

ORDINANCE NO. 02-34

A LOCAL ORDINANCE REGULATING THE SITING OF WIRELESS
TELECOMMUNICATIONS FACILITIES

WHEREAS, The Telecommunications Act of 1996 affirmed the County of Madison authority concerning the placement, construction and modification of Wireless Telecommunications Facilities, which authority is limited by State Legislation. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the applicable law, the County is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this is, to the extent permitted by law, to minimize the negative impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the County of Madison; and,

WHEREAS, This Ordinance shall be known and cited as the Wireless Telecommunications Facilities Citing Ordinance for Madison County, and is designed to establish guidelines for the citing of cellular towers;

WHEREAS, this Ordinance shall replace existing Ordinance number 01-31 also establishing guidelines for the citing of cellular towers;

NOW, THEREFORE, be it ordained by the Fiscal Court of the County of Madison, Commonwealth of Kentucky, as follows:

Section 1. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

Section 2. Definitions.

- A) "Cellular antenna tower" means a tower constructed for, or an existing facility that has been adapted for, the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services;
- B) "Cellular telecommunications service" means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations;
- C) "Co-location" means locating two (2) or more transmission antennas or related

equipment on the same cellular antenna tower;

- D) "Personal communication service" has the meaning as defined in 47 U.S.C. sec. 332(c); a
- E) "Uniform application" means an application to construct a cellular antenna tower submitted to the planning commission in conformity with Sections 3 and 5 of KRS100.985
- F) "Utility" has the meaning as defined in KRS 278.010(3); and
- G) "Antennas or related equipment" means transmitting, receiving, or other equipment used to support cellular telecommunications service or personal communications service. This definition does not include towers.

Section 3. Application Requirements.

- A. Every utility or a company that is engaged in the business of providing the required infrastructure to a utility that proposes to construct an antenna tower for cellular telecommunications services or personal communications services within Madison County shall;
 - 1) Submit a copy of the applicant's completed uniform application to the planning commission to construct an antenna tower for cellular or personal telecommunications services. The uniform application shall:
 - a) Include a grid map that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes all of the planning unit's jurisdiction; and a one-half (1/2) mile area outside of the boundaries of the planning unit's jurisdiction, if that area contains either existing or proposed construction sites for cellular antenna towers;
 - b) Include in any contract with an owner of property upon which a cellular antenna tower is to be constructed, a provision that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing a cellular antenna tower including a timetable for removal; and
 - c) Comply with any local ordinances concerning land use, subject to the limitations imposed by 47 U.S.C. sec. 332(c), KRS 278.030, 278.040, and 278.280.
- B) All information contained in the application and any updates, except for any map or other information that specifically identifies the proposed location of the cellular antenna tower then being reviewed, shall be deemed confidential and proprietary within the meaning of KRS 61.878. The local planning commission shall deny any public request for the inspection of this

information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030.

- C) After an applicant's submission of the uniform application to construct a cellular antenna tower, the planning commission shall:
 - 1) Review the uniform application in light of its agreement with the comprehensive plan and locally adopted zoning regulations;
 - 2) Make its final decision to approve or disapprove the uniform application; and
 - 3) Advise the applicant in writing of its final decision within sixty (60) days commencing from the date that the uniform application is submitted to the planning commission or within a date certain specified in a written agreement between the local planning commission and the applicant. If the planning commission fails to issue a final decision within sixty (60) days and if there is no written agreement between the local planning commission and the applicant to a specific date for the planning commission to issue a decision the uniform application shall be deemed approved.
- D) If the planning commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower shall be issued until the planning commission approves the uniform application or the sixty (60) day time period has expired, whichever occurs first.
- E) The planning commission may require the applicant to make a reasonable attempt to co-locate additional transmitting or related equipment. A planning commission may provide the location of existing cellular antenna towers on which the commission deems the applicant can successfully co-locate its transmitting and related equipment. If the local planning commission requires the applicant to attempt co-location, the applicant shall provide the local planning unit with a statement indicating that the applicant has:
 - 1) Successfully attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities, and that identifies the location of the tower or suitable structure on which the applicant will co-locate its transmission and related facilities; or
 - 2) Unsuccessfully attempted to co-locate on towers designed to host multiple wireless service provider's facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities and that:
 - a) Identifies the location of the towers or other structures on which the

applicant attempted to co-locate; and

- b) Lists the reasons why the co-location was unsuccessful in each instance.
- F) The planning commission may deny a uniform application to construct a cellular antenna tower based on an applicant's unwillingness to attempt to co-locate additional transmitting or related equipment on any new or existing towers or other structures.
- G) In the event of co-location, a utility shall be considered the primary user of the tower, if the utility is the owner of the antenna tower and if no other agreement exists that prescribes an alternate arrangement between the parties for use of the tower. Any other entity that co-locates transmission or related facilities on a cellular antenna tower shall do so in a manner that does not impose additional costs or operating restrictions on the primary user.
- H) Upon the approval of an application for the construction of a cellular antenna tower by a planning commission, the applicant shall notify the Public Service Commission within ten (10) working days of the approval. The notice to the Public Service Commission shall include a map showing the location of the construction site. If an applicant fails to file notice of an approved uniform application with the Public Service Commission, the applicant shall be prohibited from beginning construction on the cellular antenna tower until such notice has been made.
- I) A party aggrieved by a final action of a planning commission under the provisions of KRS 100.985 to 100.987 may bring an action for review in any court of competent jurisdiction

Section 4. Planning Commission Restrictions.

In regulating the placement of cellular antenna towers, the planning commission shall not:

- A) Regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emissions to the extent that these facilities comply with the regulations of the Federal Communications Commission concerning radio frequency emissions;
- B) Institute a moratorium upon the citing of cellar antenna towers;
- C) Charge an application fee that exceeds an amount that is reasonably related to expenses associated with processing an application to construct a cellular antenna tower, up to a maximum of two thousand five hundred dollars (\$2,500);
- D) Regulate the placement of antennas or related equipment on an existing cellular tower structure;
- E) Require the submission of application materials in addition to those required by Sections 3 and 5 of this Act. (Such Act being HB 270 enacted April 15, 2002)

Section 5. Additional Application Requirements

In addition an application shall include:

- A) The full name and address of the applicant.

- B) The applicant's articles of incorporation, if applicable;
- C) A geo-technical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs and foundation design recommendations;
- D) A written report, prepared by a professional engineer or land surveyor, of findings as to the proximity of the proposed site to flood hazard areas;
- E) Clear directions from the county seat to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions;
- F) The lease or sale agreement for the property on which the tower is proposed to be located, except that, if the agreement has been filed in abbreviated form with the county clerk, an applicant may file a copy of the agreement as recorded by the county clerk and, if applicable, the portion of the agreement demonstrating compliance with KRS 100.987(2);
- G) The identity and qualifications of each person directly responsible for the design and construction of the proposed tower;
- H) A site development plan or survey, signed, and sealed by a professional engineer registered in Kentucky, that shows the proposed location of the tower and all easements and existing structures within five hundred (500) feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within two hundred (200) feet of the access drive, including the intersection with the public street system;
- I) A vertical profile sketch of the tower, signed, and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas;
- J) The tower and foundation design plans and a description of the standard according to which the tower was designed, signed, and sealed by a professional engineer registered in Kentucky;
- K) A map, drawn to a scale no less than one (1) inch equals two hundred (200) feet, that identifies every structure and every owner of real estate within five hundred (500) feet of the proposed tower;
- L) A statement that every person who, according to the records of the property valuation administrator, owns property within five hundred (500) feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed, has been:
 - 1) Notified by certified mail, return receipt requested, of the proposed construction which notice shall include a map of the location of the proposed construction;
 - 2) Given the telephone number and address of the local planning commission; and
 - 3) Informed of his or her right to participate in the planning commission's proceedings on the application.
- M) A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners;
- N) A statement that the chief executive officer of the affected local governments and their legislative bodies have been notified, in writing, of the proposed construction;
- O) A copy of the notice sent to the chief executive officer of the affected local governments and their legislative bodies;
- P) A statement that:

- 1) A written notice, of durable material at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower on this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted and shall remain in a visible location on the proposed site until final disposition of the application;
 - 2) A written notice, at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower near this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted on the public road nearest the site;
- Q) A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed;
- R) A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the existing land use for the specific property involved;
- S) A statement that the applicant has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to locate its antennas and related facilities on an existing structure, including documentation of attempts to locate its antennas and related facilities on an existing structure, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service providers' facilities or on an existing structure, such as a telecommunications tower or other suitable structure capable of supporting the applicant's antennas and related facilities; and
- T) A map of the area in which the tower is proposed to be located, that is drawn to scale, and that clearly depicts the necessary search area within which an antenna tower should, pursuant to radio frequency requirements, be located.
- U) The means of security of the cellular facility shall be identified on the development plan, i.e., chain link fencing, etc.
- V) Proper landscape buffer shall be provided around the perimeter of the cellular tower site so as to preserve the aesthetics of the adjacent areas. Provide details on the development plan as to the location, spacing, species and mature growth information for all landscaping proposed.
- W) A digital submittal of the development plan formatted in accordance with the County GIS Ordinance Number 02-03.

Section 6. Conflict with Other Laws.

Where this Ordinance differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, Commonwealth or federal government, this Ordinance shall apply.

Section 7. Land Use Regulations.

The Land Use Regulations for Madison County, Kentucky shall reference this ordinance in Section 402.

Cellular tower facilities shall be listed as a permitted use in all land use classifications as listed in Section 402 of the current edition of the Madison County Land Use Regulations *with the exception of* any areas zoned for "Single Family Residential" such as UC-1, RC-1, C-1 and R-1. All other land use designations will list Cellular Tower Facilities as a permitted use.

Section 8. Effective Date.

This Ordinance shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

Section 9. Authority.

This Local Ordinance is enacted pursuant to applicable authority granted by the Commonwealth and federal government.

That the County Clerk cause this ordinance to be published in accordance with the appropriate Kentucky Revised Statues.

This Ordinance No. _____ shall become effective on the date of the second reading and adoption.

DATE OF FIRST READING: Oct 22, 2002

MOTION BY: Forniss Parks

SECONDED BY: William Tudor

VOTE: YES NO

JUDGE, KENT CLARK ✓
MAGISTRATE LARRY COMBS ✓
MAGISTRATE FORNISS PARKS ✓
MAGISTRATE WILLIAM TUDOR ✓
MAGISTRATE BILLY RAY HUGHES ✓

DATE OF SECOND READING: Nov 12, 2002

MOTION BY: Billy Ray Hughes

SECONDED BY: Forniss Park

VOTE: YES NO

JUDGE, KENT CLARK	✓
MAGISTRATE LARRY COMBS	✓
MAGISTRATE FORNISS PARKS	✓
MAGISTRATE WILLIAM TUDOR	✓
MAGISTRATE BILLY RAY HUGHES	✓



MADISON COUNTY JUDGE EXECUTIVE

Attest: Mary Jane Winter
MADISON COUNTY CLERK

MADISON COUNTY, KENTUCKY
UNIFORM APPLICATION FOR CELL TOWER APPROVAL

Application # _____ Date _____ Fee _____

1. Name of Applicant _____

Address _____

Phone _____ E-Mail Address _____

2. Name of Surveyor or Engineer _____

Address _____

Phone _____ E-Mail Address _____

3. Name of Geotechnical Engineer _____

Address _____

Phone _____ E-Mail Address _____

4. Address of Property or Site _____

5. Is there a lease or sale agreement for the proposed site? YES NO

If yes, provide a copy of the agreement.

6. Provide clear written directions from the County seat to the proposed site:

7. Following is a checklist of additional items required to be submitted at the time of application submittal. You must check all of the items listed below for the submittal to be considered complete. Failure to do so will result in delays of the approval process until all required information is provided.

Application Fee in the amount of \$2250.00, made payable to the Madison County Treasurer;

Include a grid map that shows the location of all existing cellular antenna towers that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes all of the planning unit's jurisdiction; and a one-half (1/2) mile area outside of the boundaries of the planning unit's jurisdiction, if that area contains either existing or proposed construction sites for cellular antenna towers;

- Include in any contract with an owner of property upon which a cellular antenna tower is to be constructed, a provision that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing a cellular antenna tower including a timetable for removal;
- Copy of the applicant's articles of incorporation;
- Original of the geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes the boring logs and foundation design recommendations;
- A written report, prepared by a professional engineer or land surveyor, of findings as to the proximity of the proposed site to flood hazard areas;
- Clear directions from the county seat to the proposed site;
- Copy of the lease or sales agreement for the property on which the tower is proposed to be located;
- Provide the identity and qualifications of each person directly responsible for the design and construction of the proposed tower;
- A site development plan or survey, signed, and sealed by a professional engineer registered in Kentucky, that shows the proposed locations of the tower and all easements and existing structures within five hundred (500) feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within two hundred (200) feet of the access drive, including the intersection with the public street system;
- Provide a digital submittal of the proposed development plan formatted in accordance with the County GIS Ordinance Number 02-03;
- A vertical profile sketch of the tower, signed, and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the height of all antennas;
- The tower and foundation design plans and a description of the standard according to which the tower was designed, signed, and sealed by a professional engineer registered in Kentucky;
- A map, drawn to a scale no less than one (1) inch equals two hundred (200) feet, that identifies every structure and every owner of real estate within five hundred (500) feet of the proposed tower;
- A statement that every person who, according to the records of the property valuation administrator, owns property within five hundred (500) feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed, has been:
 - 1) Notified by certified mail, return receipt requested, of the proposed construction which notice shall include a map of the location of the proposed construction;
 - 2) Given the telephone number and address of the local planning commission; and
 - 3) Informed of his or her right to participate in the planning commission's proceedings on the application.
- A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners;

- A statement that the chief executive officer of the affected local governments and their legislative bodies have been notified, in writing, of the proposed construction;
- A copy of the notice sent to the chief executive officer of the affected local governments and their legislative bodies;
- A statement that:
 - 1) A written notice, of durable material at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower on this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted and shall remain in a visible location on the proposed site until final disposition of the application;
 - 2) A written notice, at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower near this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted on the public road nearest the site;
- A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed;
- A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the existing land use for the specific property involved;
- A statement that the applicant has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to locate its antennas and related facilities on an existing structure, including documentation of attempts to locate its antennas and related facilities on an existing structure, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service providers' facilities or on an existing structure, such as a telecommunications tower or other suitable structure capable of supporting the applicant's antennas and related facilities; and
- A map of the area in which the tower is proposed to be located, that is drawn to scale, and that clearly depicts the necessary search area within which an antenna tower should, pursuant to radio frequency requirements, be located.
- The means of security of the cellular facility shall be identified on the development plan, i.e., chain link fencing, etc.
- Proper landscape buffer shall be provided around the perimeter of the cellular tower site so as to preserve the aesthetics of the adjacent areas.
- Provide details on the development plan as to the location, spacing, species and mature growth information for all landscaping proposed.

FOR OFFICIAL USE ONLY

Date Received _____ Received by _____

Deadline Date for Approval (Max 60 days from submittal date) _____

Date of Meeting of Planning Commission _____

Action by Planning Commission _____

If plat rejected, reason(s) for rejection _____

Date _____ Administrative Official _____