

BERKSHIRE PLANNING TOOLS



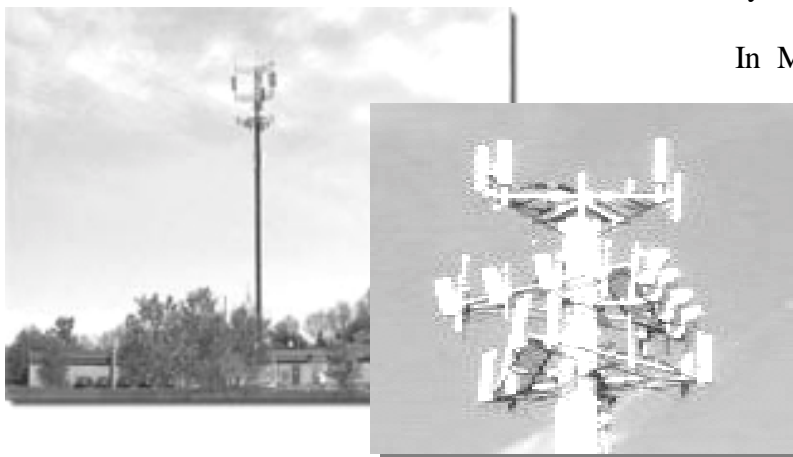
One in a series of “toolbox” items to accompany the Regional Plan for the Berkshires

June 2001

Mastering the “How To’s” When Siting Telecommunication Towers

Changing Landscape

It is estimated that nearly 1 out of 3 people own and operate a personal wireless telephone¹. With the numbers on the rise, companies are quickly responding by expanding their networks to increase clarity and reception in all pockets of the country. Whether your community is rural, suburban or urban your town become the next location for a tower or repeater. No area is safe.



While “cell phones” provide benefits, such as convenience, their rapid growth has transformed the landscape. In the early 1990’s, between 2,200 to 2,500 cell sites were built each year for cellular networks. By 1995, that annual number had risen to nearly 5,000 sites. The telecommunications industry estimated that

nationwide tower sites had grown to over 24,000 in by the early part of 2000².

The 1996 Telecommunications Act significantly affected the manner in which municipalities could handle the siting of telecommunication towers. In effect, the Act prohibited municipalities from excluding local and long distance telephone service, wireless telephones and cable and broadcast television providers and systems.

In Massachusetts, this was further emphasized with the 1998 decision by the Massachusetts Department of Telecommunications and Energy (DTE). The DTE ruled that cellular phone companies – also known as personal wireless service providers or commercial mobile radio service providers – would be considered as public service corporations. This designation meant that cell phone companies would be allowed to petition DTE in order to relieve them of complying with local zoning regulations.

Prior to the DTE ruling, local zoning bylaws could regulate such matters as the height and placement of cell towers. The elimination of local review in a cell tower siting instance has the potential for damaging the scenic beauty of

¹ Scenic America, Strategies for Smart Growth and Scenic Stewardship #6.

² McGregor, Gregor. Cellular Telecommunications Towers: Emerging Strategies and Recent Litigation.

the Berkshire region, jeopardizing tourism and the quality of life for residents.

What Does this Mean for Local Communities?

Despite the DTE ruling, communities are encouraged to prepare local plans and bylaws to protect themselves from a proliferation of tower networks. Recent Court of Appeals rulings have proven to be supportive of local bylaws and have approvingly acted in favor of local decision on siting cell towers.

ZONING BYLAWS UPHELD

In an April 2001 decision, the 1st U.S. Circuit Court of Appeals set a precedent for how towns can regulate the siting of cell towers. The court ruled that the Town of Leicester Zoning Board of Appeals did not unfairly consider a tower proposal and affirmed the 1998 denial of a telecommunications tower on Carey Hill.

According to Town Counsel Joseph C. Cove of Uxbridge, the decision establishes a precedent in determining what constitutes visual intrusion.

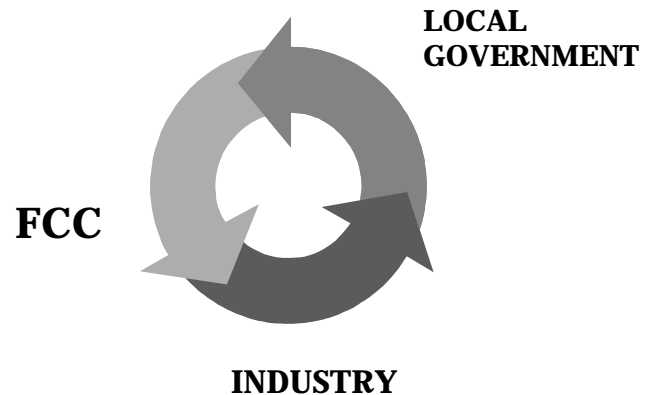
Towns should take advantage of the fact that the federal Act enables them to regulate, without discrimination or prohibition, cell tower siting. It is in the best interest of local governments to have a mechanism that specifically outlines the (although limited) authority they have to regulate telecommunication service facilities.

Making it work takes cooperation. There exists three parties which inform how personal wireless service facilities are to be developed. The three parties include:

The Industry – consisting of carriers as well as their consultants and vendors.

The Federal Communications Commission (FCC) - a federal agency responsible for licensing wireless providers and services.

Local Governments – consisting of officials who make decisions on siting personal wireless facilities.



Each party has an equal role and a great deal of negotiating ability before wireless facilities can be created.

Some ways municipalities can encourage positive cooperation between the local government and service providers are:

Education – It is important that citizens understand the effects of intensive wireless tower placement on their community and that they have the power to inform where towers should go in order to protect the scenic character of their community.

Voluntary Conservation – Encourage landowners whose land contributes to the scenic character of the town to donate conservation easements or to agree to restrict the construction of towers on their property.

Prepare a Wireless Master Plan – A comprehensive plan, using a community participatory process, should be prepared so as to determine appropriate locations for cell towers or personal wireless facilities. The decision for choosing these locations should be supported by

specific data. The plan should also discuss using existing structures such as water towers or church steeples.

Control sites through leasing or ownership –

By controlling the site, a municipality can better encourage appropriate use of the land including uses that involve cell towers. In addition, the owner can readily require and/or promote co-location (more than one repeater on the same tower).

Allow co-location as a modification of a Special Permit – Towns should establish categories of modifications based on criteria such as visual or environmental impacts. Based on these criteria, minor modifications could apply as a modification to a special permit.

Setting Up Local Strategies

Local approaches to regulating cell tower siting in your community must be done in a well thought out way. It is important that local officials understand that the banning of towers is prohibited by the Telecommunications Act. According to the Act a community shall:

- ❖ Not discriminate among competing providers;
- ❖ Not prohibit or have the effect of prohibiting wireless service;
- ❖ Act on permits within a reasonable time;
- ❖ Provide written denials based on substantial evidence;
- ❖ Not base denials on emissions.

The only way to ensure that your community will be protected from the proliferation of unsightly towers is to enact strong legislation.

Whether you wish to modify an existing section of the bylaw, develop a new section, create an overlay zone, or pre-permit sites on town-owned land, it is imperative that you are consistent with the federal Act. The following is a list of suggested elements which are advisable for

“Having solid, appropriate local ordinances can be the difference between being stuck with an unwanted cell tower or negotiating conditions that minimize visual impact and maximizing economic benefits.”

Berkshire Trade & Commerce, May 2001

including is a zoning bylaw (see BRPC’s sample bylaw for more information).

- ❖ Purpose and intent
- ❖ Special Permit regulations – including design and environmental standards
- ❖ Dimensional requirements – including height, setbacks, size, color, number of transmitters, etc.
- ❖ Application procedures and filing requirements
- ❖ Visibility and Design including a balloon or crane test at the cost of the proponent balloon test
- ❖ Co-location statement which includes options for siting transmitters on existing building or structure so as to reduce negative effects of new tower
- ❖ Equipment shelters
- ❖ Modification procedures
- ❖ Fee for technical review
- ❖ Abandonment or discontinuation of use, location, size, color, height, number of users or transmitters, etc.

Siting and regulating personal wireless facilities is a highly technical endeavor. Communities should consult with their town counsel as to what technical terms are necessary for inclusion in a bylaw in order to reduce any ambiguities.

Negotiating a Proposal

Communication is the key. As mentioned above, a town should take an active role in siting a tower. This should happen even before a formal proposal is presented to the Planning and Zoning Boards. Including the provision for professional

Berkshire Planning Tools

review can also provide great insight into the technical language which can often overwhelm even the most sophisticated boards and commissions.

Use extreme caution when reviewing a tower proposal that requests a variance. Obviously there are extreme conditions that warrant the need for considering a variance, however, any decision to allow a variance will set a precedent for future approvals.

Local governments should be meticulous when considering a tower proposal. All proposals should be reviewed by a professional and the decision-making body should consult their town counsel.

Conclusion

Zoning is crucial. Those municipalities that have enacted new zoning bylaws, approved by the Attorney General, have the strongest ability to regulate telecommunication pressures.

The 1996 Act does preserve the power of local governments to regulate towers provided local regulations are reasonable. This reasonableness test means that the local bylaw sets out clearly

defined health, safety, or aesthetic objectives that are stated in the bylaw.

The Berkshire Regional Planning Commission has assisted many communities in developing local telecommunication regulations. Currently, there are 16 Berkshire communities that have local bylaws in place to assist in siting telecommunication towers. There are an additional 6 communities considering adoption of such bylaws (see list below).

Berkshire Towns and Cities that have Adopted Cell Tower Zoning Bylaws:

Becket
Dalton
Egremont
Great Barrington
Hinsdale
Lee
Lenox (overlay zone)
Monterey (overlay zone)
Mount Washington (overlay zone)
New Ashford
North Adams
Otis
Richmond (overlay zone)
Stockbridge (overlay zone)
Tyringham
West Stockbridge

This publication is one in a series of “toolbox” items to support the Regional Plan for the Berkshires. If you would like to receive additional copies of this or other toolbox items, please contact the Berkshire Regional Planning Commission, 33 Dunham Mall, Pittsfield, MA 01201 or call (413) 442-1521. Copies of the toolbox items are also available on the web. Visit www.berkshireplanning.org

*Funding provided by the Massachusetts Executive Office of Environmental Affairs
and the Massachusetts Executive Office of Transportation and Construction*