

# JACKSON COUNTY PLANNING OFFICE

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## MEMO

To: Board of Commissioners  
Cc: Don Adams, County Manager  
From: Michael Poston, Planning Director  
Date: January 23 2017

RE: Wireless Communication Ordinance

In December of 2015 the Board of Commissioners conducted their first quasi-judicial hearing under the recently amended Telecommunication Ordinance. Based on that experience, the Commissioners requested that the Planning Department Staff to work with the Planning Board to examine the ordinance in order to make the process more streamlined and less cumbersome. Staff began the review process in April of 2016 and presented proposed amendments to the Planning Board in September of 2016. The final document was created after three months of review and discussion from the Planning Board. The Planning Board made their recommendation to approve the final draft of the proposed amendments to the Board of Commissioners at their November 15, 2016 meeting. The amendment highlights are listed below and show the chronology of the amendment process. In addition, the Planning Board's Statement of Consistency is attached, as well as, a proposed Board of Commissioners Consistency Statement for your consideration.

### November amendment highlights (Memo dated November 7, 2016)

1. Section 30-20 - Page 2-Added a definition of broadband. Used the NC Broadband Definition.
2. Section 30-23(b)(2)(b)-Page 15- Changed to read Planning Department Recommendation.
3. Section 30-22(a)(2)- Page 6- Added an example for what type of documentation could be provided.
4. Section 30-23 (a)(3)-Page 7- Added back to the section "and its inhabitants".

### October amendment highlights (Memo dated October 6, 2016)

1. Section 30-20- Page 3- The new definition is for Jackson County Board of Commissioners. The definition is being created to acknowledge that all of our municipalities have adopted the County's

Wireless Ordinance and when applications are received within municipal zoning jurisdictions the governing body of that municipality will sit as the quasi-judicial body.

2. Section 32-22 (a)(2)- Page 6- Replaced the word documented with documentation.
3. Section 30-23(b)(3)(a)- Page 16- Corrected phrase to read “hearing on application shall be scheduled”.
4. Section 30-23-(b)(3)(b)(3)- Page 16- Corrected phrase to read “meets all requirements”.
5. Section 30-23 (d)(2)(b)(2)-Page 19- Corrected phrase to read “written appeal to the Board of Adjustment”.

#### September amendment highlights (Memo dated September 2, 2016)

1. Section 30-21 (d), Page 5- Allowing state and local emergency management towers to be exempt from all approval processes (d)(4).
2. Section 30-21 (d) and (e), Page 5 and 6- Moving the approval of facilities located on County owned property from exempt to administrative review (e)(9). New language to allow approvals of facilities located on State owned property as administrative approvals (e) (9). New language to allow facilities used exclusively for providing broadband services as administrative approval so long as the structure does not exceed 120 ft. in height and does not create a new access road to the property.
3. Section 30-22 (a), page 6- Amends language in (a)(2)(3). The location hierarchy is a recommended list and this was one area of the hearing process that was cumbersome. The proposed amendments are designed to still provide guidance to applicants regarding the County’s recommended preference in site location while making the process more efficient.
4. Section 30-22 (c), page 7- Removes this subsection. This is another area that was cumbersome and redundant as the County already requires a detailed explanation regarding site locations in 30-22 (a)(2).
5. Section 30-22 (g), page 8- Amends the setback requirements from the height of the wireless structure plus 10 % from the adjacent property to the wireless structure’s engineered fall zone plus 10% (as sealed by a licensed engineer) (g)(1). The amended section also moves and clarifies the accessory structure setback in the new (g)(2).
6. Section 30-22 (h)-(m), pages 8-9 (formerly Section 30-23 #s 19-23, 26)- These requirements were located in Section 30-23 under application and review process. The reason for moving the requirements is that they are standards not application or process requirements. With exception to (h) the language has not changed, it has just been moved within the document. Subsection (h) has been modified to reflect the requirement of accessory structures. The concealment technologies are encouraged and the Board of Commissioners can make that a condition of approval (Section 30-22 (d)(3)).
7. Section 30-23 (b)(3)(a)(b), pages 15-16- These amendments clarify that there is only a quasi-judicial hearing for a conditional use permit. In this situation the public hearing is considered ex-parte

communication and any thoughts or information shared at that hearing cannot be considered in a quasi-judicial hearing. For this reason, it is better to clarify that the quasi-judicial hearing is the only hearing that is held to consider a conditional use application. I will note that all quasi-judicial hearings are open to the public, but only those parties with standing may participate in the hearing process.

8. Section 30-23 (b)(3)(iii), page 16- Amends the standard of findings related to diminution in value of adjacent properties. This standard as currently written is very difficult for the Board of Commissioners, or any board that uses this criterion as a required finding, in a conditional use approval process, to approve any application. The proposed language still applies the criterion, but the finding is shifted to an opposing party to show diminution in value.
9. Section 30-23 (b)(5), pages 16-17- The amendment removes the ability to resubmit the same or substantially similar applications within a year of denial of the original application. Since this is a quasi-judicial process and not a legislative process there is not an ability to re-hear the same or substantially similar application. If denied, an applicant can appeal the decision to Superior Court.
10. Section 30-23 (c)(2)(b) and (c)(6)- page 19- Amends the text to have the Board of Adjustment hear appeals of Staff reviews instead of the Planning Board. There is a need to consolidate our quasi-judicial functions across our many boards. This amendment will allow the Planning Board to focus on legislative based policy issues and the Board of Adjustment focus on quasi-judicial cases.



January 23, 2017

JACKSON COUNTY BOARD OF COMMISSIONERS

**Statement of Consistency pursuant to G.S. 153A-341**

Re: Proposed amendment to the Wireless Communications Ordinance.

The Jackson County Board of Commissioners has found the amendments to the ordinance are supported by the Jackson County Land Development Plan.

We find the proposed amendments to the Wireless Communications Ordinance to be consistent with the goal identified on page 42 of Jackson County's Land Development Plan. More specifically:

- To promote twenty-first century infrastructure (broadband etc.) to meet the needs of high-tech businesses.

We therefore consider the proposed amendments to be reasonable and in the public interest.

Signed: \_\_\_\_\_

Chairman, Jackson County Board of Commissioners