How Wireless Facility Zoning Gets Help from Recent Legislation

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In the brief time since the dawn of the internet, quickly followed by the introduction of smart phones, wireless service has become an essential utility. In the 1990s, cell towers were unwelcome new skyline fixtures benefitting a small but growing contingent of mobile phone users. Local governments hurried to draft zoning ordinances to restrict their location and design. The shift from cell phones to smart phones marked a steep incline in worldwide consumption of bandwidth for transmitting and receiving data. CTIA reports that Americans? use of mobile data nearly quadrupled from 2014 to 2017, representing 40x the volume of traffic in 2010. Wireless providers strive to keep up with consumer demand while the number of everyday applications requiring wireless service increases daily.

Meanwhile, local governments have struggled to keep zoning ordinances on pace with changing technology. Most recently, to accommodate data demand and prepare for 5G, the wireless industry has introduced the small cell facility or small cell, which uses a two-foot antenna that can be deployed almost anywhere in an urban environment. Contrary to the expectation of some local planning boards, small cells will not replace cell towers but will supplement and complement service from cell towers. CTIA reports that 323,448 small cells were in operation by the end of 2017. However, even with the installation of small cells to provide added data capacity to urban areas, dense population centers (e.g. suburban shopping centers), and areas with periodic spikes in population (e.g. music and sports venues), new cell towers continue to be needed to provide coverage to rural areas still hoping for adequate broadband internet and to increase capacity in areas with overtaxed towers.

Federal and state governments have adopted legislation in recent years to help the wireless industry overcome local zoning resistance and permitting delays. In 2012, Congress enacted the Spectrum Act. That statute, coupled with related federal regulations and declaratory rulings, allows wireless providers to add antennas to existing towers and to increase the height of existing structures within designated parameters without having to obtain legislative zoning approvals.

In 2017 and 2018, the Virginia General Assembly adopted legislation to enable the roll-out of small cells across the Commonwealth and to facilitate cell tower approvals. The 2017 Virginia legislation, often

referred to as SB 1282, introduced the concept of the small cell facility to the Virginia Code. Small cells, commonly deployed on utility poles and building rooftops, ?densify? wireless coverage in areas of high demand and offload usage from ?macro? sites such as cell towers and large building installations. Unlike cell towers, which can have a range of 2-5 miles or more, depending on height and obstructions, a small cell serves an area of only 500-1,000 feet. The industry quickly learned that, with thousands of small cells needed to handle the constant and increasing data demands from users streaming, posting, and chatting, the logical strategy to reduce leasing and permitting costs was to mount them on existing utility poles. However, not only did cities and towns have differing local laws regarding use of their rights-of-way, they charged widely varying permit fees. With its amendments to sections of Title 15.2 and Title 56, SB 1282 establishes a framework for permitting and constructing small cells in city and VDOT right-of-way. Local governments are prohibited from requiring wireless providers and wireless infrastructure providers to obtain special use permits that can take 3-9 months to obtain, assuming planning commissions and city councils can be convinced to grant them over the objections of a public concerned about ?visual impact.? The law also sets maximum permitting fees and approval deadlines.

The 2018 legislation (HB 1258) closed a loophole in the 2017 legislation by addressing new (or replacement) poles (up to 50? tall) in rights of way to accommodate small cells. In many cases, power poles must be replaced to provide sufficient strength and separation between power lines and small cells. Notably, the 2018 legislation also sets out new limitations on application requirements and reasons for denial for all other types (non-small cell) of wireless applications. For example, localities can no longer condition approval on a wireless provider?s giving the locality free space on the tower for county services or require propagation maps and other data that wireless providers consider proprietary.

The wireless industry moves at an extraordinary pace. Wireless providers are working behind the scenes to enter into franchise and master lease agreements and obtain zoning approvals so they can build the infrastructure necessary to provide faster speeds, reliable connections, and the services of the future. Federal and state legislation has been instrumental in helping them to obtain approvals more quickly and to reach agreements necessary for widespread installation of small cells.

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