

## RESOLUTION

WHEREAS, the Town Board of the Town of Milford has met and considered the adoption of a local law governing Telecommunication Facilities, and conducted a public hearing thereon on February 15, 2001, as required by General Municipal Law §20,

NOW, THEREFORE, BE IT RESOLVED, that the law as hereinafter set forth, is hereby adopted as Local Law Number One (1) of 2001, entitled "Telecommunication Facilities", and the same shall be entered in the minutes of the Town Board.

### TOWN OF MILFORD LOCAL LAW NUMBER ONE (1) OF 2001.

#### TELECOMMUNICATION FACILITIES

##### 1. Enabling Authority

The Planning Board is hereby authorized to review and approve, approve with modifications, or disapprove special use permits and site plans consistent with Town Law §274a and 274-b.

##### 2. Legislative Intent

The Town of Milford recognizes the increased demand for wireless communications transmission facilities and the need for the services they provide. Often these facilities require the construction of a communications tower. No presumption should be derived that this use is harmonious with the general zoning plan and will not adversely affect neighborhood character. The Town will endeavor to assimilate needed telecommunications facilities into the environment in such a way that they are not a hazard or an eyesore where they are located. The intent of this local law is to protect the town's interest in siting telecommunications facilities in a manner consistent with sound land use planning by:

- a. Minimizing visual effects of towers through careful visual impact assessment, design, siting and appropriate landscaping/screening;
- b. Avoiding potential damage to adjacent properties from tower failure or falling debris through engineering and careful siting of tower structures; and
- c. Maximizing use of any new or existing tower and encouraging the use of existing building and/or structures to minimize the number of towers needed;

while also allowing wireless service providers to meet their technological and service objectives for the benefit of the public.

### 3. Definitions

- a. TELECOMMUNICATIONS FACILITIES: Towers and/or Antennas and Accessory Structures used in connection with the provision of cellular telephone service, personal communications services (PCS), paging services, radio and television broadcast services and similar broadcast services.
- b. TOWER: A structure designed to support Antennas. It includes, without limit, free-standing towers, guyed towers, monopoles and similar structures which employ camouflage technology.
- c. ANTENNA: A system of electrical conductors that transmit or receive radio frequency signals. Such signals shall include but not be limited to radio, radio-navigation, television, cellular, paging, PCS and microwave communications.
- d. ACCESSORY STRUCTURE: An accessory facility or structure serving or being used in conjunction with a Telecommunications Facility or Tower and located on the same lot as the Telecommunications Facility or Tower. Examples of such structures include utility or transmission equipment, storage sheds or cabinets.

- e. CO-LOCATED ANTENNAS: Telecommunications facilities which utilize existing Towers, buildings or other structures for placement of Antenna(s) and which do not require construction of a new Tower.
- f. FCC: The United States Federal Communications Commission.

#### 4. Application of Special Permit Regulations

- a. No telecommunication facility, except those approved prior to the effective date of this law, shall be used unless in conformity with these regulations. No telecommunication facility shall hereafter be erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a telecommunication facility unless in conformity with these regulations.
- b. These regulations shall apply to all property within the following districts: Residential/Agricultural (RA), and Manufacturing/Industrial. Telecommunications facilities shall be specifically excluded from all other zones, and on any property within 1500 feet of NY State Routes 7 and 28. In the Residential (R) and Residential/Agricultural/Commercial (RAC) districts, only co-location of antennas on existing tall structures is allowed.
- c. Applicants proposing to co-locate on a previously approved telecommunication facility do not require a special permit, and will be permitted upon the issuance of a land use permit, providing the height of the existing facility is not increased.
- d. Where these regulations conflict with other laws and regulations of the Town, the more restrictive shall apply, except for tower height restrictions which are governed by these special use standards.

#### 5. Shared Use of Existing Tall Structures

At all times, shared use of existing tall structures (for example, municipal water towers, multi-story buildings, church steeples, farm silos, etc.) and existing

or approved towers, shall be preferred to the construction of new towers. Antenna arrays shall not extend beyond the original height of any building or structure by more than 15 feet.

- a. An applicant proposing to share use of an existing tall structure (other than existing telecommunications facilities) shall be required to submit:
  1. a completed application for a special permit.
  2. documentation of intent to allow shared use from the owner of the existing structure.
  3. a site plan as described in the Town of Milford Zoning Ordinance. The site plan shall show all existing and proposed structures and improvements including roads, buildings, guy wires and anchors, parking and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing structure shall be indicated on the site plan.
  4. a qualified engineer's report certifying that the proposed shared use shall not diminish the structural integrity and safety of the existing tall structure, and explaining what modifications, if any, will be required in order to certify to the above.
  5. a completed short EAF and a completed visual EAF.
  6. a copy of its Federal Communications Commission (FCC) license.
- b. If an applicant proposing to share use of an existing tall structure submits complete and satisfactory documentation in accordance with section 5a above, and if modifications indicated according to section 5a are deemed insignificant by the Planning Board, and after the Planning Board conducts a public hearing and complies with all SEQRA provisions, the board shall grant a

special permit without further review under this section. If the Board determines that any modifications indicated according to section 5a are significant, it may require further review according to sections 10 through 23 below.

## **6. New Telecommunications Facility**

a. The Planning Board may consider a new telecommunications facility when the applicant demonstrates that shared use of existing tall structures and existing or approved towers is impractical. An applicant shall be required to present an adequate report inventorying all existing tall structures and existing approved towers within a reasonable distance of the proposed site. This distance shall be determined by the board in consultation with the applicant. The report shall outline opportunities for shared use of these existing facilities as an alternative to a proposed new tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each existing tall structure and existing or approved tower as well as documentation of the physical, technical and/or financial reasons why shared usage is not practical in each case. Written requests for shared use and responses shall be provided by the applicant.

b. An applicant proposing to construct a telecommunications facility shall present documentary evidence regarding the need for cellular antennas within the Town of Milford. This information shall identify the cellular network layout and coverage areas to demonstrate the need for such equipment within the township.

c. To the greatest extent possible all new telecommunications towers in the Town of Milford shall be located on the valley walls and away from the valley floors. Applicants who propose a telecommunications tower on the valley floor must provide documentation of why, for physical and/or technical reasons, the tower cannot be sited off the valley floor.

d. All proposed new telecommunications facilities shall require site plan and special permit review.

## **7. Shared Usage of an Existing Tower Site for Placement of a New Tower**

Where shared use of existing tall structures and existing or approved towers is found to be impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with section 6a. above. Any proposals for a new tower on an existing tower site shall also be subject to the requirements of sections 9 through 23 below.

#### **8. New Tower at a New Location**

The planning board may consider a new telecommunications tower on a site not previously developed with an existing tower when the applicant demonstrates that shared use of existing tall structures, and existing or approved towers, is impractical, and submits a report as described in subsection 6a above; and when the board determines that shared use of an existing tower site for a new tower is undesirable based upon the applicant's investigation in accordance with section 7. Any proposal for a new telecommunication tower shall also be subject to the requirements of sections 9 through 23 below.

#### **9. New Towers: Future Shared Use**

The applicant shall design a proposed new telecommunications tower to accommodate future demand for reception and transmitting facilities. The applicant shall submit to the board a letter of intent committing the owner of the proposed new tower, and his/her successors in interest, to negotiate in good faith for shared use of the proposed tower by other telecommunications providers in the future. This letter shall be filed with the Zoning Enforcement Officer prior to issuance of the land use permit. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special permit. The letter shall commit the new tower owner and his/her successors in interest to:

- a. Respond within 90 days to a request for information from a potential shared-use applicant.
- b. Negotiate in good faith concerning future requests for shared use on the new tower by other telecommunications providers.

- c. Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges.

**10. Site Plan Review: Submission Requirements**

- a. An applicant shall be required to submit a site plan in accordance with Article 12 of the Town of Milford Zoning Ordinance. The site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire and anchors, antennae, parking and landscaping, and shall include grading plans for new facilities and roads. The site plan shall also include, but shall not be limited to:
  - 1. The exact location of the proposed telecommunications facility and/or tower;
  - 2. The maximum height of the proposed telecommunications facility and/or tower;
  - 3. A detail of tower type (monopole, guyed, free-standing or other);
  - 4. The location, type and intensity of any lighting on the tower;
  - 5. Property boundaries and names of adjacent land owners;
  - 6. The location of all other structures on the property and all structures on any adjacent property within ten (10) feet of the property lines, together with the distance of those structures to any proposed tower;
  - 7. The location, nature and extent of any proposed fencing, landscaping and/or screening; and
  - 8. The location and nature of proposed utility easements and access road, if applicable.
- b. Supporting Documentation: The applicant shall submit a completed short EAF, a completed Visual Environmental Assessment Form (Visual EAF

Addendum), and documentation on the proposed intent and capacity of use as well as justification for the height of any tower and justification for any clearing required. The applicant shall also submit a copy of its Federal Communications Commission (FCC) license.

- c. The applicant shall submit to the board the full, legal name of the applicant, its address of its place of business, and telephone number at this address. If the applicant is not the owner of the property, the name and address of the property owner shall be submitted, as well as a copy of the lease or rental agreement. If the telecommunications facility is sold, the planning board must be notified of the name and address of the new owner.

#### **11. Lot Size and Setbacks**

All proposed telecommunication towers and accessory structures shall be located on a single parcel and shall be setback from abutting parcels and street lines a distance sufficient to substantially contain on site all ice-fall or debris from tower failure and preserve the privacy of any adjoining residential properties.

- a. Lot size of parcels containing a tower shall be determined by the amount of land required to meet the setback requirements. If the land is to be leased the entire area required shall be leased from a single parcel unless the planning board determines that this provision may be waived.
- b. Telecommunication towers shall comply with all existing setback requirements of the underlying zoning district, or shall be located with a minimum setback from any property line equal to 200 feet or 2 1/2 times the height of the tower, whichever is greater. Accessory structures shall comply with the minimum setback requirements in the underlying zoning district.
- c. No wireless telecommunications tower shall be erected within 1,000 feet of any of the following:

1. Any residence not located on the subject property.
2. Public buildings, including but not limited to municipal buildings, public and private schools, libraries, senior citizen centers, public parks and playgrounds, and houses of worship.
3. Any residential building lot for which final subdivision approval has been received.

## **12. Visual Impact Assessment**

The board shall require the applicant to undertake a visual impact assessment which may include:

- a. A "Zone of Visibility" map shall be provided in order to determine the locations where the tower may be seen.
- b. Applicants shall submit a photo simulation of "before and after" views from key viewpoints both inside and outside the town, including but not limited to: state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The board shall determine the appropriate key sites at a pre-submission conference with the applicant.
- c. Assessment of alternative tower designs and color schemes, as described in section 13 below.
- d. Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

## **13. New Tower Design**

Alternative designs shall be considered for new towers, including lattice and single pole structures. The design of a proposed new tower shall comply with the following:

- a. Any new tower shall be designed to accommodate future shared use by other telecommunications providers.
- b. The planning board may require painting and/or camouflage of a tower to minimize its degree of visual impact.
- c. The maximum height of any new tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state and/or federal law and/or regulation. The planning board, at its discretion, may modify this requirement if the applicant can justify the need to exceed this height limitation.
- d. The board may request a review of the application by a qualified engineer in order to evaluate the need for, and the design of, any new tower. The cost of this review shall be borne by the applicant.
- e. Accessory structures shall maximize the use of building materials, colors and textures designed to blend with the natural surroundings.
- f. No portion of any tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to: company name, phone numbers, banners and streamers.
- g. The applicant shall, to the greatest extent possible, adhere to the U.S. Fish & Wildlife Service "Guidelines for Recommendations On Communications Tower Siting, Construction, Operation and Decommissioning".

#### **14. Existing Vegetation**

Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding four (4) inches in diameter, (measured at a height of four (4) feet off the ground), shall take place prior to the approval of the special permit.

#### **15. Screening**

Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where a site abuts a residential property or public property, including streets, screening shall be required.

#### **16. Access**

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

#### **17. Parking**

Parking shall be provided to assure adequate emergency and service access. The board shall determine the number of required spaces based upon a recommendation from the applicant. No parking spaces shall be located in any required yard.

#### **18. Fencing**

The tower and any accessory structures shall be adequately enclosed by a fence, the design of which shall be approved by the board. This requirement may be waived by the board if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility and/or public safety.

#### **19. Fees**

Site plan, special permit and land usage permit fees are as set by the Town Board, and may be changed from time to time.

#### **20. Authority to Impose Conditions**

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly

related to and incidental to the proposed telecommunications tower special use or site plan.

- a. Removal: The applicant shall submit to the planning board a letter of intent committing the tower owner, and his/her successors in interest, to notify the Zoning Enforcement Officer within thirty (30) days of the discontinuance of use of the tower. This letter shall be filed with the Zoning Enforcement Officer prior to issuance of a land use permit (assuming the telecommunication tower is approved according to this section). Obsolete or unused towers and accessory structures shall be removed from any site within four (4) months of such notification. Failure to notify and/or remove the obsolete or unused tower in accordance with these regulations, shall be a violation of this chapter, and shall be punishable according to Section 19.b. Failure of the tower owner to remove the unused tower may result in the dismantling of the tower at the owner's expense. The planning board may request a bond from the telecommunications company to ensure the removal of a damaged or abandoned telecommunications facility.
- b. Any person, partnership, association, joint venture or corporation who violates any provision of this local law shall be guilty of an offense against this local law and subject to a fine of not more than one thousand (1000) dollars or to imprisonment for a period of not more than fifteen (15) days or both fine and imprisonment. When a violation of any of the provisions of this local law is continuous, each week or portion thereof shall constitute a separate and distinct violation.

## **21. Inter-municipal Notification for New Towers**

In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that an existing tall structure or existing telecommunications tower in a neighboring municipality be considered for shared use, and to assist in the continued development of county 911 services, the planning board shall require that:

- a. An applicant who proposes a new telecommunication tower shall notify in writing the legislative body of each municipality that borders the Town of Milford, the Otsego County Planning Board, and the Director of Otsego County Emergency Services. Notification shall include the exact location of the proposed tower, and a general description of the project including, but not limited to, the height of the tower and its capacity for future shared use.
- b. Documentation of this notification shall be submitted to the planning board at the time of application.

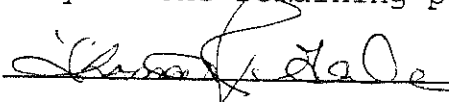
**22. Notification of Nearby Landowners**

The applicant shall be required to mail notice of the public hearing directly to all landowners whose property is located within five hundred (500) feet of the property line of the parcel on which a new tower is proposed. Notice shall also be mailed to the administrator of any state of federal parklands from which the proposed tower would be visible if constructed. Notification, in all cases, shall be made by certified mail, with return receipt requested. Documentation of this notification shall be submitted to the planning board prior to the public hearing.

**23. Severability**

If any section, sentence, clause or phrase of the Law is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Law.

Supervisor

  
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Councilman

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Resolution Adopted

Dated: \_\_\_\_\_