

2/29/2020

All,

I am requesting you send this out to your neighborhood, it's long but this is a complex issue. I address the flyer first and then provide all the pertinent background and documents that I think help people understand what's going on.

Louise Povlin

Vice Mayor, Town of Farragut

Per the flyer distributed to the Sweet Briar residents regarding 5G small cell tower deployment in Sweet Briar, there is an egregious misrepresentation of the facts. The Town of Farragut, through its elected representatives, planning commissioners and staff, HAS NOT worked with Verizon to “target” our neighborhoods for deployment of 5G small cell antennas. Further, I have worked hard to educate the residents of Farragut about the constraints placed on local governments with regard to small cell implementation and to inform them that Verizon was beginning to pursue 5G deployment in our residential areas.

To be clear, the Board, the planning commissioners and Town staff are incredibly frustrated that both state and federal laws completely undermine our ability to regulate small cell deployment to protect our residential areas. The planning commissioners approved 4 applications in residential areas in January because they have literally no choice. State and federal laws give the cell companies the authority to act as a public utility, and therefore the ability to access any public right of way. Had the Town voted the applications down, the Town would be in direct violation of state and federal laws. We have no authority to stop this – none. Voting the applications down would simply expose the town to litigation and a likely referral to the TN Attorney General’s office and we’d get overruled immediately.

The distortion of facts in this flyer is divisive. If ever there was a time for our community to be working together, residents, elected officials, and Town staff, it is now.

There is much background to understand so that our collective energies can be focused on the best opportunities to explore going forward. For those interested in attending meetings and speaking during public forum, or writing letters to the editor, please be informed. We’re well past the time for discussing this amongst ourselves. We need constructive paths to pursue, and they will require all hands on deck, if we have any chance of being effective.

Background

The Tennessee General Assembly passed legislation in 2018 that regulates the deployment of small cells in Tennessee communities. Specifically, on April 24, 2018, Governor Haslam signed the Competitive Wireless Broadband Investment, Deployment and Safety Act of 2018. This Act adopts a uniform framework applicable to all Tennessee local governments admittedly to facilitate and speed up the deployment of small cells in communities across the state. The Act includes a preemption statement (T.C.A. 13-24-404. Local option and local preemption), which severely limits a local government’s ability

to enforce any existing ordinances. In other words, the telecommunications ordinance the Board Mayor and Aldermen approved in April, 2017 was rendered unenforceable in most aspects. An ordinance which was written specifically to address the basic type of structures we, as a Town, would likely see in the near future in a manner that would lessen, to the greatest extent possible, impacts to residents and residential areas.

The following link provides a good analysis of the state law.

<https://www.mtas.tennessee.edu/system/files/knowledgebase/original/Small%20Cells%20Deployment%20Guidelines%20%28PC%20819%29%202018.pdf>

To add insult to injury, on September 26, 2018, the Federal Communications Commission (FCC) adopted orders referred to as the “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment.” These orders went into effect on January 14, 2019. The purpose of these orders was “to remove regulatory barriers that would unlawfully inhibit the deployment of infrastructure necessary to support these new services.” Further, the FCC has authority to preempt state laws through a provision in the Telecommunications Act of 1996 which is used as a basis for all of its regulatory authority. Also, 47 U.S.C. section 332(c)(7)(iv) provides as follows: No state or local government or instrumentality thereof may regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.

FCC 18-133 can be viewed at the following link.

<https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf>

There is a lawsuit in the Ninth Circuit Court of Appeals which challenges the lack of an update of the FCC’s radiofrequency guidelines. We are keeping a close eye on this litigation.

<https://www.nlc.org/sites/default/files/users/user56109/Montgomery%20County%20Brief%20on%20Merrits%20filed%206%2010%202019.pdf>

The FCC released a Resolution of Notice of Inquiry, Second Report and Order, Notice of Proposed Rulemaking and Memorandum Opinion and Order regarding Targeted Changes to the Commission’s Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields.

<https://docs.fcc.gov/public/attachments/FCC-19-126A1.pdf>

Dianne Feinstein has introduced the Restoring Local Control over Public Infrastructure Act 2019 in the Senate in June of 2019. It doesn’t appear to have gone anywhere.

<https://www.congress.gov/bill/116th-congress/senate-bill/2012>