



S.B. 366

126th General Assembly
(As Introduced)

Sens. Hottinger, Mumper, Schuring

BILL SUMMARY

- Expands current township and county zoning authority pertaining to telecommunications towers located in areas zoned for residential use to areas zoned for agricultural use.
- Expands the current notice requirement pertaining to the intention to locate a telecommunications tower within an area subject to county or township zoning regulations to include all property owners whose land is within 2,000 feet of the proposed tower.

CONTENT AND OPERATION

Current law

Overview

Current law generally does not allow township and county zoning authorities to regulate the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any building or structure of any public utility, whether publicly or privately owned, or the use of land by any public utility, for the operation of its business. However, the county and township zoning laws do confer power on those zoning authorities with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a *telecommunications tower* in an area zoned for *residential use*, but not with respect to the maintenance or use of such a tower or any change or alteration that would not substantially increase the tower's height.¹ (R.C. 303.211(A) and (B)(1) and (2) and 519.211(A) and (B)(1) and (2).)

¹ A *telecommunications provider* is a public utility. See *Campanelli v. AT&T Wireless Servs., Inc.* (1999), 85 *Ohio St.3d* 103, 107. Accordingly, unless the proposed location is

Notice requirement

Any person who plans to construct a telecommunications tower in an area that is subject to township or county zoning regulations and is zoned for residential use must provide by certified mail and, in certain instances, regular mail written notice to the appropriate legislative authority or authorities and to each owner of property, as shown on the county auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property on which the tower is proposed to be constructed, stating information about the proposal as set forth in the applicable statute. (R.C. 303.211(B)(2) and (3) [counties] and R.C. 519.211(B)(2) and (3) [townships]). Upon receiving the notice, a property owner (and in certain cases a board of township trustees) can request by a specified written notice that the township or county legislative authority apply the relevant zoning regulations to the proposed location of the tower, or a member of the applicable legislative authority can object to the proposed location and thus have the regulations apply to the tower.² After the person planning the tower's construction is notified of such a request or objection, the relevant zoning regulations apply to the tower. If no such request or objection is timely made, the regulations do not apply to the tower. (R.C. 303.211(B)(3) and (4) and 519.211(B)(3) and (4).)

Notice of a proposed location within 100 feet of a residential dwelling

Current law also includes another notice requirement that is *unrelated* to county or township zoning regulations. Any person who plans to construct, in any area of a county or township, a telecommunications tower within 100 feet of a residential dwelling must provide a written notice by certified mail to the owner of the residential dwelling and to the person occupying the residence, if that person is not the owner, stating in clear and concise language the person's intent to construct the tower and a description of the property sufficient to identify the proposed location. (R.C. 303.211(E) [counties] and R.C. 519.211(E) [townships].)

For purposes of these provisions, "telecommunications tower" has the same meaning as under the provisions explained above, except that the proposed location need not be in an unincorporated area of a township that is zoned for residential use, but "may be an area other than an unincorporated area of a

in an area zoned for residential use, county and township zoning authorities lack any zoning authority over a proposed telecommunications tower.

² *In an area subject to county zoning, the board of township trustees also can request that the board of county commissioners apply the county's zoning regulations to a telecommunications tower.*

township, in an area zoned for residential use" (R.C. 303.211(E)(2)(b) and 519.211(E)(2)(b)).³

Changes made by the bill

Expansion of authority--in general

The bill expands current county and township zoning authority over telecommunications towers by changing the definition of "telecommunications tower" to include freestanding or attached structures proposed to be located in an unincorporated area zoned either for residential (current law) or *agricultural use*. Similarly, where current law applies to a freestanding structure that is proposed to "top at a height that is greater than . . . the maximum allowable height of residential structures within the zoned area as set forth in the applicable zoning regulations . . . ," the bill applies its expanded authority to a freestanding structure that is proposed to top at a height that is greater than the maximum allowable height of *agricultural* structures within the zoned area as set forth in the applicable zoning regulations.⁴ (R.C. 303.211(B)(1)(c) and (d) and 519.211(B)(1)(c) and (d).)

Other definitional revision

The bill also amends the definition of "telecommunications tower" as used in the provision pertaining to residential dwellings within 100 feet of a proposed tower, regardless of zoning regulations. The notice requirement will apply if the proposed location of a tower "may be [in] an area other than an unincorporated area of a township, in an area zoned for residential *or agricultural use*."⁵

³ Presumably this means that the proposed location of a telecommunications tower could be in an **incorporated area** of a township and zoned by **municipal** zoning authorities for residential use.

⁴ It is unlikely that local zoning regulations establish maximum allowable heights for agricultural structures because counties and townships generally are prohibited from regulating land used for agricultural purposes or the construction or use of buildings or structures incident to the use of land for agricultural purposes, and no zoning certificate can be required for any such building or structure (R.C. 303.21(A) and 519.21(A)).

⁵ Presumably this means that the proposed location may be in **incorporated** territory in an area zoned for agricultural use.

Notice to property owners within 2,000 feet of a proposed tower in an area subject to county or township zoning regulations

The bill changes the current requirement for certified mail and, in certain instances, regular mail notice to property owners whose land is contiguous to or directly across a street or roadway from the property on which a telecommunications tower is proposed to be located. Under the bill, all property owners whose land is within 2,000 feet of a proposed tower instead must be notified. (R.C. 303.211(B)(3)(a) and 519.211(B)(3)(a).)

HISTORY

ACTION	DATE
Introduced	08-29-06

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