

RESOLUTION NO. R-99-1219

RESOLUTION APPROVING WAIVER REQUEST W99-007
WAIVER FROM REQUIRED DIMENSIONAL CRITERIA
PETITION OF Nextel
BY Leonard A. Tylka, AGENT
(Wellington Site FL-1569)

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, the Board of County Commissioners, pursuant to Article 5 (Development Review Procedures) of the Palm Beach County Unified Land Development Code (Ordinance 92-20, as amended) is authorized and empowered to consider, approve, approve with conditions or deny Waiver from Required Dimensional Criteria for Communication Towers; and

WHEREAS, the notice and hearing requirements, as provided for in Article 5 of the Palm Beach County Unified Land Development Code have been satisfied; and

WHEREAS, Waiver Request W99-007 was presented to the Board of County Commissioners at a public hearing conducted on June 29, 1999 and July 22, 1999; and

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the petitioner and other interested parties, and the recommendations of the various county review agencies; and

WHEREAS, this approval is subject to Article 5, Section 5.8 (Compliance with Time Limitations) of the Palm Beach County Unified Land Development Code (ULDC) and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners made the following findings of fact:

1. This request for Waiver to exceed tower height for a single carrier (+50) complies with the intent of Section 6.4.D.22 of the ULDC.
2. This Waiver to exceed tower height for a single carrier (+50) will not be injurious to the uses in the area adjacent to the structure and otherwise will not be detrimental to the public welfare.
3. This Waiver to exceed tower height for a single carrier (+50) is not granted based solely upon or in large measure due to costs associated with complying with all requirements of section 6.4.D.22.
4. This Waiver to exceed tower height for a single carrier (+50) will not result in an incompatibility between the proposed tower or communication facility and adjacent uses.
5. This Waiver to exceed tower height for a single carrier (+50) is necessary within the defined search or propagation study area as all other waiver alternatives have been exhausted.
6. This Waiver to exceed tower height for a single carrier (+50) is the minimum waiver that will make possible the reasonable use of the parcel of land, building or structure.

7. This Waiver to exceed tower height for a single carrier (+50) is consistent with the purposes, goals, objectives, and policies of Palm Beach County Comprehensive Plan and with relevant and appropriate portions of Article 6, Supplementary Use Standards of the Palm Beach County Unified Land Development Code.
8. This Waiver to exceed tower height for a single carrier (+50) will not be injurious to the area involved or otherwise detrimental to the public welfare.
9. This Waiver to exceed tower height for a single carrier (+50) based upon documentation submitted by the applicant is necessary within the defined search or propagation study area as existing towers or other structures do not possess the capacity to allow reasonable technical service.
10. This Waiver to exceed tower height for a single carrier (+50) based upon documentation submitted by the applicant is necessary within the defined search or propagation study area as existing towers or structures do not have the structural capacity to accommodate the equipment needed to provide reasonable service within the defined search or propagation study area.

WHEREAS, Article 5 of the Palm Beach County Unified Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Waiver Request W99-007, the petition of Nextel, by Leonard A. Tylka, agent, for a Waiver (W) to exceed tower height for a single carrier (+50) in the Agricultural Residential Zoning District, on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on July 22, 1999, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Marcus moved for the approval of the Resolution.

The motion was seconded by Commissioner Newell and, upon being put to a vote, the vote was as follows:

Maude Ford Lee, Chair	-	Aye
Warren Newell, Vice Chair	-	Aye
Karen T. Marcus	-	Aye
Carol A. Roberts	-	Absent
Mary McCarty	-	Aye
Burt Aaronson	-	Aye
Tony Masilotti	-	Absent

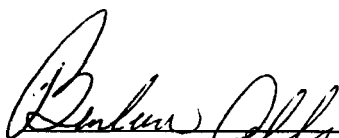
The Chair thereupon declared that the resolution was duly passed and adopted on July 22, 1999.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

DOROTHY H. WILKEN, CLERK

BY:


COUNTY ATTORNEY

BY:


DEPUTY CLERK

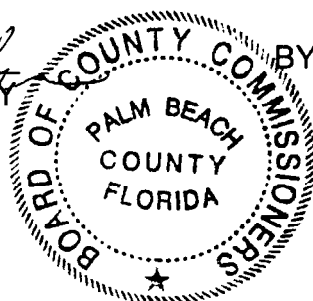


EXHIBIT A

LEGAL DESCRIPTION

PARENT TRACT LEGAL DESCRIPTION:

THE NORTHERLY **556** FEET OF LOT 4, BLOCK K, LOXAHATCHEE DISTRICT, ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT RECORDED IN PLAT BOOK 7, PAGE 81, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, **AND**

THE SOUTH 278 FEET OF THE NORTH 834 FEET OF LOT 4, BLOCK K, LOXAHATCHEE DISTRICT, ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT RECORDED IN PLAT BOOK 7, PAGE **81**, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. SUBJECT TO AN EASEMENT OVER THE WEST 50 FEET **OF** THE SUBJECT PARCEL FOR PERPETUAL RIGHT OF INGRESS AND EGRESS FOR ROADWAY PURPOSES.

CONTAINING **15.01** ACRES, MORE OR LESS.

NOTE: THE PARENT TRACT **IS** LOCATED IN SECTION 33, TOWNSHIP 43 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA.

LEASE SITE LEGAL DESCRIPTION:

A PARCEL OF LAND LYING WITHIN THE NORTH 834 FEET OF LOT 4, BLOCK K, **LOXAHATCHEE DISTRICT**, AS RECORDED IN PLAT BOOK 7, PAGE **81**, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 4, BLOCK **K**; THENCE SOUTH 02'17'46" WEST, ALONG THE WEST LINE OF SAID LOT 4, A DISTANCE OF 540.11 FEET, TO A POINT ON THE SOUTH LINE OF THE NORTH 540.00 FEET OF SAID LOT 4; THENCE SOUTH 89'12'34" EAST, ALONG SAID SOUTH LINE AND ALONG THE SOUTH LINE AND ITS WESTERLY PROLONGATION OF A CONSERVATION EASEMENT RECORDED IN OFFICIAL RECORD BOOK 9631, PAGE **805** OF SAID PUBLIC RECORDS, A DISTANCE OF 425.03 FEET, TO THE SOUTHEAST CORNER OF SAID CONSERVATION EASEMENT; THENCE NORTH 02'17'46" EAST, ALONG THE EAST LINE OF SAID CONSERVATION EASEMENT, A DISTANCE OF 62.50 FEET; THENCE SOUTH 87'42'14" EAST, DEPARTING SAID EAST LINE, A DISTANCE OF 20.00 FEET, TO THE **POINT OF BEGINNING** OF THE FOLLOWING DESCRIBED NEXTEL **LEASE SITE**:

THENCE NORTH 02'17'46" EAST, A DISTANCE **OF** 40.00 FEET; THENCE SOUTH 87'42'14" EAST, A DISTANCE OF 45.00 FEET; THENCE SOUTH 02'17'46" WEST, A DISTANCE OF 40.00 FEET; THENCE NORTH 87'42'14" WEST, A DISTANCE OF 45.00 FEET, TO THE **POINT OF BEGINNING**.

CONTAINING 1,800 SQUARE FEET OR 0.0413 ACRES, MORE OR LESS.

20 FOOT WIDE ACCESS EASEMENT LEGAL DESCRIPTION:

A STRIP OF LAND 20 FEET IN WIDTH FOR ACCESS EASEMENT PURPOSES LYING WITHIN THE NORTH 834 FEET OF LOT 4, BLOCK **K**, **LOXAHATCHEE DISTRICT**, AS RECORDED IN PLAT BOOK 7, PAGE 81, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, THE SIDELINES OF SAID ACCESS EASEMENT LYING 10 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE **POINT OF BEGINNING** (SOUTHWEST CORNER OF LEASE SITE) OF THE ABOVE DESCRIBED NEXTEL LEASE SITE; THENCE NORTH 02'17'46" EAST, ALONG THE WEST LINE **OF** SAID LEASE SITE, A DISTANCE OF 45.00 FEET, TO THE NORTHWEST CORNER **OF** SAID LEASE SITE; THENCE SOUTH 87'42'14" EAST, ALONG **THE** NORTH LINE OF SAID LEASE SITE, A DISTANCE OF 10.07 FEET, TO THE **POINT OF BEGINNING OF** THE FOLLOWING DESCRIBED CENTERLINE:

THENCE NORTH 09'10'31" EAST, A DISTANCE OF 197.39 FEET; THENCE NORTH 00'43'02" WEST, A DISTANCE OF 243.03 FEET, TO A POINT ON THE NORTH LINE OF SAID LOT 4, BLOCK K AND THE **POINT OF TERMINATION** OF SAID CENTERLINE.

EXHIBIT B
VICINITY SKETCH

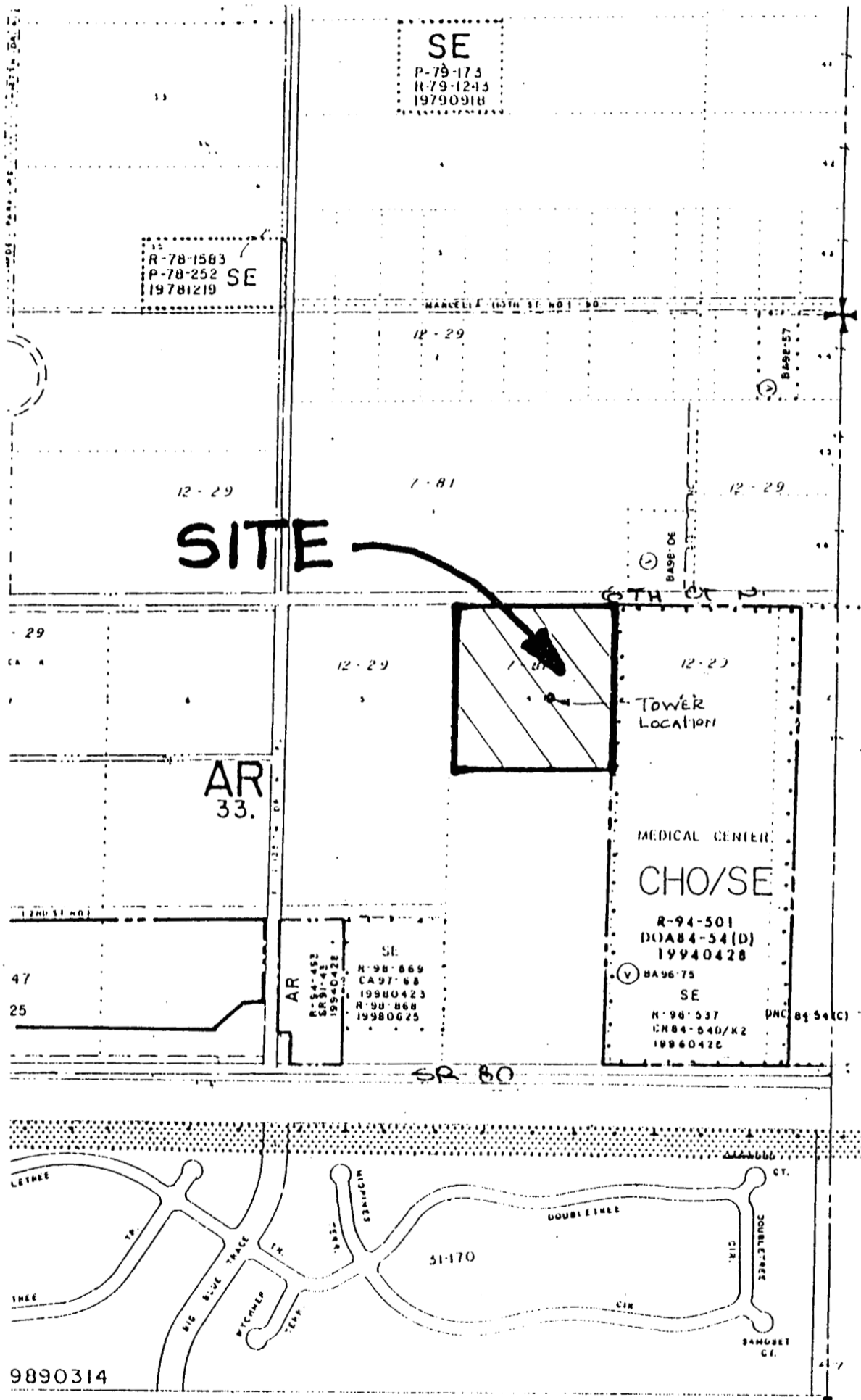


EXHIBIT C

CONDITIONS OF APPROVAL

NOTE: There is no C or D, E is always Engineering and Compliance is always last.

A. ALL PETITIONS

1. Development of the site is limited to the uses and site design as approved by the Board of County Commissioners. The approved site plan is dated April 23, 1999. All modifications must be approved by the Board of County Commissioners unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC. (ONGOING: ZONING)

B. TOWER

1. Palm Beach County and the State of Florida shall have the right to co-locate communication equipment on the subject tower at no charge, provided the placement of County or State equipment does not interfere with the petitioner's equipment or operations and shall be subject to the structural capacity of the tower. (ONGOING: PREM)
2. Prior to the issuance of a building permit for the communication tower and related accessory structure, the principal equestrian use of the property shall be constructed and operational. The camouflage tower shall be constructed in accordance with tower elevation as shown on site plan dated April 23, 1999. (BLDG PERMIT: ZONING)
3. All liquid propane tanks associated with the use of the communication tower shall be double walled and installed underground in accordance with Palm Beach County Fire Rescue and Environmental Resource Management requirements. (BLDG PERMIT: FIRE/ERM)
4. Temporary diesel powered generators shall only be permitted on site in the event of natural disaster and shall be removed once power and operations are restored to the tower. (ONGOING: FIRE/ERM/HEALTH)
5. Should the requisite authority, such as the FCC or OSHA, having jurisdiction over the same, determine that the Tower and/or facilities are dangerous to the public's health, safety and welfare, Palm Beach County shall have the right to require the tower and/or facilities to be removed or made safe within sixty (60) days written notice. (ONGOING: FIRE/ERM/HEALTH)
6. If tower lighting is required by the requisite authority such as the FAA, the lighting shall include a screening device to direct light away from the ground. The lighting shall also include a dual lighting system consisting of red lights for nighttime and high or medium intensity flashing white lights for daytime and twilight. (CO: BLDG - Zoning/FAA)

E. ENGINEERING

No engineering conditions.

F. COMPLIANCE

1. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the petitioner both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)
2. Failure to comply with any of the conditions of approval for the subject property at any time may result in:
 - a. The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy; the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; revocation of any concurrency; and/or
 - b. The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
 - c. A requirement of the development to conform with the standards of the ULDC at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or
 - d. Referral to code enforcement; and/or
 - e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or a majority vote of the Code Enforcement Board to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 5.8 of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval.

Appeals of any departmental administrative actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of an Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment or other actions based on a Board of County Commission decision shall be by petition for writ of certiorari to the Fifteenth Judicial Circuit. (MONITORING)