

1 AN ACT concerning zoning.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Counties Code is amended by changing  
5 Section 5-12001.1 as follows:

6 (55 ILCS 5/5-12001.1)

7 Sec. 5-12001.1. Authority to regulate certain specified  
8 facilities of a telecommunications carrier.

9 (a) Notwithstanding any other Section in this Division,  
10 the county board or board of county commissioners of any  
11 county shall have the power to regulate the location of the  
12 facilities, as defined in subsection (c), of a  
13 telecommunications carrier established outside the corporate  
14 limits of cities, villages, and incorporated towns that have  
15 municipal zoning ordinances in effect. The power shall only  
16 be exercised to the extent and in the manner set forth in  
17 this Section.

18 (b) The provisions of this Section shall not abridge any  
19 rights created by or authority confirmed in the federal  
20 Telecommunications Act of 1996, P.L. 104-104.

21 (c) As used in this Section, unless the context  
22 otherwise requires:

23 (1) "county jurisdiction area" means those portions  
24 of a county that lie outside the corporate limits of  
25 cities, villages, and incorporated towns that have  
26 municipal zoning ordinances in effect;

27 (2) "county board" means the county board or board  
28 of county commissioners of any county;

29 (3) "residential zoning district" means a zoning  
30 district that is designated under a county zoning  
31 ordinance and is zoned predominantly for residential

1 uses;

2 (4) "non-residential zoning district" means the  
3 county jurisdiction area of a county, except for those  
4 portions within a residential zoning district;

5 (5) "residentially zoned lot" means a zoning lot in  
6 a residential zoning district;

7 (6) "non-residentially zoned lot" means a zoning  
8 lot in a non-residential zoning district;

9 (7) "telecommunications carrier" means a  
10 telecommunications carrier as defined in the Public  
11 Utilities Act as of January 1, 1997;

12 (8) "facility" means that part of the signal  
13 distribution system used or operated by a  
14 telecommunications carrier under a license from the FCC  
15 consisting of a combination of improvements and equipment  
16 including (i) one or more antennas, (ii) a supporting  
17 structure and the hardware by which antennas are  
18 attached; (iii) equipment housing; and (iv) ancillary  
19 equipment such as signal transmission cables and  
20 miscellaneous hardware;

21 (9) "FAA" means the Federal Aviation Administration  
22 of the United States Department of Transportation;

23 (10) "FCC" means the Federal Communications  
24 Commission;

25 (11) "antenna" means an antenna device by which  
26 radio signals are transmitted, received, or both;

27 (12) "supporting structure" means a structure,  
28 whether an antenna tower or another type of structure,  
29 that supports one or more antennas as part of a facility;

30 (13) "qualifying structure" means a supporting  
31 structure that is (i) an existing structure, if the  
32 height of the facility, including the structure, is not  
33 more than 15 feet higher than the structure just before  
34 the facility is installed, or (ii) a substantially

1 similar, substantially same-location replacement of an  
2 existing structure, if the height of the facility,  
3 including the replacement structure, is not more than 15  
4 feet higher than the height of the existing structure  
5 just before the facility is installed;

6 (14) "equipment housing" means a combination of one  
7 or more equipment buildings or enclosures housing  
8 equipment that operates in conjunction with the antennas  
9 of a facility, and the equipment itself;

10 (15) "height" of a facility means the total height  
11 of the facility's supporting structure and any antennas  
12 that will extend above the top of the supporting  
13 structure; however, if the supporting structure's  
14 foundation extends more than 3 feet above the uppermost  
15 ground level along the perimeter of the foundation, then  
16 each full foot in excess of 3 feet shall be counted as an  
17 additional foot of facility height. The height of a  
18 facility's supporting structure is to be measured from  
19 the highest point of the supporting structure's  
20 foundation;

21 (16) "facility lot" means the zoning lot on which a  
22 facility is or will be located;

23 (17) "principal residential building" has its  
24 common meaning but shall not include any building under  
25 the same ownership as the land of the facility lot.  
26 "Principal residential building" shall not include any  
27 structure that is not designed for human habitation;

28 (18) "horizontal separation distance" means the  
29 distance measured from the center of the base of the  
30 facility's supporting structure to the point where the  
31 ground meets a vertical wall of a principal residential  
32 building; and

33 (19) "lot line set back distance" means the  
34 distance measured from the center of the base of the

1 facility's supporting structure to the nearest point on  
2 the common lot line between the facility lot and the  
3 nearest residentially zoned lot. If there is no common  
4 lot line, the measurement shall be made to the nearest  
5 point on the lot line of the nearest residentially zoned  
6 lot without deducting the width of any intervening right  
7 of way.

8 (d) In choosing a location for a facility, a  
9 telecommunications carrier shall consider the following:

10 (1) A non-residentially zoned lot is the most  
11 desirable location.

12 (2) A residentially zoned lot that is not used for  
13 residential purposes is the second most desirable  
14 location.

15 (3) A residentially zoned lot that is 2 acres or  
16 more in size and is used for residential purposes is the  
17 third most desirable location.

18 (4) A residentially zoned lot that is less than 2  
19 acres in size and is used for residential purposes is the  
20 least desirable location.

21 The size of a lot shall be the lot's gross area in square  
22 feet without deduction of any unbuildable or unusable land,  
23 any roadway, or any other easement.

24 (e) In designing a facility, a telecommunications  
25 carrier shall consider the following guidelines:

26 (1) No building or tower that is part of a facility  
27 should encroach onto any recorded easement prohibiting  
28 the encroachment unless the grantees of the easement have  
29 given their approval.

30 (2) Lighting should be installed for security and  
31 safety purposes only. Except with respect to lighting  
32 required by the FCC or FAA, all lighting should be  
33 shielded so that no glare extends substantially beyond  
34 the boundaries of a facility.

1           (3) No facility should encroach onto an existing  
2 septic field.

3           (4) Any facility located in a special flood hazard  
4 area or wetland should meet the legal requirements for  
5 those lands.

6           (5) Existing trees more than 3 inches in diameter  
7 should be preserved if reasonably feasible during  
8 construction. If any tree more than 3 inches in diameter  
9 is removed during construction a tree 3 inches or more in  
10 diameter of the same or a similar species shall be  
11 planted as a replacement if reasonably feasible. Tree  
12 diameter shall be measured at a point 3 feet above ground  
13 level.

14           (6) If any elevation of a facility faces an  
15 existing, adjoining residential use within a residential  
16 zoning district, low maintenance landscaping should be  
17 provided on or near the facility lot to provide at least  
18 partial screening of the facility. The quantity and type  
19 of that landscaping should be in accordance with any  
20 county landscaping regulations of general applicability,  
21 except that paragraph (5) of this subsection (e) shall  
22 control over any tree-related regulations imposing a  
23 greater burden.

24           (7) Fencing should be installed around a facility.  
25 The height and materials of the fencing should be in  
26 accordance with any county fence regulations of general  
27 applicability.

28           (8) Any building that is part of a facility located  
29 adjacent to a residentially zoned lot should be designed  
30 with exterior materials and colors that are reasonably  
31 compatible with the residential character of the area.

32           (f) The following provisions shall apply to all  
33 facilities established in any county jurisdiction area after  
34 the effective date of the amendatory Act of 1997:

1           (1) Except as provided in this Section, no yard or  
2 set back regulations shall apply to or be required for a  
3 facility.

4           (2) A facility may be located on the same zoning  
5 lot as one or more other structures or uses without  
6 violating any ordinance or regulation that prohibits or  
7 limits multiple structures, buildings, or uses on a  
8 zoning lot.

9           (3) No minimum lot area, width, or depth shall be  
10 required for a facility, and unless the facility is to be  
11 manned on a regular, daily basis, no off-street parking  
12 spaces shall be required for a facility. If the facility  
13 is to be manned on a regular, daily basis, one off-street  
14 parking space shall be provided for each employee  
15 regularly at the facility. No loading facilities are  
16 required.

17           (4) No portion of a facility's supporting structure  
18 or equipment housing shall be less than 15 feet from the  
19 front lot line of the facility lot or less than 10 feet  
20 from any other lot line.

21           (5) No bulk regulations or lot coverage, building  
22 coverage, or floor area ratio limitations shall be  
23 applied to a facility or to any existing use or structure  
24 coincident with the establishment of a facility. Except  
25 as provided in this Section, no height limits or  
26 restrictions shall apply to a facility.

27           (6) A county's review of a building permit  
28 application for a facility shall be completed within 30  
29 days. If a decision of the county board is required to  
30 permit the establishment of a facility, the county's  
31 review of the application shall be simultaneous with the  
32 process leading to the county board's decision.

33           (7) The improvements and equipment comprising the  
34 facility may be wholly or partly freestanding or wholly

1 or partly attached to, enclosed in, or installed in or on  
2 a structure or structures.

3 (8) Any public hearing authorized under this  
4 Section shall be conducted in a manner determined by the  
5 county board. Notice of any such public hearing shall be  
6 published at least 15 days before the hearing in a  
7 newspaper of general circulation published in the county.

8 (9) Any decision regarding a facility by the county  
9 board or a county agency or official shall be supported  
10 by written findings of fact. The circuit court shall  
11 have jurisdiction to review the reasonableness of any  
12 adverse decision and the plaintiff shall bear the burden  
13 of proof, but there shall be no presumption of the  
14 validity of the decision.

15 (g) The following provisions shall apply to all  
16 facilities established after the effective date of this  
17 amendatory Act of 1997 in the county jurisdiction area of any  
18 county with a population of less than 180,000:

19 (1) A facility is permitted if its supporting  
20 structure is a qualifying structure or if both of the  
21 following conditions are met:

22 (A) the height of the facility shall not  
23 exceed 200 feet, except that if a facility is  
24 located more than one and one-half miles from the  
25 corporate limits of any municipality with a  
26 population of 25,000 or more the height of the  
27 facility shall not exceed 350 feet; and

28 (B) the horizontal separation distance to the  
29 nearest principal residential building shall not be  
30 less than the height of the supporting structure;  
31 except that if the supporting structure exceeds 99  
32 feet in height, the horizontal separation distance  
33 to the nearest principal residential building shall  
34 be at least 100 feet or 80% of the height of the

1 supporting structure, whichever is greater.  
2 Compliance with this paragraph shall only be  
3 evaluated as of the time that a building permit  
4 application for the facility is submitted. If the  
5 supporting structure is not an antenna tower this  
6 paragraph is satisfied.

7 (2) Unless a facility is permitted under paragraph  
8 (1) of this subsection (g), a facility can be established  
9 only after the county board gives its approval following  
10 consideration of the provisions of paragraph (3) of this  
11 subsection (g). The county board may give its approval  
12 after one public hearing on the proposal, but only by the  
13 favorable vote of a majority of the members present at a  
14 meeting held no later than 75 days after submission of a  
15 complete application by the telecommunications carrier.  
16 If the county board fails to act on the application  
17 within 75 days after its submission, the application  
18 shall be deemed to have been approved. No more than one  
19 public hearing shall be required.

20 (3) For purposes of paragraph (2) of this  
21 subsection (g), the following siting considerations, but  
22 no other matter, shall be considered by the county board  
23 or any other body conducting the public hearing:

24 (A) the criteria in subsection (d) of this  
25 Section;

26 (B) whether a substantial adverse effect on  
27 public safety will result from some aspect of the  
28 facility's design or proposed construction, but only  
29 if that aspect of design or construction is  
30 modifiable by the applicant;

31 (C) the benefits to be derived by the users of  
32 the services to be provided or enhanced by the  
33 facility and whether public safety and emergency  
34 response capabilities would benefit by the



1 establishment of the facility;

2 (D) the existing uses on adjacent and nearby  
3 properties; and

4 (E) the extent to which the design of the  
5 proposed facility reflects compliance with  
6 subsection (e) of this Section.

7 (4) On judicial review of an adverse decision, the  
8 issue shall be the reasonableness of the county board's  
9 decision in light of the evidence presented on the siting  
10 considerations and the well-reasoned recommendations of  
11 any other body that conducts the public hearing.

12 (h) The following provisions shall apply to all  
13 facilities established after the effective date of this  
14 amendatory Act of 1997 in the county jurisdiction area of any  
15 county with a population of 180,000 or more. A facility is  
16 permitted in any zoning district subject to the following:

17 (1) A facility shall not be located on a lot under  
18 paragraph (4) of subsection (d) unless a variation is  
19 granted by the county board under paragraph (4) of this  
20 subsection (h).

21 (2) Unless a height variation is granted by the  
22 county board, the height of a facility shall not exceed  
23 75 feet if the facility will be located in a residential  
24 zoning district or 200 feet if the facility will be  
25 located in a non-residential zoning district. However,  
26 the height of a facility may exceed the height limit in  
27 this paragraph, and no height variation shall be  
28 required, if the supporting structure is a qualifying  
29 structure.

30 (3) The improvements and equipment of the facility  
31 shall be placed to comply with the requirements of this  
32 paragraph at the time a building permit application for  
33 the facility is submitted. If the supporting structure  
34 is an antenna tower other than a qualifying structure

1 then (i) if the facility will be located in a residential  
2 zoning district the lot line set back distance to the  
3 nearest residentially zoned lot shall be at least 50% of  
4 the height of the facility's supporting structure or (ii)  
5 if the facility will be located in a non-residential  
6 zoning district the horizontal separation distance to the  
7 nearest principal residential building shall be at least  
8 equal to the height of the facility's supporting  
9 structure.

10 (4) The county board may grant variations for any  
11 of the regulations, conditions, and restrictions of this  
12 subsection (h), after one public hearing on the proposed  
13 variations, by a favorable vote of a majority of the  
14 members present at a meeting held no later than 75 days  
15 after submission of an application by the  
16 telecommunications carrier. If the county board fails to  
17 act on the application within 75 days after submission,  
18 the application shall be deemed to have been approved.  
19 In its consideration of an application for variations,  
20 the county board, and any other body conducting the  
21 public hearing, shall consider the following, and no  
22 other matters:

23 (A) whether, but for the granting of a  
24 variation, the service that the telecommunications  
25 carrier seeks to enhance or provide with the  
26 proposed facility will be less available, impaired,  
27 or diminished in quality, quantity, or scope of  
28 coverage;

29 (B) whether the conditions upon which the  
30 application for variations is based are unique in  
31 some respect or, if not, whether the strict  
32 application of the regulations would result in a  
33 hardship on the telecommunications carrier;

34 (C) whether a substantial adverse effect on

1 public safety will result from some aspect of the  
2 facility's design or proposed construction, but only  
3 if that aspect of design or construction is  
4 modifiable by the applicant;

5 (D) whether there are benefits to be derived  
6 by the users of the services to be provided or  
7 enhanced by the facility and whether public safety  
8 and emergency response capabilities would benefit by  
9 the establishment of the facility; and

10 (E) the extent to which the design of the  
11 proposed facility reflects compliance with  
12 subsection (e) of this Section.

13 No more than one public hearing shall be required.

14 (5) On judicial review of an adverse decision, the  
15 issue shall be the reasonableness of the county board's  
16 decision in light of the evidence presented and the  
17 well-reasoned recommendations of any other body that  
18 conducted the public hearing.

19 (Source: P.A. 90-522, eff. 1-1-98.)