

RESOLUTION APPROVING WAIVER REQUEST W78-242(A)
WAIVER FROM REQUIRED DIMENSIONAL CRITERIA
PETITION OF FPL
BY PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS
(BOCA WOODS PUD - FPL TOWER)

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) and Article 6, Section 6.4.D.22 (Commercial Communication Towers) 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 W78-242(A) was presented to the Board of County Commissioners at a public hearing conducted on October 22, 1998; 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 from the maximum allowed height for a Combined Transmission/Communication Structure (Communication Tower (113 feet)) complies with the intent of Section 6.4.D.22 of the ULDC.
2. This Waiver from Required Combined Transmission/Communication Structure (Communication Tower (113 feet)), 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 from Required Combined Transmission/Communication Structure (Communication Tower (113 feet)) is not granted based solely upon or in large measures due costs associated with complying with all requirements of section 6.4.D.22.
4. This Waiver from Required Combined Transmission/Communication Structure (Communication Tower (113 feet)), will not result in an incompatibility between the proposed tower or communication facility and adjacent uses.



5. This Waiver from Required Combined Transmission/Communication Structure (Communication Tower (113 feet)) is necessary within the defined search or propagation study area as all other waiver alternatives have been exhausted.
6. This Waiver from Required Combined Transmission/Communication Structure (Communication Tower (113 feet)), is the minimum waiver that will make possible the reasonable use of the parcel of land, building or structure.
7. This Wavier from Required Combined Transmission/Communication Structure (Communication Tower (113 feet)), 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 Wavier from Required Combined Transmission/Communication Structure (Communication Tower (113 feet)), will not be injurious to the area involved or otherwise detrimental to the public welfare.
9. This Waiver from Required Combined Transmission/Communication Structure (Communication Tower (113 feet)) based upon documentation submitted by the applicant is necessary within the defined search or propagation study area **so** as not to prohibit the provision of personal wireless, television, and related communication services as defined by the Telecommunications Act of 1996 and rules of the FCC.
10. This Waiver from Required Combined Transmission/Communication Structure (Communication Tower (113 feet)) based upon documentation submitted by the applicant **is** necessary within the defined search or propagation study area and will allow a proposed tower location to reduce the impact on adjacent residential uses.

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 Zoning Petition W78-242(A), the petition of FPL, by Palm Beach County Board of County Commissioners, for a Waiver (W) to allow the structure to exceed the maximum permitted height (100') by thirteen (13) feet in the Residential Estate/Planned Unit Development (RE/PUD) 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 October 22, 1998, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof, and subject to the "Memorandum of Understanding" included as Exhibit D, attached hereto and made a part hereof.

Commissioner Foster moved for the approval of the Resolution.

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

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

The Chair thereupon declared that the resolution was duly passed and adopted on October **22, 1998**.

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

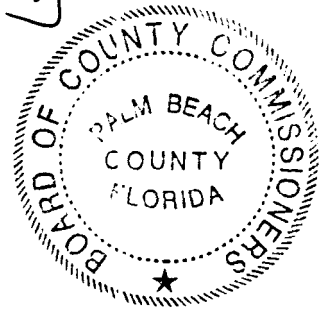


EXHIBIT A
LEGAL DESCRIPTION

Boca Woods Country Club Plat 4

A portion of an FPL easement located 405.22' South and 79.14' West of Lot 8, Block 15, a part of Boca Woods Country Club, a P.U.D. Situate in Sections 23 and 24, Township 47 South, Range 41 East, Palm Beach County, Florida, Being a replat of a portion of Florida Fruit Lands Company's Subdivision No. 2, As recorded in Plat Book 1, Page 102.

EXHIBIT B
VICINITY SKETCH

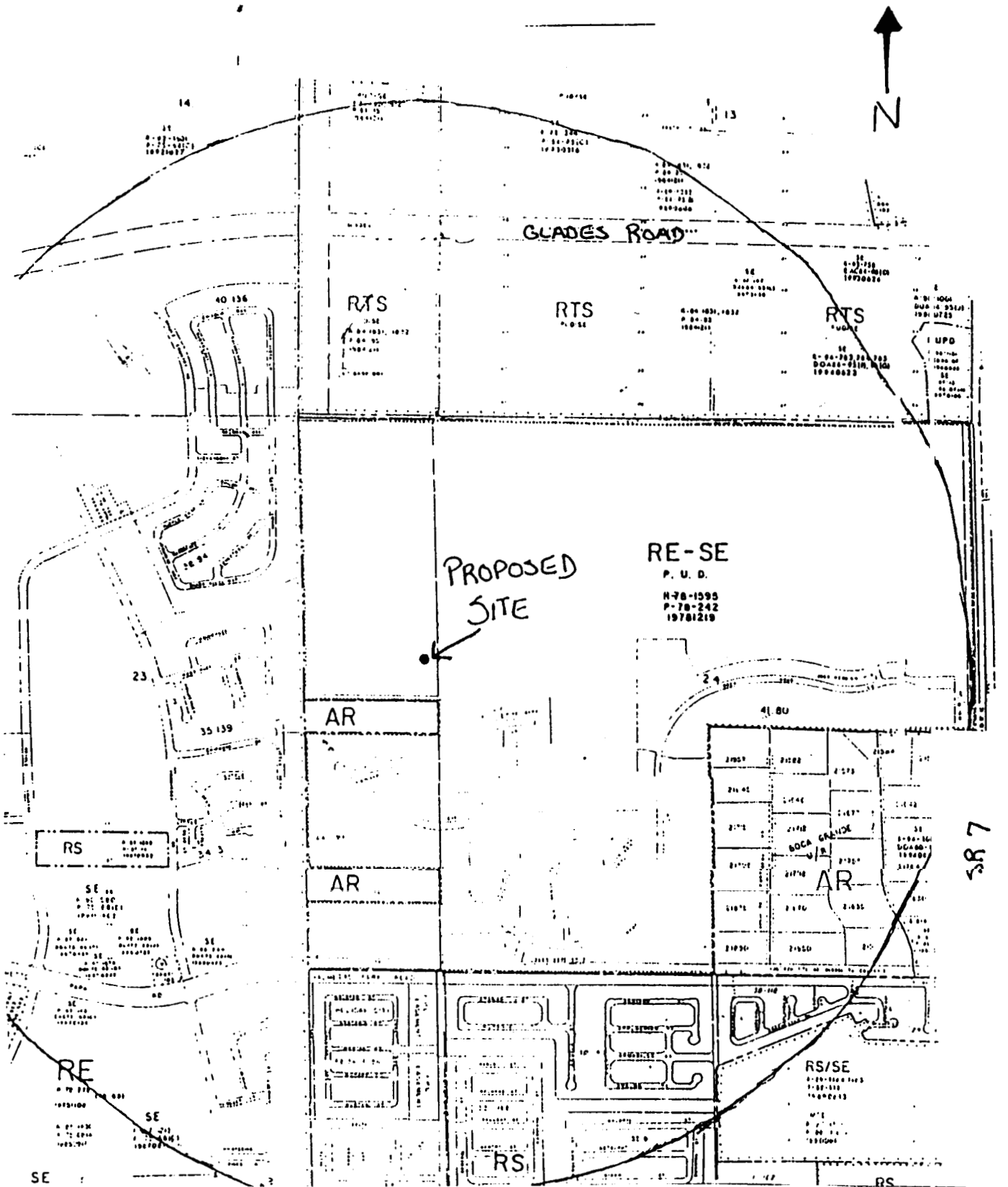


EXHIBIT C

CONDITIONS OF APPROVAL

NOTE: Conditions B, C and D intentionally omitted.

A. ALL PETITIONS

1. Development of the site is limited to the uses and site design as approved by the Board of County Commissioners pursuant to the "Memorandum of Understanding Between Florida Power & Light Company and the Board of County Commissioners", approved September 24, 1998. 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)

E. ENGINEERING

No 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)

EXHIBIT D

OCT -8 1998

R98 1515D
MEMORANDUM OF UNDERSTANDING
BETWEEN FLORIDA POWER & LIGHT COMPANY
AND
THE BOARD OF COUNTY COMMISSIONERS
OF PALM BEACH COUNTY, FLORIDA

SEP 24 1998

PALM BEACH COUNTY ("County") and FLORIDA POWER & LIGHT COMPANY ("FPL"), hereby agree to and reach the following Memorandum of Understanding Between Florida Power & Light Company and the Board of County Commissioners of Palm Beach County, Florida ("Memorandum"):

1. There presently exists in the Boca Woods Development equipment of a wireless telecommunications company (hereinafter referred to as "equipment") which is used in the provision of a telecommunications service to the public. Such equipment is attached to a structure of FPL which is in an FPL easement and at a location hereinafter referred to as "Site One". The Boca Woods Home Owners Association has indicated its desire to relocate or reconstruct the equipment on an alternative site within the FPL easement, hereinafter referred to as "Site Two". Both Site One and Site Two are identified in the attached Exhibit "A".

2. In order to accomplish the relocation or reconstruction, the County on its own initiative and at its sole cost agrees to initiate a Conditional Use Application to allow the relocation or reconstruction of the equipment on Site Two. The equipment to be relocated or reconstructed at Site Two will be attached to a structure used in the transmission of electricity and will be identical or substantially similar to the structure now existing on Site One. The structure and attached

equipment which will be relocated or reconstructed on Site Two are described in the attached Exhibit "B".

3. Prior to approval of the Conditional Use Application, written consent and authorization to proceed with such Application shall be obtained by FPL from the Boca Woods Home Owners Association and from the owner of the equipment. FPL agrees that unless required by court or Federal Communication Commission order that FPL shall not approve further attachments by wireless telecommunications companies of such equipment to the FPL transmission poles or easement which are located in the Boca Woods Development.

4. The attachment of such equipment to a structure which is located at Site Two will be in conformance with current land development regulations if conditional use approval is granted by the County.

5. If said Conditional Use Application is approved by the County, FPL agrees to construct a new structure on Site Two in order to accommodate the attachment of the equipment and to allow for the removal and relocation of the equipment from Site One to Site Two. In addition, after the removal of the equipment now on Site One, FPL agrees that the FPL pole on Site One will be reconstructed by removing the top portion of the structure, as shown in Exhibit "B". Relocation or reconstruction at both sites shall occur no later than 90 (ninety) days after the effective date of the Resolution approving the conditional use, if the resolution is not appealed by the filing of a petition of certiorari. If the resolution is appealed, relocation shall occur no later than 90 (ninety) days after the court issues a final order denying the certiorari petition.

6. The County acknowledges that the relocation **or** reconstruction of the structures at both sites will not require building permits because the County does not require building permits for the construction of electric transmission poles.

7. Upon completion of the relocation or reconstruction, the County agrees that the Code Enforcement Board matter against FPL, Code Enforcement proceeding C9710020007, **will** be dismissed with prejudice as being moot, **as** the situation which resulted in the Code Enforcement proceeding will no longer exist.

8. The County and **FPL** acknowledge that this Memorandum of Understanding and the actions undertaken to implement it are done for the purpose of resolving the above-referenced Code Enforcement matter. This Memorandum and any agreement or understanding included in the Memorandum is for settlement purposes only and shall not be a precedent, on the part of the County or **of** FPL, regarding the attachment or any antenna facilities or other equipment of telecommunications companies to electric poles, easements, or other property **of** FPL, nor shall it in anyway be considered as an admission **of** violation or liability under such Code Enforcement proceedings or that the County zoning **or** construction permitting ordinances apply to the attachment of telecommunications antenna to electric poles.

9. This Memorandum does not eliminate the need for legislative, quasi judicial or executive decision making by the Palm Beach County Board **of** County Commissioners regarding the Conditional Use Application identified herein and waivers, if necessary and the Board **of** County Commissioners cannot and has not agreed to any particular result regarding the Conditional Use Application it has agreed to initiate.

10. This Memorandum of Understanding represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, either written or oral related to the subject of this Memorandum of Understanding.

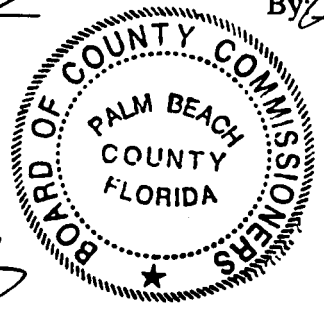
ATTEST:
Dorothy H. Wilken, Clerk

PALM BEACH COUNTY, FLORIDA
by its Board of County Commissioners

By: [Signature]
Deputy Clerk

By: [Signature]
Chair

Approved as to Form and
Legal Sufficiency



By: [Signature]
County Attorney

R98 1515D

SEP 24 1998

ATTEST:

FLORIDA POWER & LIGHT COMPANY,

By: _____
Assistant Secretary

By: [Signature]