STATE OF NEW YORK

4506

2017-2018 Regular Sessions

IN ASSEMBLY

February 2, 2017

Introduced by M. of A. COLTON, CYMBROWITZ, WRIGHT, HOOPER, BENEDETTO, ENGLEBRIGHT, RIVERA, ROSENTHAL, JAFFEE -- Multi-Sponsored by -- M. of A. FINCH, GLICK, HIKIND, McKEVITT, THIELE, TITUS, WALKER -- read once and referred to the Committee on Local Governments

AN ACT to enact the "wireless facility siting act"; to amend the general municipal law, in relation to the placement, construction and modification of wireless services facilities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. Municipal control over the siting of wireless services facilities is an important component of municipal home rule. The legislature recognizes the federal, state and local interests of providing for proper and convenient wireless services to the public. As such, the legislature needs to balance the interests of providing quality wireless communication services with local concerns on the inappropriate siting of telecommunications towers. This act provides for a process of municipal review for applications to site, construct and modify wireless services facilities. Such process must incorporate the needs and desires of the local community, with regard to the aesthetic ramifications of such siting. It is the intent of the legislature in adopting the "wireless facility siting act" to implement enabling legislation which specifically sets forth a uniform statewide process for municipal review of applications for the placement, construction and modification of wireless services facilities in all municipalities that do not have local laws to regulate the placement of such towers. Each municipality shall be able to enact approval processes that are more strict than those established by this act.

§ 2. Short title. This act shall be known as and may be cited as the "wireless facility siting act".

§ 3. The general municipal law is amended by adding a new article 13-E to read as follows:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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ARTICLE 13-E
WIRELESS FACILITY SITING ACT

Section 300. Definitions.
301. Permit requirements.
302. Minimum state-wide procedure for municipal review of permit requests.
303. Standards for review and application requirements for a wireless facility.
304. Co-location standards.
305. Permit approval; non-conforming facilities.
306. Applicability.

§ 300. Definitions. The following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise:

1. "Ancillary equipment" means all equipment necessary for the secure and successful operation of a wireless facility including but not limited to, support structures, transmitting, receiving and combining equipment, equipment shelters, transmission cables, and backup power sources. Ancillary equipment shall not include residential, industrial or commercial buildings but shall include any such equipment placed on residential, industrial or commercial buildings.

2. "Building inspector" means the municipal official charged with issuing building permits and/or enforcing the zoning law of such municipality or other individual designated by the legislative body to issue permits for wireless facilities.

3. "Historic area" means an area wholly or partially within, or wireless facility having its foundation within one thousand feet of, any historic building, structure, facility, site or district, that is listed on the national register of historic places, or that has been proposed by the New York state board on historic preservation for a recommendation to the state historic preservation officer for nomination for inclusion in the national register, that is listed on the state register of historic places, or has been designated as a historic place or landmark by the municipality.

4. "Municipal board" or "board" means the municipal board authorized to review applications for wireless facilities. In the event a municipality has not designated a board, references in this article to the municipal board shall be deemed to refer to the legislative body of such municipality.

5. "Municipal zoning law" means a municipality's zoning local law or ordinance.

6. "Municipality" means any city, town or village.

7. "Permit" means the authorization by the building inspector pursuant to this article to construct a wireless facility.

8. "Person" means any individual, corporation, limited liability company, joint venture, public benefit corporation, partnership, limited liability partnership or association.

9. "Scenic area" means an area wholly or partially within, or a wireless facility having its foundation within one thousand feet of, any publicly owned or operated parkland, recreation area or designated open space, including any wireless facility having its foundation within one thousand feet of the centerline of any scenic byway as defined in article twelve-C of the highway law or as designated by the municipality.

10. "Technical review" means review of a permit application by an independent expert in telecommunications siting.

11. "Technically and commercially reasonable" means in accordance with general industry practice in the provision of wireless services pertaining to cost and service coverage.

12. "Telecommunications tower" means any freestanding tower, monopole or similar structure used for the provision of wireless services including ancillary telecommunications equipment required to integrate such facility into an existing or proposed wireless network.

13. "Wireless facility" means only the part or parts of any facility used in connection with the provision of wireless services including, but not limited to, antennas, ancillary equipment and telecommunications towers.

14. "Wireless services" means all commercial mobile services, as that term is defined in section 332(d) of title 47, United States Code, as amended from time to time, including, but not limited to, all broadband personal communications services, wireless radio telephone services, geographic area specialized and enhanced specialized mobile radio services, and incumbent-wide area specialized mobile radio licensees, which offer real time, two-way voice or data service that is interconnected with the public switched telephone network or otherwise provides access to communications services.

§ 301. Permit requirements. No person shall commence the construction or modification of a wireless facility without first obtaining a municipal permit.

§ 302. Minimum state-wide procedure for municipal review of permit requests. 1. (a) Upon receipt of a completed application for permission to construct, place or modify a wireless facility, the municipal board shall conduct a public hearing within ninety days of such application. A written decision shall be rendered within sixty-two days of such public hearing. The time within which the municipal board must render its written decision may be extended by mutual consent of the applicant and the board.

(b) Each applicant shall provide written notice to all owners and residents of property located within one thousand feet of the proposed wireless facility within ten days of filing an application pursuant to paragraph (a) of this subdivision, and again not more than thirty days before any scheduled public hearing.

2. (a) An application fee may be imposed by a municipality upon an applicant for the placement, construction or modification of a wireless facility that shall not exceed the normal and customary fee for a building permit application in such municipality for projects of such scope and nature.

(b) Upon request of the board, an applicant may be required to establish an escrow account for the payment of the actual, reasonable and customary costs incurred by the municipality for an independent technical review of each aspect of the application.

§ 303. Standards for review and application requirements for a wireless facility. 1. Permit approval may be granted if the applicant demonstrates compliance with the following standards for the review, pays all applicable fees and costs, and submits the required documents.

2. (a) The application shall include, at a minimum, information, which shall include a map, that identifies the location of all existing wireless facilities together with all facilities for which an application has been filed within twenty miles of where such facilities are to be located. On such map the facilities identified must note the owner and operator of such facilities.

(b) The application shall contain information that establishes that there is a specific need for the proposed wireless facility including, but not limited to, evidence that the existing wireless facilities do not provide adequate coverage and do not have the viability to provide adequate coverage by adjusting the facilities at existing sites.

(c) The information submitted pursuant to this subdivision shall include data on the effects upon the public health of the radio waves emitted by the proposed wireless facility.

3. The application shall demonstrate that operation of the wireless facility complies with all applicable regulations of the Federal Communications Commission. If new, more restrictive standards are adopted by such agency, the facility shall, in a manner consistent with such standards, be brought into compliance, or continued operations may be restricted by the municipality.

4. The wireless facility shall be designed and finished in a manner which minimizes the visual impact on surrounding properties in accordance with generally accepted practices, while providing the level of service requested by the applicant. Minimization of visual impact in an historic or scenic area shall include reasonable efforts that take into account the topography and surroundings of the wireless facility.

5. No telecommunications tower shall be located within one thousand five hundred feet of any elementary or secondary school.

6. The wireless facility shall be designed, constructed, maintained and operated in a manner that ensures the security of the facility and protects against unauthorized access.

7. Wireless facilities shall not be illuminated by artificial means and shall not display obstruction marking and/or lighting unless such marking and/or lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a particular wireless facility; provided, however, when incorporated into the design, light fixtures used to illuminate ball fields, parking lots, or other ground areas or ground structures may be attached to wireless facilities.

8. The applicant shall preserve existing on-site vegetation to the maximum extent practicable. The base of the facility and any accessory structures shall be landscaped.

9. (a) Any contract with an owner of property upon which a wireless facility is to be placed, constructed or modified shall include a provision requiring the owner of the wireless facility to remove such facility in the event the facility has not been in use for a period of at least twelve months. The terms of such provision shall be filed with the municipality where the proposed wireless facility is to be located. The permit may be revoked upon a finding that the required contract language has been removed.

(b) The municipality may require that, in the event the wireless facility is not used by the applicant, other co-locators, their successors and/or assigns for a period of one year or more, such facility shall be removed by its then-current owner. In the event the wireless facility is not so removed, the municipality shall give written notice to the owner of such facility (i) stating that the wireless facility is considered abandoned, and (ii) setting a time, date and place for a public hearing. Such public hearing shall be on not less than thirty days notice to such owner. Upon a finding that the wireless facility has been abandoned, the municipality shall deliver written notice to the applicant indicating the reasons for its finding, and directing that the wireless facility be removed within one hundred twenty days, weather

permitting. In the event that the wireless facility is not so removed, the municipality may commence an action in supreme court against the owner of such facility seeking an order requiring the removal. The prevailing party in such enforcement action shall be entitled to recover from the other reasonable attorneys fees, as determined by the court.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subdivision, a municipality may adopt a local law to require the posting of a bond or other security in order to finance dismantling of an abandoned wireless facility.

§ 304. Co-location standards. 1. Where an application proposes construction of a wireless facility designed to support only one provider, the applicant shall demonstrate that co-locating with another wireless facility instead of construction of the proposed wireless facility is not technically and commercially reasonable.

2. The board may require the applicant for a wireless facility to make a reasonable attempt to co-locate with another wireless facility that can adequately serve the needs of the applicant.

3. If the board requires the applicant to attempt to co-locate a wireless facility with an existing wireless facility, the applicant shall provide the board with a statement indicating that the applicant has either:

(a) agreed to co-locate the wireless facility with an existing wireless facility, and which statement identifies the location of the facility on which the applicant will be co-located; or

(b) attempted to co-locate the wireless facility with an existing wireless facility; such statement should identify the location of the facilities which the applicant attempted to co-locate on wireless facilities which the applicant has reviewed, and list the reasons why each such attempt to co-locate a wireless facility was unsuccessful.

4. The board may deny an application if it determines that such applicant can co-locate its proposed facility at another site.

§ 305. Permit approval; non-conforming facilities. 1. Upon finding that a proposed wireless facility complies with the provisions of sections three hundred three and three hundred four of this article, the board shall issue a permit. Appeals from board actions pursuant to the provisions of this article shall be governed by article seventy-eight of the civil practice law and rules.

2. (a) Where the wireless facility does not meet the specifications outlined in this article, the municipal board shall not issue the permit pursuant to this article.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, upon a showing that construction of a wireless facility meeting the requirements of this article is not technically and commercially reasonable, application may be made pursuant to the provisions of any municipal zoning law or other local law, ordinance, rule or regulation adopted pursuant to the provisions of article five-A of the general city law, the statute of local governments or municipal home rule law governing the placement, construction or modification of wireless facilities; provided, however that an area or use variance shall be granted for a wireless facility upon a showing that:

(i) the wireless facility is a public necessity in that it is required to render the safe and adequate level of service required by the applicant; and

(ii) the placement, construction or modification of the wireless facility is necessary in order for the applicant to render the required

level of service in a manner that is technically and commercially reasonable.

§ 306. Applicability. Notwithstanding any provision of law to the contrary, the provisions of this article shall govern the placement, construction and modification of all wireless facilities in a municipality; whether such placement, construction or modification shall be upon state, county, municipality or privately owned lands or rights of way provided, however, no provision of this article shall be deemed to prohibit any municipality from enacting and implementing a local law which is consistent with the minimum requirements of this article, and imposes stricter or more restrictive standards on the siting of wireless facilities than those enacted in this article.

§ 4. This act shall take effect immediately, provided that section three of this act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all applications for building permits for wireless facilities submitted on or after the effective date of such section.