



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/05/04, by Robert Rita

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12001.1

Amends the Counties Code. Makes a technical change to a Section concerning zoning requirements for a telecommunications carrier facility.

LRB093 18061 MKM 43748 b

1 AN ACT concerning telecommunications.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by changing Section
5 5-12001.1 as follows:

6 (55 ILCS 5/5-12001.1)

7 Sec. 5-12001.1. Authority to regulate ~~certain~~ specified
8 facilities of a telecommunications carrier.

9 (a) Notwithstanding any other Section in this Division, the
10 county board or board of county commissioners of any county
11 shall have the power to regulate the location of the
12 facilities, as defined in subsection (c), of a
13 telecommunications carrier established outside the corporate
14 limits of cities, villages, and incorporated towns that have
15 municipal zoning ordinances in effect. The power shall only be
16 exercised to the extent and in the manner set forth in this
17 Section.

18 (b) The provisions of this Section shall not abridge any
19 rights created by or authority confirmed in the federal
20 Telecommunications Act of 1996, P.L. 104-104.

21 (c) As used in this Section, unless the context otherwise
22 requires:

23 (1) "county jurisdiction area" means those portions of
24 a county that lie outside the corporate limits of cities,
25 villages, and incorporated towns that have municipal
26 zoning ordinances in effect;

27 (2) "county board" means the county board or board of
28 county commissioners of any county;

29 (3) "residential zoning district" means a zoning
30 district that is designated under a county zoning ordinance
31 and is zoned predominantly for residential uses;

32 (4) "non-residential zoning district" means the county

1 jurisdiction area of a county, except for those portions
2 within a residential zoning district;

3 (5) "residentially zoned lot" means a zoning lot in a
4 residential zoning district;

5 (6) "non-residentially zoned lot" means a zoning lot in
6 a non-residential zoning district;

7 (7) "telecommunications carrier" means a
8 telecommunications carrier as defined in the Public
9 Utilities Act as of January 1, 1997;

10 (8) "facility" means that part of the signal
11 distribution system used or operated by a
12 telecommunications carrier under a license from the FCC
13 consisting of a combination of improvements and equipment
14 including (i) one or more antennas, (ii) a supporting
15 structure and the hardware by which antennas are attached;
16 (iii) equipment housing; and (iv) ancillary equipment such
17 as signal transmission cables and miscellaneous hardware;

18 (9) "FAA" means the Federal Aviation Administration of
19 the United States Department of Transportation;

20 (10) "FCC" means the Federal Communications
21 Commission;

22 (11) "antenna" means an antenna device by which radio
23 signals are transmitted, received, or both;

24 (12) "supporting structure" means a structure, whether
25 an antenna tower or another type of structure, that
26 supports one or more antennas as part of a facility;

27 (13) "qualifying structure" means a supporting
28 structure that is (i) an existing structure, if the height
29 of the facility, including the structure, is not more than
30 15 feet higher than the structure just before the facility
31 is installed, or (ii) a substantially similar,
32 substantially same-location replacement of an existing
33 structure, if the height of the facility, including the
34 replacement structure, is not more than 15 feet higher than
35 the height of the existing structure just before the
36 facility is installed;

1 (14) "equipment housing" means a combination of one or
2 more equipment buildings or enclosures housing equipment
3 that operates in conjunction with the antennas of a
4 facility, and the equipment itself;

5 (15) "height" of a facility means the total height of
6 the facility's supporting structure and any antennas that
7 will extend above the top of the supporting structure;
8 however, if the supporting structure's foundation extends
9 more than 3 feet above the uppermost ground level along the
10 perimeter of the foundation, then each full foot in excess
11 of 3 feet shall be counted as an additional foot of
12 facility height. The height of a facility's supporting
13 structure is to be measured from the highest point of the
14 supporting structure's foundation;

15 (16) "facility lot" means the zoning lot on which a
16 facility is or will be located;

17 (17) "principal residential building" has its common
18 meaning but shall not include any building under the same
19 ownership as the land of the facility lot. "Principal
20 residential building" shall not include any structure that
21 is not designed for human habitation;

22 (18) "horizontal separation distance" means the
23 distance measured from the center of the base of the
24 facility's supporting structure to the point where the
25 ground meets a vertical wall of a principal residential
26 building; and

27 (19) "lot line set back distance" means the distance
28 measured from the center of the base of the facility's
29 supporting structure to the nearest point on the common lot
30 line between the facility lot and the nearest residentially
31 zoned lot. If there is no common lot line, the measurement
32 shall be made to the nearest point on the lot line of the
33 nearest residentially zoned lot without deducting the
34 width of any intervening right of way.

35 (d) In choosing a location for a facility, a
36 telecommunications carrier shall consider the following:

1 (1) A non-residentially zoned lot is the most desirable
2 location.

3 (2) A residentially zoned lot that is not used for
4 residential purposes is the second most desirable
5 location.

6 (3) A residentially zoned lot that is 2 acres or more
7 in size and is used for residential purposes is the third
8 most desirable location.

9 (4) A residentially zoned lot that is less than 2 acres
10 in size and is used for residential purposes is the least
11 desirable location.

12 The size of a lot shall be the lot's gross area in square
13 feet without deduction of any unbuildable or unusable land, any
14 roadway, or any other easement.

15 (e) In designing a facility, a telecommunications carrier
16 shall consider the following guidelines:

17 (1) No building or tower that is part of a facility
18 should encroach onto any recorded easement prohibiting the
19 encroachment unless the grantees of the easement have given
20 their approval.

21 (2) Lighting should be installed for security and
22 safety purposes only. Except with respect to lighting
23 required by the FCC or FAA, all lighting should be shielded
24 so that no glare extends substantially beyond the
25 boundaries of a facility.

26 (3) No facility should encroach onto an existing septic
27 field.

28 (4) Any facility located in a special flood hazard area
29 or wetland should meet the legal requirements for those
30 lands.

31 (5) Existing trees more than 3 inches in diameter
32 should be preserved if reasonably feasible during
33 construction. If any tree more than 3 inches in diameter is
34 removed during construction a tree 3 inches or more in
35 diameter of the same or a similar species shall be planted
36 as a replacement if reasonably feasible. Tree diameter

1 shall be measured at a point 3 feet above ground level.

2 (6) If any elevation of a facility faces an existing,
3 adjoining residential use within a residential zoning
4 district, low maintenance landscaping should be provided
5 on or near the facility lot to provide at least partial
6 screening of the facility. The quantity and type of that
7 landscaping should be in accordance with any county
8 landscaping regulations of general applicability, except
9 that paragraph (5) of this subsection (e) shall control
10 over any tree-related regulations imposing a greater
11 burden.

12 (7) Fencing should be installed around a facility. The
13 height and materials of the fencing should be in accordance
14 with any county fence regulations of general
15 applicability.

16 (8) Any building that is part of a facility located
17 adjacent to a residentially zoned lot should be designed
18 with exterior materials and colors that are reasonably
19 compatible with the residential character of the area.

20 (f) The following provisions shall apply to all facilities
21 established in any county jurisdiction area after the effective
22 date of the amendatory Act of 1997:

23 (1) Except as provided in this Section, no yard or set
24 back regulations shall apply to or be required for a
25 facility.

26 (2) A facility may be located on the same zoning lot as
27 one or more other structures or uses without violating any
28 ordinance or regulation that prohibits or limits multiple
29 structures, buildings, or uses on a zoning lot.

30 (3) No minimum lot area, width, or depth shall be
31 required for a facility, and unless the facility is to be
32 manned on a regular, daily basis, no off-street parking
33 spaces shall be required for a facility. If the facility is
34 to be manned on a regular, daily basis, one off-street
35 parking space shall be provided for each employee regularly
36 at the facility. No loading facilities are required.

1 (4) No portion of a facility's supporting structure or
2 equipment housing shall be less than 15 feet from the front
3 lot line of the facility lot or less than 10 feet from any
4 other lot line.

5 (5) No bulk regulations or lot coverage, building
6 coverage, or floor area ratio limitations shall be applied
7 to a facility or to any existing use or structure
8 coincident with the establishment of a facility. Except as
9 provided in this Section, no height limits or restrictions
10 shall apply to a facility.

11 (6) A county's review of a building permit application
12 for a facility shall be completed within 30 days. If a
13 decision of the county board is required to permit the
14 establishment of a facility, the county's review of the
15 application shall be simultaneous with the process leading
16 to the county board's decision.

17 (7) The improvements and equipment comprising the
18 facility may be wholly or partly freestanding or wholly or
19 partly attached to, enclosed in, or installed in or on a
20 structure or structures.

21 (8) Any public hearing authorized under this Section
22 shall be conducted in a manner determined by the county
23 board. Notice of any such public hearing shall be published
24 at least 15 days before the hearing in a newspaper of
25 general circulation published in the county.

26 (9) Any decision regarding a facility by the county
27 board or a county agency or official shall be supported by
28 written findings of fact. The circuit court shall have
29 jurisdiction to review the reasonableness of any adverse
30 decision and the plaintiff shall bear the burden of proof,
31 but there shall be no presumption of the validity of the
32 decision.

33 (g) The following provisions shall apply to all facilities
34 established after the effective date of this amendatory Act of
35 1997 in the county jurisdiction area of any county with a
36 population of less than 180,000:

1 (1) A facility is permitted if its supporting structure
2 is a qualifying structure or if both of the following
3 conditions are met:

4 (A) the height of the facility shall not exceed 200
5 feet, except that if a facility is located more than
6 one and one-half miles from the corporate limits of any
7 municipality with a population of 25,000 or more the
8 height of the facility shall not exceed 350 feet; and

9 (B) the horizontal separation distance to the
10 nearest principal residential building shall not be
11 less than the height of the supporting structure;
12 except that if the supporting structure exceeds 99 feet
13 in height, the horizontal separation distance to the
14 nearest principal residential building shall be at
15 least 100 feet or 80% of the height of the supporting
16 structure, whichever is greater. Compliance with this
17 paragraph shall only be evaluated as of the time that a
18 building permit application for the facility is
19 submitted. If the supporting structure is not an
20 antenna tower this paragraph is satisfied.

21 (2) Unless a facility is permitted under paragraph (1)
22 of this subsection (g), a facility can be established only
23 after the county board gives its approval following
24 consideration of the provisions of paragraph (3) of this
25 subsection (g). The county board may give its approval
26 after one public hearing on the proposal, but only by the
27 favorable vote of a majority of the members present at a
28 meeting held no later than 75 days after submission of a
29 complete application by the telecommunications carrier. If
30 the county board fails to act on the application within 75
31 days after its submission, the application shall be deemed
32 to have been approved. No more than one public hearing
33 shall be required.

34 (3) For purposes of paragraph (2) of this subsection
35 (g), the following siting considerations, but no other
36 matter, shall be considered by the county board or any

1 other body conducting the public hearing:

2 (A) the criteria in subsection (d) of this Section;

3 (B) whether a substantial adverse effect on public
4 safety will result from some aspect of the facility's
5 design or proposed construction, but only if that
6 aspect of design or construction is modifiable by the
7 applicant;

8 (C) the benefits to be derived by the users of the
9 services to be provided or enhanced by the facility and
10 whether public safety and emergency response
11 capabilities would benefit by the establishment of the
12 facility;

13 (D) the existing uses on adjacent and nearby
14 properties; and

15 (E) the extent to which the design of the proposed
16 facility reflects compliance with subsection (e) of
17 this Section.

18 (4) On judicial review of an adverse decision, the
19 issue shall be the reasonableness of the county board's
20 decision in light of the evidence presented on the siting
21 considerations and the well-reasoned recommendations of
22 any other body that conducts the public hearing.

23 (h) The following provisions shall apply to all facilities
24 established after the effective date of this amendatory Act of
25 1997 in the county jurisdiction area of any county with a
26 population of 180,000 or more. A facility is permitted in any
27 zoning district subject to the following:

28 (1) A facility shall not be located on a lot under
29 paragraph (4) of subsection (d) unless a variation is
30 granted by the county board under paragraph (4) of this
31 subsection (h).

32 (2) Unless a height variation is granted by the county
33 board, the height of a facility shall not exceed 75 feet if
34 the facility will be located in a residential zoning
35 district or 200 feet if the facility will be located in a
36 non-residential zoning district. However, the height of a

1 facility may exceed the height limit in this paragraph, and
2 no height variation shall be required, if the supporting
3 structure is a qualifying structure.

4 (3) The improvements and equipment of the facility
5 shall be placed to comply with the requirements of this
6 paragraph at the time a building permit application for the
7 facility is submitted. If the supporting structure is an
8 antenna tower other than a qualifying structure then (i) if
9 the facility will be located in a residential zoning
10 district the lot line set back distance to the nearest
11 residentially zoned lot shall be at least 50% of the height
12 of the facility's supporting structure or (ii) if the
13 facility will be located in a non-residential zoning
14 district the horizontal separation distance to the nearest
15 principal residential building shall be at least equal to
16 the height of the facility's supporting structure.

17 (4) The county board may grant variations for any of
18 the regulations, conditions, and restrictions of this
19 subsection (h), after one public hearing on the proposed
20 variations, by a favorable vote of a majority of the
21 members present at a meeting held no later than 75 days
22 after submission of an application by the
23 telecommunications carrier. If the county board fails to
24 act on the application within 75 days after submission, the
25 application shall be deemed to have been approved. In its
26 consideration of an application for variations, the county
27 board, and any other body conducting the public hearing,
28 shall consider the following, and no other matters:

29 (A) whether, but for the granting of a variation,
30 the service that the telecommunications carrier seeks
31 to enhance or provide with the proposed facility will
32 be less available, impaired, or diminished in quality,
33 quantity, or scope of coverage;

34 (B) whether the conditions upon which the
35 application for variations is based are unique in some
36 respect or, if not, whether the strict application of

1 the regulations would result in a hardship on the
2 telecommunications carrier;

3 (C) whether a substantial adverse effect on public
4 safety will result from some aspect of the facility's
5 design or proposed construction, but only if that
6 aspect of design or construction is modifiable by the
7 applicant;

8 (D) whether there are benefits to be derived by the
9 users of the services to be provided or enhanced by the
10 facility and whether public safety and emergency
11 response capabilities would benefit by the
12 establishment of the facility; and

13 (E) the extent to which the design of the proposed
14 facility reflects compliance with subsection (e) of
15 this Section.

16 No more than one public hearing shall be required.

17 (5) On judicial review of an adverse decision, the
18 issue shall be the reasonableness of the county board's
19 decision in light of the evidence presented and the
20 well-reasoned recommendations of any other body that
21 conducted the public hearing.

22 (Source: P.A. 90-522, eff. 1-1-98.)