



The Cell Tower, the School and the Give and Take of Local Control

Part 1 – The Cell Tower

As a residential community that consistently rates among the nation's best, the village takes care in reviewing and approving applications for commercial projects. Two new developments merit comment. The first involves the construction of a telecommunications (cell) tower at the northeast corner of the swimming pool parking lot and the southeast tower of the Department of Public Works (DPW) yard. The second involves a small area study the village commissioned in connection with the Port Washington Road corridor from the Dunwood School to the A-B Data building.

The focus of this article is the cell phone tower.

CELL PHONE TOWER

At its October 13, 2015 meeting, on the unanimous recommendation of the Plan Commission, the village board repealed and recreated the telecommunications ordinance to conform to state law. The board also granted a conditional use order for the construction of the new cell phone tower.

In 2013, the Wisconsin legislature passed a new law creating a uniform state wide framework for locating cell phone towers and antennas, Wis. Stat. § 66.0404. Previously, this was principally a matter of local control; cities, villages, towns, and counties would negotiate with cellular companies about where to locate cell towers and the terms of the lease. The new state law is an effort to preempt (i.e., take away the right of) local government units from blocking the siting or construction of a telecommunications towers.

Provided that the applicant properly submits an application for a conditional use order authorizing the construction or substantial modification of such a structure, the statute places substantial limitations on a political subdivision's authority to regulate the activity. The statute prohibits political subdivisions from imposing environmental testing, requiring that the structure be placed on public property, disapproving an application based solely on aesthetic concerns or the height of the

structure (up to 200 feet), limiting the duration of the permit, or disapproving the application based on the suitability of other locations.

According to the Wisconsin Wireless Association, which represented the telecommunications providers, the new law was enacted to speed up the deployment of towers and antennas that are needed to keep up with the rapid growth of cellular phone service and wireless broadband. Previously, it often took considerable back and forth with local officials to get permission to construct a wireless tower. The service providers complained that local government sometimes required them to put antennas on water towers and other public property and then charged thousands of dollars a month to lease the space.

The new statute requires local governments to act on a wireless tower permit application within 90 days or the application is deemed approved.

Under the circumstances, the village board decided the best option would be to grant the conditional use permit and attempt to negotiate an acceptable ground license agreement with the service provider.

To the member, the board was troubled that the statute had usurped local control.

On the subject of land use, the village often cannot control outcomes, but in many situations it has the ability to shape events, such as promoting smart development along the Port Washington Road corridor, the subject of Part 2 of this series.

Douglas H. Frazer is a trustee on the Fox Point Village board. The views expressed are his own and not necessarily those of the village, the village board, other village board members, or Best Version Media, LLC.



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