

COMMONWEALTH OF KENTUCKY
BULLITT COUNTY
ZONING ORDINANCE NO. 11-05, SERIES 2011

AN ORDINANCE RELATING TO THE ADOPTION OF ARTICLE 10 AS A TEXT AMENDMENT TO THE BULLITT COUNTY PLANNING AND ZONING REGULATIONS REGARDING SITING AND CONSTRUCTION OF CELLULAR ANTENNA TOWERS.

WHEREAS, the holding in the Kentucky Supreme Court case, *Kentucky Public Service Commission v. Shadoan*, 325 S.W.3d 360 (Ky. 2010), decided November 18, 2010, establishes that local planning commissions, not the Public Service Commission, have jurisdiction over the siting and construction of cellular antenna towers within the geographic area of the planning unit; and

WHEREAS, currently the Bullitt County Planning and Zoning Regulations do not contain any standards or restrictions applicable to cellular antenna towers; and

WHEREAS, the Fiscal Court of Bullitt County has considered the evidence of the public hearing held by the Planning Commission and the recommendations of the Commission; and

WHEREAS, the Fiscal Court concurs in and adopts the reasons of the Planning Commission for said text amendment and approves and accepts the recommendations of the Planning Commission in this matter as set out in said minutes; and

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF COUNTY OF BULLITT, COMMONWEALTH OF KENTUCKY:

SECTION ONE: Bullitt Fiscal Court hereby adopts Article 10 as a text amendment to the Bullitt County Planning and Zoning Regulations set forth in full below

and more fully described in the minutes and records of the Bullitt County Joint Planning Commission in Docket Number 2011T-01:

ARTICLE 10 CELLULAR ANTENNA TOWERS

10.100. PURPOSE. The purposes of these regulations are: to provide for the safest and most efficient integration of cellular antenna towers for cellular telecommunications services or personal communications services within Bullitt County; to provide for such facilities in coordination with the recommendations of the comprehensive plan; and to allow for such facilities with the intention of furthering the public health, excluding concerns specified in KRS 100.986(1), safety, quality of life, and to encourage growth of communications services in Bullitt County to the benefit of its citizens and businesses alike.

10.200. PRE-APPLICATION CONFERENCE. Applicants are encouraged to notify the Planning Commission Administrator to discuss proposals, to allow for early coordination, and to identify those items that are in conformance/nonconformance with the comprehensive plan, zoning ordinance, and the provisions of these regulations.

10.300. DEFINITIONS. For the purposes of these regulations, the following definitions shall apply:

"Alternative Cellular Antenna Tower" means structures that accommodate, camouflage, minimize or conceal the presence of cellular antennas or cellular antenna towers and that are constructed primarily for the purpose of accommodating cellular antennas or cellular antenna towers or are reconstructed for the purpose of accommodating cellular antennas or cellular antenna towers. This does not include existing structures erected for another primary purpose, but which subsequently have cellular antennas attached to or located within them, without any reconstruction of the original structure. For the provisions of these regulations, an alternative cellular antenna tower is considered a cellular antenna tower.

"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.

"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. For the provisions of these regulations, the term "cellular antenna tower" encompasses all of the following: alternative cellular antenna tower, lattice cellular antenna tower, guyed cellular antenna tower, and monopole cellular antenna tower.

"Cellular Telecommunications Service" means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.

"Co-location" means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower.

"Commission" means the Bullitt County Joint Planning Commission.

"Guyed Cellular Antenna Tower" means a type of wireless transmission tower that is supported by guy wires.

"Lattice Cellular Antenna Tower" means a self-supporting tower with multiple legs and cross bracing of structural steel.

"Monopole Cellular Antenna Tower" means a single-poled self-supporting tower on which wireless antenna can be placed.

"Personal Communication Service" means any mobile service that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

"Uniform Application" means an application to construct a cellular antenna tower submitted to a planning commission in conformity with KRS 100.985 through KRS 100.987, hereinafter referred to as "application."

"Utility" means any person except, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:

(a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;

(b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;

(c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;

(d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;

(e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or

(f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment

facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220.

10.400. GENERAL. Cellular antenna towers for cellular telecommunications services or personal communications services may be allowed in any zone, except as stated in Subsection 10.500(a), after a Commission review in accordance with the following procedures to ascertain agreement with the adopted Comprehensive Plan, the Bullitt County Planning and Zoning Regulations applicable to the zone wherein a cellular antenna tower is proposed to be located, and these regulations.

(a) Applicability. Every entity that proposes to construct a cellular antenna tower shall file an application to the Commission. Where the Commission finds that circumstances or conditions relating to the application of an alternative cellular antenna tower are such that one or more of the requirements of the application listed below are not necessary or desirable for the protection of surrounding property or the public health, excluding concerns specified in KRS 100.986(1), safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the Commission, or its duly authorized representative, may modify or waive such requirement of the application, either permanently or on a temporary basis. Any such modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested modification or waiver. The Commission shall not regulate the placement of antennas or related equipment on an existing structure.

(b) Application Requirements. Every application for the construction of any type of cellular antenna tower for cellular telecommunications services or personal communications services shall include the following:

- (1) The full name and address of the applicant.
- (2) The applicant's articles of incorporation, if applicable.
- (3) A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky that includes boring logs and foundation design recommendations.
- (4) 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.
- (5) Clear directions from the City of Shepherdsville to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions.

(6) 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 that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.

(7) The identity and qualifications of each person directly responsible for the design and construction of the proposed tower.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) 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:

(i) Notified by certified mail, return receipt requested, of the proposed construction which notice shall include a map of the location of the proposed construction.

(ii) Given the telephone number and address of the local planning commission; and

(iii) Informed of his or her right to participate in the planning commission's proceedings on the application.

(13) A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners.

(14) A statement that the chief executive officer of the affected local government and the legislative body have been notified, in writing, of the proposed construction.

(15) A copy of the notice sent to the chief executive officer of the affected local government and the legislative.

(16) A statement that:

(i) 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 in a visible location on the proposed site; and

(ii) 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.

(17) A statement that notice of the location of the proposed construction has been published in the Pioneer News.

(18) 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.

(19) 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.

(20) 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.

(21) 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:

(i) All of the planning unit's jurisdiction; and

(ii) 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.

(c) Confidentiality of Application. 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 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. The confidentiality of the applications and any updates of the application can be waived by the written authorization of the applicant.

(d) Application Fee. An applicant for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall pay an application fee in the amount of \$2500 upon submission of an application. This fee will cover the cost of Commission review and any required building permits.

10.500. DESIGN STANDARDS. The applicant shall provide information demonstrating compliance with the requirements contained herein. Potential sites that should be considered (in order from most-preferred to least-preferred) include street right-of-way, existing utility towers, industrial zones, commercial zones, and government buildings. Where the Commission finds that circumstances or conditions relating to the particular application are such that one or more of the requirements listed below are not necessary or desirable for the protection of surrounding property or the public health, excluding concerns specified in KRS 100.986(1), safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the Commission, or its duly authorized representative, may modify or waive such requirement, either permanently or on a temporary basis. Any such

modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested modification or waiver.

(a) Monopole Cellular Antenna Towers shall be permitted in any zone and shall be located a minimum distance of not less than 250 feet from all existing residential structures. Distance shall be measured from the base of the tower to the nearest wall of the residential structure.

(b) Lattice and Guyed Cellular Antenna Towers shall be permitted in any zone except for residential zones.

(c) Any cellular antenna tower constructed in an agricultural zone shall be located a minimum distance of not less than 250 feet from all existing residential structures. Distance shall be measured from the base of the tower to the nearest wall of the residential structure.

(d) Setbacks for all cellular antenna towers or other structures constructed in connection with any cellular antenna towers, except fences and/or guy wires, shall be a minimum distance from the property line equal to the setback of the respective zone, plus one-half (1/2) the height of the tower. Alternative cellular antenna towers that are to be located as part of a utility service facility (e.g. power pole or telephone pole) shall comply with setback requirements applicable to such utility service facilities, if any.

Lease lines are not considered property lines and therefore do not have building setback limits.

(e) Height. A cellular antenna tower, or alternative antenna tower structure, may be constructed to a maximum height of two hundred-fifty (250) feet regardless of the maximum height requirements listed in the specific zoning district. This also applies to any tower taller than fifteen (15) feet constructed on the top of another building or structure, with the height being the overall height of building/structure and tower together, measured from the grade to the highest point. The Commission may allow antennas greater than two hundred-fifty (250) feet in height upon review of the applicant's proof that the additional height meets the criteria identified in 10.700.

(f) The Cellular Antenna Tower shall be Constructed in compliance with the current ANSI/EIA/TIA 222-F standards and other applicable state standards, incorporated herein by reference.

(g) Illumination. Any cellular antenna tower shall not be illuminated, except in accordance with other state or federal regulations.

(h) Woven Wire or Chain Link (eighty (80) percent open) or solid fences made from wood or other materials (less than fifty (50) percent open) shall be used to

enclose the site. Such fences shall not be more than eight (8) feet in height, and may be located within the front, side, or rear yard.

(i) Surfacing of All Driveways and Off-street Parking Areas shall comply with the requirements of the applicable local zoning ordinance.

(j) Signs. There shall be no signs permitted, except those displaying emergency information, owner contact information, warning or safety instructions, or signs that are required by a federal, state, or local agency. Such signs shall not exceed five (5) square feet in area.

(k) Lease Agreements. All option and site lease agreements shall not prohibit the possibility of co-location, and in the case of abandonment, shall include a method that the lessor and/or lessee will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.

(l) Approval of the Federal Aviation Administration (FAA) and the Kentucky Airport Zoning Commission (KAZC) or documentation where approval is not required shall be submitted prior to the issuance of a building permit for the construction of the cellular antenna tower. In determining whether to approve the construction of a cellular antenna tower, the Commission may consider whether a proposed cellular antenna tower will impede the flight path of any Landing Area designated by the Commonwealth of Kentucky. A cell tower will be deemed to impede the flight path of a designated landing area if the tower obstructs the air at a 25 to 1 slope, meaning 25 vertical feet to one horizontal foot, from the center of the runway out in all directions for a horizontal distance of 5000 feet. This section is not intended to supersede more stringent FAA requirements and in no way relieves the applicant from compliance with any FAA requirements.

10.600. GUARANTEE OF REMOVAL IN CASE OF ABANDONMENT. Any contract with an owner of property upon which a cellular antenna tower is to be constructed shall include 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.

Discontinuance of Use. If the use of any cellular antenna, cellular antenna tower, or alternative cellular antenna tower is discontinued, the owner of the cellular antenna tower shall provide the Commission with a copy of the notice to the FCC of intent to cease operations within 30 days of such notice to the FCC. If the cellular antenna, cellular antenna tower, or alternative cellular antenna tower will not be reused, the owner of the cellular antenna tower shall have 180 days from submittal of the FCC notice to the Commission to obtain a demolition permit and remove the antenna or tower that will not be reused. If the cellular antenna, cellular antenna tower, or alternative cellular antenna tower is to be reused, the owner of the cellular antenna tower shall have no more than 12 months from submittal of the FCC notice to the Commission in which to

commence new operation of the antenna or tower to be reused. Upon failure to commence new operation of the antenna or tower that is to be reused within 12 months, the cellular antenna, cellular antenna tower, or alternative cellular antenna tower shall be presumed abandoned, and the owner of the cellular antenna tower shall obtain within 90 days of the expiration of the 12 month period, a demolition permit and remove the antenna or tower that is presumed abandoned within 60 days of obtaining the demolition permit. If the owner of the cellular antenna tower fails to remove an antenna or tower in the time provided by this paragraph, the Commission may, on grounds of public safety, health, and welfare, cause the demolition and removal of the cellular antenna, cellular antenna tower, or alternative cellular antenna tower and recover its costs of demolition and removal from the owner of the cellular antenna tower and the property owner. After the expiration of the time set forth in this paragraph, one notice will be sent to the owner of the cellular antenna tower and to the property owner citing this provision and informing both parties that 30 days from the date of the notice, the Commission may cause the demolition and removal of the abandoned cellular antenna, cellular antenna tower, or alternative cellular antenna tower if said tower or antenna is not removed within the 30 days.

10.700. PROCESSING OF APPLICATION AND CRITERIA

(a) Approval or Disapproval of the proposal shall be based upon compliance of the application with the Comprehensive Plan, Zoning Regulations including this Regulation, KRS Chapter 100, and any other applicable regulations.

(b) After an applicant's submission of a completed application to construct a cellular antenna tower, the Planning Commission shall process the application upon the following timetable:

- (1) At a public hearing, wherein interested parties and citizens shall have the opportunity to be heard, review the application in light of its agreement with the Comprehensive Plan and the Zoning Regulations;
- (2) The Commission may also evaluate the application on the basis of the extent to which the application responds to the impact of the proposed development on adjacent land uses, especially in terms of visual impact. The Commission shall have substantial evidence, presented at a public hearing, in order to deny an application based upon visual impact;
- (3) Make final decision to approve or disapprove the application; and
- (4) Advise the applicant in writing of its final decision within sixty (60) days commencing from the date that the completed uniform application is submitted to the Planning Commission or within a

date certain specified in a written agreement between the Planning Commission and the applicant.

(c) If the Planning Commission fails to issue a final decision within sixty (60) days and if there is no written agreement between the 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 without the Planning Commission having issued a written decision to the applicant, whichever occurs first.

(e) The planning commission may require the applicant to make a reasonable attempt to co-locate additional transmitting or related equipment. The 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 planning commission requires the applicant to attempt co-location, the applicant shall provide the planning commission 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) Upon the approval of an application for the construction of a cellular antenna tower by the 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 the 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.

(h) The planning commission shall not regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emissions to the extent that the proposed facility complies with the regulations of the Federal Communications Commission concerning radio frequency emissions.

10.800. AMENDMENTS. Any amendments to plans, except for minor adjustments as determined by the Planning Commission, or its duly authorized representative, shall be made in accordance with the procedure required by Subsection 10.400(b), subject to the same limitations and requirements as those under which such plans were originally approved.

SECTION TWO: SEVERABILITY


Should any section, subdivisions, sentence or clause of this ordinance be held unconstitutional or invalid for any reason by any court of competent jurisdiction, then such portion shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions of this ordinance.

SECTION THREE: This Ordinance shall take effect upon publication.

Given first reading at a regular meeting of the Fiscal Court of Bullitt County, Kentucky, on this 3rd day of May, 2011.


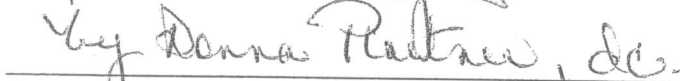
Given second reading, voted upon, and passed at a meeting of the Fiscal Court
of Bullitt County, Kentucky, on the 17th day of May, 2011.

BULLITT COUNTY FISCAL COURT



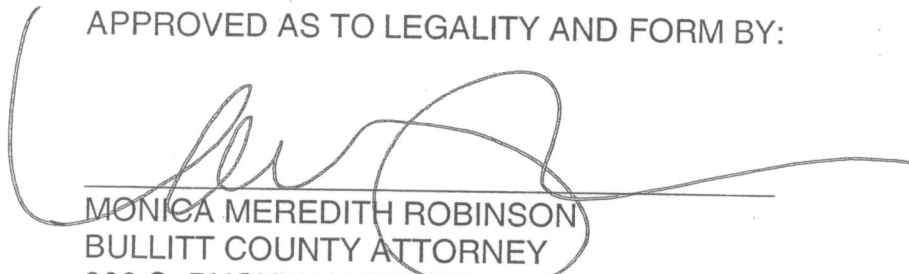
MELANIE J. ROBERTS
BULLITT COUNTY JUDGE/EXECUTIVE

ATTESTED TO:

BULLITT COUNTY CLERK

APPROVED AS TO LEGALITY AND FORM BY:



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