

Winnetka Village Council
STUDY SESSION
Village Hall
510 Green Bay Road
Tuesday, November 10, 2015
7:00 PM

Emails regarding any agenda item are welcomed. Please email contactcouncil@winnetka.org, and your email will be relayed to the Council. Emails for a Tuesday Council meeting must be received by Monday at 4 p.m. Any email may be subject to disclosure under the Freedom of Information Act.

AGENDA

- 1) Call to Order
- 2) Discussion of Small Cell Wireless Facilities2
- 3) Public Comment
- 4) Executive Session
- 5) Adjournment

NOTICE

All agenda materials are available at villageofwinnetka.org (Government > Council Information > Agenda Packets & Minutes); the Reference Desk at the Winnetka Library; or in the Manager’s Office at Village Hall (2nd floor).

Broadcasts of the Village Council meetings are televised on Channel 10 and AT&T Uverse Channel 99 every night at 7 PM. Webcasts of the meeting may also be viewed on the Internet via a link on the Village’s web site: <http://winn-media.com/videos/>

The Village of Winnetka, in compliance with the Americans with Disabilities Act, requests that all persons with disabilities who require certain accommodations to allow them to observe and/or participate in this meeting or have questions about the accessibility of the meeting or facilities, contact the Village ADA Coordinator – Megan Pierce, at 510 Green Bay Road, Winnetka, Illinois 60093, 847-716-3543; T.D.D. 847-501-6041.



Agenda Item Executive Summary

Title: Discussion of Small Cell Wireless Facilities

Presenter: Peter M. Friedman, Village Attorney

Agenda Date:

11/10/2015

Consent:

YES

NO

Ordinance

Resolution

Bid Authorization/Award

Policy Direction

Informational Only

Item History:

None.

Executive Summary:

Multiple wireless telecommunication providers or their contractors have contacted the Village regarding the installation of new “small cell” wireless facilities at various locations within the Village, primarily on poles within public rights-of-way. Many other municipalities in the Chicagoland region have received similar inquiries. The Village Attorney and the Director of Water & Electric have prepared information for the Village Board to on (1) the applicable federal and State laws, which create the framework within which the Village may regulate wireless facilities including small cell facilities, (2) the Village’s existing right-of-way and zoning regulations, and (3) various approaches the Village may consider to regulate small cell facilities.

Recommendation:

Provide direction on any further necessary information and policy options.

Attachments:

- 1) Agenda Report
- 2) November 5, 2015 Memorandum from Village Attorney Peter M. Friedman

SUBJECT: **Small Cell Wireless Facilities**

PREPARED BY: Peter Friedman, Village Attorney

DATE: November 5, 2015

Background

Several wireless telecommunication providers or their contractors have contacted the Village regarding the installation of new “small cell” wireless facilities at various locations within the Village, primarily on poles within public rights-of-way. Many other municipalities in the Chicagoland region have received similar inquiries.

The Village’s existing regulations of wireless facilities were designed to regulate cell towers, large cell sites, and related facilities of the time. Those large facilities serve the primary purpose of customer access (that is, cell signal coverage). Small cell facilities are different from large cell sites, both in size and purpose. The Village’s existing regulations thus are not directly applicable to the circumstances raised by small cell installations.

While small cell facilities do enhance signal coverage, the primary purpose of small cell facilities is to increase data capacity as customer demands for data increase.

Large cell sites have been installed on a few towers and buildings in the Village. In contrast, the nature of small cell facilities is that they are very limited in geographical reach and thus they must be installed in many more locations in a geographic area than can be served by a single large cell site. As a result, telecommunication providers seek to install small cell facilities on utility poles, streetlight and traffic signal poles, and similar structures, usually within utility easements and public rights-of-way. Typically only one small cell can be installed on a pole in an area like the Village, to avoid undue stress on the pole.

The Village’s existing regulations may not be sufficient to control the potential proliferation of small cell facilities.

This attached memorandum discusses (1) the applicable federal and State laws, which create the framework within which the Village may regulate wireless facilities including small cell facilities, (2) the Village’s existing right-of-way and zoning regulations, and (3) various approaches the Village may consider to regulate small cell facilities. Several proposals the Village has received for installation of small cell facilities are included in the memorandum.

It is timely and appropriate for the Village to proactively consider the various policy options related to the regulation of small cell facilities. That is the purpose of the November 10, 2015 Study Session on this topic.

Recommendation:

- 1) Discuss regulatory framework and policy options in order to provide further direction on administrative and code amendments and strategies.

Attachment

Attachment A: November 5, 2015 Memorandum from Village Attorney Peter Friedman

Holland & Knight

131 South Dearborn Street, 30th Floor | Chicago, IL 60603 | T 312.263.3600 | F 312.578.6666
Holland & Knight LLP | www.hklaw.com

Peter M. Friedman
(312) 578-6566
peter.friedman@hklaw.com

Memorandum

Date: November 5, 2015

To: President Gene Greable
Village Trustees

From: Peter M. Friedman, Village Attorney

Re: Small Cell Wireless Facilities

Multiple wireless telecommunication providers or their contractors have contacted the Village regarding the installation of new “small cell” wireless facilities at various locations within the Village, primarily on poles within public rights-of-way. Many other municipalities in the Chicagoland region have received similar inquiries. A synopsis of contacts with the Village is included at the end of this memorandum.

Like many municipalities, the Village adopted its existing regulations of wireless facilities to regulate cell towers, large cell sites, and related facilities of the time. Those large facilities serve the primary purpose of customer access (that is, cell signal coverage). Small cell facilities are different from large cell sites, both in size and purpose. The Village’s existing regulations thus are not tuned to the circumstances raised by small cell installations.

While small cell facilities do enhance signal coverage, the primary purpose of small cell facilities is to increase data capacity as customer demands for data increase.

Large cell sites have been installed on a few towers and buildings in the Village. In contrast, the nature of small cell facilities is that they are very limited in geographical reach and thus they must be installed in many more locations in a geographic area than can be served by a single large cell site. As a result, telecommunication providers seek to install small cell facilities on utility poles, streetlight and traffic signal poles, and similar structures, usually within utility easements and public rights-of-way. Typically only one small cell can be installed on a pole in an area like the Village, to avoid undue stress on the pole.

The Village’s existing regulations may not be sufficient to control the potential proliferation of small cell facilities.

This memorandum discusses (1) the applicable federal and State laws, which create the framework within which the Village may regulate wireless facilities including small cell facilities, (2) the Village’s existing right-of-way and zoning regulations, and (3) various approaches the Village may consider to regulate small cell facilities. Several proposals the Village has received for installation of small cell facilities are included with this memorandum.

1. Regulatory Framework.

a. U.S. Telecommunications Act.

The U.S. Telecommunications Act, 47 USC, limits, in Section 332(c)(7)(B), the regulation of “the placement, construction, and modification” wireless facilities, including small cell facilities, by state and local governments. The Act preserves a local government’s right to make decisions regarding the placement, construction, and modification of personal wireless service facilities, but the local government may not:

- i. unreasonably discriminate among providers of functionally equivalent services;
- ii. prohibit or have the effect of prohibiting the provision of personal wireless services; and
- iii. regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions.

Under that Act, the Village must act on requests for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with the Village, taking into account the nature and scope of the request. Any decision by the Village to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record. Any person adversely affected by the Village’s final action or failure to act may file an action in court within 30 days after the action or failure to act.

b. Illinois Telephone Company Act.

Section 4 of the Illinois Telephone Company Act, 220 ILCS 65/4, authorizes “telecommunications carriers,” including wireless telecommunication providers, to install facilities in public rights-of-way, subject to direction by municipalities regarding the location of the facilities.

A carrier must give written notice to the corporate authorities of the municipality or their designees of the carrier’s intent to install facilities in a right-of-way. The notice must include plans and specifications of the facilities. Notice must be given 10 days before the facilities are to be installed or, if the installation involves excavation, 30 days before the facilities are to be installed.

After receipt of notice from a carrier, the corporate authorities or their designee must, within 10 days or, if excavation is required, 25 days, identify the location or locations within the right-of-way where the facilities may be installed. After receipt of the permitted locations, the carrier must provide to the municipalities plans and specifications for the installation of the facilities and install the facilities in accordance with those plans and specifications. If the municipality does not provide to the carrier locations where the proposed facilities may be constructed, the carrier may proceed with installation of the facilities at locations that it chooses, so long as the locations do not interfere with proper uses of the right-of-way.

2. Existing Village Regulations.

a. Chapter 14.04 of Village Code: Construction of Utility Facilities in the Public Rights-of-Way.

i. Permit Required.

Chapter 14.04 of the Village Code applies to all facilities belonging to or used by a “utility” other than the Village and located within a right-of-way. For the purpose of Chapter 14.04, “utility” includes “telecommunications provider,” which specifically includes cellular mobile telecommunication services and mobile radio services.

Section 14.04.040 requires all utilities to obtain a permit from the Village for work in the right-of-way other than the installation and maintenance of service connections that would not disrupt the right-of-way. Work that requires a permit specifically includes: (1) changing the location of facilities; (2) installing new facilities; (3) work that disrupts the right-of-way; (4) work that materially increases the space within the right-of-way occupied by a facility; and (5) work that expands the capacity of a facility to provide service not previously provided by the facility.

If a permit application proposes the installation of above-ground or freestanding facilities, the application must include proof that the applicant has notified the owners and occupants of all properties located within 250 feet of the proposed location of the proposed installation. The notice must include a site plan, the dimensions of the proposed equipment, and a statement that the installation is subject to Council approval.

Section 14.04.050.B sets forth a special process for permit applications for telecommunication facilities that is intended to comply with Section 4 of the Telephone Company Act. After a carrier provides notice to the Village of its intent to construct facilities and the Village identifies the locations where the facilities may be installed, the carrier must apply for a permit. If the Village’s Director of Public Works determines that the proposed installation conforms with the requirements of Chapter 14.04 and all other applicable law, the Director of Public Works must issue a permit “as soon as practicable.” If the Village does not respond to a carrier’s notice of intent to install facilities in the right-of-way within the time periods set forth in Section 4 of the Telephone Company Act, then the carrier may commence work without obtaining a permit from the Village.

ii. Generally Facilities Must Be Underground.

Section 14.04.150 provides additional regulations governing the location of facilities within rights-of-way. As a general rule, all facilities must be underground. Pursuant to Section 14.04.150.C, underground facilities: (1) may be located under a paved portion of a highway only if other locations are impracticable or inconsistent with sound engineering judgment; (2) must be installed at a location will not interfere with Village facilities, use of the right-of-way, travel, and visibility; and (3) must, in the case of communication lines, be located within five feet from the right-of-way line, with any above-ground appurtenance located within one foot of the right-of-way line.

Pursuant to 14.04.150.D, an underground communication facility may cross a highway only if: (1) the design materials and construction methods provide a maximum maintenance-free service life; and (2) the initial installation provides all foreseeable capacity needed by the carrier in the future.

iii. Above-ground facilities.

Above-ground facilities must be approved by the Village Council in accordance with standards set forth in Section 14.04.150.H.

Additionally, pursuant to Section 14.04.150.B, overhead facilities may not be installed, replaced, or upgraded unless: (1) the Village Electric Utility has overhead electrical lines running parallel to the same right-of-way at the same location; (2) the proposed overhead facility is for the routine repair or maintenance of existing overhead facilities and does not increase the capacity of existing lines or add additional overhead lines; (3) the overhead facility will not require installation of new poles; and (4) the overhead line will comply with the minimum vertical clearance requirements of rules promulgated by the Illinois Commerce Commission (“ICC”).

Section 14.04.150.D provides that overhead communication facilities may not cross a highway unless: (1) the Village’s Electric Utility has overhead electric lines crossing the same highway at the same location; (2) the proposed overhead facility is for the routine repair or maintenance of existing overhead facilities and does not increase the capacity of existing lines or add additional overhead lines; (3) the overhead facility will not require installation of new poles; (4) the owner of the communication facility has a pole agreement with the Village; and (5) the overhead line will comply with the minimum vertical clearance requirements of rules promulgated by the ICC.

iv. Freestanding facilities.

Section 14.04.150.F authorizes the Village to restrict the location and size of any freestanding facility (as opposed to a facility installed on a pole) in a right-of-way. Freestanding facilities must be underground unless the Design Review Board determines that the landscape plan provides adequate visual screening and the facility is approved in advance by the Village Council in accordance with criteria set forth in Section 14.04.150.H.

Freestanding facilities are prohibited on or above any sidewalk within the Village and on or above any parkway located adjacent to a school or church, within a commercial or multi-family zoning district, within 10 feet of any parkway tree, and within the drip line of a protected tree. Freestanding facilities are prohibited in rights-of-way unless approved by the Village Council.

v. Appearance standards.

Section 14.04.150.G imposes appearance standards on facilities in rights-of-way. The Director of Public Works must determine that a proposed free-standing facility does not require extensive removal of trees and other landscape features. Additionally, the Design Review Board must review and approve proposed free-standing facilities in accordance with certain findings.

vi. Other regulations.

Chapter 14.04 also imposes other regulatory requirements, including that permittees obtain and maintain certain insurance protecting the Village, indemnify the Village, provide performance security covering the installation work and restoration of the right-of-way, and comply with construction standards.

b. Chapter 17.52 of Zoning Ordinance: WTSF Wireless Facilities Telecommunications Service Facilities Overlay District.

Section 17.52.010.C of the Zoning Ordinance establishes the Wireless Telecommunications Service Facilities Overlay District (“*Overlay District*”), which is comprised of two parts: (1) the following locations: (a) an area along the south and west boundaries of the Winnetka Park District Golf Course; (b) the Village Public Works Yard located at 1390 Willow Road; (c) the southwest portion of the Village landfill located at 1390 Willow Road; (d) the Village Water and Electric Plant located at Lake Michigan and Tower Road; (e) the Village Public Safety Building located at 410 Green Bay Road; and (f) the golf netting poles located at the eastern edge of the Winnetka Park District Golf Driving Range (collectively, the “*Public Properties*”); and (2) the C-1 and C-2 Zoning Districts (collectively, the “*C Districts*”).

Except as provided in Chapter 17.52 of the Zoning Ordinance, wireless telecommunication facilities are prohibited within all zoning districts in the Village. Pursuant to Section 17.53.010.D, monopoles, masts, and antennas are permitted accessory uses at the Public Properties. This means that such structures are permitted, so long as they are incidental to the principal uses of the Public Properties. In contrast, antennas and related cabinets and shelters are special accessory uses in the C Districts. This means that antennas may not be installed in the C Districts unless a special use permit is granted pursuant to the notice and hearing processes described in Chapter 17.56 of the Zoning Ordinance.

Within the overlay district, Section 17.52.010.E sets forth an order of priority for the locations where new wireless telecommunication facilities may be installed. Sections 17.52.010.H through 17.52.010.N establish site requirements for each of the Public Properties and the C Districts, including the number of wireless telecommunication facilities permitted at each of the Public Properties. A wireless telecommunication facility may not be installed at any location unless higher priority sites have been fully utilized or are not technically feasible.

Other site requirements for the Public Properties and the C Districts include limitations on height, location, co-location, and design and, in some cases, additional procedural requirements for the approval of a wireless telecommunication facility. The site requirements vary by location.

All applications for building permits and special use permits for wireless telecommunication facilities must include plans and maps showing compliance with the requirements of Chapter 17.52.

3. Possible Regulatory Approaches.

a. Temporary Moratorium on New Facilities.

Some communities have imposed a temporary moratorium on the issuance of permits and other approvals related to wireless telecommunication facilities for the purpose of developing new regulations that address small cell facilities. This approach gives small cell wireless providers notice that new permits will not be granted, cutting off any potential vested right to install facilities pursuant to existing regulations that may be less restrictive.

The Village must be very cautious about a moratorium, however, for several reasons. The FCC has determined that the “shot-clock” provisions related to traditional facilities (that is, time limits on reviewing applications) also apply to small cell facilities. The shot-clock runs regardless of any moratorium. Also, the telecommunications industry dislikes moratoriums and the enactment of a moratorium may adversely affect a working relationship with a telecommunications provider that is attempting to work cooperatively with the Village.

b. Amendments to Chapter 14.04.

Chapter 14.04 of the Village Code already limits the circumstances under which above-ground and overhead facilities may be installed in rights-of-way, but the regulations do not neatly fit the circumstances related to small cell facilities. The Village must be careful to avoid applying an existing regulation in a manner that would run afoul of the limitations set in the U.S. Telecommunications Act or the provisions of the Illinois Telephone Act.

In addition, Chapter 14.04 is primarily a construction code. It does not currently address matters such as site designations, property rights, and other details that may relate to small cell facilities.

c. Amendments to Chapter 17.52.

The Village’s existing zoning regulations allow wireless facilities only as accessory uses within the Overlay District. The regulations do not specifically permit wireless facilities within rights-of-way. These regulations thus are inadequate to thoroughly and unambiguously regulate small cell facilities, which will be likely located throughout the Village in numerous locations within rights-of-way.

In addition, wireless providers have claimed that the Zoning Ordinance does not apply at all to small cell facilities because the zoning regulations only apply to zoning lots and not rights-of-way. The Village certainly will disagree with that contention, but it would be prudent to amend the Zoning Ordinance so there are no questions as to the applicability of its regulations to all types of wireless communications facilities.

Therefore, if the Village determines that small cell facilities should be regulated in the Zoning Ordinance, new provisions will be required to cover the various elements of small cell facilities siting, installation, and maintenance. And, in any event, those Zoning Ordinance provision should be updated even if new small cell facilities regulations are codified elsewhere.

4. Regulatory Approaches.

The Village should consider adoption of regulations governing numerous elements of small cell facilities. Those regulations may be suitable for the Zoning Ordinance or the Village Code, or both, and may include such standards as the following:

- A written application for permission to install a small cell site, including the information required from the applicant.
- A process the Village will follow to evaluate an application and make a decision on it.
- Site criteria, such as preferred locations, prohibited locations, preferred types of poles or other forms of installations, required licenses, easements or other property rights.
- Fees for using Village poles or other facilities.
- Exceptions from the site criteria and the various conditions for granting exceptions.
- A method for determining available sites and, if necessary, allocating sites among the numerous telecommunications providers that will seek them.

New regulations must be crafted to avoid discriminating among telecommunications providers and to avoid the effect of prohibiting service, in violation of the U.S. Communication Act.

Staff and the Village Attorney will be prepared to discuss the various options and standards the Village may consider.

5. Synopsis of Contacts from Telecommunications Providers.

March 2014

AT&T Mobility contacted the Village to discuss the process and permitting to secure approval of small cell equipment in the public right-of-way. AT&T completed all of their preliminary engineering and siting information and started to discuss development of utility operating agreements and license fees. In February 2015, AT&T Mobility notified the Village that it was placing the project on hold until 2016. AT&T was proposing to install equipment at three sites. These included: the intersection of Scott Avenue & Lake Street, 1523 Edgewood Lane and 747 Hibbard Road.

December 2014

Insite Inc., a real estate consulting service, contacted the Village on behalf of Verizon about installing a small cell at Village Hall. The Village declines due appearance concerns.

January 2015

CCSI contacted the Village on behalf of an unnamed carrier. They were interested in installing small cell sites near the Hubbard Woods Metra Station and downtown Winnetka. Sites targeted by CCSI were located on Park District and/or private property.

March 2015

Blue Streak Cable & Telecommunications contacted the Village about installing small cell sites on utility poles. The contractor was retained by Verizon. Six sites were identified for a small cell sites. Locations identified were the following: 1025 Hill Road, 1390 Willow Road, 1255 Elm Street, 335 Locust Road, 920 Greenwood Avenue and 1215 Westmoor Road. As of August, Blue Streak has completed their engineering of the sites. Blue Streak and Verizon personnel have met with the Water & Electric utility to discuss operating agreements and license fees.

July 2015

Mobilitie contacted the Village about installing small cell sites in public right-of-way and/or on utility poles.

September 2015

WT Communications contacted Water & Electric about electric service requirements for a new small cell site located on private property.

6. Examples of Small Cell Site Installations

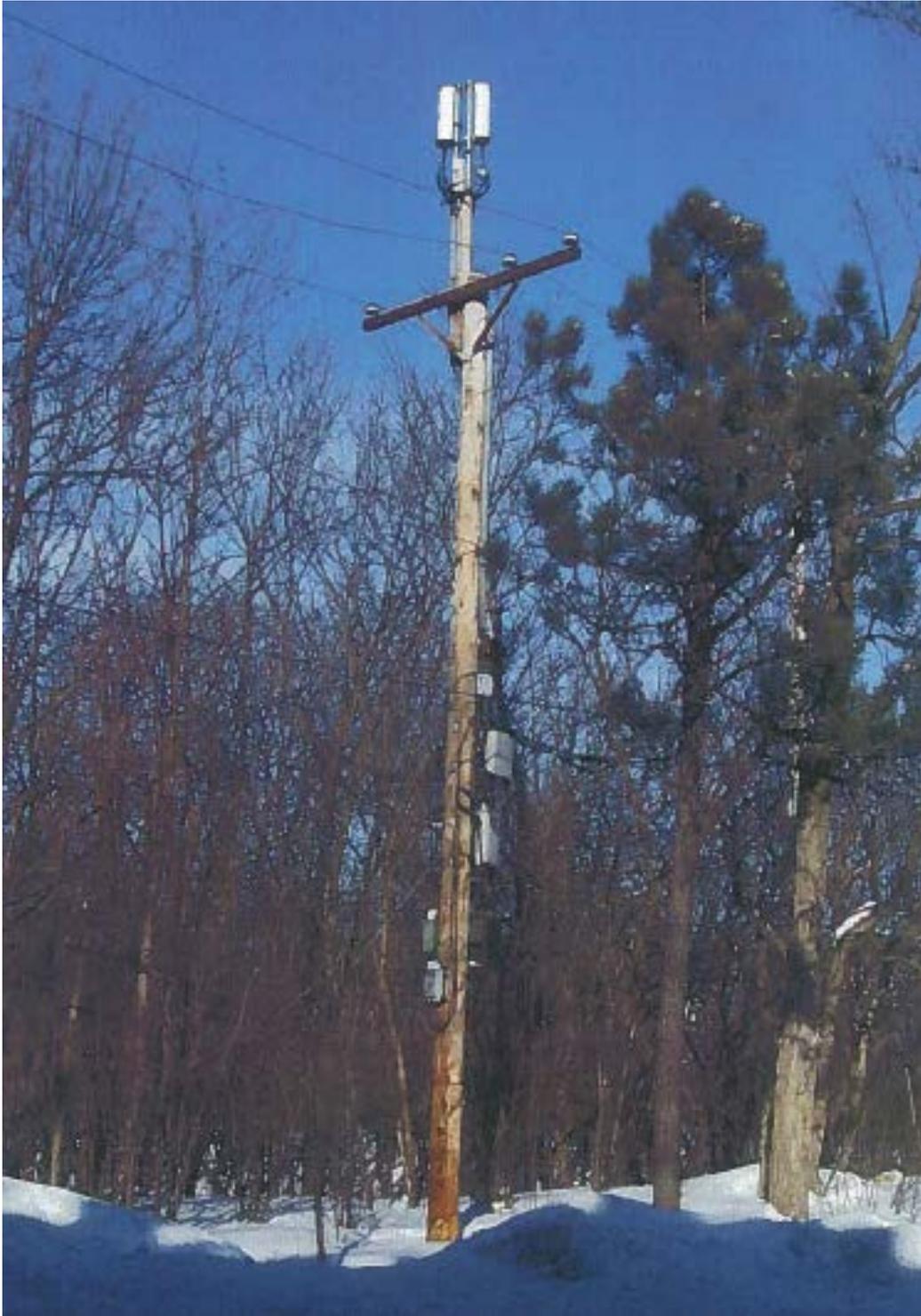
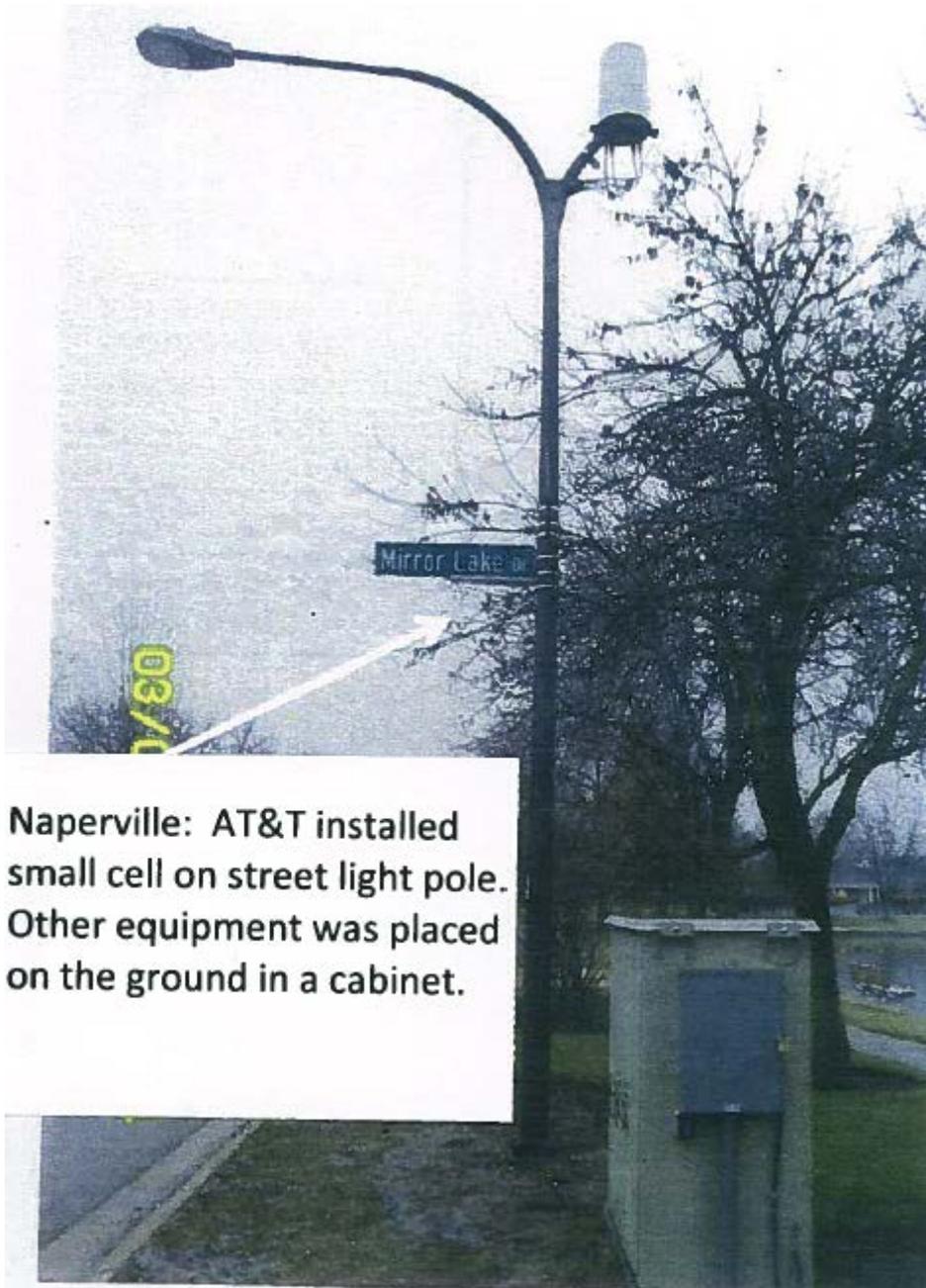








Photo simulation of proposed site in another community.



Naperville: AT&T installed small cell on street light pole. Other equipment was placed on the ground in a cabinet.

