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RECEIVED
JAN 11 2011
PUBLIC SERVICE
COMMISSION

January 10, 2011

Docket Clerk
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

Re: Complaint

Dear Docket Clerk:

Happy new year! Please find for filing the original and eleven (11) copies of a Complaint captioned **L. Glenn Shadoan and Sue Shadoan v. Bluegrass Wireless, LLC**. All parties have been served. Thanks very much.

Cordially,

Tom FitzGerald
Counsel for Complainants

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED
JAN 11 2011
PUBLIC SERVICE
COMMISSION

L. GLENN SHADOAN AND SUE SHADOAN

COMPLAINANTS

V.

COMPLAINT

BLUEGRASS WIRELESS, LLC,

RESPONDENT

* * * * *

Come the Complainants, L. Glenn and Sue Shadoan, by and through counsel, and for their complaint against Bluegrass Wireless, LLC (hereinafter Bluegrass Wireless) state as follows:

1. Complainants and Respondent Bluegrass Wireless were parties to a previous proceeding identified as In the Matter of: Application of Bluegrass Wireless, LLC for Issuance of A Certificate Of Public Convenience And Necessity To Construct A Cell Site (LILY II) In Rural Service Area #6 (Laurel) Of The Commonwealth of Kentucky, PSC Case No. 2005-00320.

2. During the briefing of the jurisdictional issue in that case, in a May 24, 2006 filing in PSC Case No. 2005-00320, the company asserted that the London and Laurel County Planning Commission had jurisdiction over cell tower applications since the Planning Commission had adopted general planning and zoning regulations in accordance with KRS Chapter 100 and “[t]he statutes do not require promulgation of cellular communications-specific regulations.” According to the company, “[n]o language in any of [the relevant statutes] mandates that the local planning unit adopt regulations specific to cellular communications systems before it may review applications[,]” and that “where a cellular provider proposes to build a cell site **in an area with a local planning unit**

that has adopted planning and zoning regulations, it *must* submit its application to that local planning unit so that the local planning unit may review the application in light of the planning and zoning regulations already in place.” (Emphasis added).¹

3. The Kentucky Supreme Court decision in the case of Kentucky Public Service Commission v. L. Glenn Shadoan, et al., 2009-SC-000053-DG has clarified the construction of KRS 100.987(1) and other statutes pertaining to the jurisdiction of the PSC over cellular antenna towers, holding that:

If the area of the proposed cellular tower has a planning unit that has adopted **planning and zoning** regulations, the jurisdiction over matters relating to cellular tower placement and construction rests with that planning commission, not the PSC, regardless of whether the planning unit has enacted regulations specifically relating to cellular towers. If there are no regulations specifically pertaining to cellular towers, as in the present case, the applicant will, however, still need to meet the general restrictions of the particular zone in which the proposed cell tower is to be constructed, e.g. permitted uses within the zone, height and setback requirements, etc.

Opinion, p. 10. (Emphasis added).

4. Under the Court’s construction of KRS 100.987, the London-Laurel County Planning Commission would have jurisdiction over the construction of the Bluegrass Wireless cellular antenna tower in question **only** if the area of the proposed (and now constructed) tower had zoning in place that covered the property in question.

5. In this case, there is no zoning in place, since the tower is in the county, and, according to the attached December 2, 2010 letter from the Building Official for the Department of Housing, Buildings and Construction, Division of Building Code Enforcement,

The City of London has adopted a zoning map which separates the City of London into separate zoning districts. **The zoning does not extend into the county. Laurel**

¹ There is no indication that the mistaken assumption by Bluegrass Wireless that zoning extended countywide in Laurel County was anything other than an innocent mistake of fact and law.

County does not have any zoning districts.

Id. (emphasis added). A copy of this letter is attached hereto as Exhibit A.

6. This statement is consistent with the language of the Development Ordinance for London and Laurel County, Kentucky that was adopted as Ordinance 917 on December 13, 1996 and is located in Ordinance Book 18 of the City of London, which states at Section 203 that:

On and after the date of adoption, these regulations shall govern land use, the subdivision and layout of land parcels, and structural development in London and Laurel County, as described below:

1. The regulations governing the use of land and structures (zoning) are applicable to the area within the corporate limits of the City of London as shown on the Official Zoning Map.
2. The regulations governing the subdivision and development of land are applicable to the areas within the corporate limits of the City of London, and throughout Laurel County.
3. The regulations governing the development of buildings (building, plumbing, electrical, and housing codes) are applicable to the area within the corporate boundaries of the City of London.

A copy of Section 203 is attached as Exhibit B.

7. Additionally, while the City of London adopted **An Ordinance Regulating The Siting Of Wireless Telecommunications Facilities** on October 26, 2007, that Ordinance applies only to a company “that proposes to construct an antenna tower for cellular telecommunications services or personal communications services **within the City of London[.]**” Ordinance 2007-14 Section 65.020(A). A copy of that provision is also attached as Exhibit C.

8. With the Supreme Court clarification that, while specific cellular tower zoning regulations are not necessary for jurisdiction to vest with the local planning unit, but that

general zoning regulations **are** necessary in order for that jurisdiction to vest with the planning unit, it is clear that the Public Service Commission retains jurisdiction over this tower due to its location in Laurel County outside of the corporate boundaries of the City of London.

9. The cellular tower in question, which has been constructed by Bluegrass Wireless without advance application to the Public Service Commission, is located adjacent to the Shadoan property, which is located at 550 Shackle Road in Laurel County, Kentucky. Attached as Exhibit D is a Google Map printout of the location of the Shadoan property at 550 Shackle Road, which becomes Hammock Road shortly after it crosses Fariston Road.

10. The Shadoan property and the property on which Bluegrass Wireless made and later withdrew application to the PSC, is (as can be seen from the portion of the Figure 7-5 of the London-Laurel County Comprehensive Plan) **outside** of the corporate boundaries of the City of London and thus, outside of the scope of the Development Code and zoning regulations adopted for the City of London.

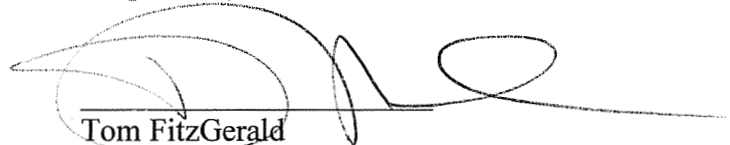
11. Given the lack of zoning of the property on which the cellular tower was constructed, the review of the siting of the Bluegrass Wireless cellular antenna tower falls within the jurisdiction of the Public Service Commission according to the analysis of the statute under the Supreme Court decision.

Prayer for Relief

Wherefore, Complainants respectfully request:

1. that the Public Service Commission assert jurisdiction over the tower in question and open a case before the Commission regarding the siting and construction of the cellular antenna tower;
2. that the Commission request that Bluegrass Wireless provide a complete application, and that a hearing be held thereon;
3. that Commission staff review that application for compliance with applicable statutes and regulations; and
4. that the Commission direct any removal or remedial actions that may appear warranted on the basis of that application and the agency review thereof, and any testimony or other evidence adduced at hearing.

Respectfully submitted,

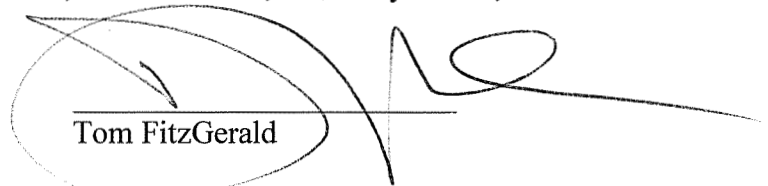


Tom FitzGerald
Counsel for L. Glenn and Sue Shadoan

January 10, 2011

Certification

I hereby certify that the original and 10 copies of this Complaint were mailed by priority mail for filing with the Docket Clerk, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601 this 10th day of January, 2011 and that a copy of the Complaint was served by first-class mail to Hon. Jeff Derouen, Executive Director of the Commission, to Hon. John Selent, Dinsmore and Shohl, 1400 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202 and to the registered agent for Bluegrass Wireless, LLC, Ron Smith, 2902 Ring Road, Elizabethtown, Kentucky 42701, this 10th day of January, 2011.



Tom FitzGerald

EXHIBIT A

December 2, 2010 Letter From London Building Official
Regarding Status of Planning and Zoning in City of London and
Laurel County, Kentucky

CITY OF LONDON
DEPARTMENT OF HOUSING, BUILDINGS & CONSTRUCTION
DIVISION OF BUILDING CODE ENFORCEMENT
501 SOUTH MAIN STREET
LONDON, KENTUCKY 40741
PHONE (606) 864-8401
FAX (606) 864-2892

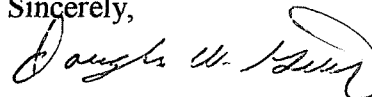
December 2, 2010

RE: Comprehensive Plan and Zoning in County

Dear Mr. L. Glenn Shadoan:

The City of London has adopted a Zoning Map which separates the City of London into separate zoning districts. The zoning does not extend into the county. Laurel County does not have any zoning districts. Laurel County does have a Planning Commission which requires a Comprehensive Plan. The Comprehensive Plan is kept at the Office of the Planning Commission located at 501 South Main Street, London, Kentucky. The Comprehensive Plan is for the City of London and Laurel County.

Sincerely,



Douglas W. Gilbert
Building Official

EXHIBIT B

Section 203 Of The Development Ordinance For London
And Laurel County, Kentucky
Ordinance 917 (December 13, 1996)

DEVELOPMENT ORDINANCE

**LONDON
AND
LAUREL COUNTY,
KENTUCKY**

LONDON & LAUREL COUNTY JOINT PLANNING COMMISSION
(Includes revisions through September 17, 1996)

ARTICLE II GENERAL PROVISIONS

200 TITLE

This ordinance shall be known and may be cited to as the "Development Ordinance for the City of London, and Laurel County, Kentucky."

201 AUTHORITY

These regulations are adopted under the authority granted in Kentucky Revised Statutes (K.R.S.) Chapter 100.

202 PURPOSE

The general purpose of this ordinance is to regulate the use of land and structures, the subdivision and development of land, and the development of structures within the City of London and Laurel County (as applicable), all for the purpose of protecting the public health, safety, comfort, and general welfare.

Article III provides for the administration of this ordinance, defining the powers and duties of the governmental bodies and individuals as provided hereafter, and prescribing penalties for the violation of the provisions in this ordinance or any amendment thereto.

Article IV divides the city into zones and districts, encouraging, regulating, and restricting therein the location, construction, reconstruction, alteration, and use of structures and land; promoting the orderly development of residential, business, industrial, recreation, and public areas; providing for adequate light, air, and convenience of access to property by regulating the use of land and buildings and the bulk of structures in relationship to surrounding properties; limiting congestion in the public right-of-ways; providing the compatibility of different land uses and the most appropriate use of land.

Article V deals with the subdivision of land and the development of streets, utilities, and other physical improvements needed for development. Land subdivision is often the first step in the process of community development. Once land has been divided into streets, blocks, lots, and open spaces, a pattern has been established which usually determines how well community needs for residential, commercial, industrial, and public land will be met. It also determines to a great extent how well the community will be able to meet these needs.

After land has been subdivided and publicly recorded, it is very difficult and costly

to correct defects and deficiencies in the subdivision layout and in the facilities provided. In addition, a subdivided area eventually becomes a public responsibility in that its streets must be maintained and its residents must be provided with a variety of public services. In reality, the welfare of the entire community is affected in many respects. The quality of the community is to a large degree a reflection of the quality of individual subdivision developments, since it is an accumulation of subdivisions over a period of time. The guidance of land division and development in harmony with community goals and objectives is therefore a matter of serious public concern. It is in the interest of the public, the developer, and the future property owners that subdivisions be conceived, designed, and developed in accordance with sound rules and proper standards.

The regulations contained in Article V are designed to provide for the harmonious development of the subdivided area; for a coordinated layout; for the proper arrangement of streets; for adequate and convenient open spaces; for traffic, utilities, recreation, light, air, and access of firefighting equipment; for avoidance of population congestion through requirements for minimum lot widths and lot areas; for adequate provision of water, drainage, sewer, and other sanitary facilities; and for reducing flood damage potentials to the greatest extent possible.

Article VI provides a summary of the primary codes that guide structural development in the community. The overall purpose of the codes program is to insure that all buildings are constructed in such a way as to protect the health, safety, and general welfare of the occupants. Included among the code programs are building codes, electrical codes, plumbing codes, and housing codes.

Article VII defines the most important terms included in the ordinance. In a period of increasing legal considerations, it is important that terms be clearly defined and easily understood by officials, developers, and others who use this ordinance.

203 JURISDICTION

On and after the date of adoption, these regulations shall govern land use, the subdivision and layout of land parcels, and structural development in London and Laurel County, as described below:

1. The regulations governing the use of land and structures (zoning) are applicable to the area within the corporate limits of the City of London as shown on the Official Zoning Map.
2. The regulations governing the subdivision and development of land are applicable to the areas within the corporate limits of the City of London, and throughout Laurel County.
3. The regulations governing the development of buildings (building,

plumbing, electrical, and housing codes) are applicable to the area within the corporate boundaries of the City of London.

204 MINIMUM REQUIREMENTS

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and general welfare. The Planning Commission may require standards above the minimum contained herein whenever it finds that the protection of public health, safety, and welfare justify such increases.

205 CONSISTENCY WITH OTHER PROVISIONS

Whenever there is a discrepancy between minimum standards set forth in these regulations and those of other lawfully adopted rules, regulations, resolutions, or ordinances, the most restrictive or highest standard shall apply.

206 SEPARABILITY AND SEVERABILITY

Should any section or provisions of these regulations be, for any reason, held void or invalid, it shall not affect the validity of any other section or provision thereof which is not itself void or invalid.

207 RELATION TO COMPREHENSIVE PLAN

The implementation of these regulations is closely related to the attainment of goals and objectives contained in the London/Laurel County Comprehensive Plan.

208 REPEAL OF CONFLICTING ORDINANCES

All ordinances or parts of ordinances in conflict with this ordinance or inconsistent with the provisions of this ordinance are hereby repealed to the extent necessary to give this ordinance full force and effect.

209 EFFECTIVE DATE

This ordinance shall become effective from and after the date of its approval and adoption.

DATE December 13, 1996

EXHIBIT C

Sections 65.001 – 65.020 Of An Ordinance Regulating the
Siting of Wireless Telecommunications Facilities, City of
London Ordinance 2007-14, October 26, 2007.

COMMONWEALTH OF KENTUCKY
CITY OF LONDON, KENTUCKY
ORDINANCE NO. 2007-14

AN ORDINANCE REGULATING THE SITING OF WIRELESS TELECOMMUNICATIONS
FACILITIES

Be it ordained by the City of London, Kentucky:

Chapter 65 in the City of London Code of Ordinances sections 65.001 through (and including) section 65.025 are hereby repealed.

ARTICLE I. GENERAL PROVISIONS

§ 65.001 PURPOSE AND LEGISLATIVE INTENT

The Telecommunications Act of 1996 affirmed the City of London's authority concerning the placement, construction and modification of wireless telecommunications facilities, which authority is limited by state legislation. In order to ensure that the placement, construction or modification of wireless telecommunications facilities is consistent with the applicable law, the city is adopting a single, comprehensive wireless telecommunications facilities application and permit process. The intent of this is, to the extent permitted by law, to minimize the negative impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities and protect the health, safety and welfare of the city.

§ 65.002 TITLE

This chapter shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance in the City of London Code of Ordinances.

§ 65.003 SEVERABILITY

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, part, section, subsection, or other portion or the proscribed application thereof shall be severable and the remaining provisions of this chapter and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

§ 65.004 DEFINITIONS

For the purpose of this chapter the following definitions shall apply unless the context indicates or clearly requires a different meaning.

Ordinance No. 2007-14 continued

“ANTENNAS OR RELATED EQUIPMENT.” Transmitting, receiving or other equipment -used to support cellular telecommunications service or personal communications service. This definition does not include towers.

“CELLULAR ANTENNA TOWER.” A tower constructed for or an existing facility that has been adapted for the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services.

“CELLULAR TELECOMMUNICATION SERVICE.” A retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.

“CO-LOCATION.” Locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower.

“PERSONAL COMMUNICATION SERVICE.” This phrase has the meaning as defined in 47 U.S.C. 332(c);

“UNIFORM APPLICATION.” An application to construct a cellular antenna tower submitted to the Planning Commission in conformity with KRS 100.985 (3) and (5).

“UTILITY.” This term has the meaning as defined in KRS 278.010(3).

ARTICLE II APPLICATION AND REVIEW PROCESS

§ 65.020 APPLICATION PROCESS

(A) Every utility or a company that is engaged in the business of providing the required infrastructure to a utility that proposes to construct an antenna tower for cellular telecommunications services or personal communications services within the City of London must:

(1) Submit a copy of the applicant’s completed uniform application to construct an antenna tower for cellular or personal telecommunications services to the Planning Commission. The uniform application shall:

(a) Include a grid map that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes all of the planning unit’s jurisdiction and a one-half (1/2) mile area outside of the boundaries of the planning unit’s jurisdiction, if that area contains either existing or proposed construction sites for cellular antenna towers;

(b) Include in any contract with an owner of property upon which a

EXHIBIT D

Google maps printout showing location of Shadoan property at 550 Shackle Road, Laurel County, Kentucky



Address **550 Shackle Rd**
London, KY 40744

Get Google Maps on your phone
Text the word "GMAPS" to 466453


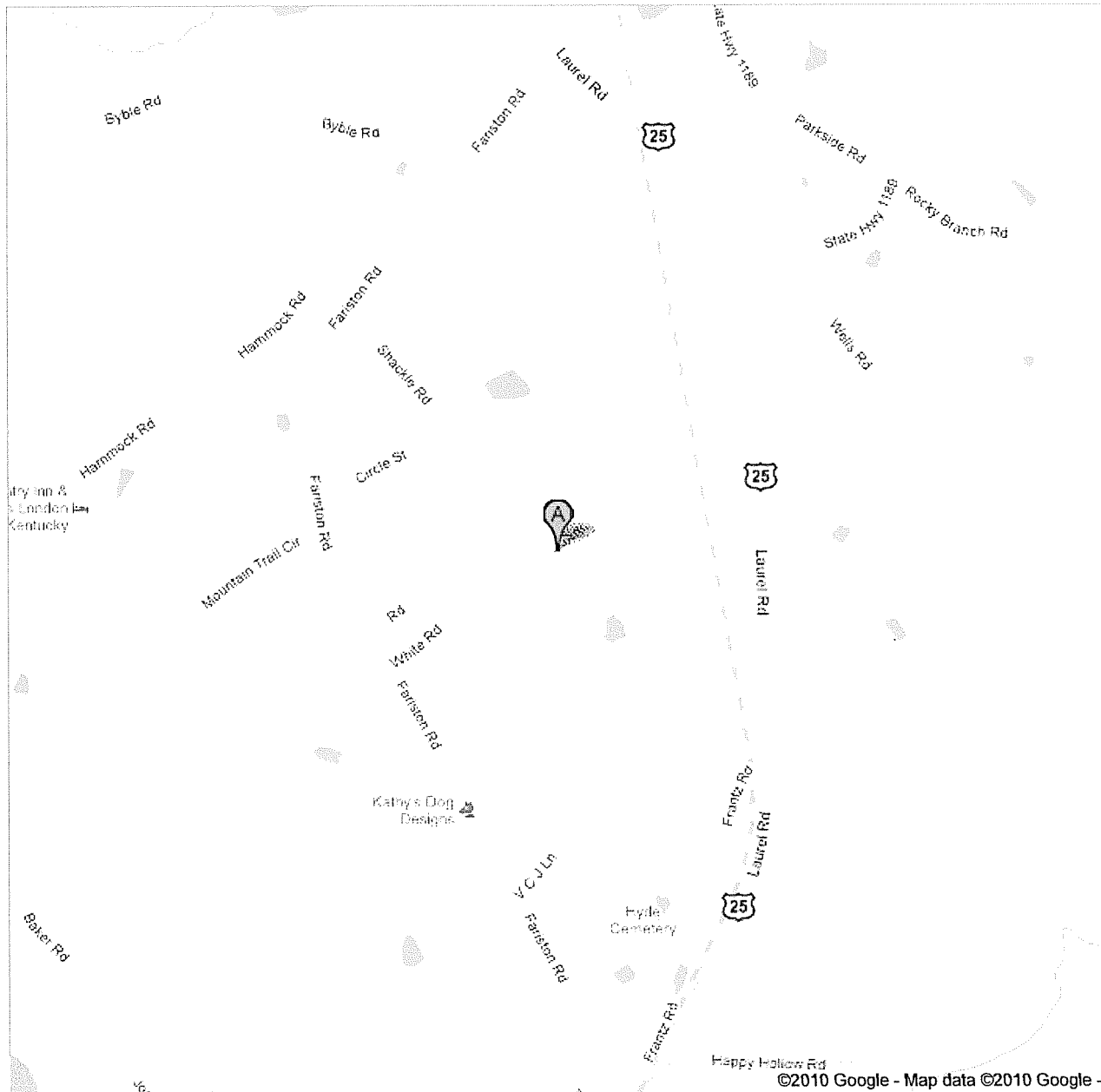
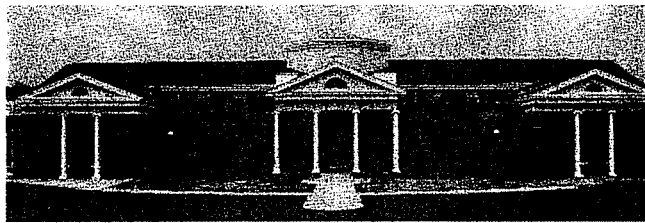



EXHIBIT E

Figure 7-5 From the 2007 London-Laurel County
Comprehensive Plan Reflecting The Boundary Of The City
of London And Including A Circle and Arrow Identifying
The Location of Shackle Road Outside of That Boundary

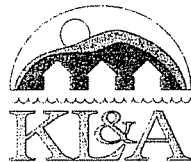
London-Laurel County

C o m p r e h e n s i v e
P l a n



Prepared For:
London-Laurel County Joint
Planning Commission
501 S. Main Street
London, KY 40741

Prepared By:

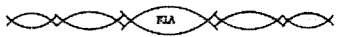


Kriss Lowry & Associates, Inc.
227 South Rays Fork Road
Corinth, KY 41010-3027
www.krisslowry.com

A p p r o v e d
November 13th
2 0 0 7

FIGURE 7-5

LAUREL COUNTY
BICYCLE ROUTES &
SCENIC BYWAYS



2007
Comprehensive Plan
City of London &
Laurel County, Kentucky

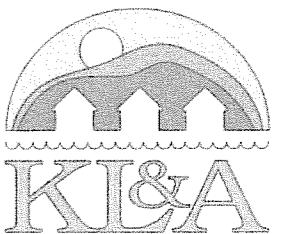
LEGEND

- Wilderness Road Heritage Highway
- Bluegrass Tour Bike Route
- Local Roads
- I - 75
- State Routes
- Hal Rogers Pkwy
- US Routes
- Levi Jackson State Park
- London

MAP INFORMATION

Data Sources:
Kentucky Transportation Cabinet (KYTC)
US Census Tiger LINE data (ESRI Online)

Cartography by:
Dottie Batte



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227 South Rays Fork Rd
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