



CITY OF DURHAM | DURHAM COUNTY
NORTH CAROLINA



Date: December 1, 2014

To: Thomas J. Bonfield, City Manager
Through: Keith Chadwell, Deputy City Manager
From: Steven L. Medlin, AICP, Planning Director 
Subject: *Unified Development Ordinance* Text Amendment, Unipole Freestanding Wireless Communication Facility (TC1400004)

Summary. Text amendment TC1400004 is a privately-initiated amendment to the *Unified Development Ordinance* (UDO) to allow unipole (a.k.a. "slick-stick") freestanding wireless communication facilities (WCF) to be considered "concealed" if located in most nonresidential, planned, or design districts. The specific text amendment application is found in Attachment A. Examples of such facilities are included in Attachment B.

Recommendation. The staff recommends approval of the attached ordinance to amend WCF regulations within the *Unified Development Ordinance* specifically regarding unipole facilities (TC1400002), and recommends approval of a consistency statement regarding consistency with the Durham *Comprehensive Plan* and that the request is reasonable and in the public interest.

Staff would prefer to incorporate this amendment into the overall revisions to the WCF ordinance standards (TC1200013) that have been under consideration by the Joint City-County Planning Committee (JCCPC), with impending subsequent public hearings. The applicant was provided the options to either incorporate the request into the overall revisions or to move forward with this request ahead of those revisions. The applicant has chosen to initiate the approval process ahead of the overall revisions in order to take advantage of both the current setback standards and the current exemption of concealed, freestanding WCFs from the minor special use permit process in all zoning districts. The overall WCF revisions will propose changes to both of these current UDO provisions.

The Planning Commission recommended approval, 7-2, of the text amendment on October 14, 2014. The Planning Commission determined that the requested amendment is consistent with the adopted *Comprehensive Plan*; and that it is reasonable and in the public interest based on comments received at the public hearing and the information in the staff report.

Background. The text amendment application is a privately-initiated amendment submitted by the Morningstar Law Group on behalf of Durham Tower Development,

LLC. The JCCPC reviewed this request at its August 6, 2014, meeting, and provided no clear policy direction regarding coordination of this request with the overall WCF revisions under consideration. Comments regarding the request itself were mixed, but generally supportive of the request.

The Planning Commission heard the request at its October 14, 2014, meeting and recommended approval. The Durham County Board of Commissioners will consider this request at its December 8, 2014, meeting.

Issues. A unipole is a type of monopole WCF that contains all antennas within the pole of the tower. Thus, only a tall pole is visible and the antennas are hidden (see Attachments B and C). This type of monopole does not currently qualify as “concealed” based upon the definition of concealed WCFs in Sec. 16.3, Defined Terms, of the UDO:

“Concealed Wireless Communications Facility: A wireless communications facility, ancillary structure, or WCF equipment compound that is not readily identifiable as such, and is designed to be aesthetically compatible with existing and proposed uses on a site. A concealed facility may have a secondary function, including, but not limited to the following: church steeple, windmill, bell tower, clock tower, cupola, light standard, flagpole with or without a flag, or tree. A nonconcealed wireless communication facility is one that is readily identifiable such as a monopole or lattice tower.”

The amendment request would allow unipoles to be considered “concealed” in all nonresidential districts except Commercial Neighborhood (CN), in all planned districts except Planned Density Residential (PDR), and in all design districts. This would expand the range of allowable zoning districts where this type of WCF could be located, and would allow approval within these districts to be administrative instead of requiring a special use permit (unless within 300 feet of a scenic byway).

A unipole is considered a type of concealed, or stealth, tower in other North Carolina jurisdictions, and in at least one instance is the preferred option¹. Questions regarding the effectiveness of concealed towers, typically in the form of “monopines” (i.e., monopole WCFs designed as trees, typically pine trees) and in a few instances as flagpoles, have been raised during discussions about the overall revisions to the WCF standards. All of the various versions of the WCF revisions at this time would continue to classify unipoles as nonconcealed towers and would require a minor special use permit for their approval in any of the zoning districts that allow them.

¹For example, in August 16, 2011, the City of Wilmington, NC, amended its City Code Section 18-812 to define “concealed, stealth, or camouflaged communication tower.” This definition specifically precludes monopines and flag poles as concealed towers, and includes unipoles as concealed towers.

Therefore, there are two aspects of the request that need consideration. The first is the request itself, and the second is timing of the request. Staff and the JCCPC have reviewed the request; and although a unipole is not a completely concealed facility, it does conceal all the antenna apparatus, as exemplified in attachments B and C. That, and limiting the locations where approval can be performed administratively versus requiring a special use permit, lead staff and some members of the JCCPC to determine the request reasonable.

The draft ordinance prepared by staff (Attachment D) attempts to provide clarity to the request while maintaining the intent of the applicant. Instead of attempting to categorize a unipole as "concealed" or "nonconcealed," staff has created a separate category that is consistent with the intent of the applicant, while also providing some consistency with the other types of freestanding towers. Both concealed and nonconcealed WCFs are allowed within the RR and RS-20 zoning districts, and therefore staff believes it prudent to also allow unipoles in those districts; but only with a special use permit consistent with nonconcealed WCF approval standards.

The second aspect for consideration is the timing of the request. Although staff considers the request to be reasonable, staff would prefer the changes to be incorporated within, instead of ahead of, the overall revisions to the WCF standards. As noted above, a unipole, although currently considered nonconcealed, is an option under current UDO regulations. Primary differences include the requirement of a special use permit instead of administrative approval, setbacks (although a reduction can be sought with a special use permit), limited locations, and buffers.

The applicant has the option of moving forward with the request ahead of the overall revisions or incorporating the requested changes into the overall revisions that are pending. Issues with both options were discussed. The applicant has chosen to initiate the approval process ahead of the overall revisions to the WCF standards.

The requested amendment, whether approved ahead of the overall WCF revisions, or incorporated within them, is not anticipated to conflict with state or federal regulations². The request has also been reviewed against the Durham *Comprehensive Plan*, which incorporates by reference all other adopted plans. The *Comprehensive Plan* does not specifically address WCFs within Chapter 4, Community Character and Design Element, but the request does not appear to conflict with the tenants of the this chapter regarding design quality (Goal 4.2), contextual design (Goal 4.3), and roadway image (Goal 4.4). Furthermore, the request maintains the special use permit

²State legislation includes North Carolina Session Law S.L. 2007-526 and subsequent amendment S.L. 2013-185. Federal regulations include the Federal Communications Act of 1996, and Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012.

requirements already established for WCF proposals in the vicinity of scenic byways, as promoted in Objective 4.3.1, Protecting Rural Character.

Although staff has indicated a preference for the amendment request to be incorporated in the pending overall WCF ordinance revisions, the substance of the request appears reasonable and in the public interest. Comments provided at the JCCPC and Planning Commission meetings characterized unipoles as a preferred tower type to standard monopoles and, in some instances, monopine (faux tree) towers. Furthermore, the request limits administrative approvals to certain nonresidential, planned, and design districts while allowing them only in the RR and RS-20 residential districts with a special use permit. Thus, impacts upon single-family residential areas should be limited and would require additional scrutiny.

Changes to the amendment since Planning Commission: No substantial changes have been made to the proposed ordinance amendment. Staff has added clarifying text in paragraph 5.3.3N.13.a(1)(c) to indicate that the PDR district is also included in "all other residential districts" for the purpose of height requirements.

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Attachments:

Attachment A: Application by Morningstar Law Group.

Attachment B: Examples of Unipole Towers

Attachment C: Example Elevation of a Unipole Tower, per site plan D1400068

Attachment D: An Ordinance to Amend the Unified Development Ordinance
Regarding Unipole Freestanding Wireless Communication
Facilities (TC1400004)

Attachment E: Unified Development Ordinance Text Amendment Consistency
Statement by the Durham City Council pursuant to NCGS §
160A-383

Attachment F: Planning Commission Comments from October 14, 2014