



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.23.

5/21/2024

Subject:

Fred Poppe Regional Park f/k/a Palm Bay Regional Park / Cellular Communications Tower

Fiscal Impact:

None

Dept/Office:

County Attorney's Office

Requested Action:

Confirm that the location of a cellular communications tower at Fred Poppe Park in Palm Bay will not violate a use restriction set forth in the County Deed conveying the Park to the City.

Summary Explanation and Background:

The City of Palm Bay seeks to locate a cellular tower at Fred Poppe Regional Park (f/k/a Palm Bay Regional Park) (the "Park"). Prior to commencing construction, the City seeks confirmation from the County that a cellular tower at the Park will not violate a restriction set forth in the deed conveying the Park from the County to the City.

The County Deed to the City dated January 26, 2016, provides that, "The [Park] is to be used solely for providing public recreational use and related activities." The Deed contains a reverter clause which states, "In the event that any of such Property is not used or ceases to be used for the stated purpose and under the stated conditions, then all right, title, and interest in such Property shall revert to the party of the first part which shall thereafter have the right to reenter and repossess the Property conveyed herein."

The City asserts that the cellular tower location will not interfere or conflict with public recreational use of the two hundred acre Park. As the attached letter from the City Attorney's Office suggests, the County likely would have allowed a cellular tower when the County owned the Park. At that time, the Brevard County Wireless Telecommunications Master Plan (the "Master Plan") identified the Park as an available site for telecommunications infrastructure. Of course, the County would have needed the City's authorization as the zoning jurisdiction.

The Master Plan proclaims the benefits of leasing publicly owned lands for new wireless telecommunications infrastructure. These benefits include the public owner's ability to assure the community the preference of concealment materials and technologies presently available to the industry, and the public revenue derived from such leases.

Clerk to the Board Instructions:

Please return a memo of the Board's action to the County Attorney's Office, County Manager's Office, and Palm Bay Deputy City Manager Juliet Misconi.



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May 22, 2024

M E M O R A N D U M

TO: Morris Richardson, County Attorney

RE: Item F.23., Fred Poppe Regional Park f/k/a Palm Bay Regional Park/Cellular Communications Tower

The Board of County Commissioners, in regular session on May 21, 2024, confirmed that the location of a cellular communications tower at Fred Poppe Park in Palm Bay will not violate a use restriction set forth in the County Deed conveying the Park to the City.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/tr

cc: County Manager
City of Palm Bay



CITY OF PALM BAY
OFFICE OF THE CITY ATTORNEY

April 30, 2024

Via Electronic Mail (morris.richardson@brevardfl.gov)

Morris Richardson
Assistant County Attorney
Brevard County Attorney's Office
2725 Judge Fran Jamieson Way
Viera, Florida 32940-6605

Re: Palm Bay Regional Park / Cellular Communications Tower

Dear Mr. Richardson:

The City of Palm Bay ("City") is contemplating the location and construction of a cellular tower at Fred Poppe Regional Park (f/k/a Palm Bay Regional Park) ("Park").

Brevard County conveyed the Park by County Deed to the City on January 26, 2016, and recorded in Official Records Book 7596, Page 2612, Public Records of Brevard County, Florida. The County Deed provides that, "The [Property] is to be used solely for providing public recreational use and related activities." The Deed further provides, "In the event that any of such Property is not used or ceases to be used for the stated purpose and under the stated conditions, then all right, title, and interest in such Property shall revert to the party of the first part which shall thereafter have the right to reenter and repossess the Property conveyed herein."

Chapter 3 of the Brevard County Wireless Telecommunications Master Plan ("Master Plan") states the benefits of utilizing certain public-owned lands for new wireless telecommunications infrastructure. The County has affirmed its interest in maximizing the use of publicly owned land and qualified all properties with a minimum size of 7,500 square feet as potentially useful properties. Further, the Master Plan identifies the Park as an available site for telecommunications infrastructure.

Prior to commencing any construction, the City seeks confirmation from Brevard County that a cellular tower at the Park is consistent with the "public recreational use and related activities" enumerated in the County Deed.

Sincerely,

Michael A. Rodríguez
Chief Deputy City Attorney

cc: Juliet Misconi, Deputy City Manager