

Opposition to Proposed
P21-082 CGI St. Lucie, LLC - Wireless
Communication Tower
Special Exception Use

July 26, 2021

Prepared by:
Randy G. DeFrehn

Governing Law – Controlling Statutory and Regulatory Requirements Pertaining to P21-082 Special Exception Use Application

- Florida Statutes Section 286.0115 -- City of Port St. Lucie Ordinance 17-65, codifies the local quasi-judicial procedures
- City of Port St. Lucie Zoning Codes Chapter 158
- Federal Law and Regulations that Limit State and Local Authority:
 - ***“Telecommunications Act of 1996”*** prohibits Government Agencies from considering health implications of Cell Tower Radio Frequency if emissions are within permissible federal limits
 - ***Middle-Class Tax Relief and Job Creation Act of 2012*** prohibits local authorities from denying applications for existing tower owners to raise the height if it does not *“substantially change” the physical dimensions* (some say 20')

Request is Filed Subsequent to Resolution 19-R93 Adjudicated by the Council on Oct 28 2019

- Application was denied due to a finding that the application failed to comply with Code Sections: 158.260 (D), (J) and (K) through findings that:
 - Adequate Screening or Buffering: A tower extending 150' cannot be screened by planting trees or shrubs
 - The proposed use was incompatible with the surrounding area, including especially the height of the proposed tower.
 - the proposed use was considered incompatible, too intensive and intrusive upon the nearby area and would result in excessive nuisance from the use altering the character of neighborhood.

Applicant's Responses to Council's Decision to Deny Their Original Application

1. Screening and Buffering (158.260 (D))

Applicant's Statement:

*1. Our plan includes existing landscaping to the north approx. plus (17) 12-14' Buttonwoods and (239) Red tip cocoplums. **We have changed the design from a 150' standard monopole tower to a 120' "monopine stealth tower" with faux branches that camouflage the antennas. This enhances the screening of the development** [emphasis added].*

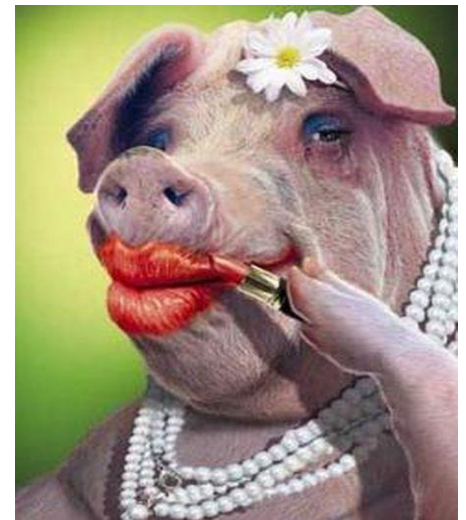
REBUTTAL:

- They propose building an enormous tower, not a structure which can be "screened" from view by planting trees which will grow to, at most, 10% of the height of the tower to be screened, making the plantings irrelevant.
- The primary concern is that they are proposing to substitute a "monopine stealth tower" which they argue will camouflage the antenna.

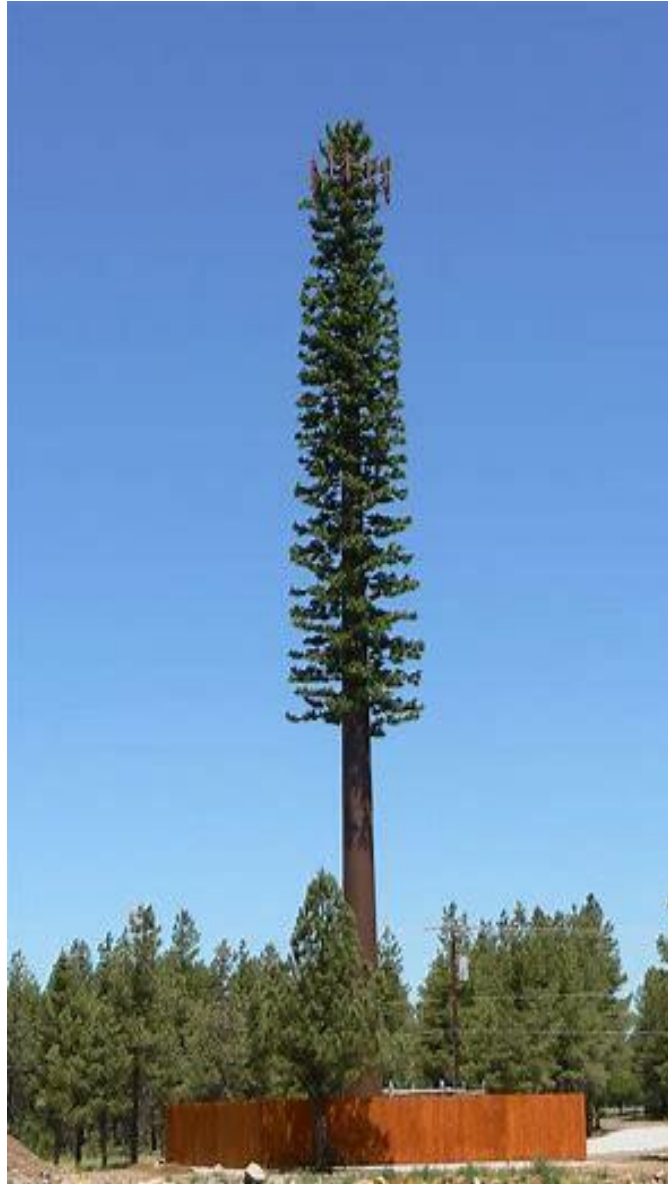
1. Screening and Buffering (158.260 (D))

REBUTTAL:

- Anyone who has seen this technology which reportedly “hides” the tower or attempts to make it blend with existing trees will readily attest that trying to put a fake Southern Pine more than twice the size of any of the natural tree cover (none of which include Southern Pines) is no more “stealthy” than the proverbial “**lipstick on a pig**”
- This remains an overwhelming imposition on the existing skyline, creating an unnecessary **NUISANCE** to the community without a corresponding value for the residents.



The “Stealth Monopine”



Pictured among other pine trees. Unlike at the proposed site.

2. Proposed use is incompatible [with the neighborhood] (including size and height, access, light and noise) (158.260 (J))

APPLICANT'S STATEMENT:

We have dropped the height by 20% to 120', access has been established via Utility Drive and 14' existing rock driveway, there is no lighting proposed and there is no noise associated with this development. The only noise that may be considered would be in the event of power failure and in such a generator would be in use until power was restored as would be the case with anyone in the vicinity without power.

REBUTTAL:

- Lowering the height to 120' is **still incompatible** with the neighborhood at more than twice the height of the surrounding trees and any existing buildings

2. Proposed use is incompatible [with the neighborhood] (including size and height, access, light and noise) (158.260 (J))

- REBUTTAL:
- But wait...
 - At the February 2021 meeting, the RG Tower Representative said that they don't really have to go to 120' and could return to a higher level.
 - In fact once it were built, the ***Middle Class Tax Relief Act of 2012*** would prohibits a state or local government from denying any eligible facilities' request to raise the height of an existing wireless tower or base station *“that does not substantially change the physical dimensions of such tower or base station.”*
 - **Only the City of Port St. Lucie would be held to its obligation to permit the construction. Once built, the developer has unfettered permission to arbitrarily raise that height providing it does not “substantially change the physical dimensions”**



VIEW LOOKING EAST ACROSS HOLE NUMBER 3
PROPOSED TOWER WILL BE 80% OF THE SIZE SHOWN
STILL OVER TWICE THE SIZE OF THESE TREES

Elevation after installing 150' Tall Monopole.

IS THIS WHAT YOU WANT TO SEE
WHEN YOU LOOK TOWARDS THE
GOLF COURSE?



Who, **What**, When, Where, Why and How

Image from the applicant's original proposal.



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Elevation after installing 150' Tall Monopole.

Approximate Revised elevation at 120'

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Who, **What**, When, Where, Why and How

Original image provided by applicant with modified height to reflect view with proposed “stealth” design.

3. Incompatibility with the nearby area that would result in excessive disturbance or nuisance.

APPLICANT'S STATEMENT:

We have redesigned the tower and propose a stealth monopine vs a traditional monopole or self-support tower. This is an unmanned stealth facility that generates no more than 4 semi-annual trips to the site by each carrier. There is no noise, nuisance, or disturbance.

*This proposal meets all requirements of Special Exception sections 158.255 through 158.262 and Site Plan sections 158.235 through 158.245. Again, we seek no variances. **Although a taller standard monopole tower at this location would have been much more feasible for our development, we can accept some level of improvement with a new design that is more favorable to the Council. We ask Council to consider the need, recognize our efforts to please the Council with a more favorable design and approve our request for a special exception for this project.***

3. Incompatibility with the nearby area that would result in excessive disturbance or nuisance.

REBUTTAL:

- It is not the noise, lights or traffic issues associated with the cell tower with which the community is concerned in its opposition.
- That fact does not preclude its construction as a **nuisance**.
- **NUISANCE DEFINED:**
 - A nuisance occurs when a party's action significantly affects, interferes or **otherwise negatively impacts another's ability to use and enjoy their own property and which may affect health, safety and welfare**.
 - A private nuisance occurs when the violation of rights affects an individual, such as that party's right to the use and quiet enjoyment of his or her property. When a nuisance is said to affect more than one person, it is called a public nuisance ...

THIS PROJECT MEETS THAT DEFINITION

3. Incompatibility with the nearby area that would result in excessive disturbance or nuisance.

REBUTTAL:

Regarding the applicant's request for the Council to **“consider the need and recognize their efforts to *“please the Council”*** and reward them by approving their application...

- **This decision must be based on an objective application of the rules and regulations contained in the City Code.**
- The only concession being made is their proposal to mask its tower as an oversized, incompatible fake tree, which is little more than a desperate attempt to contend that calling something a “stealth” design, makes it so when its visage is anything but, does nothing to change the fact that its imposing size and location are incompatible with the neighborhood and, if approved, would indisputably alter its character.

What is being proposed and Why?

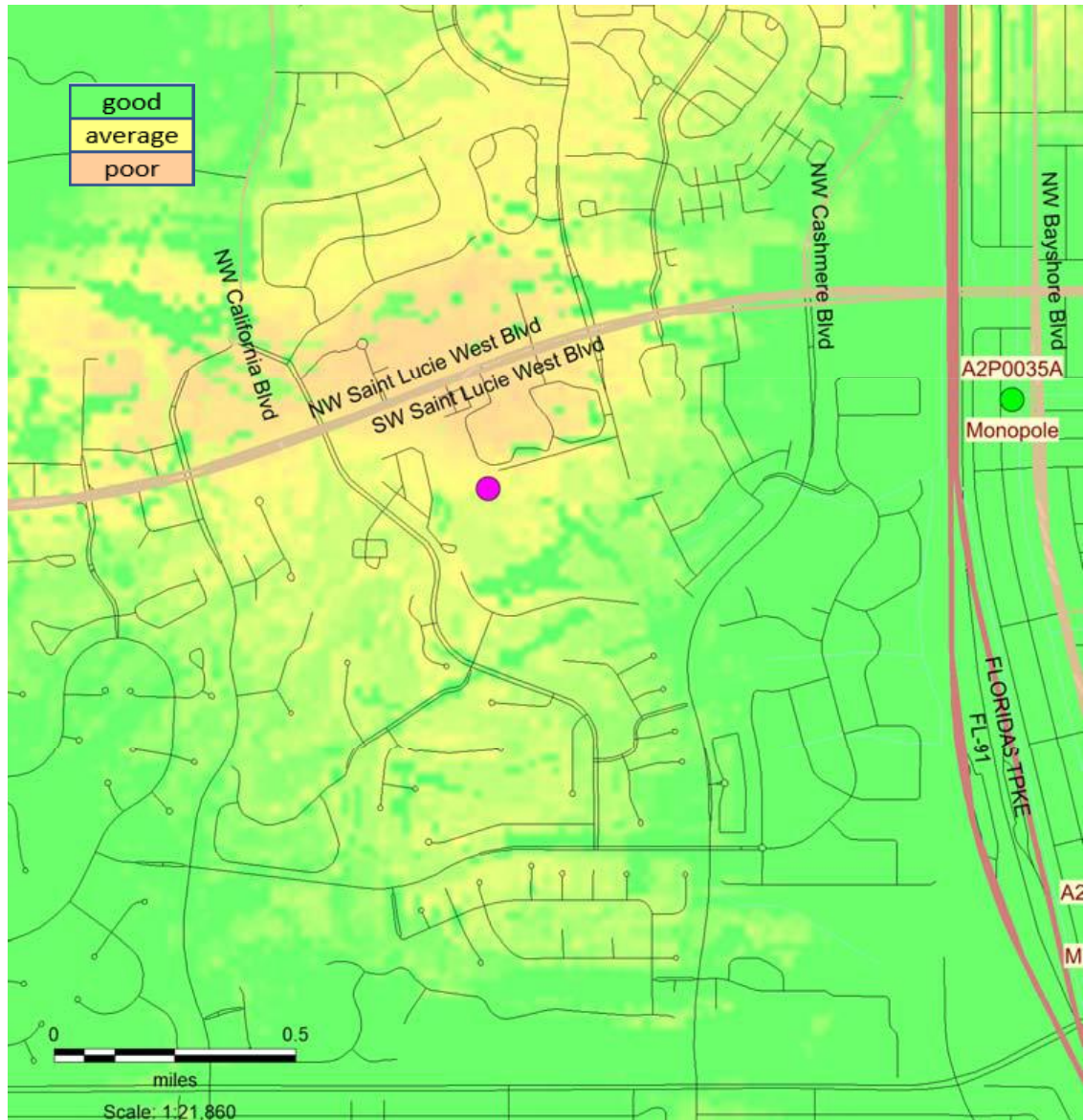
NEED?

- The applicant contends that growing demand for cellular and data service can only be met by the addition of their proposed tower at 460 Utility Drive.
- They submitted a Radio Frequency (RF) Engineering Report prepared by T-Mobile's Engineering and Operations staff which describes their assessment of T-Mobile's existing service (developed using **projections from proprietary computer simulation applications – as opposed to actual measurements of service quality during peak hours**) in the area surrounding the proposed tower site.

What is being proposed and Why?

- Applicant also claims that an unprecedented increase in traffic that developed during the period March 2020 through March 2021 is indicative of the need for additional capacity. To their credit, however, they concede that it is possible, if not likely, that this increase is attributable to the COVID-19 exigencies and that this largely residential area contributed to the increase in traffic
- Their map shows a variety of service quality, from “good” (indoor and outdoor service), to “average” (reliable outdoor service), to below average (poor service) which could result in dropped calls and, during the busiest times, even the inability to place 911 calls which their projections forecast would occur along the retail corridor of St. Lucie West Blvd.

T-Mobile Engineering Report - Existing Coverage



Source: T-Mobil Radio Frequency (RF)
Engineering Report per Applicant's Zoning
Commission Submission

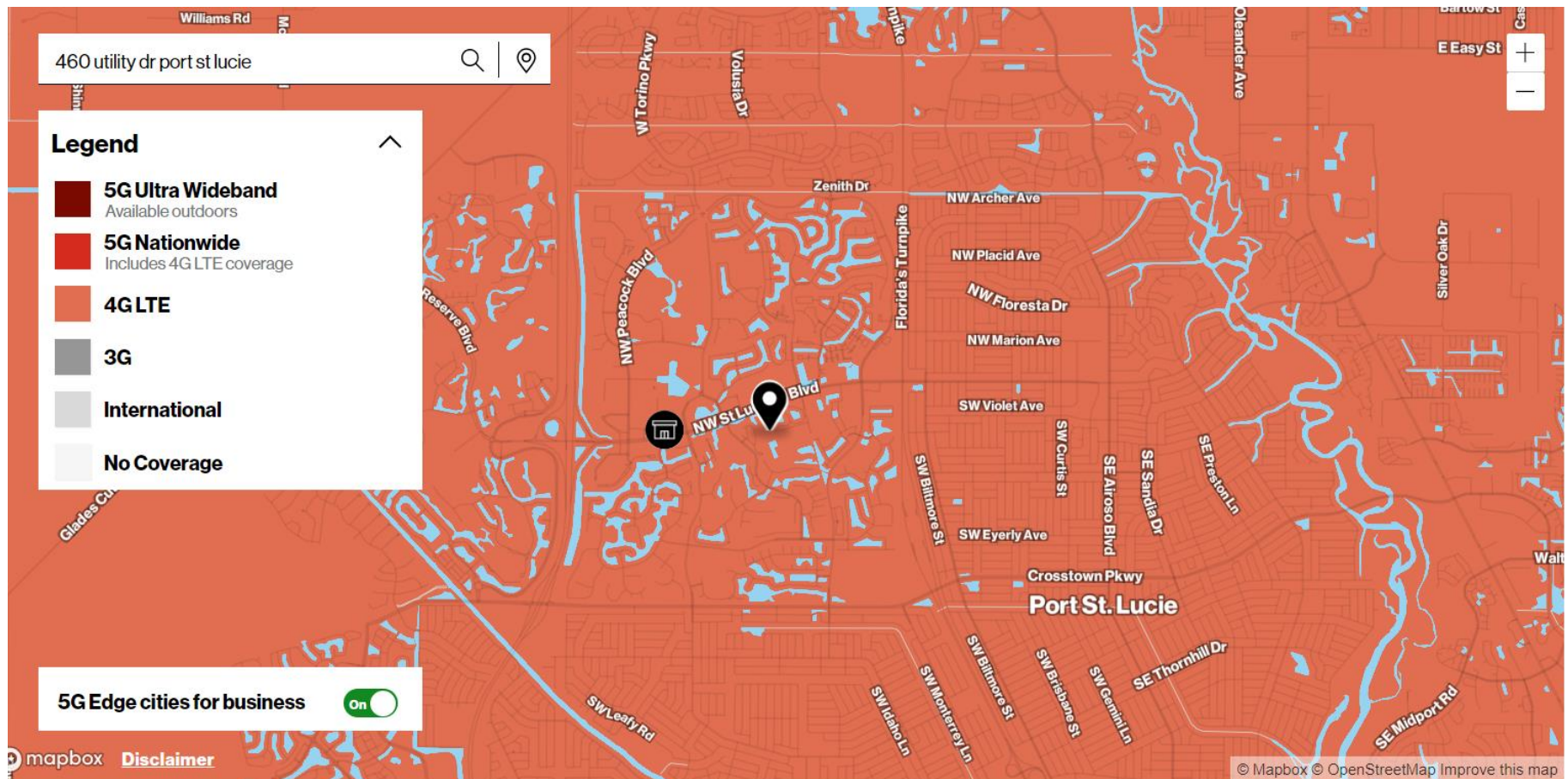
Why, then, does T-Mobile's website show that they provide "Good Signal Strength" for 4G LTE technology throughout the service area? **And why do both Verizon and AT&T provide similar maps showing good, comprehensive coverage in the area.**

“Nationwide Coverage You Can Rely On”

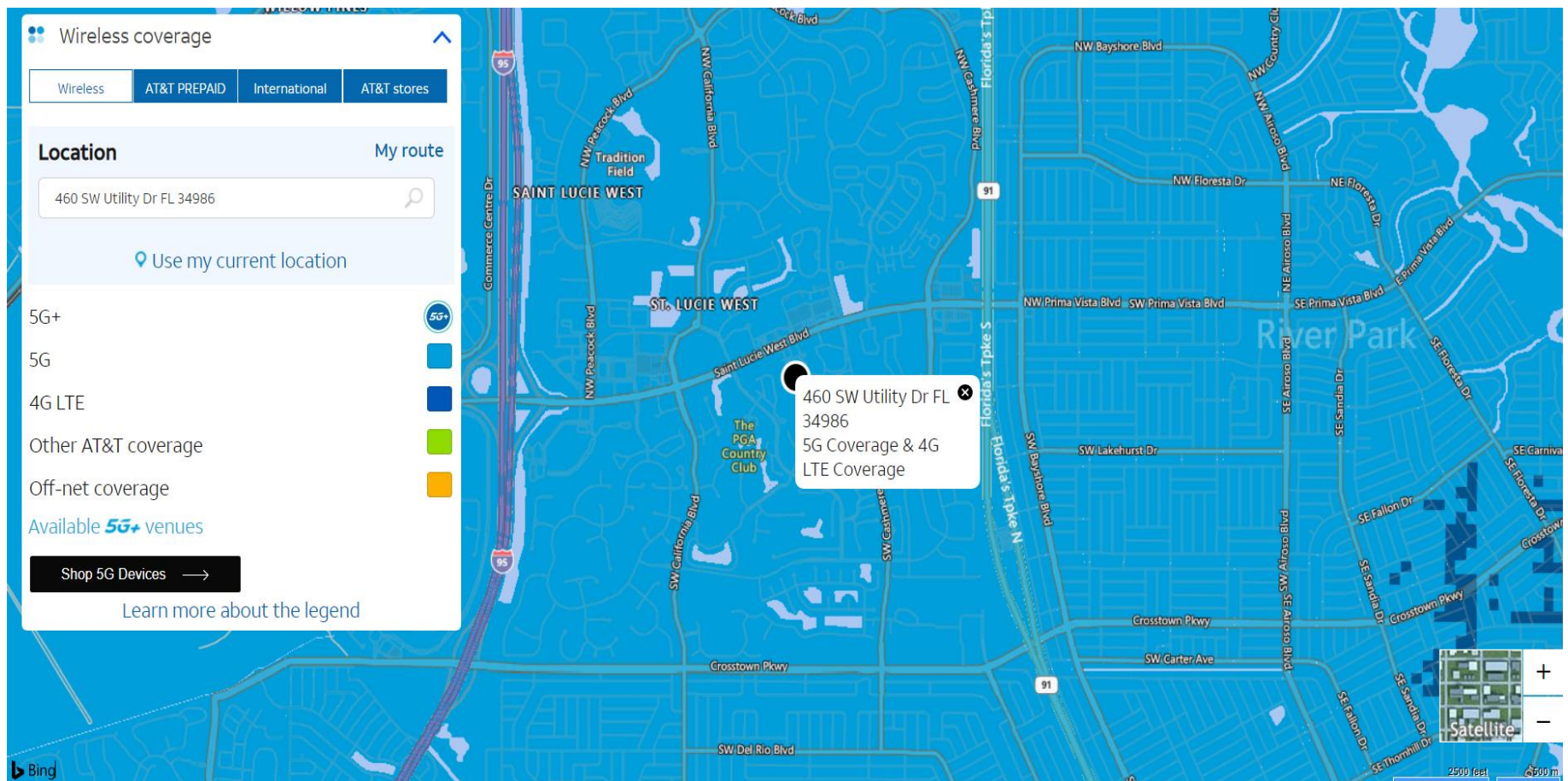
The screenshot shows the T-Mobile website's coverage map interface. The browser address bar displays the URL <https://www.t-mobile.com/coverage/coverage-map>. The navigation menu includes 'Plans', 'Phones & devices', 'Deals', '5G Coverage', and 'Why T-Mobile'. The main content area features a map of Port St. Lucie, FL, with a red circle highlighting a specific location. A pop-up window for this location shows the address '460 Southwest Utility Drive, Port St. Lucie, FL' and indicates '4G LTE' with 'Good signal strength'. A legend at the bottom of the map identifies signal strength levels: 5G (red), 4G LTE (dark purple), 3G/2G (light purple), Partner (hatched), Partner: Canada and Mexico (medium purple), and No coverage (black). Below the map, two promotional banners are visible: 'Nationwide coverage you can rely on' and 'Bringing your own phone?'. The Windows taskbar at the bottom shows the system tray with the date and time as 11:53 AM on 6/16/2021.

Current service signal strength map for the area surrounding the proposed tower site.

Verizon Coverage Map Refutes Necessity Of an Additional Tower with Current Technology



AT&T Coverage Map Refutes Necessity Of An Additional Tower With Current Technology



What is being proposed and Why?

- If the carrier (T-Mobile) **perceives a need** to improve service, why didn't they seek to comply with Code Section 158.213" Co-Location" which requires service providers to document contacts with existing facilities to prevent tower proliferation by seeking to rent space on one of the 6 towers within 1.1 miles or the 35 towers within a 3 mile radius of the proposed location?

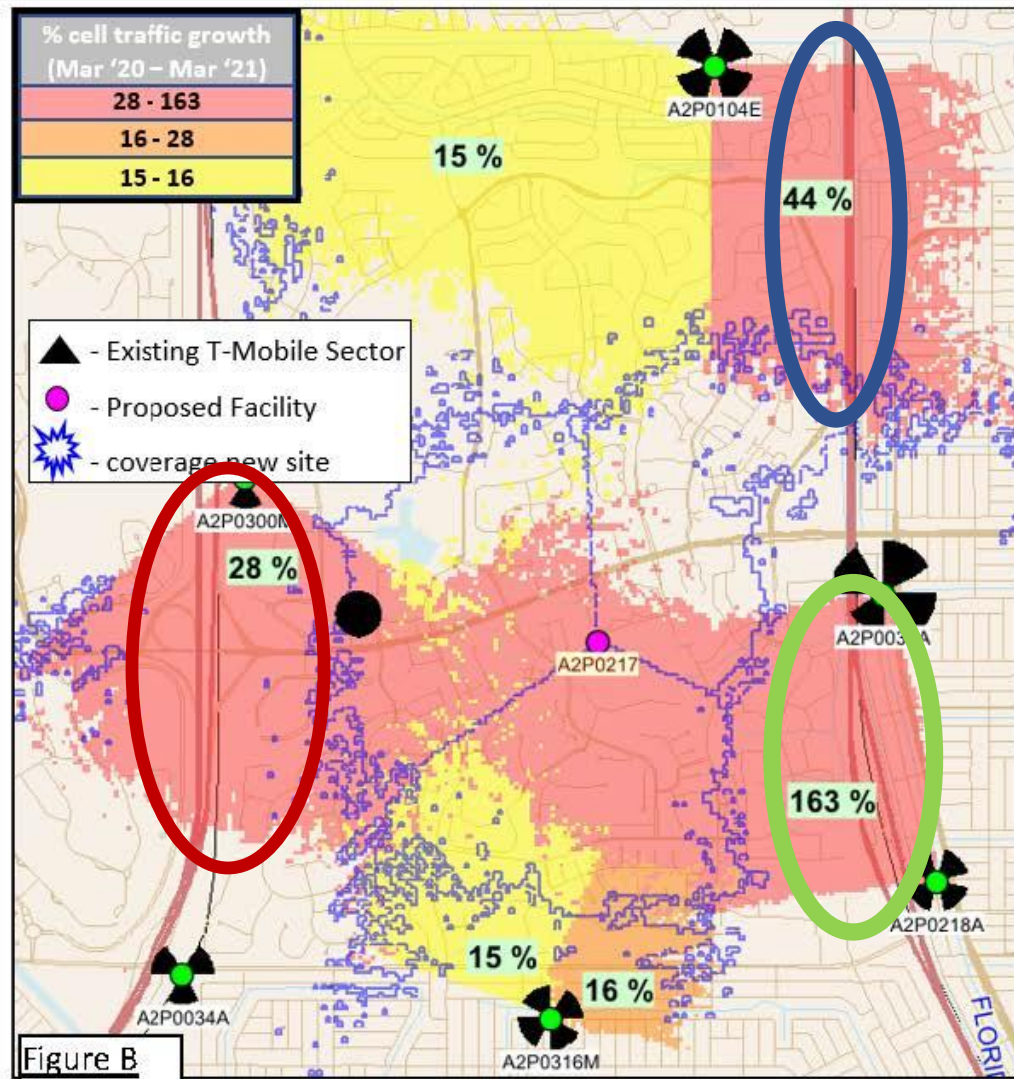
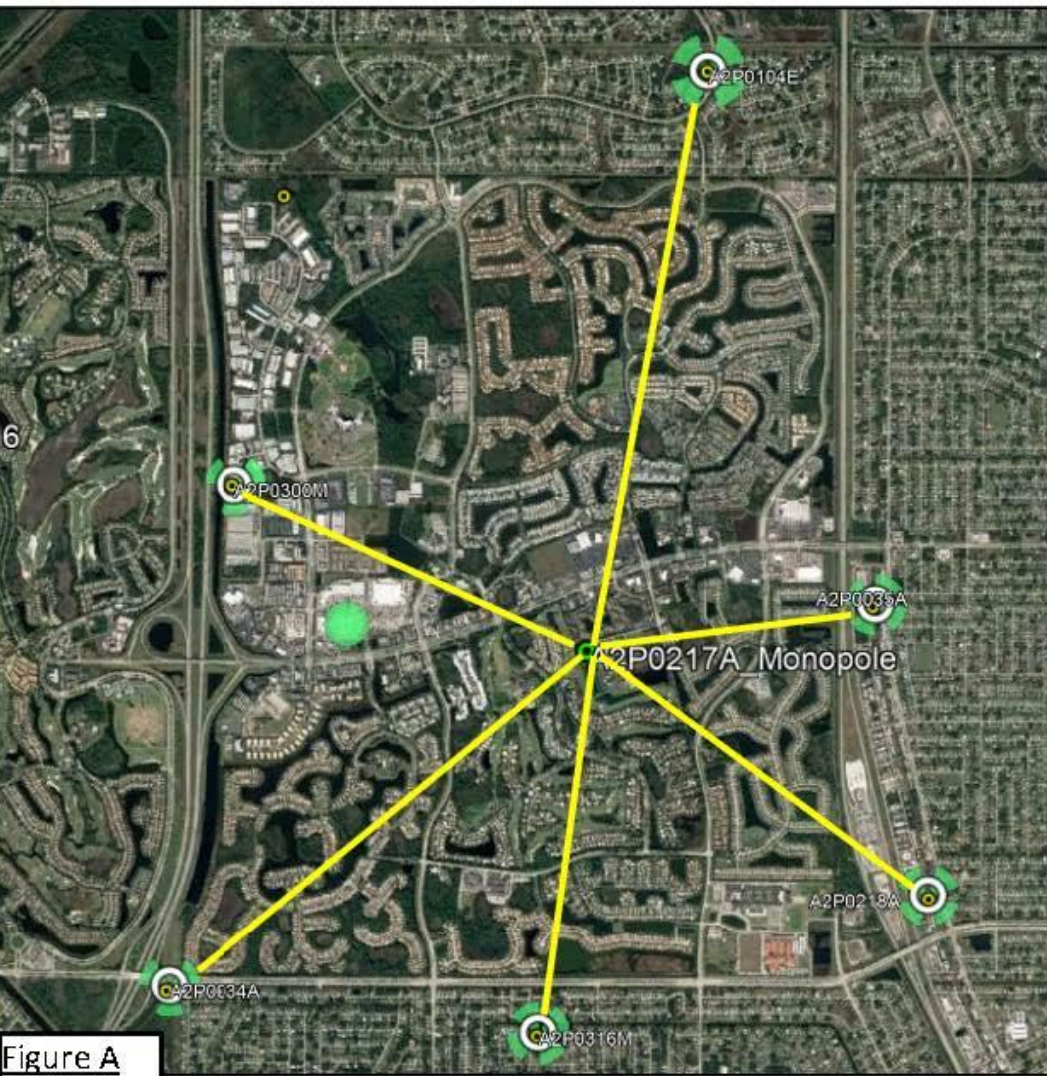
BUT, REALLY, WHOSE NEED?

- The fact is that this is not a proposal from a carrier; rather, it is a proposal from a builder of cell phone base station towers (RG Towers, LLC) who partnered with a willing landowner of a golf course (CGI St Lucie, LLC) who only benefit from construction of a tower which will be leased a number of willing carriers.

What is being proposed and Why?

- Applicant contends that the growth in demand requires more than simply additional antennae to improve what they characterize as inadequate service, but an entirely new facility – no different from what was originally proposed.
- They submitted a demand growth chart (See below) which showed the increase in traffic across the service area during the same period
- While every area showed some level of growth from the beginning to the end of the period, it was most pronounced in the area to the south and east of the service area, between existing towers A2P0218A and A2P0035A, Florida Turnpike at 163%. This was followed by a distant second at 44% for an area directly north of the first and also paralleling the Turnpike and between existing towers A2P0035A and A2P0104. The third area was closet to I-95 in the area north of St. Lucie West Blvd and east of Peacock and near existing tower A2P0300M which experienced a 28% increase. The remaining areas occupy neighborhoods which showed projected increases in the mid-teens. (See Cellular Traffic Increase Map)

Appendix A: Cellular Traffic Increase and Impact on Network Performance



Increase in cell traffic March 2020 to March 2021

Source: T-Mobile Radio Frequency (RF) Engineering Report per Applicant's Zoning Commission Submission

Primary Reasons Why P21-082 Special Exception Use Application Should Be Denied

FAILURE TO COMPLY WITH PROVISIONS OF THE CITY CODE

- APPLICANT's revised application continues to fail the same fundamental requirements of the Special Exception Use City Code provisions as before, specifically Section 158.260, paragraphs -
 - (D) Screening and Buffering
 - (H) Establishment and operation of the proposed use upon the particular property involved will not impair the health, safety, welfare, or convenience of residents and workers in the City.
 - (J) Compatibility with existing use of adjacent properties; and
 - (K) *use is considered incompatible, too intensive or intrusive upon the nearby area and would result in excessive ... nuisance from the use altering the character of neighborhood.*

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Preempted by the FCC

Compliance with City Code

Applicants statement:

- This proposal meets all requirements of Special Exception sections 158.255 through 158.262 and Site Plan sections 158.235 through 158.245. Again, we seek no variances.

Opposition Rebuttal

- Applicant claims their proposal meets the requirement of Section 158.255 – Intent. However, said section states that “*due to the potentiality for their incompatibility with adjoining land uses,*” Special Use Exception designations “*may be permitted within the zoning district classifications only after affirmative findings that they can be developed at particular locations in a compatible manner.*”

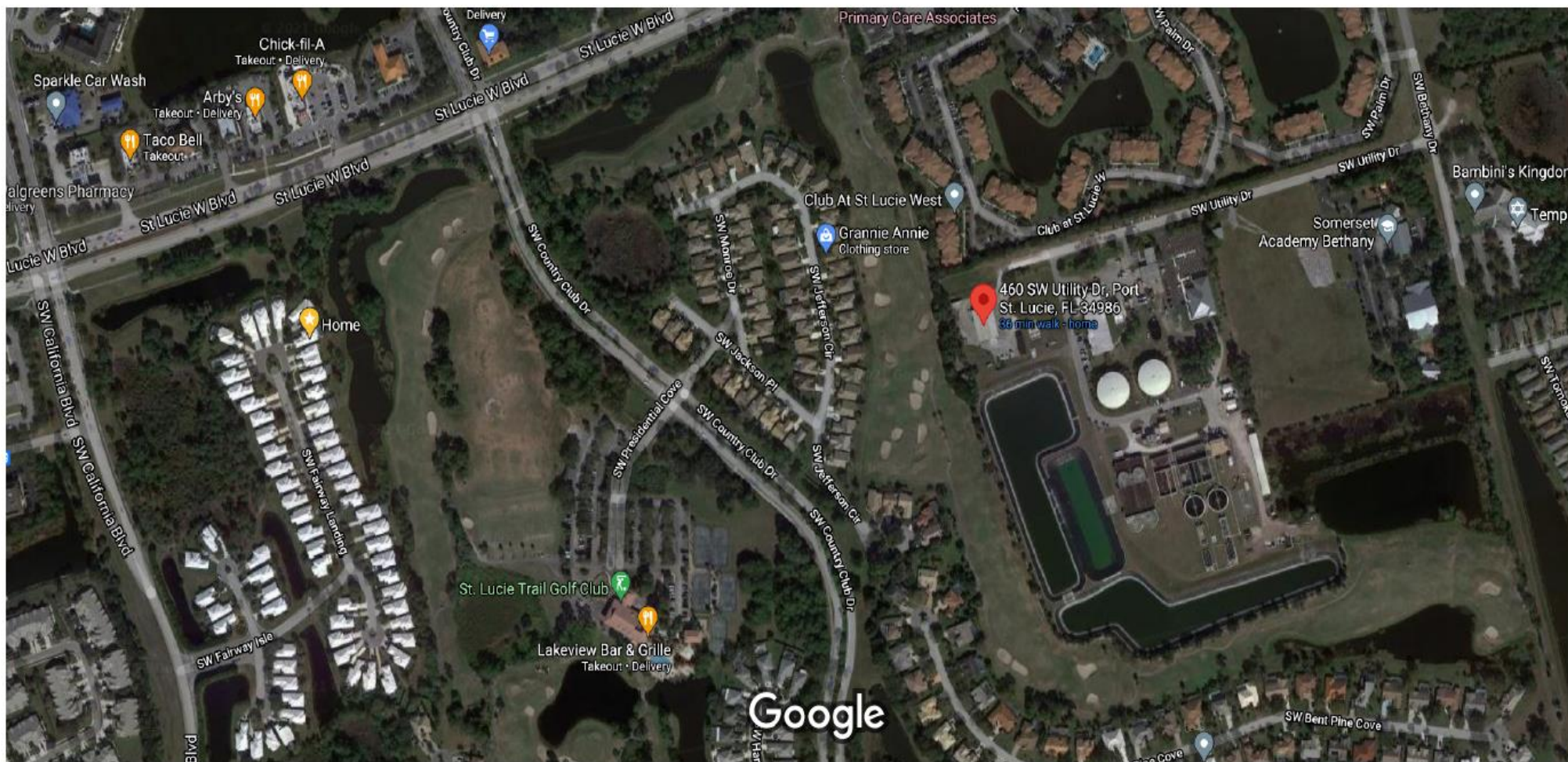
Application Fails 158.255

“Incompatible with the surrounding area”

- Immediately adjacent are the St. Lucie West Services District Office, the water treatment plant, the third fairway of the golf course and the Southwest corner of The Club residential neighborhood.
- Each of these is within a circumference of less than 250 feet.
- The area that will suffer the full impact of this project, extends well beyond that narrow area. Simply extending that perimeter to a mere three hundred yards, those in the most immediate area include:
 - The administrative offices of the Services District
 - Somerset Academy Bethany and the Bambini Kingdom Christian Pre-schools, and
 - The overwhelming remainder are comprised of residential properties, primarily single family homes in neighborhoods that include Presidential Cove and Bent Pine Cove of Country Club Estates and The Club.
 - With the exception of The Club and the golf course clubhouse all of the remaining construction is one to two-story residential.

Contrary to their claim, construction of a cell phone base tower of this nature **REMAINS CLEARLY INCOMPATIBLE** with the neighborhood

Google Maps 460 SW Utility Dr



Other Considerations Why P21-082 Special Exception Use Application Should Be Denied

NEGATIVE IMPACT ON PROPERTY VALUES IN THE COMMUNITY

- **Cell Towers Make Property Less Marketable:** Studies show buyers are **94% less likely to purchase homes close to, or with a direct line of sight to cell towers** and those who do would expect to pay less for such properties.
- **Estimates of Depreciating Property Value** appearing in some of the industry's premier periodicals range from 2.46% on average for homes within 0.72 kilometers to 9.78% for homes within visibility of the tower, compared with those outside the visibility range.
- **Other studies Go Farther:** Estimating the negative impact on property values from the construction of new towers can run as high as 20%

Home Value Degradation

- While some may question these estimates, it is telling that the Department of **Housing and Urban Development requires disclosure of whether the dwelling or related property improvements is located within the easement serving a high-voltage transmission line, radio/TV transmission tower, cell phone tower, microwave relay dish or tower, or satellite dish (radio, TV cable, etc.).** Even if the property lies outside such easement, “[T]he appraiser is instructed to note and comment on the effect on marketability **resulting from the proximity to such site hazards and nuisances.**”
- Similarly, The **California Association of Realtors’** Property Sellers Questionnaire specifically lists “cell towers” on their required disclosure form for real estate sales. **The seller must note “neighborhood noise, nuisance or other problems from.. ” and includes cell towers and high voltage transmission lines on the long list of problems.**
- Closer to home, **NAR and the Palm Beach Board**, whose coverage included Martin and St Lucie Counties states: “If an agent is aware of a proposed cell tower it can be construed as a material fact and therefore **has to be disclosed**” for the same reasons as enumerated above.

Stealth Monocline Cell Tower from
Country Club Estates



PROTECT
OUR
COMMUNITY!