would like to accept those. He reviewed the site plan (see page 14 of Exhibit "B") and the Compound Plan (see page 15 of Exhibit "B"). He explained the need for a tower in the area. He reviewed development patterns of towers in the Town that were adjacent to residential and historical structures. He reviewed the potential revenue stream for the Town (see page 39 of Exhibit "B").

Mr. John Little, Attorney with Gunster Law representing RG Towers introduced himself. He stated that in 2014 the Commission adopted a Resolution authorizing a lease agreement for the construction of a communication tower at the Lake Park Marina. He outlined the Resolution and lease agreement and explained the difference between the lease agreement and the site plan.

Party Intervener Report:

Mr. Curtis Lyman, representing the Lake Harbour Towers South Condominium Association at 301 Lake Shore Drive, which was north of the Marina. He stated that the upper apartments at 301 Lake Shore Drive (south side) would be directly irradiated from the proposed tower. He represents 84 of the residents that would be negatively affected by the Commission's decision if the application were approved. He pointed out that the proper course of action, as recommended by Town staff and the Planning & Zoning Board was to deny the application. He explained that the execution of the Commission's decision would have consequence over many years to come. He stated that they have submitted documentation supporting the denial of the application, which was buried among all the material on this matter. He stated that the tower would endanger public and private property, but especially human lives. He explained that an engineering report in the packet shows that the tower was not consistent with the Institute of Electrical and Electronics Engineering (IEEE) standards. He reminded the Commission that staff and the Planning & Zoning Board have denied the application. He gave nine (9) reason why the application should be denied. He explained the Town's definition of nuisance. He urged the Commission to do their duty, "damn the consequences in spite of the contractual threats that have been made", protect the residents, and deny the application.

Questions by the Commission to the applicant:

Vice-Mayor Glas-Castro stated that the applicants team went too quickly through their presentaiton and did not address the technical questions that were required as part of Section 74-65 of the Town Code. She stated that the Town Code requires that the applicant demonstrate that there are no reasonable alternative technology to accommodate the antenna to accomplish the objectives of the antenna. She asked what efforts were made to find alternative sites and how this was the least intrusive site to the community.

Mr. Josh Long apologized for the quick presentation, but was told as he arrived that he would only have 15 minutes to give his presentation. He explained that during the Planning & Zoning Board meeting they were able to present a presentation with additional detail. He explained that the search for a location in the area has taken quite some time. He explained that there were only three (3) locations (301, 501, and 801 Lake Shore Drive) that were comparable in the height needed for coverage. He stated that the 501 Lake Shore Drive building was the first to be reviewed and a lease agreement was made with them, but the negotiation fell apart. Secondly, 401 Lake Shore Drive was approached and they were not interested in entering into a lease agreement. He stated that when the negotiation with 501 Lake Shore Drive began to fall apart, they were approached by the Town to consider the Marina as a site.

Commissioner O'Rourke asked if one block west of the area was ever considered as an alternate site for the tower. Mr. Patrick Keen, Radar Frequency Engineer with T-Mobile and one of the engineers involved with the design and location of the tower responded. He explained that in 2013 they surveyed the area and determined, at the time, that the Marina was an ideal location for a tower location based on the network requirement.

Commissioner O'Rourke asked his question again, "was one block west of the area ever considered". Mr. Keen stated that he had not been involved with any design consideration with that location. He was not aware of the T-Mobile staff having entertained it.

Vice-Mayor Glas-Castro stated that Mr. Long mentioned, during the Planning & Zoning Board meetings, that there were intensive discussions, but very little was presented this evening. She stated that there were graphics in the packet that she could not interpret, including something about a coverage gap. She stated that unless someone could explain the information it was useless information.

Mr. Keen stated that the T-Mobile engineering team delivered an outlined the need for a tower in the area. He stated that the network matrix were complicated and difficult to communicate some of the consideration they made when determining a location for the tower. He explained that one of the basic engineering process was signal levels, so a coverage gap means that the signal levels are not adequate to provide services as needed by customers. He stated that in this area, the average signal levels are starting around 5 to 6-blocks south, east towards 6<sup>th</sup> Street, across the inter-coastal, south of Blue Heron Blvd, to Kelsey Park north, which were considered areas that have a gap, or compromised service. He explained that customers using the service indoors during busy hours might experience difficulties making calls; maintaining calls; or download speeds issues. He explained that signal levels are inadequate in Lake Park especially if someone were trying to make an emergency call. He explained that capacity was a concern in dense and commercial areas, which place strains on the network towers. He explained that in this part of the area the towers are approximately 1.2 to 2-miles apart. The tower at the Marina would reduce that to 1.25 to 1.5-miles apart. Based on their experience the grid would be spaced closer together for the network. He explained that performance issues of dropped calls were a concern. He stated that data collected in a motor vehicle showed areas with no service.

Vice-Mayor Glas-Castro stated that she does not understand because the T-Mobile marketing shows an excellent signal, which was included in the backup by the Party Interveners. Mr. Keen explained that the marketing team relies on a different set of matrix, and frankly, they were trying to keep up with marketing. He stated that they look at day-to-day experiences with the network.

Mr. Scott Richards, with RG Towers explained that when exploring for a site they have three (3) criteria's: 1) was it leasable 2) was it zone able 3) was it constructional. He stated that the site was leasable as shown in their lease option agreement with the Town. Secondly, regarding zone able, the Town Code Section 74-63 Permitted Uses, the Marina was a Town owned facilities, which met those criteria. He stated that according to the Town Code they had to look at a Town owned facility. He explained that another criteria they had to take into consideration was that the proposed area had to be in a Campus Light Industrial Commercial zone or C-4. He stated that due to setback and lot size requirements there were no other areas on US1 that were viable. He stated that these were the reasons why the Marina was chosen as a viable site.

Vice-Mayor Glas-Castro asked what efforts were made to co-locate and use existing towers structures or alternate technologies, such as the Distributed Antenna Systems (DAS) that were becoming more available.

Mr. Richards explained that T-Mobile tried co-locating at the 501 Lake Shore Drive building in 2008, but ultimately rejected. He explained that the height criteria needed was 110-feet, which the buildings on Lake Shore Drive do not meet the height criteria.

Vice-Mayor Glas-Castro asked if other towers could be modified to meet their coverage. Mr. Keen explained that the height of the tower would need to be doubled to meet the requirement of T-Mobile.

Vice-Mayor Glas-Castro stated that a radius graphic of the coverage area was outside of the Town. She asked how the proposed tower would serve the community as indicated in Town Code Section 74-65.

Mr. Keen explained that it would improve the service dramatically within that radius of 1.25 miles of improved coverage surrounding the Marina.

Vice-Mayor Glas-Castro stated that pursuant to Section 6409, if approved and built, the tower would be eligible for a 10-percent increase. She calculated that 10-percent on a 125-foot tower would be another 12.5-foot in height. She stated that the ground equipment would be subject to a similar increase. She expressed concern that the tower was proposed at 125-feet, but would be 137.5-foot tower.

Mr. Richards explained that they would design and build the tower at 125-feet, with no increases. He explained that concerning the ground space, the Commission has approved a total of 750-feet. They would limit each of the co-locators to stay within the 750-foot total approved ground space. He stated that potentially they could fit up to four (4) co-locators on the tower. He explained that other municipalities have allowed them to stack vertically the equipment.

Vice-Mayor Glas-Castro referred to the Party Intervenors expert documentation regarding potential lightning damage Ground Potential Rise (GPR) and expressed concern regarding the electromagnetic interference that the tower might have with the marine equipment. She asked if the engineer could enlighten the Commission.

Mr. Richards explained that Mr. Keen was a Radar Frequency Engineer, not an electrical engineer. He stated that he was not an electrical engineer, but had spoken to the general contractor, who was an electrical engineer. He stated that on Mr. Duckworth's website it defines in red bold on their home page "special grounding at wireless towers sites would prevent 99 percent of all lightning damage". He explained that ground rods (per the general contractor) for the co-locating, which would be tied to the tower ground ring; they would easily exceed 200-feet of buried grounding conductor and could increase the grounding with chemical rods with other means if required (see Exhibit "C"). He stated that the next concern expressed was the equipment damages and the potential affects. He

referred to the tower outside of Town Hall and the specifications regarding the grounding of that tower.

Mr. Little asked if he would be allowed to add two (2) additional comments to what Mr. Richards had stated. The Commission allowed Mr. Little to speak. Mr. Little stated that they were advised today of the Party Interveners materials, which was the reason why their electrical engineer was not present. The PDF link they were provide did not include the backup materials. He apologized for not having the electrical engineer present, but reiterated that the material was only provided to them earlier in the day. He pointed out that in Town Code Section 74-65 subsection 15 it states “prior to the issuance of the building permit to construct the antenna tower, the owner/applicant shall provide the Town with licenses and certifications from the state, Federal and local agencies and also to ensure structural integrity”; also it includes other Town Codes and provisions that must be complied, which are in the contexts of a Building Permit. Under Section 20, it states, “the operator shall submit a report to the Town certifying the structural and electrical integrity on at least an every two (2)-year bases”. It also states that the Town could perform periodic inspection of the facility at their expense to ensure structural and electrical integrity and compliance with the article. He respectively suggested that the portion presented by the Party Intervener had any relevance with the Building Permit as opposed to the Site Plan. Lastly, he asked that their engineer have an opportunity to put his credentials on the record, since he jumped in to answer questions and did not include the information earlier.

Vice-Mayor Glas-Castro stated that the Marina was in a natural flood area. She asked staff if they considered the elevation and the equipment that would be placed on the ground. Community Development Director DiTommaso stated that she brought that to the attention of the Town consultant engineer’s and no concerns were included in the response.

Commissioner Lynch stated that she had questions of Mr. Patrick Keen. Mr. Keen introduced himself and provided his credentials for the record. He stated that he was a Radio Frequency Engineer for 20-years and it included deciding locations for new cell phone towers and the configuration of the antennas, power levels of the equipment. He stated that his degree was from Rutgers University in Electrical Engineering, and had spent six (6)-years in the Military working on radar systems. He stated that he has the general knowledge of radio propagation.

Commissioner Lynch asked how many dropped call complaints were received by T-Mobile. Mr. Keen stated that for the purposes of the application they prepared graphics and matrix regarding dropped calls. He explained that from December 12, 2015 through January 12, 2016 the tower that serves this area (northwest of Lake Park) experienced more than 7,000 dropped calls in that month. He explained that it was not easy to determine where the dropped calls occurred and often times it was at the end of the coverage footprint.

Commissioner Lynch asked what attributed to the dropped calls. Mr. Keen explained that often times the power of the phone attributes to the dropped calls. He gave an example

that if someone were driving away from a tower footprint the service becomes lower and lower. He stated that busy hours of the day would also contribute to drop calls as the capacity on the tower becomes too great.

Commissioner Lynch asked if the tower at Town Hall would be the same as the proposed tower in terms of electric magnetic output. Mr. Keen explained that a stealth tower was a compromise and allows less equipment to be placed around the tower for the antennas. He stated that in general they could place the radios near the antennas and it was advantageous to their network design. He explained that it allows for a larger coverage area footprint.

Commissioner Lynch asked if the proposed tower would be more powerful than the tower at Town Hall. Mr. Keen stated that the proposed tower would be lower power than the Town Hall tower.

Commissioner Lynch asked how the tower would be grounded as presented by the Party Intervener. Mr. Keen explained that he was not an expert in that field. Mr. Richards explained that he was not an electrical engineer. Commissioner O'Rourke objected to his testimony.

Commissioner Lynch stated that grounding was a great concern. Mr. Richards explained that they were notified this morning about the information provided by the Party Intervener regarding the lightning rods. He stated that he has recited the information provided by the general contractor and legal counsel.

Commissioner Lynch stated that the topic needs to be explored because of the testimony presented by the Party Intervener.

Commissioner Flaherty asked where in Palm Beach County they had constructed other towers. Mr. Richards explained that two (2) towers were built in the City of Greenacres and one (1) in the Town of Lantana, each on city owned properties.

Commissioner Flaherty asked if they were residential or commercial properties. Mr. Richards explained that one of the towers was in the City of Greenacres City Hall; the other was at the I.B.B. Park near John I. Leonard Community High School, where a 75-foot light pole was replaced by the 125-foot tower and lights were installed 75-feet up; the Lantana tower was placed at the police department location. He stated that residents surround all three (3) towers.

Commissioner Flaherty asked how the 5G network would affect the tower. Mr. Richards explained that the carriers are all updating their equipment, so they design the towers to accommodate the future loading growth.

Commissioner Flaherty stated that on the Compound Plan (see page 15 of Exhibit "B") did it include the total 750-foot ground space necessary. Mr. Richards explained that on the top left-hand side of the slide it shows the start of the square footage with a gate. He

stated that there was potential space to accommodate three (3) co-locators within the 750-feet. Their goal was to remain within that space.

Commissioner Flaherty stated that his other question was how many Lake Park residents had reported dropped calls. Mr. Keen stated that the engineering team do not have access to the particular phone numbers to know which calls were Lake Park customers.

Mayor DuBois clarified that each of the presenters were given 15 minutes, which explains why the presentations were quick. He explained that his questions were technical regarding the lightening and the IEEE including the grounding of equipment, but if no expert was in attendance to answer the questions then he could not take an answer from anyone. Mr. Richards asked to have an email from their general contractor, who was an electrical, engineer included as an exhibit (see Exhibit "C").

Mayor DuBois stated that they would be able to accommodate the groundwork referenced by Mr. Duckworth.

Mayor DuBois asked if they had any studies regarding property values. Mr. Little explained that there were no studies regarding property values and stated that any of the statements made during the hearing regarding property values do not qualify as competent substantial evidence on that issue. He explained that the case law states that issues of elegit property value impacts that were tied to health are environmental issues are not properly considered from a legal standpoint. He stated that the Town Code does not state that criteria requested was needed and the information provided was speculation to this property or location.

Mayor DuBois asked for clarification that property value information was part of the Federal Statute. Mr. Little explained that to the extent that there were attempts to tie impacts on property values to concerns about health related issues, those are not properly considered because it was affectively back dooring in the issues that the Federal Statute preempted to the environmental and health concerns. Attorney Baird stated that those were legal arguments that were being made, which could be made during the rebuttal.

Mayor DuBois asked what Town Code Section 74-63 objection meant to them. He asked if they had just received the full packet this morning. Mr. Little explained that the Party Intervener portion was received today. He stated that Town Code Section 74-63 (d) directly ties to what was already decided in the lease that was entered into by the Town. He stated that the provision ties into the lease agreement made in 2014. Community Development Director DiTommaso explained that 74-63 (d) was mentioned in the recommendation concerning substantial written evidence which would need to be presented to support the recommendation. She explained that Town Code Section 74-65 (6) aesthetics was used as a basis. Mr. Little stated that Town Code Section 74-63 (6)(e) provides that "a tower or antenna site, the design of the telecommunications facility shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings. The proposed telecommunications facility design shall be included in the application and shall be required to be recommended for approval by the planning and zoning board to the

town commission for its approval". His response was that the stealth tower design (yardarm) was shown as an attachment to the first and the amended lease in 2015, which was designed in a way (regarding the open issues of including flags on the tower) that would tie into a sailboat marine. He stated that was to maximize to the extent possible taking a stealth tower with a the yardarm and the use of flags to tie into the marina neighborhood. He stated that it was a better blend than the tower outside of Town Hall. He stated that the tower would comply with this section.

Mayor DuBois asked if the radio waves could be directed. Mr. Keen explained that towers are designed with "quasi-omni pattern" with antennas pointing in a 360-degree circle. He stated that they could have six (6) antennas at a site, each antenna with a 33-degree be with horizontally spaced every 60-degrees. He stated that it does supply directivity in a circle.

Mayor DuBois asked if in that array would there be transmitters directed towards the northern shoreline. Mr. Keen stated that for this tower they were proposing four (4) directions.

Commissioner O'Rourke ask if no electrical engineer was represented today. Mr. Little stated "correct"; they saw the materials this morning. Commissioner O'Rourke asked if they saw the material this morning, then it was not something they had considered before. Mr. Little explained that all aspects of the Town Code under Section 74-65 were considered and have applied those. He stated that the Town's consultant electrical engineer did not raise the issue that the Party Intervener had injected at the last moment. He pointed out that in the Town Code Section 74-65 sections 15 and 20 it does speak to issues like this that are part of the Building Permit, not the Site Plan application.

Commissioner O'Rourke stated that the site plan application requires that they not engage in an activity that would endanger residents or detrimental to the safety of residents. He stated that he was not referring to health and safety of residents concerning radio frequency. Mr. Little stated that he understood that and believed the application does, and did not believe it was a concern that staff or staff's consultants raised.

Commissioner O'Rourke stated that possible electrocution could be a safety concern. Mr. Little stated that from a due process standpoint they were caught, as the applicant, in a bad situation because they were informed this morning of the existence of the materials. He stated that they do not have someone testifying who they could cross-examination. They have placed into the record their response from the electrical engineer and architect as to how they would do the grounding and what could additionally be done. In his opinion it was better than the 200-feet being suggested by the Party Interveners expert. He stated that the time parameters that they were afforded they tried to provide the best information they could and he was also making the point of the Building Permit aspect.

Commissioner O'Rourke stated with due respect the question of safety of the residents was in the Ordinance itself. Mr. Little response was "it is".

Commissioner O'Rourke stated that due to the area proposed, which was near the water, the applicant should have considered lightning issues, but it was not included in the presentation. Mr. Little referred to the Town Code and the only provision that raised the concern was in Section 74-65 subsection 15, which mentions building codes and safety standards. He stated that in the provision it states that prior to the issuance of a building permit, which lays out the factors necessary. He explained that the application complies with the Town Code and the Party Intervener, not staff or staff's consultants, had raised the concerns. He explained that they have done the best they could with the information within the hours given to respond.

Commissioner O'Rourke asked if the applicant was familiar with the criteria, stating that the development should not negatively affect the adjacent and natural systems. Mr. Little explained that staff had overlaid three (3) criteria's to their recommendation based upon their view of additional criteria they felt should be considered by the Commission. He stated that the Town Attorney could render a legal opinion to the Commission regarding the criteria. He stated that the reason applicants had criteria they follow on an application (where the rules are laid out in the Town Code) was so that an applicant would know what to bring forward so that an elected body could make a decision. He stated that when additional things that were not part of the Town Code, that was adopted by the Commission, was not laid in the Town Code, then there are some Constitutional and legal issues that he would leave to the Town Attorney to address.

Attorney Baird respectfully disagreed and stated that the items Mr. Little referred to, staff addressed as the general site planning principals that would not be applied to any site plan. Staff explained during the presentation the reason why they were doing so was because there was not specific criteria set forth in the Town Code because the Town was a master planned community and the Marina was a site that was coming outside of the master plan. He explained that the three (3) items recited from staff were general site planning principals, which professional planners use when reviewing site plans and applications.

Commissioner O'Rourke asked if they were under the Town's goals and statements. Attorney Baird believed they were different. He stated that those were general planning principals that professional planners use in evaluating a site plan. He explained that staff had separate findings with respect to their evaluation of whether the development application was consistent with the goals, objectives, and policies of the Comprehensive Plan and they set that forth in their staff report.

Commissioner O'Rourke referred to the staff report, under Section 2, Health Impacts -- electrocution of residents was a concern and asked the applicant why the issue was not addressed in their presentation. Mr. Little confirmed the section of the staff report with Commissioner O'Rourke. He stated that his understanding of what staff wrote was that certain residents have raised information regarding the health impacts of the tower, which were submitted for the Commission's consideration. The applicant had produced documentation as part of the agenda packet, highlighting the Telecommunications Act of 1996, which preempted the Town from using this as a basis of denial.

Commissioner O'Rourke asked if there were other considerations besides radio frequency waves that the Commission should not consider as health impacts of the residents. Mr. Little clarified that what he was saying was what the Act speaks to and was addressed in the Act. He stated that they were both speaking pasted each other and he was trying to answer the Commissioners question.

Commissioner O'Rourke stated that he understood, but was speaking about electrical problems. He asked about the aesthetics and the way the project was supposed to appear because of the stealth nature of the tower that it would not interfere with the aesthetics of the Marina area. Mr. Little stated that he was answering the question as it relates to the Mayor's question to whether or not they complied with 74-65 (6)(e). He stated that the aesthetics provision there was to the maximum extent possible and explains the things you are supposed to do to try to make it to the maximum extent possible compatible with that area. He explained that the stealth tower with the yardarm, and the ability to put flags upon it, was designed in a way to dry and blend into the Marina that has many sail masts around it.

Commissioner O'Rourke stated that the Town Code states that it was to minimize the adverse visual impacts associated with unnecessary proliferations of antenna towers and existing structures. He stated that his concern was with the existing structures and not so concerned by tower. Mr. Little seemed to believe that the stealth nature of it removes the problem. He stated that his concern was with the structure that goes along with the tower. He explained that it was stated earlier that a co-locator could require stacking, which would bring the height of the equipment higher and into an area that would interfere with aesthetic beauty of the Marina.

Mayor DuBois urged Commission O'Rourke to form his comments into a question.

Commissioner O'Rourke asked the applicant if they agreed or disagreed that the Marina's aesthetic would interfere with stacking the equipment. Mr. Richards asked to repeat the question. Commissioner O'Rourke asked if stacking equipment over other equipment affect the aesthetic nature of the Marina. Mr. Richards explained that it would be subjective opinion. He explained that with a 125-foot tower the existing equipment pads that were in there would be approximately 4-6 feet in height. He stated that if they were to get to the point where stacking were necessary, they would need to check if the Town Code would allow it. He stated that their goal was to contain all the equipment within the 750-feet of space without having to stack.

Commissioner O'Rourke stated that according to the applicant the lease agreement had an option that allows for stacking. Mr. Richards stated that what he said was that in other municipalities, they do allow stacking, but he has not checked the Town Code to see if it were permissible. Mr. Little explained that the stacking was at the ground level and Mr. Richards was explaining that if it were necessary to stack, they would need to come before the Commission. They are not stating that they have a right to do so because of the lease agreement option. He explained that 50 percent of the revenue would be shared according to the lease agreement.

Mayor DuBois thanked staff and the applicant for their presentations and announced that they were moving on to Public Comment. He stated that he had received 33 public comment cards and each person was allowed three (3) minutes. He explained that if anyone would care to waive their time in favor or opposition to the item, they could come to the podium and say so and it would move things along a little bit. He explained that he would call the first person and would announce the next person "on-deck" to move the meeting along.

Public Comment:

1. **Robert Shelton** explained that he does not object to cell phone towers but does object to having it placed in the Marina.

2. **Gina Bunts** referred to Town Code Section 74-61 (7) to consider the public health and safety with telecommunication towers and studies conducted internationally on the health effects of residents living close to towers.

3. **Diane Bernhard** discussed the applicant's presentation at the Planning & Zoning Board meeting and the differences with the presentation to the Commission.

4. **Margaret Robb** questioned the coverage area and the proposed location for the tower. She opposed the tower at the Marina.

5. **Kay Heisler** expressed concern with the tower being placed at the Marina.

6. **Curtis Lyman** as the President of the Lake Harbour South Condominium Association 89 percent of the residents have provided written communication opposing the tower.

7. **Hourvash** was opposed to building the tower at the Marina.

8. **Richard Harvey** referred to an email he distributed to the Commission regarding a Brevard meeting, where they were interested in building a tower like the one proposed. He stated that the applicant has misrepresented what they represented at the Brevard meeting.

9. **Joanne Robin** supported the Marina Business Plan, but opposed the tower at the Marina.

10. **Cliffard Watkins** explained that the applicant had proposed a different location for the tower before approaching the Town about the Marina.

11. **Samuel Kouhialakos** expected to see a rendering of the tower during the presentation. He expressed concern regarding the property values and opposed the tower.

12. **Herbert Robb** expressed concern regarding the amount of space, which would be used for the tower. He expressed concern with the need for utility trucks, and landscaping.

13. **Diana Anderson** expressed concern with the proposed tower and would sell her apartment if the tower were installed.

14. **Michael Tomas** expressed concern with the economic value of the total land at the Marina by installing a tower.

15. **Julie Sarkozy** opposed the tower at the Marina. She stated that there were other ways to increase revenue rather than taking away from the property as it stands.

16. **Barry Heisler** opposed the tower.

17. **Cliff Robert** opposed the tower and felt that no investor would build near the Marina if a tower were built.

18. **Christopher Burdan** expressed concern with the stealth tower.

19. **Greg Korb** expressed concern with the different presentation that was presented at the Planning & Zoning Board meeting and the distractions this evening with all the legal terms. He opposed the tower being directly outside of residential windows. He expressed concern with the grounding, and fuel tanks.

20. **Claudia Wendel** provided a “radiation pattern of a cell tower antenna” page for the record (see Exhibit “D”). She expressed concern with the loss revenue to the area. She urged the Commission to vote against the tower.

21. **Rosie Matthews** opposed the cell tower.

22. **Barry Heisl** asked the Commission to keep in mind that both 401 and 501 Lake Shore Drive rejected the proposal of installing the tower on the roof of their buildings. He stated that no one from Lake Park has reported dropped calls.

23. **Gerard Venable** compared lies versus statistics. He stated that the loss revenue would offset the benefit the Town would receive.

24. **Mimi Venable** spoke of the untruths regarding dropped calls and the applicant was not truth worthy.

25. **Robert Socolosky** expressed concern that the children could not play at the Marina.

26. **Michael DeSouza** expressed concern with property values and health issues.

27. **Joyce Wojtowicz** opposed the tower because of the potential health issues and unsightliness of the natural beauty of the Marina.

28. **Michael Caputo** thanked the President of the Association for the time and effort toward the presentation. He opposed the tower at the Marina.

29. **Susan Ray** explained that the Telecommunications Act of 1996 was being rewritten to reflect all the current scientific evidence that proves that non-thermal electromagnetic radiation was harmful to humans. She stated that RG Towers were misleading the Commission because they recommend placing the antennas outside of the monopoles. She asked the Commission to look beyond the revenue the tower would generate.

30. **Mark Brasnahr** thanked the Commission for their time and thanked the Palm Beach County Sheriff's Officer for their presence at the meeting. A member of the applicant staff, which made him feel uncomfortable, approached him at the last meeting.

31. **Renee Ronnie** expressed concern with the flooding, and gas tanks at the Marina.

Two (2) members of the public did not respond when called to speak.

Closing remarks by staff.

Community Development Director DiTommaso provided closing remarks (see Exhibit "E"). Staff recommended denial of the application.

Closing remarks by applicant.

Mr. Little asked to make their closing remarks after the Party Intervener. Attorney Baird stated that the Town Code takes the proceedings in this order.

Mr. Little thanked the Commission for their time and attention to the matter and understood that this was not an easy task. He stated that they object to any testimony that relates to health effect issues, environmental issues, and speculation about property values. He explained that the issue was to be decided on the context of the site plan criteria that would be applied here to the extent that was deemed to be applicable. He stated that their point was that there was a lease that was entered into and amended to address the vast majority of what has been spoken about tonight. He stated that with respect to the issue that came up to their attention today on the grounding issue, they have provided the data regarding the grounding and have explained that the context of the Building Permit process would be addressed. He stated that the grounding issue would be addressed to the satisfaction of the Town in the context of the provision, as the Town Code would call for. He stated that with the issue of nuisance, as well as other arguments that were being made, he made the point that in the lease that was executed, in paragraph 13, it was represented and warranted by the Town that the execution and performance lease would not violate any laws or Ordinances or any other agreements binding by the Town, which would include the Comprehensive Plan, Land Use Regulations. He stated that the lease agreement came back again in 2014 to amend, again it showed a stealth tower and it showed all the issues in the attachment. There were publicly noticed hearings; not consent agenda issues; they were matters that came before the Commission. He stated that the lease specifically provides that it was a permitted use for the issues being discussed. He stated that in paragraph 7 of the lease provides that the tenant shall have the right to build the very thing that was being discussed. He stated that they showed how the applications complies with the site plan criteria, how it would be applied, Comprehensive Plan issues to the extent applicable that were decided at the time the lease was entered into. They have addressed Section 6(e), which they addressed

previously. He pointed out that this was a contract, with no termination provision as it relates to the Town and the regulatory authority should not be used in a manner to try to write into the lease agreement a termination provision that does not exist. He stated that there was an economic stream that comes with this, a need in the community, which the evidence has shown for cell coverage. He explained that they could not take cell towers and stop them on artificial lines between municipalities, but it was located in your community and by its very effect spreads out and serves your community. He explained that in the Town Code requirements by which they must look for locations for cell towers and the first item on section 74-63 specifies Town owned or leased land. He explained that it was reason why there was a tower at Town Hall and Public Works, which was why the Town entered into the lease for the Marina two (2) years ago and it was confirmed again one (1) year ago. He finished off by stating that if they were going to look for adages to should apply to the situation he would suggested that it were an adage that our word was our bond. The lease has been brought before the Commission twice, and addresses the issues. He suggested that they move forward in a way that honors that word.

Closing remarks by Party Intervener.

Mr. Lyman thanked the Commission for the opportunity on behalf of the Association and neighbors to speak this evening. He stated that the Party Intervener report was submitted to the Town on March 9, 2016 and a public record. Anyone could have access to the report if requested. He stated that they should not hide behind the argument of due process because due process had been fulfilled. He referred to the grounding and stated asked why were the plans not submitted with IEEE standards. He referred to a letter from an engineer, who was one of the lightning engineer experts in the world that states that the Marina was an inappropriate site for the tower because it could not be grounded properly. If the Commission approved the application, they would endanger human life, property values, and would hurt the people that have voted for them to represent. He asked that they use common sense and deny the application. He thanked the Commission.

Mayor DuBois explained that it was time for a motion and vote of the Commission. He stated that since there was no recommendation by staff, he asked the Town Attorney for guidance.

Attorney Baird provided the Commission with instructions. He stated that the lease that had been referenced, the lease was a contract, contract zoning was prohibited, and what they were here to consider was not the contract. They were here to consider the site plan and whether or not to approve it. He explained that the Commission's decision regarding the site plan should be based on the evidence presented this evening regarding the discussion items that were presented by the applicant and meets the criteria of the Town Code and site plan sections of the Town Code. He explained that staff considerations of the evaluation of those same things. The Commission should disregard the testimony from citizens and the diagram regarding the radiation pattern and the environmental effects because Federal Law prohibits from doing so, therefore, that evidence was not relevant to their determination. He stated that their determination was based on their evaluation of the site plan and the sections of the Town Code, and the Comprehensive

Plan. He explained that the appropriate motions for the Commission were to consider would be a motion to approve the site plan or a motion not to approve the site plan.

**Motion: Commissioner O'Rourke moved to deny the application; Commissioner Lynch seconded the motion.**

Vice-Mayor Glas-Castro provided her credentials as a professional planner accredited by the American Institute Certified Planners; "prior to reviewing the agenda back up, I looked at the Comprehensive Plan myself to assess the policies that were in there to govern all development and redevelopment activities within the Town. Similar to staff I saw that goal 3.4.1 in Policy 5.1 were questionable. But I think staff missed a couple of policies. Policy 1.5 requires that development and redevelopment, which would substantially increase the tax base, while minimizing negative impacts on natural and historic resources, existing neighborhoods, and development. I think they should have also brought out objective 5 itself, which states that as a substantial built out community in an urbanized area, the Town shall promote development and infill development in a manner that was considerate to existing neighborhoods and uses, built natural environments and neighboring jurisdictions. Also, Policy 5.4 states that the Town shall utilize techniques such as distance requirements, buffering, landscaping, lower intensity development, and scale down requirements to provide appropriate transitions between uses, of different intensities, densities, and functions. I find it odd that the applicant did not address consistencies with the Comprehensive Plan at all, just general statements by their professional planner that he found it to be consistent. Their Attorney tried to speak to the lease option agreement itself; I know that this applicant was not the original party when we addressed this in April 2014. But, this Board specifically asked about approvals that would be needed and it was confirmed that Planning & Zoning review, site plan approval would be required. The applicants knows that we cannot contract away or waive by contract the Comprehensive Plan requirements. So I tend to agree with staff's analysis on the Comprehensive Plan and the incomparability of the proposal with the adjacent neighborhood, with our existing land use pattern, and with our visions, which started back in 2013 before the lease option agreement was entered into. I find it interesting that the applicant stated that they felt they were compatible and they did not reject it, the suggestion that more decorative material be used for the fencing around the base of the tower. So, I found it objectionable that they want to be compatible with the dumpster enclosure rather than the characteristics of the area as a whole. I have concern with Federal rule Section 6409, allows a 10 percent increase. What I have been taught as a professional planner is that you should plan for that 10 percent increase, so if this Commission is inclined to approve the tower then I would suggest that we bring down the height to 100-feet, which was also consistent with the height of 301 Lake Shore Drive, which would be the adjacent closes building. I have other comments if the majority of the Commission is inclined to support the applicant's proposal".

Commissioner O'Rourke stated that considering the testimony and evidence that was presented his decision was based on the recommendation by both the Planning & Zoning Board, of which two (2) members are professional planners along with staff recommendations, it was his intension to vote to deny the application.

Mayor DuBois explained that an Aye vote would deny the application and a Nay vote would support another motion.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Flaherty	X		
Commissioner O'Rourke	X		
Commissioner Lynch	X		
Vice-Mayor Glas-Castro	X		
Mayor DuBois		X	

Motion carried and the application was denied 4-1.

Attorney Baird explained that under Town Code Section 2-2 of the Town Code he was required to prepare a final order that reflects the decision of the Commission based upon the evidence that the Commission relied upon. He stated that the final order would be prepared for the Mayor's signature within a week or two.

Mayor DuBois closed the Public Hearing.

**TOWN ATTORNEY, TOWN MANAGER, COMMISSIONER COMMENTS:**

**Town Attorney Baird** had no comments.

**Town Manager D'Agostino** had no comments.

**Commissioner Flaherty** thanked everyone that attended.

**Commissioner O'Rourke** had no comments.

**Vice-Mayor Glas-Castro** stated that the Easter Egg Hunt was scheduled for Saturday, March 27, 2016 at Kelsey Park at 9:00 a.m.

**Commissioner Lynch** stated that all help would be needed during the event.

**Mayor DuBois** thanked everyone for attending the meeting and for their civility and all of their comments.

**ADJOURNMENT**

There being no further business to come before the Commission and after a motion to adjourn by Commissioner O'Rourke and seconded by Commissioner Lynch, and by unanimous vote, the meeting adjourned at 9:44 p.m.

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Mayor James DuBois

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Town Clerk, Vivian Mendez, CMC

Town Seal

Approved on this \_\_\_\_\_ of \_\_\_\_\_, 2016