

ORDINANCE NO. 17-2007 series

AN ORDINANCE ADDING SECTION 218,  
TO ARTICLE II OF THE TAYLORSVILLE  
SPENCER COUNTY JOINT PLANNING AND ZONING  
REGULATIONS REGARDING CELLULAR ANTENNA TOWERS FOR CELLULAR  
TELECOMMUNICATIONS SERVICE OR PERSONAL COMMUNICATIONS  
SERVICES.

WHEREAS, a public hearing was held before the Taylorsville-Spencer County Joint Planning and Zoning Commission on the 4<sup>th</sup> day of January, 2007 after appropriate legal notice and,

WHEREAS, pursuant to KRS 100.211 (2) and Article XIII, Section 1301 of the regulations, the Taylorsville-Spencer County Joint Planning and Zoning Commission took the following action which was (to recommend or to not recommend) the proposed addition,

WHEREAS, the Spencer County Fiscal Court held a hearing on the 19<sup>th</sup> day of February , 2007 , after appropriate legal notice, in regard to the proposed amendment and,

THEREFORE, BE IT ORDAINED by the Spencer County Fiscal Court (or the County of Spencer) that Article II, Section 218, of the Taylorsville-Spencer County Joint Planning and Zoning regulations is amended to read as follows:

1. **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 the community; 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, safety, and general welfare, pursuant to the Telecommunications Act, particularly 47 USCA 332 (c) (7) regarding preservation of local zoning authority, KRS 100.985 – KRS 100.987 and any other law pertaining to “cell towers”.

## 2. PRE-APPLICATION CONFERENCE.

Applicants are encouraged to notify the planning commission 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.

## 3. DEFINITIONS.

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

**A.) "Alternative Cellular Antenna Tower"** means manmade trees, clock towers, bell towers, steeples, light poles and similar alternative-design mounting 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.

**B.) "Antennas or Related Equipment"** means transmitting, receiving, or other equipment used to support cellular telecommunications service or personal communication service. This definition does not include towers.

**C.) "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.

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

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

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

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

**H.) "Monopole Cellular Antenna Tower"** means a slender self-supporting tower on which wireless antenna can be placed.

**I.) "Personal Communication Service"** has the meaning as defined in 47 USC. sec.332(c).

**J.) "Planning Commission"** means the Taylorsville-Spencer County Joint Planning Commission established by a joint agreement of the City of Taylorsville, KY and Spencer County, Kentucky pursuant to KRS Chapter 100.

**K.) "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.

**L.) "Utility"** has the meaning as defined in KRS 278.010(3).

#### 4. GENERAL.

Cellular antenna towers for cellular telecommunications services or personal communication services may be allowed in any zone after a planning commission review in accordance with the following procedures to ascertain agreement with the adopted comprehensive plan and the regulations contained within the zoning ordinance.

**A.) Applicability.** Every utility, or a company that is engaged in the business of providing the require infrastructure to a utility, that proposes to construct cellular antenna tower shall submit a completed uniform application to the planning commission. Where the planning 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 uniform application listed below are not necessary or desirable for the protection of the surrounding property or the public health, safety, an general welfare, and that such special conditions or circumstances make one or more said requirement unreasonable, the planning commission, or its duly authorized representative, may modify or waive such requirement of the uniform 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 planning commission shall not regulate the placement of antennas or related equipment on an existing structure.

**B.) Application Requirements.** Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall include the following:

B1.) The full name and address of the applicant.

B2.) The applicant's articles of incorporation, if applicable.

B3.) A geo-technical investigation report signed and sealed by a professional engineer registered in Kentucky that includes boring logs and foundation design recommendations.

B4.) 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.

B5.) Clear directions from the City of Taylorsville to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions.

B6.) The lease or sale agreement for the property or 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.

B7.) The identity and qualifications of each person directly responsible for the design and construction of the proposed tower.

B8.) 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.

B9.) 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.

B10.) The tower and foundation design plans and, description of the standard according to which the tower was designed, signed, and sealed by a professional engineer registered in Kentucky.

B11.) 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.

B12.) 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:

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

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

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

B13.) A list of the property owners who received the notice, together with copies of the certified letter sent to the listed property owners.

B14.) A statement that the chief executive officer of the affected local government and the legislative body (i.e. City Commissioners of the City of Taylorsville, County Judge-Executive of Spencer County and Spencer County Fiscal Court) have been notified, in writing, of the proposed construction.

B15.) A copy of the notice sent to the chief executive officer of the affected local government and the legislative body (i.e., City Commissioners of the City of Taylorsville, County Judge-Executive of Spencer County and Spencer County Fiscal Court)

B16.) A statement that:

(a) 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

(b) 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.

B17.) A statement that notice of the location of the proposed construction has been published in The Spencer Magnet, the newspaper of notice in Spencer County.

B18.) 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.

B19.) 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 opportunities to locate its antennas and related facilities on an existing structure, including documentation that attempts to locate its antennas and related facilities on an existing structure, if any, with supporting radio frequency analysis, where applicable, and statement indicating that the applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service provider; facilities or on an existing structure, such as telecommunications tower or other suitable structure capable of supporting the applicant's antennas and related facilities.

B20.) 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.

B21.) A grid map that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction site for new cellular antenna towers within an area that includes:

(a) All the planning unit's jurisdiction (The City of Taylorsville and Spencer County, Kentucky); and

(b) 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 set by the planning commission upon submission of a uniform application.

**E.) Processing of Application.** Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall be processed as follows:

E1.) Upon the filing of the application, the Planning & Zoning Administrator shall forthwith Notice the Commission and schedule at least one (1) public hearing on the proposal shall be held, at which hearing interested parties and citizens shall have the opportunity to be heard. Notice of the time and place of such hearing shall be published at least once, in the Spencer Magnet, provided that the hearing shall be held within 30 days of the filing of the application.

E2.) Notice of the proposal shall be posted on the site at least fourteen (14) days in advance of the hearing. The notice shall consist of 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. Notice of the proposal shall also be posted on the public road nearest the site. This notice shall consist of, 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 near this site" and including the addresses and telephone numbers of the applicant and the planning commission.

E3.) Notice of the hearing shall be given at least fourteen (14) days in advance of the hearing, by certified mail, return receipt requested, to the owner of every parcel of 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. The notice shall include a map of the location of the proposed construction, the telephone number and address of the planning commission and shall inform the addressee of his or her right to participate in the planning commission's proceedings on the application. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event a property is a condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group that administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two or more co-owners of an adjoining property who are listed in the property valuation administrator's records as having the same address.

E4.) Upon holding the hearing, the planning commission shall, within sixty (60) days commencing from the date that the application is received by the planning commission, or within a date specified in a written agreement between the planning commission and the applicant, make its final decision to approve or disapprove the uniform application. 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 utility to a specific date for the planning commission to issue a decision, it shall be presumed that the planning commission has approved the utility's uniform application.

E5.) 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 service 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.

## 5. 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 planning 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, safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the planning 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. Lattice and guyed cellular antenna towers shall be permitted in any zone except for residential zones.

**B.) Lattice and Guyed Cellular Antenna Towers** 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.

**C.) Setbacks** for all structures constructed in connection with guyed or lattice cellular antenna towers, except fences and/or guy wires, shall be a minimum distance from the property line or lease line equal to at least the height of the tower, but not less than fifty (50) feet. All structures constructed in connection with monopole or alternative cellular antenna tower shall comply with the applicable setback requirements established for other structures within the applicable zoning district. 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. Setback will be computed from the property line of the larger parent tract in the event the application leases or acquires an easement for a smaller tract intended for the placement of the tower.

**D.) Height.** A cellular antenna tower, or alternative antenna tower structure, may be constructed to a maximum height of two hundred (200) 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 planning commission may allow antennas greater than two hundred (200) feet in height upon review of the applicant's justification that the additional height meets the criteria identified in Subsection 6.

**E.) The Cellular Antenna Tower shall be constructed** in compliance with all applicable state and federal standards.

**F.) Illumination.** Cellular antenna towers shall not be illuminated, except in accordance with other state or federal regulations.

**G.) The Site shall be Un-staffed,** Personnel may periodically visit the site for maintenance, equipment modification, or repairs. To accommodate such visits ingress/egress shall be only from approved access points.

**H.) Chain Link** eighty (80 percent open) fence 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. The use of barbed wire or sharp pointed fences shall be prohibited in or along any boundary adjoining residential or MHP zones.

**I.) Screening** shall be provided by evergreen trees with a minimum height of six (6) feet, planted in staggered pattern at a maximum distance of fifteen (15) feet on center. The screening shall be placed in an area between the property line, or lease line, and a ten (10) foot setback.

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

**K.) Road Bond for County Maintained Roads.** Planning & Zoning may require a reasonable road bond to cover any damage to county maintained roads, which are used to access the construction site.

**L.) 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.

**M.) Number of Service Providers.** All new cellular antenna towers shall be designed and constructed to accommodate a minimum of three (3) service providers.

**N.) 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 utility will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.

**O.) 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.

## **6. CRITERIA**

**Approval or Disapproval** of the proposal shall be based upon an evaluation of the proposal's agreement with the comprehensive plan and zoning regulations.

**A.)** 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:

A1.) 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

A2.) 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' 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.

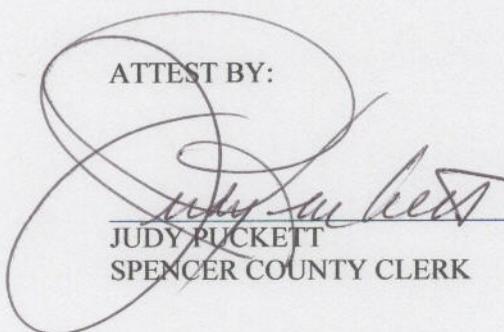
B.) The planning commission may deny a uniform application to construct a cellular antenna tower based on an applicant's unwillingness to attempt to co-locate additional transmitting or related equipment on a new or existing towers or other structures.

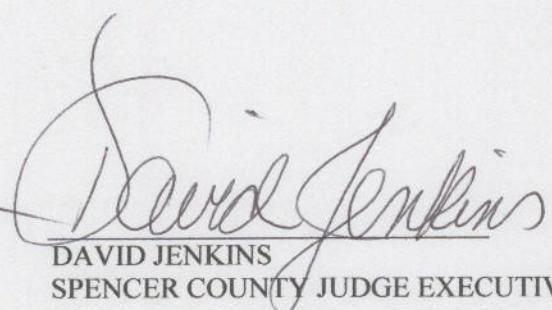
C.) The planning commission shall not regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emission to the extent that the proposed facility complies with the regulations of the Federal Communication Commission concerning radio frequency emissions.

## 7. 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 4.B, subject to the same limitations and requirements as those under which such plans were originally approved.

ATTEST BY:

  
JUDY PUCKETT  
SPENCER COUNTY CLERK

  
DAVID JENKINS  
SPENCER COUNTY JUDGE EXECUTIVE