

06/24/2004

Ordinance

148-2004

ORDINANCE NO. 148-2004

AN ORDINANCE AMENDING SECTIONS 25-3, 25-4, 25-5, 25-7, AND 25-13 OF THE ZONING ORDINANCE PERTAINING TO LOCATIONAL CRITERIA FOR TELECOMMUNICATION TOWERS.

WHEREAS, the Lexington-Fayette Urban County Planning Commission has considered a text amendment proposed to it so as to revise locational criteria for telecommunication towers; and

WHEREAS, the Planning Commission did hold a public hearing on this proposed text amendment on May 27, 2004; and

WHEREAS, the Planning Commission did recommend approval of this proposed text amendment by a vote of 8-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:


Section 1 - That Sections 25-3, 25-4, 25-5, 25-7, and 25-13 of the Zoning Ordinance of the Lexington-Fayette Urban County Government pertaining to locational criteria for telecommunication towers be and hereby are amended to read as set forth in the Planning Commission Report which is attached hereto as Exhibit A and incorporated herein by reference.

Section 2 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: June 24, 2004


MAYOR

ATTEST:


CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: June 30, 2004-1t

Recd by JK
Date: 6-3-04

0-148-2004
Exh. A

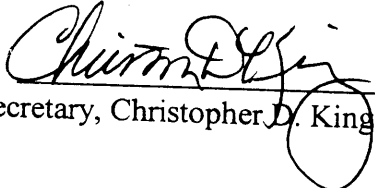
RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: ZOTA 2004-5: AMENDMENT TO ARTICLE 25 - TELECOMMUNICATION TOWERS - petition for a Zoning Ordinance Text Amendment to allow consistency between the Zoning Ordinance and the Revised Engineering Manual as it relates to tower construction near flood hazard areas.

Having considered the above matter on May 27, 2004, at a Public Hearing and having voted 8-0 that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend approval of this matter for the following reasons:

1. The revisions to Article 25, as proposed, will allow consistency between the Zoning Ordinance and the revised Engineering Manual as it relates to cellular tower construction in or near designated flood hazard areas.
2. The proposed changes will allow for more ease and efficiency in evaluating appropriateness of a cellular tower application because ambiguity due to conflicting language will be reduced or eliminated.

ATTEST: This 3rd day of June, 2004.


Secretary, Christopher D. King

DON ROBINSON
CHAIR

At the Public Hearing before the Urban County Planning Commission, this petition was represented by **the Planning staff.**

OBJECTIONS
None

OBJECTORS
None

Exhibit A

VOTES WERE AS FOLLOWS:

- AYES: (8) Day, Harper, Kay, Penn, Phillips, Vaughn, Whitman, Robinson
- NAYS: (0)
- ABSENT: (3) Aten, Godfrey, Ross
- ABSTAINED: (0)
- DISQUALIFIED: (0)

Motion for **approval** of **ZOTA 2004-5: Amendment to Article 25 – Telecommunication Towers** carried.

/lsb

Enclosures: Staff Report w/Text
Applicable excerpts of minutes of above meeting.

Excerpted from March 25, 2004, Planning Commission Minutes

REQUEST TO INITIATE A ZONING ORDINANCE TEXT AMENDMENT FOR CELLULAR TOWERS – The staff requests that the Commission initiate a Zoning Ordinance Text Amendment for minor amendments to Article 25 concerning criteria for location of telecommunication towers.

Staff Request – Mr. Emmons requested that the Commission initiate a Zoning Ordinance Text Amendment to Article 25 concerning criteria for location of telecommunication towers.

Action - A motion was made by Mr. Penn, seconded by Mr. Aten, and carried 9-0 (Day and Harper absent) to initiate a Zoning Ordinance Text Amendment to Article 25 concerning criteria for location of telecommunication towers.

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

ZOTA 2004-5: AMENDMENT TO ARTICLE 25 - TELECOMMUNICATION TOWERS

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: (Text **underlined and bold** indicates an addition; text ~~**dashed through and bold**~~ indicates a deletion) to the Zoning Ordinance.

(Copies of the entire text are attached to this staff report.)

STAFF REVIEW:

The Urban County Planning Commission has initiated a text amendment to Article 25 of the Zoning Ordinance, which addresses the regulation of telecommunication towers. Article 25 was created in April of 2000 by Urban County Council ordinance to reflect requirements of House Bill 168, which allowed local governments limited regulation in the siting of cellular towers. It was subsequently revised in March 2003 to comply with the requirements of House Bill 270, giving Planning Commissions (and/or other local government entities) power to review cellular tower applications and either approve or disapprove the applications, based on the appropriateness of individual requests.

In reviewing a cellular tower application, design standards must be applied to determine locational appropriateness; and conditions for approval may be imposed, such as landscaping, design and materials used for construction, required setbacks, etc. This was true when Article 25 was created, when it was revised in 2003, and will not change with the proposed text amendment.

The primary change proposed for Article 25 at this time addresses compliance with the Urban County Government Division of Engineering's adopted Storm Water Manual as it relates to construction in or near designated flood hazard areas. Generally, the Engineering Manuals allow no construction either in the floodplain or in the adjoining 25-foot buffer area. When Article 25 was revised in 2003, one of the locational standards disallowed cell towers, accessory structures or fences in either the floodplain or the buffer area, to comply with the Engineering Manuals. Just recently, there has been discussion of this requirement with the Division of Engineering. The determination has been made that, due to the minimal impact that a cell tower or its equipment cabinet would have regarding potential obstruction to flood waters, they could be located in the 25-foot buffer area when approved by the Planning Commission. However, construction would still be disallowed in the designated flood hazard area. The Engineering Manuals are in the process of being revised to reflect that change, which subsequently necessitates a revision of the Zoning Ordinance.

Clarification of conflicting language, as it relates to height requirements of specific zones, and clarification of other conflicts found after working with Article 25, as revised a year ago, are the other text changes proposed. An additional definition ("cellular equipment cabinet") has been provided to eliminate any ambiguity with regard to compliance with the Engineering Manual, which provides the basis and the reasoning for the proposed change to the Manual, as well as the Ordinance.

The changes proposed are minor in nature and will allow for more ease and efficiency in analysis of a cellular tower application, as ambiguity due to conflicting language will be greatly reduced or eliminated.

The Staff Recommends: Approval, for the following reasons:

1. The revisions to Article 25, as proposed, will allow consistency between the Zoning Ordinance and the revised Engineering Manual as it relates to cellular tower construction in or near designated flood hazard areas.
2. The proposed changes will allow for more ease and efficiency in evaluating appropriateness of a cellular tower application because ambiguity due to conflicting language will be reduced or eliminated.

ARTICLE 25

TELECOMMUNICATION TOWERS

25-1 INTENT - Inasmuch as the Congress of the United States enacted the Telecommunications Act of 1996, to deregulate the telecommunications industry by providing a more competitive environment for wired and wireless telecommunications, the Kentucky Legislature initially passed House Bill 168, and later enacted House Bill 270, to allow local governments which have adopted planning and zoning regulations to plan for and regulate the siting of cellular antenna towers. The intent of this section of the Zoning Ordinance is to provide for cellular telecommunication towers in appropriate locations throughout the community at sites which provide adequate cellular telecommunication service while protecting the public, preserving the character and value of surrounding property, and protecting the view from residential areas.

25-2 APPLICABILITY - This section of the Zoning Ordinance shall apply to all cellular telecommunication towers located, or to be located, within the jurisdiction of the Lexington-Fayette Urban County Government.

25-3 DEFINITIONS - For the purposes of this Article, the following definitions shall apply:

ALTERNATIVE CELLULAR ANTENNA TOWER - Any facility, such as a clock or bell tower; steeple; light pole; or other similar alternative-design mounting structure that accommodates, minimizes, camouflages or conceals the presence of a cellular antenna or cellular antenna tower and that is constructed (or reconstructed) primarily for the purpose of accommodating a cellular antenna or cellular antenna tower.

ANTENNA OR RELATED EQUIPMENT - Transmitting, receiving, or other equipment used to support cellular telecommunications services or personal communications services.

CELLULAR ANTENNA TOWER - A tower constructed for, or an existing building or facility that has been adapted for, the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services.

CELLULAR ANTENNA TOWER HEIGHT - The distance from the anchored base of the tower, whether on the top of another building or at grade, to the highest point of the antenna structure.

CELLULAR EQUIPMENT CABINET - A cabinet designed to house radio equipment, similar in size to a traffic signal cabinet, not designed for human occupancy. Any maintenance to radio equipment can only be done from outside the cabinet, as opposed to an alternative larger sized equipment shelter that can be totally accessed by service personnel.

CELLULAR TELECOMMUNICATIONS FACILITY - The lot, tract, or parcel of land that contains the cellular antenna tower, its supporting structure, any accessory building, parking, and any other uses or structures that are associated with the transmission facility.

CELLULAR TELECOMMUNICATIONS SERVICE - A retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.

CELLULAR TELEPHONE TRANSMITTING FACILITY, TEMPORARY - Any system of wires, poles, rods, reflecting disks, or similar devices used for the transmission or reception of electromagnetic waves, not meeting the definition of a “structure” as defined by this Zoning Ordinance. Temporary facilities (cellular antenna towers) shall be subject to issuance of a locational permit from the Division of Building Inspection prior to being located on a property.

CELLULAR TOWER HEIGHT-TO-YARD RATIO - For the purposes of this section of the Zoning Ordinance, a cellular tower height-to-yard ratio shall be the relationship of the height of the tower to the lot line, the boundary of the long-term lease area, or to the nearest building intended for human habitation, whichever is greater, whether or not that building is located on the lot with the tower and as further specified in these regulations.

CO-LOCATION - Locating two (2) or more transmission antennae or related equipment on the same cellular antenna tower.

SEARCH RING - The necessary search area within which a site for a cellular antenna tower should, pursuant to radio frequency requirements, be located.

UNIFORM APPLICATION - The application submitted to the Planning Commission by an applicant, complete and meeting all requirements as provided in KRS 100.9865, for the construction of a cellular antenna tower

for cellular telecommunications services or personal communications services. Completion of a uniform application shall not be required for temporary cellular antennae that are deployed during construction of permanent facilities; used in the event of emergency situations where infrastructure has been damaged; or in connection with temporary high usage situations, such as sporting events.

25-4 WHERE PERMITTED - To the largest extent feasible, applicants are encouraged to consider properties owned by the local government for the location of cellular towers, if such properties are appropriate in view of surrounding land uses. Whenever possible, cellular antenna towers, whether temporary or permanent, shall be sited at locations that minimize their adverse effect on residential uses in the immediate area. Only when no other adequate site is available shall a cellular antenna tower be permitted in a residential zone, unless located on a property not used or intended for residential purposes. In accordance with the procedures established by this Article, cellular antenna towers may be permitted in any zone when approved by the Planning Commission, with the following exceptions:

- (a) No cellular antenna tower, ~~or any~~ accessory structure or cabinet shall be permitted in a designated flood hazard area. Any cellular tower ~~or~~ accessory structure must be located at least twenty-five (25) feet outside of a designated flood hazard area, in compliance with the adopted Engineering Manuals. However, the tower itself, the equipment cabinet, as defined herein, as well as the fence that surrounds the tower and cabinet, may be located within the 25-foot buffer area.
- (b) No cellular antenna tower shall be constructed on land that is environmentally sensitive or a geologic hazard area.
- (c) No cellular antenna tower shall be permitted in or within 1,200 feet of a Historic District or Landmark, in a H-1 Zone, or in or within 1,200 feet of a National Register District or Property, unless the Planning Commission, in addition to the requirements of 25-9(c), finds that no other reasonable site within the search ring is available; and unless it can be determined that the location of a cellular tower will be beneficial to the historic property or district where it is proposed. Every means feasible shall be used to conceal the tower or antenna so that it is impossible to discern its existence.
- (d) No cellular antenna tower shall be located along a Scenic Byway, as designated by the State of Kentucky, so as to have a negative impact on the scenic qualities of the roadway and the views from

the roadway. When approved by the Planning Commission, any wireless communications facility proposed to be located along a state and/or federally designated Scenic Byway, or located within a Scenic View Corridor, shall be located on an existing tower structure or utility pole, or shall be designed as an alternative tower, as described in Section 25-3. Any tower or antenna that is not an alternative tower design shall be designed to blend into the surrounding environment through the use of color and/or other camouflaging architectural treatments, except in instances where color is dictated by federal or state authorities, such as the Federal Aviation Administration. In addition, the base of the tower and any supporting equipment shall be located either three hundred (300) feet from the right-of-way or beyond the view shed of the designated Scenic Byway, whichever is greater.

25-5 DESIGN STANDARDS - The following design standards shall apply to all cellular antenna towers:

- (a) Cellular antenna towers shall not be lighted, except as required by the Federal Aviation Administration (FAA).
- (b) The arrangement of the tower and its accessory structures on the lot or site shall provide adequately for the servicing of the facilities, including safe access points from streets and roads.
- (c) No signs shall be located on the cellular antenna tower; on the fence surrounding the antenna; or on any buildings accessory to the cellular antenna tower, with the exception of signs providing information or instructions relating to warnings, safety, emergencies and the like.
- (d) Cellular antenna towers located in non-residential zones shall have a height-to-yard ratio of not less than 3:1, unless the owners of the adjoining properties agree to a height-to-yard ratio which is less. The Planning Commission will have the authority to reduce the height-to-yard ratio in cases of demonstrated hardship and only when that location is essential for service.
- (e) The tower shall be constructed to withstand a minimum wind speed of 75 miles per hour with ½ inch of ice or 90 miles per hour basic wind speed, and seismic load capacity standards as determined by Kentucky Building Code. The tower design shall be certified by a registered engineer, licensed in the State of Kentucky.
- (f) The location of the cellular antenna tower shall not interfere with traffic circulation, access, storm

drainage, required landscaping or other requirements of the Zoning Ordinance, and shall not reduce the number of parking spaces below what is otherwise required.

- (g) All accessory structures associated with the cellular antenna tower shall be located as close to the antenna tower as possible and at least twenty-five (25) feet from any adjoining property in a residential zone or any property used for residential purposes. The Commission shall have the power to reduce the 25-foot setback in cases of demonstrated hardship or where adequate natural screening exists on the cell tower lot itself.
- (h) An amended development plan shall be filed for those sites that were subject to a previous development plan. Such amended plans shall be filed with the Planning Commission ~~at the time of submission of the uniform application within thirty (30) days of Planning Commission approval of a cellular tower~~, and shall be subject to the procedures and requirements of a minor amendment as set forth in Article 21.
- (i) A security fence, not less than eight (8) feet in height, shall enclose the base of the cellular antenna tower. In addition, the perimeter of the facility shall be ~~landscaped with~~ bounded on all sides by a five-foot landscape easement, which shall contain one tree for every forty feet of linear boundary, or fraction thereof, from Group A or B of the Plant List, as provided in Article 18, plus a six-foot high planting, hedge or fence. The Planning Commission shall have the authority to waive the landscape requirements if adequate natural screening already exists on the property.
- (j) Monopole and alternative design cellular antenna towers shall be permitted in all zones. Lattice towers and guyed towers may only be located in Professional Office zones; the Office, Industry and Research Park zone; the Highway Service and Wholesale and Warehouse Business zones, where deemed appropriate by the Planning Commission; and in industrial and agricultural zones. In agricultural zones, lattice and guyed towers shall only be permitted when more than 250' from all existing residences.
- (k) Co-location shall be encouraged in each site considered by the Planning Commission. Each cellular antenna tower should be of sufficient height, and the site should be of sufficient size, to accommodate more than one antenna user, except in cases of alternative tower design. Where co-location is not an option, innovative (alternative) design, as

described in Section 25-3, shall be encouraged and will require that only staff review be provided to the Planning Commission, provided it meets the ~~height requirement of the zone in which it is located; and provided it meets~~ the setback and screening requirements as set forth in Section 25-5 and the criteria set forth in Section 25-9(c). A bond, letter of credit or other surety will be required, as described in Section 25-12 herein below.

- (l) In cases where a cellular antenna tower or antenna is located on a portion of a property whose "subdivision" is based on a long-term lease, the lease area shall not take the parent tract below the minimum lot requirement for the zone in which it located.

(m) Prior to construction and/or location of a cellular antenna or tower, whether on an existing structure or on ground level, any applicable permits must be obtained from the Division of Building Inspection.

25-6 MITIGATING DESIGN STANDARDS FOR CELLULAR ANTENNA TOWERS IN RESIDENTIAL OR AGRICULTURAL ZONES - When no adequate alternate site for a cellular antenna tower is available, a site in a residential or an agricultural zone may be permitted. The Planning Commission shall consider the following mitigating design standards and may reduce or modify these standards in cases where it can be demonstrated that there is extreme hardship:

- (a) The Planning Commission shall have the power to impose additional landscaping requirements, which may include plantings, trees, and fencing designed to complement the character of the landscaping in the surrounding residential area.
- (b) Design and materials to be used in the accessory building or buildings may be required to be submitted to the Planning Commission for review and approval.
- (c) Asphalt or other hard-surface paving shall be provided for driveways and parking.
- (d) A 1:1 height-to-yard ratio shall be required. A reduction in the height-to-yard ratio may be permitted if no other location for the tower can be found.
- (e) Monopole or alternative tower design shall be used in any residential zone; and paint colors, such as light gray or light blue, shall be used to minimize any negative visual impact the tower or antenna may have on adjoining properties. The tower must be maintained on a regular basis by the owner of the facility in order to ensure that it continues to have a minimal visual impact on the surrounding area.

25-7 TEMPORARY CELLULAR ANTENNA TOWERS -

Temporary cellular antenna towers, which shall be subject to approval by the Planning Commission, shall be limited to a time period of no more than one (1) year from the date the locational permit is issued by the Division of Building Inspection, shall be subject to the same screening requirements **(other than plant material)** as a permanent tower, and shall be limited to a height of seventy (70) feet. Removal of the security fence when the tower and any associated accessory structures are dismantled or removed from the site shall be the responsibility of the owner of the tower and shall be accomplished within ninety (90) days of the removal of the tower. Temporary transmitting facilities shall be permitted by right where permanent cellular towers and antennae have been approved, until permanent construction is completed. The Planning Commission shall have the power to require a bond, letter of credit, or other appropriate alternative surety in order to ensure the safe removal of the tower and any accessory structures.

25-8 UNIFORM APPLICATION FOR A CELLULAR ANTENNA TOWER -

Any applicant that proposes to construct a cellular antenna tower for cellular telecommunications services or personal communications services within Lexington-Fayette County must submit a completed uniform application to the Planning Commission, as mandated by KRS 100.9865. A copy of the requirements for submission of a uniform application are on file and may be obtained from the Division of Planning Office. Unless waived by the applicant, all information contained in the uniform application and any updates, except for information that specifically identifies the proposed location of the cellular antenna tower then being reviewed, shall be deemed confidential and proprietary. In accordance with KRS 100.987, the Planning Commission may not approve public requests for the inspection of this information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent jurisdiction or when the applicant has provided a written waiver of confidentiality. In addition, the applicant shall submit the following information:

25-8(a) - Efforts of the applicant to locate on an existing structure by identifying:

- (1) The location of towers or other structures (including buildings) located within the search ring for the subject facility and which are capable of its support.
- (2) Reasons why the co-location was unsuccessful in each instance. Such reasons shall be supported by documentation and shall relate to the following criteria:

- (a) The existing towers or facilities are not of sufficient height to meet the applicant's engineering standards.
- (b) The existing towers or facilities do not have sufficient structural strength to support the applicant's proposed antenna or related equipment.
- (c) The physical constraints of the site preclude co-location.
- (d) The applicant's proposed equipment would cause frequency interference with other existing or proposed equipment on the tower or facility; or the existing or proposed equipment on the tower or facility would cause frequency interference with the applicant's planned equipment, which cannot reasonably be prevented.
- (e) The owner of the existing tower or facility is unwilling to entertain a co-location proposal.

25-8(b) - A statement of the relationship of the cellular antenna tower location to the adopted Comprehensive Plan of Lexington-Fayette Urban County.

25-9 PLANNING COMMISSION PROCEDURE - Upon filing of the uniform application, the Planning Commission shall charge the applicant a fee as established by the Urban County Council. The Commission shall have sixty (60) days to complete its review of the request for a cellular antenna tower and act on the request. If an application does not contain all of the information as required by KRS 100.9865, it will be considered incomplete and shall not be accepted as "filed." The 60-day time limit for review will not begin until the application has been completed and filed in accordance with the requirements of the uniform application. In situations where it can be demonstrated by the applicant that some portions of the uniform application are unreasonable for the location and construction of a cellular antenna tower, the Planning staff (or other authorized representative of the Planning Commission) may waive such requirements, and the application shall be considered complete. However, the applicant must first provide a written request, including a justification of the waiver, before it can be considered by the staff. Once it has been determined that portions of the uniform application may be waived, the application shall be considered complete as of the date that determination is made. The requisite 60-day time period for review and/or final action on the application will begin at that time.

25-9(a) NOTICE - The Planning Commission shall give notice of the time, date and place of the public meeting by one publication in the newspaper of highest circulation in Fayette County, not earlier than 21 days, nor later than 7 days before the public hearing. In

addition, notice of the hearing shall be given by the posting of a sign on the proposed site by the applicant. The sign shall be constructed of durable material; shall not be less than two (2) feet by four (4) feet; shall state "Cellular Antenna Tower" in bold letters not less than three (3) inches in height; shall state the time, place and location of the public meeting and the phone number of the Division of Planning in letters at least one (1) inch in height. The sign shall be posted on the property at a location visible from the highest traffic volume roadway abutting the property not more than three days after the filing of the application and shall be maintained until the meeting date. The applicant shall provide an affidavit to the Planning Commission at the hearing, stating that the sign was posted as required and has been maintained on the property during the notice period to the best of the applicant's knowledge and ability.

In addition, for any cellular tower or antenna that requires Planning Commission review, the applicant shall provide notice of the public hearing by first-class letter at least twenty-one (21) days in advance to owners of all property within a 500-foot radius of the subject property.

In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a 500-foot radius of the subject property, but to the next two properties beyond those included in the 500-foot radius; but in no event shall notice be required for property more than twenty-four hundred (2,400) feet from the subject property for a cellular tower or antenna request. If the tower or antenna is located on a portion of a larger property in any agricultural (A-U, A-R, A-N or A-B) zone, notice may be required for the 500-foot radius, as well as any required supplemental area, around the lease area, rather than around the entire property.

25-9(b) PUBLIC MEETING ON REQUEST FOR CELLULAR ANTENNA TOWER - After giving notice as provided herein, the Planning Commission shall hold a public meeting and vote to approve, conditionally approve or disapprove the proposed cellular antenna tower. At the public meeting, the Planning Commission shall receive the report of the staff, orally and/or in writing, and shall hear testimony of the staff members as it sees fit. The Commission shall allow the applicant, protesters, and other interested citizens to testify and rebut the evidence presented by other parties. The Chairman shall have the power to limit repetitive testimony and shall exclude irrelevant testimony and evidence. It should be noted that testimony regarding the environmental effects of radio frequency emissions is considered irrelevant and shall not be permitted.

25-9(c) CELLULAR TOWER REVIEW - The Planning Commission shall have the authority to hear and decide requests by an applicant for a cellular antenna tower. The Commission may approve, conditionally approve, disapprove, or take no action on the request for a cellular antenna tower. The burden shall be on the applicant to establish the following by a clear preponderance of the evidence:

- (1) The application meets all requirements of the Zoning Ordinance;
- (2) The application is in agreement with the Comprehensive Plan;
- (3) That the location of the tower will not cause interference (a "dead area") with public safety radio systems;
- (4) Reasons why the site is appropriate for a cellular antenna tower and why it will not have an adverse effect on the health, safety and welfare of the adjoining area;
- (5) Reasons why the tower will not alter the essential character of the surrounding area;
- (6) Reasons why the applicant has been unsuccessful in its attempts to co-locate on towers designed to host multiple wireless service providers' facilities or other existing structures, such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities.

25-9(d) ACTION OF THE PLANNING COMMISSION - Action by the Planning Commission to either approve, conditionally approve, postpone or disapprove an application for a cellular antenna tower must occur within sixty (60) days of the receipt of a completed uniform application. No action on the part of the Planning Commission means that the Commission has not taken definitive final action on the application within the requisite time period. The following actions by the Planning Commission shall have the meanings so stated:

(1) APPROVAL means the application meets the requirements of the Zoning Ordinance and is in agreement with the Comprehensive Plan. Once it is determined that the application meets these requirements, the Planning Commission may then act to approve the application.

(2) CONDITIONAL APPROVAL means that the Planning Commission has imposed certain reasonable conditions and/or has required modifications to the application, to ensure the health, safety, and welfare of the community and to protect the essential character of the surrounding area. Such conditions may include, but are not limited to, relocating the tower or the accessory building to a different location on the site; installation of landscaping or

screening; modification of the tower design; or modification of the antenna design. Conditions imposed by the Planning Commission shall be binding upon any tower constructed on the proposed site, including co-locators.

(3) POSTPONEMENT means the Planning Commission has delayed action on the application to a future Planning Commission meeting for definite reasons, which shall be noted by the Commission, in order that certain clarifications can be made.

(4) DISAPPROVAL means the application does not meet the requirements of the Zoning Ordinance and/or is in disagreement with the Comprehensive Plan. In these cases, the Planning Commission may then act to disapprove the application. The specific findings and reasons for the disapproval shall be stated in the Planning Commission's action and shall be recorded in the minutes of the meeting and made available to the applicant and to the public. A tie vote by the Planning Commission shall be a disapproval by operation of law.

(5) NO ACTION means that if the Planning Commission has not taken final action on an application within the requisite time period, unless there is a written agreement between the applicant and the Planning Commission which specifies a date by which the decision will be rendered, the application is deemed approved by operation of law.

25-10 FORWARDING THE COMMISSION'S ACTION TO THE PUBLIC SERVICE COMMISSION - If the application is approved, the applicant shall inform the Public Service Commission of the Planning Commission's action within ten (10) working days of the approval. The notice to the Public Service Commission shall include a map showing the location of the construction site. If an applicant fails to file notice of an approved uniform application with the Public Service Commission, the applicant shall be prohibited from beginning construction on the cellular antenna tower until such notice has been made.

25-11 EXISTING FACILITIES - Any existing cellular antenna towers that were constructed prior to the adoption of these regulations shall be considered permitted uses and shall be subject to these regulations in the event the cellular tower is to be removed. These regulations shall also apply to existing facilities if a tower or antenna is replaced and/or augmented to increase the height more than 50%. Replacement towers for lattice or guyed towers located in residential zones shall be monopoles or alternative tower design unless, in the review of the application, the Planning Commission finds that the replacement with a lattice or guyed tower would improve the opportunities for co-location. In its review of such an application, the

Commission shall consider the impact of the proposed tower on the immediate neighborhood and the surrounding neighborhoods, and may attach appropriate and reasonable conditions to the approval of the tower to mitigate such impacts.

25-12 ACTION REQUIRED IN THE EVENT OF ABANDONMENT OF CELLULAR TOWER - The owner of a cellular tower or antenna shall file annually with the Division of Planning a declaration of intent for continued operation and use of the tower or antenna. In the event that the tower or antenna is abandoned, it must be removed within six (6) months of ceasing operation at the owner's expense. Prior to issuance of a building permit for construction of a tower or antenna, a bond, letter of credit or other appropriate surety shall be filed with the Division of Building Inspection, in order to ensure the successful dismantling and removal of the tower or antenna and any associated accessory structure.

25-13 STAFF REVIEW PROPOSALS BY THE APPLICANT - When an applicant seeks to place antennae on an existing structure; or in the event an applicant proposes to augment the height of an existing tower, provided the height of the tower will not be increased over 50%, ~~provided~~ and the height will not result in additional lighting requirements pursuant to Federal Aviation Administration rules, and provided a "dead area" will not be created for emergency radio communication systems, the application may then be reviewed and acted on by the staff.

25-14 APPEALS - Any party claiming to be aggrieved by a final action of the Planning Commission under the provisions of KRS 100.985 to 100.987 may bring an action for review in Fayette Circuit Court.

All orders of the Planning Commission which have not been appealed within thirty (30) days shall become final; however, there shall be no stay of any action on the subject property until such time as an appeal has been filed.

Excerpted from May 27, 2004, Planning Commission Minutes

ZOTA 2004-5: AMENDMENT TO ARTICLE 25 – TELECOMMUNICATION TOWERS - petition for a Zoning Ordinance Text Amendment to allow consistency between the Zoning Ordinance and the Revised Engineering Manual as it relates to tower construction near flood hazard areas.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: (Text **underlined and bold** indicates an addition; text ~~**dashed through and bold**~~ indicates a deletion) to the Zoning Ordinance.

(Copies of this proposed amendment are available from the staff.)

The Zoning Committee Recommended: Approval, for the reasons listed by the staff.

The Staff Recommended: Approval, for the following reasons:

1. The revisions to Article 25, as proposed, will allow consistency between the Zoning Ordinance and the revised Engineering Manual as it relates to cellular tower construction in or near designated flood hazard areas.
2. The proposed changes will allow for more ease and efficiency in evaluating appropriateness of a cellular tower application because ambiguity due to conflicting language will be reduced or eliminated.

Staff Presentation - Ms. Rackers explained to the Commission that this was a text amendment to revise Article 25, which is the section of the Zoning Ordinance that addresses telecommunication towers. She said that the text amendment had been initiated by the Planning Commission, its primary intent being to allow consistency between the newly revised Engineering Manual as it relates to construction in or near designated flood hazard areas.

After giving a brief history of Article 25 (i.e., its creation in 2000 in response to the Telecommunications Act of 1996 and its subsequent revision in 2003 to comply with House Bill 270 of the Kentucky Legislature), Ms. Rackers outlined the changes proposed. She said that, after working with Article 25 for approximately a year as it relates to actual cellular tower applications, it was realized that minor "tweaks" were needed in order to clarify ambiguities and to eliminate conflicting language. She noted that these changes would make it easier to review and analyze applications. She added that a definition of "equipment cabinet" was also proposed for clarification purposes with regard to the Engineering Manual requirements. Two photos of typical equipment cabinets were presented to the Commission for their review. She noted that these cabinets are no longer generally designed for human "habitation" and now are more similar to the small cabinets found in new subdivisions for underground utilities.

In presenting the proposed change relating to construction in or near flood hazard areas, Ms. Rackers said that when Article 25 was revised in 2003 to comply with House Bill 270, it was stipulated that cellular towers, their accessory structures and perimeter fencing would not be permitted in either the designated flood hazard area or the 25-foot buffer area, required by the Engineering Storm Water Manual. Since that time, the Division of Engineering has determined that, due to the minimal impact that construction of a cell tower and its equipment cabinet would have on the flow of flood waters, they should be permitted within the 25-foot buffer area, as would the perimeter fence. However, they still would not be permitted within the actual floodplain. She noted that the Engineering Manual was in the process of being revised to reflect that change, which also necessitated a change in the Zoning Ordinance language.

Ms. Rackers said it was the staff's belief that these changes would allow for more ease in analysis of cellular tower applications, providing consistency between the revised Engineering Manual and the Zoning Ordinance, and therefore recommended approval for that reason. She noted that the proposed text had been presented to the Zoning Committee for its review, and that committee recommended approval, for the reasons provided by the staff.

Action - A motion was made by Mr. Harper, seconded by Ms. Whitman, and carried 8-0 (Aten, Godfrey and Ross absent) to approve ZOTA 2004-5, for the reasons provided by staff.