



Planning Brief

New Federal & Michigan Laws Impact Municipal Approval of Certain Wireless Facilities **Action May Be Necessary**

The following is an update to a special brief we sent out earlier this year.

When the "Middle Class Tax Relief and Job Creation Act of 2012" - HR 3630 - was approved in February 2012, it contained a little-known provision that impacts the local approval of certain Wireless Communications Facilities. The Act amends the federal telecommunications laws to limit the ability of local units of government to deny certain requests to modify existing wireless communications facilities or replace existing equipment on existing towers. In Michigan, P.A. 143 of 2012 provides additional restrictions for local regulation of wireless equipment.

Under Michigan's P.A. 143 of 2012:

1. Classification as a Permitted Use - Wireless Communications Equipment (WCE) - which does not include towers - is a permitted use and shall not be subject to special land use approval or other approval under the Michigan Zoning Enabling Act (MZEA) if 4 requirements are met: a) collocation on an existing support structure or in an existing equipment compound; b) existing wireless communications support structure or existing equipment compound is in compliance with the local unit of government's zoning ordinance or was approved by the appropriate body or official; c) the proposed collocation will not do any of the following: *i.* increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater, *ii.* Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation, *iii.* increase the area of the existing equipment compound to greater than 2,500 square feet; d) the proposed collocation complies with the terms and conditions of any previous final approval of the wireless communications support structure or equipment compound by the appropriate zoning body or official.

2. Approval Time Limits - WCE that meets a) and b) above but does not meet c) or d) above is a permitted use if it receives special land use approval under the following terms: 1) an application, site plan, and relevant information is submitted, 2) after submittal for a special land use, the approving body or official has 14 business days to notify the applicant of any missing data or information not provided in the application; otherwise the application shall be deemed to be complete. If notification of deficiencies is made, it stops the 14-day clock rather than resetting it. Thus, a quick review is advantageous so a local government has time to determine the sufficiency of any resubmitted application. Review fees charged by the local government must reflect actual, reasonable costs and may not exceed \$1,000. The approving body or official shall approve or deny the application not more than 60 days from the date it is considered complete. If no action is taken within 60 days, the application is deemed approved. When a new tower is proposed, an additional 30 days for review and action is permitted (90 days total).

3. Limits on Conditions - Approval of WCE that is a special land use because it meets a) and b) but not c) or d) under paragraph 1 may be made expressly conditional only on the WCE meeting other local ordinances (non-zoning) and federal and state laws. Approval of new towers does not have this limitation, meaning that conditions related to zoning and non-zoning laws can be part of a special land use approval.

We strongly encourage local governments to review their current wireless zoning provisions with planning and legal experts to ensure compliance with new federal and state requirements.

Focus on... **WIRELESS**