

**BOONE COUNTY PLANNING COMMISSION
BOONE COUNTY ADMINISTRATION BUILDING
BOONE COUNTY FISCAL COURTROOM
PUBLIC HEARINGS
AUGUST 3, 2016
7:30 P.M.**

COMMISSION MEMBERS PRESENT:

Mr. Matt Apke
Mr. Randy Bessler
Mr. Kim Bunger, Secretary/Treasurer
Mr. Mike Ford, Vice Chairman
Mrs. Lori Heilman
Mr. Mark Hicks
Mrs. Janet Kegley
Mr. Don McMillian
Ms. Lisa Reeves
Mr. Charlie Rolfsen, Chairman
Mr. Bob Schwenke
Mr. Steve Turner, Temporary Presiding Officer

COMMISSION MEMBERS NOT PRESENT:

Mr. Greg Breetz
Mr. Kim Patton
Mr. Charlie Reynolds

LEGAL COUNSEL PRESENT:

Mr. Dale T. Wilson

STAFF MEMBERS PRESENT:

Mr. Kevin P. Costello, AICP, Executive Director
Mr. Todd K. Morgan, AICP, Senior Planner

Chairman Rolfsen called the Public Hearing to order at 7:37 P.M. and introduced the first item on the Agenda:

ZONING TEXT AMENDMENT - Todd Morgan, Staff

1. Request of the **Boone County Planning Commission Technical/Design Review Committee** to consider a series of zoning text amendments to Section 3197 "Regulations for Cellular Telecommunication Facilities" and Article 40 "Definitions" of the **Boone County Zoning Regulations** to add permitting requirements and related definitions for small cellular poles. The request is to hear and evaluate comments on the proposed zoning text amendments and how they affect the current **Boone County Comprehensive Plan and Boone County Zoning Regulations**.

Staff Member, Todd Morgan, presented the Staff Report, which included a PowerPoint presentation (see Staff Report). He stated that the Boone County Planning Commission's Technical/Design Review Committee has requested that the full Planning Commission consider and recommend Zoning Text Amendments to add permitting requirements and related definitions for small cellular poles. A brief description of small cellular poles can be found in a February 26, 2016 Staff email. Cellular telecommunications providers, such as, Verizon Wireless, are having issues with dropped phone calls when too many of their customers are utilizing data services from a given tower or tower sector. To rectify this problem, cellular telecommunications providers have started to utilize small cell or micro cell sites, which are 35' to 45' tall. The cellular provider's equipment and small cell antennas are typically placed on wood utility poles or "stealth" steel poles in public right-of-ways. These poles may already exist or new poles can be placed in public right-of-ways by utility companies, such as Cincinnati Bell. The utility company owns the pole and provides a fiber optic connection from the closest macro tower (standard cell tower) and the small cell site. The cellular telecommunication company pays the utility company a co-location fee. To date, four small cell sites have been placed in the public right-of-way in Boone County (3 in the City of Florence and 1 in Unincorporated Boone County) and others are currently being sought. The four utility poles were granted encroachment permits but did not receive zoning approval for the small cell antennas or equipment. The Planning Commission's legal counsel has also researched this issue and determined such use should be reviewed under KRS 100.987 like any other cell tower.

Mr. Morgan showed photographs of the four existing poles (towers). One is located at 5 Cavalier Boulevard or at the corner of KY 18 and Cavalier Boulevard. The second pole is located at 7080 Burlington Pike near Boone County High School. This pole currently doesn't have a defined antenna on it. The third pole is located at 7098 Curtis Avenue near KY 18 and Turfway Road. The last pole is located at 5878 Garden Road in Unincorporated Boone County. It is located near a residential area. All four of these poles were installed by Fibertech.

The intent of the proposed regulations is to update Sections 3197 and 4000 of the **Boone County Zoning Regulations**. The current text does not address small cellular poles or contain definitions of cellular antenna towers, small cellular poles or utility poles. New definitions and regulations are being proposed. A codified draft set of regulations is included in the Staff Report. Any new sections or language are in bold print and any deletions are in strike outs. Sixteen new design standards are being proposed on page 31.38. He further referenced some of the proposed design standards. Small cellular poles shall not exceed thirty five (35) feet in height from grade. An antenna or similar type structure of six (6) feet or less in height can be installed on a pole and it does need to meet the 35 feet pole height requirement. As a result, the overall height is limited to forty-one (41) feet,

which includes the antenna. The Staff is recommending that existing utility, traffic control or other previously erected poles be used whenever feasible. There are design guidelines dealing with materials, colors and textures, which require matching existing poles. If a pole is not located nearby, stealth technology or steel poles like light poles may be required. The Zoning Administrator will review these types of applications. What is the best fit in this area? What type of technology should be used? There is a detailed requirement of two times the pole height from a residential structure. There should be no discernable noise at the closest principal residential structure. If there is noise, the applicant will have to muffle it. All new small cellular poles shall be designed and constructed to accommodate a minimum of two (2) service providers. If a pole is proposed in an area where there is underground utilities, the applicant must pursue options other than a standard overhead utility pole. New small cellular poles are not allowed within 500 feet of another existing small cellular pole. Mr. Morgan stated that an applicant can always request a waiver of any standard or requirement based upon a special circumstance or hardship. Such waiver would be reviewed and approved or denied by the Zoning Administrator.

In terms of the Boone County Comprehensive Plan, the "Introduction" section states "while this document is the statement of a plan at one point in time, its full value will be in its flexibility to respond to changing conditions and its evolution within the context of a continuing comprehensive planning process." The Goals and Objectives state the "Installation of utilities and development around utilities shall occur in a manner that protects the safety of the general public. Wireless Communications (Cellular towers) and similar facilities shall not be obtrusive to residential or scenic areas, and co-location shall be implemented wherever possible". The proposed Design Standards meet this objective.

In terms of Staff Comments, the regulations will apply to any of the four (4) legislative bodies that wish to adopt them. The second comment refers to Mr. Wilson's April 18, 2016 letter. He explained that even if the entity is a public utility, it would not be exempt if the structure constitutes a cellular antenna tower under KRS 100.987. Finally, the Planning Commission and the four legislative bodies will need to determine whether the proposed text amendments implement the adopted Boone County Comprehensive Plan involving the Goals and Objectives.

Mr. Hicks inquired about the poles being located on private property versus public right-of-way. Mr. Morgan responded both could happen and local zoning applies to both. In addition, an applicant must apply for an encroachment permit if the pole is proposed to be in the public right-of-way. A franchise agreement may also be required. The sole purpose of these poles is to install micro cell equipment on them. They serve no utility purpose. The applicant prefers to place these poles on public right-of-ways and not on private property.

Mr. Bunger asked what is the requirement for abandoned poles? Mr. Morgan referred to letter "O" on page 31.39. This Design Standard involves removal of inoperable poles.

Mr. Schwenke asked about the existing regulations. Would the Planning Commission require a Public Hearing now for every pole? Mr. Morgan replied yes. He also noted that he has made the current pole owners aware of the Planning Commission's position. The matter is before the Code Enforcement Board for the poles that are located in the City of Florence.

Chairman Rolfsen asked if the existing poles meet the standards or requirements of the proposed regulations? Mr. Morgan answered that he doesn't know for sure since plans have not been submitted to the Planning Commission. There are other residential structures in the area and he indicated that he would need to know if there are other poles in the area. Chairman Rolfsen asked if the existing poles are grandfathered in? Mr. Morgan stated no. They are not over 10 years old and the matter has been referred to the Code Enforcement Board. Mr. Wilson added the applicants still may have not received approval from the owner of the right-of-way. Chairman Rolfsen asked if more poles were installed, would there be less towers? Mr. Morgan stated that the small cellular poles allow for more calling capacity in a small geographical area. The micro cell poles are linked to a cell tower. They are not for coverage purposes but for calling capacity. Chairman Rolfsen asked if the Staff anticipates hundreds more as Boone County continues to grow? Mr. Morgan responded that the potential is larger because of the many carriers.

Mrs. Heilman inquired about co-location. Mr. Morgan replied that the proposed regulations requires co-location of at least one other carrier. The radio frequency engineers will determine if co-location is possible due to the location and position of the antenna. Coverage objectives must be met.

Mr. Bunger asked if the proposed regulations aren't adopted, what would happen? Mr. Morgan explained that the current regulations would treat small cellular poles as a brand new cell tower in Boone County. A Public Hearing would be held before the full Planning Commission. The proposed regulations would change the review process and follow new design standards. All waivers would be reviewed by the Zoning Administrator. The new process is an administrative review.

Mr. Turner inquired about the use of existing utility poles. Mr. Morgan commented that most utility companies don't want wireless providers to use their poles. Mr. Turner inquired about existing structures like buildings. Mr. Morgan responded that it might come down to expense or the cost of putting it on private property like a building versus a public right-of-way.

Mr. Dave Kramer, Cincinnati Bell, explained that the macro towers have reached a capacity limit. Technology has caught up and everyone including kids are using their phones. Data capacity demand is doubling each year. The macro towers go for miles and interfere with each other. The small cellular poles are located in pointed smaller areas like Boone County High School and Mall Road. They are located in front of a church, a Kroger store or a municipal building. The poles take that capacity for that smaller area and off load it. The small cellular poles only serve about a 1,500 foot area. The poles are 25 to 30 feet in height. Cincinnati Bell has installed about 200 of them for Verizon. Again, they co-exist off the macro tower. It is like a big extension cord linking the macro tower to the small cellular pole in order to improve service. The macro tower can then serve the remaining community since the smaller area is served by the micro cell or small cellular pole.

Mr. Turner asked why the provider wouldn't put the antenna on Boone County High School if the problem was their building? Mr. Kramer replied that Cincinnati Bell tried 72 times to get private easements and they were only successful once. Because it involves a cost for the technology and it only serves a minimum area, the economics doesn't support substantial lease agreements like a macro site. An average macro site would cost about \$3,200 per month. Small cellular poles are not revenue generators for the carriers. The carriers are simply trying to fill their capacity needs.

Verizon is about 18 months ahead of the other carriers. It is where the industry is going. The FCC feels it is the most economical way to provide broadband capacity.

Mr. Bunger asked how pole locations are dealt with in urban areas? Mr. Kramer answered that his company has worked on pole siting in downtown Cincinnati, Newport and Covington. All of the poles are in the right-of-way. Of the 260 small cell poles they have installed for Verizon, there are three on private property (schools). Most carriers will install two radios on each pole. It can't go beyond that because of frequency interference and limitations of the pole. An individual carrier usually likes to be 4,000 - 5,000 feet apart from each other. In an urban area like downtown Cincinnati, antennas are usually several blocks away from each other. The proposed 500 foot distance rule keeps competitors away from each other. The ability for a second carrier to co-locate is less than 5%. Wireless carriers for macro tower networks are not the same. They use different frequencies and antennas. The reality of two carriers having the exact same need at the same time is slim because it is a small area - only 1,500 feet. Mr. Kramer stated that the proposed amendments balance the needs of the community with the providers. Twenty-five years ago, people thought about water, sewer and gas but not wireless technologies.

Mr. Bunger asked whether Cincinnati Bell would be willing to match existing poles in the area? Mr. Kramer replied that Cincinnati Bell has 4 - 5 different types of poles in the Cincinnati area. The vast majority are wooden poles because they fit in with the community. Cincinnati Bell also has stealth decorative options. They also have a 10 foot high decorative pole and equipment is behind a shroud. Some look like street lights, park benches and trash cans. In response to Mr. Bunger, Mr. Morgan stated that an applicant initiates a pre-application meeting with Staff first to discuss options. Mr. Kramer replied that they sometimes visit a site and look at alternatives that address community concerns.

Mr. Schwenke asked about areas where there are underground utilities. Mr. Kramer explained that Cincinnati Bell corporate has decided not to install these types of poles in areas where there are underground utilities without a homogeneous support from the community. Mr. Kramer noted that he is working with the Homebuilders Association to pre-display these types of facilities in advance.

Ms. Holly Spade, AT&T Kentucky, asked the Planning Commission to clarify on whether these proposed regulations apply to existing utility poles on page 31.28? Under the Public Service Commission (PSC) section, it is premature to notify the PSC before the provider goes on air. According to their legal counsel, this statutory law notification should only occur when they go on air. Under the co-location section, there should also be a reference to a 811 notification. This should be sufficient. Mr. Costello noted that 811 doesn't mark public utilities just private utilities. Ms. Spade inquired about the need to hire a licensed engineer for the small cellular poles. Perhaps a surveyor is sufficient. AT&T is beginning to organize a process for these types of poles. In terms of color, Ms. Spade asked for assurance that color only applies to the poles. If it applied to equipment, it could affect warranties of the equipment. Finally, Ms. Spade inquired about a review fee. Would it be per node or per polygon? Mr. Costello responded that a fee has not been established. It won't involve bulk pricing like Kenton County. Currently, there is a charge to review cell towers and cell tower co-locations. There might be a co-location fee and a new pole fee. The Planning Commission would adopt the new fee but only if the regulations are adopted. The

proposed fee would be tied to actual costs. Ms. Spade concluded that she appreciated the work of the Planning Commission and looks forward to working with the Board.

Mr. Costello reviewed options for meeting dates for the Technical/Design Review Committee. Staff will review the comments made at the Public Hearing including the Board members and the public. Staff will forward any potential revisions of the proposed regulations to the Technical/Design Review Committee members in advance of the Committee meeting. Mr. Costello added that unlike Kenton County, the proposed regulations are text amendments to the zoning code. It requires action by the four legislative units.

There being no further questions or comments, Chairman Rolfsen announced that the Committee Meeting for this item will be on September 7, 2016 at 6:00 P.M. in this room or the Fiscal Court Conference Room. This item will be on the Agenda for the Business Meeting on September 7, 2016 at 7:00 P.M. Chairman Rolfsen closed the Public Hearing at 8:23 P.M.

CHAIRMAN ROLFSEN STATED THAT THE CHICK-FIL-A SPECIAL SIGN DISTRICT (ITEM #2) APPLICATION HAS BEEN WITHDRAWN BASED ON AN EMAIL FROM THE APPLICANT.

APPROVED:

Charlie Rolfsen
Chairman

Attest:

Kevin P. Costello, AICP
Executive Director