



FAYETTE ALLIANCE

GROWING OUR CITY, PROMOTING OUR FARMS

603 W. Short St.
Lexington, KY 40508
(859) 281-1202
www.fayettealliance.com

Board Members

Jimmy Bell
Price Bell, Jr.
Todd Clark
Susan Enlow
Thomas Gaines
Greg Goodman
Gay Haggin VanMeter
Dave Harper
Stan Harvey
Barry Holmes
Patrick McGee
John Phillips
Tom Poskin
Sam Razor
Walt Robertson
Don Robinson
Sasha Sanan
David Switzer
Jack van Nagell
Griffin VanMeter
Holly Wiedemann

Community Partners

Bluegrass Conservancy
Dudley's on Short
FCNC
Fayette Co. Farm Bureau
KY Horse Park
KTA

Sustainers

Josephine Abercrombie
Helen Alexander
Ian Banwell
Antony Beck
Gary Bisantz
Darley
Fayette Co. Farm Bureau
Greg Goodman
Dave Harper
John Hendrickson
Sally Humphrey
Keeneland Association
KTA
Langley Properties Co.
Deirdre Lyons
Richard & Sue Ann Masson
Don Robinson
Bill Shively
Tom VanMeter
Derek Vaughan
Misdee Wrigley Miller

Executive Director

Knox van Nagell, J.D.

LFUCG Planning Commission
Government Center
200 East Main Street
Lexington, KY 40507

November 6th 2012

Dear Chairman Owens and Planning Commissioners,

My name is Knox van Nagell, and I am writing this letter on behalf of Fayette Alliance.

Founded in 2006, Fayette Alliance is a coalition of citizens dedicated to achieving sustainable growth in Lexington-Fayette County through land use advocacy, education, and promotion.

Through our efforts at government and beyond, Lexington can become the model for sustainable growth, by connecting and balancing its vibrant city with its unique and productive Bluegrass farmland.

In furtherance of this mission, Fayette Alliance respectfully requests that you deny CT 2012-1—An application for construction of a 199' cellular tower monopole in the Agricultural Rural (A-R Zone), at 1811 Iron Works Pike.

The proposal requires the subdivision of a non-conforming lot in the rural area, in violation of state and local land-use law. In the interests of responsible land-use planning and community welfare, CT 2012-1 should be denied.

Facts

New Cingular Wireless PCS, LLC (d/b/a AT&T Mobility) aims to construct a 199' cell-tower at 1811 Iron Works Pike—2.6 miles west of Russell Cave Road. The proposed tower will be located in the center of a 50 x 50 (2,500 square-foot) leased area on a 27-acre horse farm. The subject property is in the A-R zone, and located on a state scenic byway in the Rural Services Area. It is in close proximity to several major thoroughbred operations—several of which are under conservation easement with the PDR program and Bluegrass Conservancy.

The proposed cell tower will have a concrete base, enclosed by chain-link and plank-fences. As the tower is less than 200' in height, lighting is not required. It will comply with all FAA and FCC requirements.

An old gravel farm road will be paved to service the site. AT&T intends to place additional carriers on the tower, to improve current cellular service and alleviate the need for future towers in this portion of Fayette County.

The applicant is requesting two variances in connection to this proposal: a reduction of the 1:1 required height-to-yard ratio and a waiver of the



FAYETTE ALLIANCE

GROWING OUR CITY, PROMOTING OUR FARMS

required landscaping—due to the logistical nature of the farming operation and prevalence of old-growth trees on the subject property. Planning Staff is recommending postponement, to further assess the complex legal and development issues associated with the application.

Argument

Fayette Alliance respectfully requests that you deny CT 2012-1 for the following legal reasons:

1. The subject property is a non-conforming lot, and as such, cannot be subdivided in a manner that increases its nonconformance. If constructed, the cell tower will require an illegal subdivision of the farm—violating key provisions of the LFUCG Zoning Ordinance and Rural Land Management Plan.

The 27-acre parcel is located in the A-R zone, and is subject to a 40-acre minimum lot requirement, according to Section 8-1 (f) of the LFUCG Zoning Ordinance. The subject parcel is smaller than 40-acres, and therefore a “non conforming lot”.

To move forward, AT&T Mobility wishes to lease a 2,500 square-foot portion of the non-conforming lot to construct a cell-tower. Such a lease constitutes a “subdivision” of land according to state and local law:

KRS 100.111 (22) defines a “subdivision” to include “...the division of a parcel of land into two (2) or more lots or parcels; for the purpose, whether immediate or future, of sale, **LEASE**, or building development...”

Article 1 of the LFUCG Subdivision Regulations also state “ the division of a parcel of land into two or more lots or parcels for the purpose, whether immediate or future, of sale, **LEASE**, or building development...” is a subdivision of property.

In addition, KY Courts also find that divisions of land for leasing purposes are “subdivisions” that are subject to local subdivision regulations. *Sizemore v. Madison County Fiscal Court*, 58 S.W.3d 887 (KY App. 2000).

Therefore, it is apparent from KRS 100, our local Subdivision Regulations, and the KY Court of Appeals, that KY law requires a formal “**subdivision**” of the 27-acre farm to **lease the land needed for the AT&T cell-tower**.

This is a key point in the analysis, as **non-conforming lots may not be legally subdivided** under Article 4-5(a) of the LFUCG Zoning Ordinance:

“A non-conforming lot may not be further subdivided or consolidated, either in whole or in part, with another parcel in a manner that increases its non-conformity.”

Clearly, a subdivision of the 27-acre farm increases its non-conformance, as it constitutes an additional division of the subject property that already violates the 40-acre minimum rule of the A-R zone.

Article 25-5 (m) of the Zoning Ordinance governing cell towers expressly prohibits such a scenario:



FAYETTE ALLIANCE
GROWING OUR CITY, PROMOTING OUR FARMS

“ 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 of the zone in which it is located.”

Moreover, the proposed subdivision not only violates Articles 4 and 25 of the Zoning Ordinance, but also the Rural Land Management Plan’s recommendation that **existing, undeveloped tracts smaller than 40 acres be consolidated into larger parcels** to promote agricultural, non-urban uses in the Rural Service Area. The Rural Service Area Land Management Plan, Page III-6. To ignore this requirement, undermines the forty-acre minimum requirement of the A-R zone, and compromises the physical integrity of our agricultural “factory floor” in Fayette County.

Therefore, for the aforementioned reasons, the cell-tower proposal constitutes an illegal “subdivision” or intensification of a non-conforming lot in the Rural Services Area, and should be denied.

Lexington-Fayette County’s dedication to careful land-use planning, and in turn, its iconic rural landscape, make it one of the premier destinations in the world. Sound zoning laws are the building blocks of our community, and anchor our public welfare, economy and unparalleled quality of life.

We must uphold planning and zoning laws that serve Lexington so well, and disapprove an illegal subdivision of a non-conforming lot as proposed in CT 2012-1—An application for construction of a 199’ cellular tower monopole in the Agricultural Rural (A-R Zone). To do otherwise, sets a dangerous legal precedent that hangs our countywide land use authorities and Lexington-Fayette County in the balance.

Thank you for your consideration and dedication to responsible land use planning.

Respectfully,

Knox van Nagell