

**STAFF REPORT**

Planning & Zoning Commission: November 8, 2004  
Board of County Commissioners: December 8, 2004

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**APPLICANT:** Stereo Town Inc., c/o Karen Adams **FILE NUMBER:** H-04-66

**PURPOSE:** Public Service Facility Overlay District for a Communication Tower with a Reduction in Setbacks

**GENERAL**

**LOCATION:** West side of Exultant Drive, approximately 1,000' south of Pacific Avenue

**LEGAL**

**DESCRIPTION:** Lot 1, Hernando Square Plaza North, as per plat thereof recorded in Plat Book 30, Pages 3 - 4, of the Public Records of Hernando County, Florida in Section 10, Township 23 South, Range 17 East

**FILE STATUS:** All requirements necessary to conduct the public hearing have been satisfied.

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**CITIZEN RESPONSE:** FOR: 0 AGAINST: 4

**STAFF FINDINGS:**

Surrounding Zoning

North: PDP(SF), PDP(GHC)  
South: PDP(GHC)  
East: PDP(GHC)  
West: PDP(GHC), PDP(SF)

Surrounding Land Uses

DRA, undeveloped  
Home Depot, undeveloped  
Undeveloped  
Home Depot, DRA

**SUMMARY OF REQUEST**

The petitioner requests a Public Service Facility Overlay District for a Communication Tower with a reduction in setbacks. The subject property is located on the west side of Exultant Drive, approximately 1,000' south of Pacific Avenue.

**FACTUAL INFORMATION**

1. The property is currently zoned PDP(GHC) with a C-2 use for signs.
2. The property comprises approximately 1.2 acres.
3. The site has been developed with a Rex consumer electronics store.

4. The site contains no specimen or majestic trees.
5. The subject property has access from Exultant Drive.
6. The subject property is located within a commercial land use classification on the adopted Future Land Use Map.
7. The on-site soil type is Candler fine sand. Candler fine sand provides a habitat suitable for gopher tortoises. Since there is the potential for this listed species of special concern to be present, a Florida Fish and Wildlife Conservation Commission permit may be required prior to site alterations.
8. The property is located in a flood zone C.
9. The subject property does not contain any wetlands, WHPAs or SPAs according to County data resources.
10. The Utilities Department has indicated that central water and sewer are available to serve the subject site.
11. There are adequate public facilities available to serve the subject property.
12. The area is characterized by commercial and residential development, and undeveloped parcels.
13. The petitioner has requested a reduction in setbacks for the tower and accessory structures from 50' to 40' from a residentially zoned parcel, which is a deviation from the LDRs.

**STAFF DISCUSSION**

The petitioner requests a public service facility overlay district for a communication tower in order to develop the subject property with a 190' monopole cellular service tower. The subject site has been developed with a Rex consumer electronics store. The subject property was rezoned in 1986 to PDP(GHC) with a C-2 use for billboard signs.

The narrative and plan provided indicate the petitioner proposes to develop the subject site with a 190' monopole tower designed to accommodate a minimum of five (5) carriers and equipment cabinets within an approximately 3,901 square foot fenced area. The site is to be fenced with a 6' chain link fence with 1' of barbed wire on top. The narrative estimates the proposed use will generate one round trip per carrier per month.

The petitioner requests a reduction in setbacks. The LDRs require a monopole 100' or taller to be located a minimum 125% of the tower height from a residentially zoned property, unless such property is used or designated for a nonresidential use. The proposed 190' tower is located 40' from a residentially zoned parcel containing a DRA which is considered a nonresidential use, therefore the reduced setback is not required. The LDRs require that no building, structure or use within a public service facility overlay district shall be closer than 50' to the property line of an adjoining parcel containing a residence or the property line of a residentially zoned parcel. The proposed tower and accessory structures will be located closer than 50' from the property line of an adjoining residentially zoned parcel developed with a DRA. The petitioner notes that the DRA separates the proposed tower from residentially developed property by more than 350', providing for an adequate tower fall zone and tower buffering. The LDRs require monopole towers to meet the setbacks of the zoning district. The proposed use meets the setbacks for the PDP(GHC) zoning district.

The petitioner has provided a search ring and asserted no structures suitable for collocation and no public service facility overlay districts approved for communication towers are located within the search ring. The County mapping resources do not indicate any communication towers within the petitioner's search ring.

The petitioner indicates in the narrative that the proposed communication tower will not have a negative material impact on the surrounding land uses, infrastructure and environment. The petitioner notes that the surrounding land uses are predominantly general to heavy commercial uses and a drainage retention area. The petitioner notes that the project is buffered to the west by a 172,000 square foot DRA. The petitioner notes that the proposed communication tower will generate minimal traffic, will not be lighted and will not use central water and sewer service. The petitioner notes a preliminary environmental review indicated the proposed tower will have no negative impacts on the environment. The subject property does not contain any wetlands, WHPAs or SPAs according to County data resources. The petitioner notes that no wetlands or other natural resources are located on or adjacent to the subject site.

The petitioner indicated the balloon test would be conducted on November 1, 2, and 3, 2004 pursuant to ordinance requirements. Staff made a site visit to observe the balloon test on November 2, 2004. An affidavit verifying the completion of the balloon test was not provided prior to finalization of the staff's report.

The County's RF engineering consultant has reviewed the petitioner's request and confirmed the cellular service provider's need for a cell site in this vicinity. The consultant notes that he is concurrently reviewing a second request for a cell site less than 2,200' to the east of this site. He has determined that the service providers on both sites may operate from either site with little or no adverse consequences. The consultant indicates the two sites will provide equal coverage and accessibility. The consultant is of the opinion that this site would provide slightly better spacing and geometric conditions for both applicants. He notes that if for any non-technical reason the other site located to the east is deemed superior, the decision to approve that petition will have virtually no

impact on the technical provision or quality of service, because the technical differences between the two sites are minimal. The consultant notes he evaluated no non-radio subjects such as aesthetic and compatibility issues.

The County has an adopted Airport Ordinance which states that any communication tower shall be presumed to be a “potential airport obstruction” and requires notification to the Federal Aviation Administration. The Airport Director has verbally indicated no issues with this tower. The County’s LDRs require that prior to approval to construct any structure determined to be a “potential airport obstruction,” either an Airport Construction Permit or an Airport Obstruction Variance must be granted. If the FAA finds no impacts, a permit granting construction approval of the structure will be issued contingent upon satisfactory compliance with the FAA “Advisory Circular (AC) 70/7460-1J” which addresses Obstruction Marking and Lighting.

The County Engineer had no comments.

The petitioner indicates no water or sewer services are required. The Utilities Department has indicated that central water and sewer are available to serve the subject site.

SWFWMD and the Gulf Coast Conservancy have been notified of the request; no replies have yet been received.

### **FINDINGS OF FACT**

The area is characterized by commercial and residential development, and undeveloped parcels. The Regency Oaks residential subdivision is located to the northwest of the subject property. The subject property is located approximately 375' from residentially developed SF lots in Regency Oaks. A DRA lies between the subject property and Regency Oaks. Undeveloped parcels zoned for commercial uses are located to the north. Home Depot is located to the south. The Planning staff is of the opinion the proposed communication tower would not be appropriate at this location characterized by general commercial uses and proximate to the Regency Oaks residential subdivision.

The subject property is located within a commercial land use classification on the adopted Future Land Use Map. Communication towers are considered public service facility uses and/or structures which are allowable in any future land use classification.

Policy 1.01H(2) indicates existing and future residential areas are to be protected from encroachment of incompatible uses that are destructive to the character and integrity of the residential environment. The Planning staff is of the opinion that the proposed communication tower would be an encroachment of an incompatible use destructive to the character and integrity of the Regency Oaks residential environment.

The staff is of the opinion that the request for a public service facility overlay district for a communication tower with a reduction in setbacks is inappropriate based on the following conclusions:

1. The proposed public service facility overlay district would be incompatible with the surrounding land uses.
2. The proposed public service facility overlay district would be inconsistent with the Comprehensive Plan.

**The rezoning process is a land use determination and does not constitute a permit for either construction on, or use of, the property, or a Certificate of Concurrence. Prior to use of, or construction on, the property, the petitioner must receive approval from the appropriate County department(s) for the proposed use.**

**The granting of this land use determination does not protect the owner from civil liability for recorded deed restrictions which may exceed any county land use ordinances. Homeowners associations or architectural review committees require submission of plans for review and approval. The applicant for this land use request should contact the local association or the Public Records for all restrictions applicable to this property.**

**STAFF RECOMMENDATION:**

Pursuant to the findings of fact outlined in the staff's report, the Planning staff recommends the Planning and Zoning Commission recommend the Board of County Commissioners adopt Resolution # \_\_\_\_\_ denying the petitioner's request to public service facility overlay district for a communication tower with a reduction in setbacks.

**P&Z RECOMMENDATION:**

On November 8, 2004, the Planning and Zoning Commission voted 5-0 to postpone this petition until the December 13, 2004, P&Z meeting at 9:00 a.m.

On December 13, 2004, the P&Z acknowledged the petitioner's request to withdraw the application.

**BCC ACTION:**

On December 8, 2004, the BCC acknowledged the petitioner's request to withdraw the application.