



H.B. 84

127th General Assembly
(As Introduced)

Reps. Hottinger, Peterson, R. McGregor, Koziura, Setzer, Adams, Collier

BILL SUMMARY

- Expands current township and county zoning authority over telecommunications towers located in areas zoned for residential use to include towers on land used for agricultural purposes.
 - Expands the current notice requirement prior to locating 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.
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CONTENT AND OPERATION

Current law

Overview

Current law generally does not allow county and 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. A telecommunications provider is a public utility. (See *Campanelli v. AT&T Wireless Servs., Inc.* (1999), 85 Ohio St.3d 103, 107.) However, the county and township zoning laws do confer zoning authority 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. (R.C. 303.211(A) and (B)(1) and (2) and 519.211(A) and (B)(1) and (2).)

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 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. When notice of the objections are mailed to the person planning the tower's construction, 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 has no impact on 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 (R.C. 303.211(E)(2)(b) and 519.211(E)(2)(b)).

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 on land used for agricultural purposes. (R.C. 303.211(B)(1)(c) and 519.211(B)(1)(c).) The bill also amends the definition of "telecommunications tower" as used in the provision requiring notice to residential dwellings within 100 feet of a proposed tower so that the notice requirement will apply if the proposed location of a tower is on land used for agricultural purposes. (R.C. 303.211(E)(2)(b) and 519.211(E)(2)(b).) The bill makes the element of the definition of "telecommunications tower" that excludes towers less than certain heights inapplicable to towers on land used for agricultural purposes (R.C. 303.211(B)(1)(d) and 519.211(B)(1)(d)).

Notice to property owners within 2,000 feet of a proposed tower

The bill changes the current requirement for notice to property owners whose land is contiguous to or directly across a street or roadway from the construction site of a proposed telecommunications tower, to apply to all property owners whose land is within 2,000 feet of the proposed tower (R.C. 303.211(B)(3)(a) and 519.211(B)(3)(a)).

HISTORY

ACTION	DATE
Introduced	02-28-07

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