

TOWN OF GREEN BAY PLANNING COMMISSION MINUTES

DATE: 10/21/08

TIME: 7:08 p.m.

PRESENT: Dawn Goodman, Gary Jonet, Mike Gilson, Bob Boncher, John Metzler, Bob Geyer

ABSENT: Dianne Jacobs (this is an excused absence so she could attend the Fire Department meeting).

*Others Present: Denise and Don De Peau.

APPROVAL OF LAST MEETING'S MINUTES: John Metzler opened the meeting and noted that the meeting notice was properly posted in 3 places. The minutes from the 9/16/08 Planning Commission Meeting were reviewed.

MOTION MADE BY: Bob Geyer to accept the minutes.

MOTION 2NDED BY: Gary Jonet

AYES: 6 **NAYS:** None **MOTION CARRIED.**

ISSUE #1: Don and Denise De Peau requesting a Zoning Amendment (Request #631-J) (7:10-7:25 p.m.).

Planning Commission members clarified with Don where the parcel in question was located and the particulars of the plan. Don explained that the house on the property has been sold to their nephew and the other parcel being broken off is being sold separately to a different party. Gary Jonet noted that some of the details need to be defined and clarified with Brown County. Don De Peau agreed.

MOTION MADE BY Bob Geyer to recommend to the Town Board that there be a Zoning Amendment (#631-J) to rezone from A-1 Agriculture to E-R Estate Residential and to accept the CSM, which is Part of the NE ¼ of the SE ¼ of Section 34, T25N-R22E, Town of Green Bay, Brown County, WI. Located at 4191 Gravel Pit Road. Parcel contains 231, 174 square feet/(5.31 acres) of land. Time and date were set for a hearing before the Town Board on Tuesday, November 11, 2008 at 6:20 pm.

MOTION 2NDED BY: Gary Jonet.

AYES: 6 **NAYS:** None. **MOTION CARRIED.**

ISSUE #2: Change to Zoning Ordinance Wording regarding Towers. (7:26-8:07 pm).

Dawn Goodman passed out packets of information that she researched and compiled for the Planning Commission (per a request to do so by Town Chairman Lee DeChamps). The information included tower policies and tower zoning information from various communities in Wisconsin including: Door County, Village of Suamico, Town of Ledgeview; and City of Madison. She also included information from the FCC and the State of Maine, which utilized Wisconsin laws formulating their regulations. The Planning Commission reviewed the information at length. Dawn suggested that the Planning Commission consider developing a Zoning Ordinance on Towers, since this is a growing consideration and source of potential revenue in many communities due to cell phone towers and other communication towers going up. A number of Planning Commission members noted that not much on this issue is addressed in the current town zoning and that much re-writing and/or additions to definitions could potentially be involved depending on how in depth we decide to go. Gary Jonet suggested that at present, the situation could be adequately addressed by adding the following terminology to all related zoning: "and Commercial Telecommunication Towers".

MOTION MADE BY: Gary Jonet to recommend an Amendment to the Zoning (#629-J) to the Town Board which would add the following words to all related Town zoning: "and Commercial Telecommunication Towers", with a hearing on the matter set for Tuesday, November 11, 2008 at 6:25 pm.

MOTION 2NDED BY: Bob Geyer.

AYES: 6 **NAYS:** None. **MOTION CARRIED.**

Any Other Business: There was no other business to address.

DATE & TIME OF NEXT MEETING WERE SET: Tuesday, November 18, 2008 at 7:00 p.m.

MOTION to Adjourn Made by: Bob Boncher. Mike Gilson 2nded.

AYES: 6 **NAYS:** None **MOTION CARRIED.**

TIME OF ADJOURNMENT: 8:07 p.m.

Planning Commission Chairman

Planning Commission Secretary

Addendum 1 to 10/21/08 Planning Commission Meeting Minutes

TOWER INFORMATION FROM LOCAL AND PERTINENT COMMUNITIES AS OF 10/21/8

1. This is from Door County's zoning ordinance:

(<http://map.co.door.wi.us/planning/ORDINANCE/TOWER/TOWER%20ORDINANCE%20-%20AUGUST%202007.pdf>):

DEFINITIONS (Useful for our purposes):

Alternative Support Structure: Clock towers, steeples, silos, light poles, water towers, electric transmission towers, wind turbine towers, buildings, or other structures that may support antennas.

Antenna: Any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves when such system is either external to or attached to a structure. Antennas shall include devices having active or passive elements extending in any direction, and directional beam type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna.

Camouflaged Tower: Any telecommunications tower that due to design or appearance entirely hides, obscures, or conceals the presence of the tower and antennas.

Guyed Tower: A telecommunications tower that is supported in whole or in part by guy wires and ground anchors or other means of support besides the superstructure of the tower itself.

Height (of the Telecommunications Tower): The distance measured from the original grade at the base of the tower to the highest point of the tower, including appurtenances, such as attached antennas, protection devices (e.g. lightning rods), and lights.

Lattice Tower: A telecommunications tower that consists of vertical and horizontal supports and crossed metal braces.

Monopole: A telecommunications tower of a single pole design.

Provider: Any company that builds and operates telecommunications facilities and services, whether or not licensed by the Federal Communications Commission.

Telecommunications Tower: Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including camouflaged towers, lattice towers, guyed towers, or monopole towers.

Telecommunications Tower Support Facility: Equipment buildings, utilities, and equipment enclosures.

EXEMPTIONS (Useful for our purposes):

- (1) Structures for the support of television antennas and other receive-only antennas. The antenna use shall constitute ancillary or secondary use, not primary use, of the property.
- (2) Structures for the support of amateur radio antennas that are owned and/or operated by a federally licensed amateur radio operator, provided that the antenna use constitutes ancillary or secondary use, not primary use, of the property.
- (3) Structures for the support of mobile antennas for services providing public information coverage of news events or of a temporary or emergency nature.
- (4) Telecommunications towers mounted on the ground that do not exceed 75 feet in height.
- (5) Telecommunications towers mounted on buildings that do not exceed 25 feet above the highest part of the building to which they are attached.
- (6) Public safety towers owned and operated by federal, state, county, or other local municipal governments.

PURPOSE (Useful for our purposes):

The purpose of this Ordinance is to provide a uniform and comprehensive set of standards for the development and installation of telecommunications towers and related facilities. The regulations contained herein are designed to protect and promote public health, safety, community welfare, and the aesthetic quality of _____ while not unduly restricting the development of needed telecommunications service. It is intended that _____ shall apply these regulations to accomplish the following:

- (1) Provide a uniform and comprehensive set of standards for the development and installation of telecommunications towers and related facilities.
- (2) Minimize adverse visual effects of telecommunications towers through siting standards.
- (3) Protect environmentally sensitive areas of _____ by regulating the location of telecommunications towers. Included under this consideration is the protection of migratory birds.
- (4) Require collocation of new antennas on existing telecommunications towers when feasible.
- (5) Encourage the use of alternative support structures.
- (6) Require construction of telecommunications towers with the ability to locate 4 or more providers.

2. This is from the Village of Suamico:

(<http://www.suamico.org/>)

18-Zoning Code Page 48 of 74 Adopted 1-21-08
18.19 TELECOMMUNICATION
TOWERS.

(1) **Purpose.** The purpose of this Section is as follows:

(a) To allow necessary radio, television, cellular, and other wireless communication facilities.

(b) To encourage joint use of new and existing structures.

(c) To minimize visual impact on surrounding properties, particularly residential.

(d) To encourage the location of towers in nonresidential areas and minimize the total number of towers within the Village.

(2) **Applicability.** The requirements of this Section shall apply to all telecommunication towers and antennas, except that towers and antennas that are under seventy (70) feet in height and are owned and operated by federally-licensed amateur radio station operators or are receive-only antennas shall be exempt from this Section.

(3) **Antennas.**

(a) Permitted Use. Installing an antenna on an existing structure (including a tower) shall be a permitted use in all zoning districts provided the antenna adds no more than twenty (20) feet to the height of the existing structure.

(b) Design. If an antenna is installed on a structure other than a tower, the antenna and supporting equipment must be of a neutral color that is identical, or closely compatible with, the color of the supporting structure in order to limit visual impact.

(4) **Telecommunication Towers.**

(a) Permitted Uses.

Telecommunication towers which do not exceed the maximum building height requirement for the district in which they are located shall be allowed as a permitted use in all districts.

(b) Conditional Uses.

Telecommunication towers which exceed the maximum building height requirement for the district in which they are located

shall only be permitted as a conditional use in the AG-Agriculture, Public Lands & Institutions, B-Business District, HB-Highway Business, I1-Industrial District (Limited), and I2-Industrial District.

(c) Utilizing Existing Structures. A conditional use permit for a new telecommunication tower shall not be granted unless the applicant demonstrates that the telecommunications equipment planned for the new tower cannot be accommodated on an existing or approved tower or structure. Such demonstration may include one (1) or more of the following reasons:

1. No existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements.
2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
3. Existing towers or structures do not have the structural capacity to support the applicant's proposed antenna and related equipment and the existing tower or structure cannot be reinforced, modified, or replaced to accommodate planned equipment at a reasonable cost.
4. The planned equipment would cause interference affecting the usability of other existing or planned equipment at the tower or the existing antennas would cause interference with the applicant's proposed antenna and the interference cannot be prevented at a reasonable cost.
5. The fees, costs, or contractual provisions required by the owner to share an existing tower or structure or adapt and existing tower.

(d) Accommodation of Other Users. Any proposed telecommunication tower shall be designed, structurally, electrically, and in all respects to accommodate both the applicant's antennas and comparable antennas for at least two (2) additional users.

Towers must be designed to allow for future rearrangement of antennas upon the tower Village of Suamico and to accept antennas mounted at varying heights.

(e) Federal Requirements. All telecommunication towers must meet the current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and relations are changed, then the owners of the towers and antennas governed by this Section shall bring such towers and antennas into compliance with the revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with revised standards and regulations shall constitute grounds for the removal of the tower or antenna by the governing authority at the owner's expense.

(f) Construction. All telecommunication towers constructed, erected, or located within the Village shall comply with all applicable state and local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time.

(g) Design. All new and modified telecommunication towers and associated accessory structures shall be designed, to the extent possible, to blend in with the surrounding environment, except as may be required by rules of the FAA and FCC.

(h) Lighting. Telecommunication towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, it shall be designed to cause the least disturbance to surrounding views as possible.

(i) Setbacks. Telecommunication towers and associated structures shall meet

the required setbacks for the district in which they are located. In addition, towers shall be set back a distance equal to the height of the tower from any off-site residential building.

(j) Signs. No signs, other than warning or equipment information signs, shall be located on any telecommunication tower.

(k) Security. The base of the telecommunication tower shall be fenced with materials impervious to sight and secured so that it is not accessible by the general public.

(5) Conditional Use Permits. If a conditional use permit is required by this Section, the applicant shall submit a scaled site plan and a scaled elevation view and other supporting drawings, calculations, and other documentation or information deemed necessary by the Village to assess compliance with the requirements and purpose of this Section and Code. Any information of an engineering nature that the applicant submits shall be certified by a licensed professional engineer.

(6) Removal of Abandoned Antennas and Towers. Any antenna or telecommunication tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The owner of such antenna or tower shall remove them within ninety (90) days of receipt of notice from the Village notifying the owner of such abandonment. If the antenna or tower is not removed within the ninety (90) day period, the Village may remove such antenna or tower at the owner's expense. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease operation.

3. This is from the League of WI Municipalities:

Ordinance #80 Zoning Telecommunication Facilities and Antennas - City of Madison[\(\[http://www.lwm-info.org/index.asp?Type=B_BASIC&SEC=%7B7A9A9546-C8B4-4994-A750-F2380D3E532E%7D&DE=%7B8EAC66DE-5CE0-4F78-BAAB-ECF4B617EFDF%7D\]\(http://www.lwm-info.org/index.asp?Type=B_BASIC&SEC=%7B7A9A9546-C8B4-4994-A750-F2380D3E532E%7D&DE=%7B8EAC66DE-5CE0-4F78-BAAB-ECF4B617EFDF%7D\)\):](http://www.lwm-info.org/index.asp?Type=B_BASIC&SEC=%7B7A9A9546-C8B4-4994-A750-F2380D3E532E%7D&DE=%7B8EAC66DE-5CE0-4F78-BAAB-ECF4B617EFDF%7D)

The Common Council of the City of Madison do ordain as follows:

Subsection (23) entitled "Telecommunication Facilities and Antennas" of Section 28.04 entitled "General Provisions" of the Madison General Ordinances is amended to read as follows:

(23) Telecommunication Facilities and Antennas

(a) The **purpose and intent** of this ordinance is to strike a balance between the federal interest concerning the construction, modification and siting of telecommunication towers and antennas for use in providing personal wireless services, and the interest of the City of Madison (hereinafter the "City") in regulating local zoning. The regulations contained herein are designed to protect and promote the public health, safety and welfare of the community and the aesthetic quality of the City. The goals of this ordinance are to protect residential areas and land uses from the potential adverse impacts of towers and antennas; minimize the total number of towers throughout the community; encourage the joint use of new and existing tower sites as a primary siting option rather than construction of additional single-use towers; minimize the visual impact of towers and antennas; and avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures. It is also the intent of this section to provide a public forum to insure a balance between public concerns and private interests in establishing commercial telecommunication and related facilities.

(b) **Definitions:**

1. **"Antenna"** means any exterior transmitting or receiving device mounted on a tower, building, or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

2. **"Co-location"** means the provision of multiple antennas of more than one commercial wireless communication service provider or government entity on a single tower or structure.

3. **"Commercial Use"** means a use that involves the exchange of cash, goods or services, barter, forgiveness of indebtedness, or any other remuneration in exchange for goods, services, lodging, meals, entertainment in any form, or the right to occupy space over any period of time.

4. **"Equipment building, shelter or cabinet"** means a cabinet or building used to house

equipment used by telecommunication providers to house equipment at a facility.

5. **"Lattice Tower"** means a self-supporting structure, erected on the ground, which consists of metal crossed. strips or bars to support antennas and related equipment.

6. **"Monopole"** means a monopolar structure, erected on the ground to support wireless communication antennas and connecting appurtenances.

7. **"Personal Wireless Services"** means commercial mobile services, unlicensed wireless services and common carrier wireless exchange services as now defined in 47 U.S.C. 332 sec. (7)(C), as the same may be amended from time to time.

8. **"Telecommunication Facilities"** means any plant or equipment used to carry wireless commercial telecommunications services by radio signal or other electromagnetic waves, including towers, antennas, equipment buildings, parking area and other accessory development.

9. **"Telecommunications Tower"** means a mast pole, monopole, guyed tower, lattice tower, free-standing tower, or other structure designed and primarily used to support antennas. A ground or building mounted mast greater than fifteen feet tall and six inches in diameter supporting one or more antennas, dishes, or arrays shall be considered a telecommunications tower.

(c) Registration of Telecommunications Carriers and Providers.

1. **Registration and Application Requirements.** All personal wireless service carriers and providers that offer or provide any telecommunications services for a fee directly to the public, either within the City or outside the corporate limits from telecommunications facilities within the City, and all Telecommunications tower owners, shall register and provide to the City, pursuant to this ordinance, on forms to be provided by the Inspection Unit Director and shall provide with each conditional use application the following information:

a. The identity and legal status of the registrant, including any affiliates.

b. The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.

c. A narrative and map description of registrant's existing telecommunications facilities within the City, adjacent cities, villages and townships.

d. Such other information as the Inspection Unit Director may reasonably require.

2. **Purpose of Registration.** The purpose of registration under this ordinance is to:

- a. Provide the City with accurate and current information concerning personal wireless services carriers and providers and telecommunications tower owners, who offer or provide services within the City, or that own or operate telecommunication facilities within the City;
- b. Assist the City in enforcement of this Section;
- c. Assist the City in monitoring compliance with local, state and federal laws.

...Exempt Facilities.

1. Amateur radio towers installed, erected, maintained and/or operated in any residential zoning district, by a federally-licensed amateur radio operator, complying with the provisions contained in Chapter 17 of these ordinances, so long as all the following conditions are met:

- a. The antenna use involved is accessory to the primary use of the property which is not a telecommunication facility;
- b. In a residential zone, no more than one support structure for licensed amateur radio operator is allowed on the parcel;
- c. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

2. Publicly owned and operated telecommunications facilities required in the public interest to provide for and maintain a radio frequency telecommunication system, including digital, analog, wireless or electromagnetic waves, for police, fire and other municipal services.

(i) Penalties. Any person who violates any provision of this ordinance or fails to comply with any of its requirements shall upon conviction thereof forfeit not less than ten dollars (\$ 10) nor more than two hundred dollars (\$200) for each violation, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

4. This is from the FCC:

(http://www.access.gpo.gov/nara/cfr/waisidx_07/47cfr17_07.html):

Title 47--Telecommunication

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION: PART 17--CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES:

(http://edocket.access.gpo.gov/cfr_2007/octqtr/pdf/47cfr17.4.pdf)

§17.2 Definitions.

(a) **Antenna structure.** The term antenna structure includes the radiating and/or receive system, its supporting structures and any appurtenances mounted thereon.

(b) An **antenna farm area** is defined as a geographical location, with estab-

lished boundaries, designated by the Federal Communications Commission, in which antenna towers with a common impact on aviation may be grouped.

(c) **Antenna structure owner.** For the purposes of this part, an antenna structure owner is the individual or entity vested with ownership, equitable ownership, dominion, or title to the antenna structure. Notwithstanding any agreements made between the owner and any entity designated by the owner to maintain the antenna structure, the owner is ultimately responsible for compliance with the requirements of this part.

§17.14 **Exemptions.** Certain antenna structures exempt from notification to the FAA.

A notification to the Federal Aviation Administration is not required for any of the following construction or alteration:

(a) Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation. Applicant claiming such exemption under §17.14(a) shall submit a statement with their application to the FCC explaining basis in detail for their finding.

(b) Any antenna structure of 6.10 meters (20 feet) or less in height except one that would increase the height of another antenna structure.

(c) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device, of a type approved by the Administrator of the Federal Aviation Administration, the location and height of which is fixed by its functional purpose.

[32 FR 11269, Aug. 3, 1967, as amended at 39 FR 7581, Feb. 27, 1974; 42 FR 54824, Oct. 11, 1977; 61 FR 4363, Feb. 6, 1996]

any then existing or authorized antenna structure or structures.

[32 FR 11269, Aug. 3, 1967, as amended at 61 FR 4363, Feb. 6, 1996]

5. **[This is from the State of Maine \(which utilized WI laws formulating their ordinance\)\(https://maine.gov/spo/landuse/docs/techassist/wirelesstelecommunicationsordinancencocomments.pdf\)](https://maine.gov/spo/landuse/docs/techassist/wirelesstelecommunicationsordinancencocomments.pdf)**:

Definitions

The terms used in this ordinance shall have the following meanings:

"Antenna" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

"Antenna Height" means the vertical distance measured from the base of the

antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

"Colocation" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

"Expansion" means the addition of antennas, towers, or other devices to an existing structure.

"FAA" means the Federal Aviation Administration, or its lawful successor.

"FCC" means the Federal Communications Commission , or its lawful successor.

"Height" means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

"Line of sight" means the direct view of the object from the designated scenic resource.

"Parabolic Antenna" (also known as a satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

"Targeted Market Coverage Area" means the area which is targeted to be served by this proposed telecommunications facility.

"Unreasonable Adverse Impact" means that the proposed project would produce an end result which is:

- 1.) excessively out-of-character with the designated scenic resources affected, including existing buildings structures and features within the designated scenic resource, and
- 2.) would significantly diminish the scenic value of the designated scenic resource.

"Wireless Telecommunications Facility" or "Facility" means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

Exemptions To Consider:

A.) **Emergency Wireless Telecommunications Facility.** Temporary wireless communication facilities for emergency communications by public officials.

B.) **Amateur (ham) radio stations.** Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).

C.) **Parabolic antenna.** Parabolic Antennas less than seven (7) feet in diameter, that are an accessory use of the property.

D.) **Maintenance or repair.** Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.

E.) **Temporary wireless telecommunications facility.** Temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) days. This exemption for temporary facilities allows "**COWs**" (**cellular on wheels**) to be erected for initial market coverage while the permanent facility is established. This exemption also allows short term facilities for media or events. The municipality should determine a maximum time period based on the needs of the service providers in the community.

F.) **Antennas as Accessory Uses.** An antenna that is an accessory use to a residential dwelling unit. This model ordinance exempts accessory antennas for residences only. Municipalities should consider whether to grant a similar exemption for public service or other purposes as well.

****Special Considerations They Note that we may want to consider:***

As discussed more fully in the literature accompanying this model ordinance, the Wireless Telecommunications Act of 1996 opened the industry up to wide competition. With respect to local land use control, the Act provides as follows:

- The Act prohibits municipalities from banning these facilities within the municipality;
- The Act prohibits municipalities from effectively prohibiting them,
- The Act permits municipalities to limit the location and number of facilities, provided all functionally equivalent carriers are treated equally;
- The Act requires municipalities to make their decisions in writing and based on substantial evidence the Act requires that municipal decisions must be made within a reasonable period of time.

This model applies to all wireless telecommunication facilities, but a municipality can limit the application to address fewer facilities.

This model ordinance exempts emergency communications facilities used by public officials only. Municipalities should consider exempting similar facilities used by private interests.

The Federal Telecommunications Act exempts amateur "ham" radio stations. This model exempts other facilities for ease of administration.

Parabolic antennas (i.e., satellite dishes) are exempt because they are commonly accessory residential uses, so the numerous reviews might be burdensome on both the property owner and the municipality.

Maintenance and repair are exempt if they don't alter the size of the facility, because these activities usually don't change the impact of the facility on the community.

This model also exempts reconstruction of facilities, but municipalities should consider whether certain reconstruction projects should be reviewed in order to bring nonconforming uses into compliance and to promote colocation existing facilities. See Definitions section for "height."

The exemption for temporary facilities allows "**COWs**" (**cellular on wheels**) to be erected for initial market coverage while the permanent facility is established. This exemption also allows short term facilities for media or events. The municipality should determine a maximum time period based on the needs of the service providers in the community.

This model ordinance exempts accessory antennas for residences only. Municipalities should consider whether to grant a similar exemption for public service or other purposes as well.

Other Considerations That Might Help Us:

- Ensure that the applicant meets the standard for having a legal interest in the property. For a nonowner of the site, the legal interest may include a lease, easement or option to purchase the property.
- The FCC regulates wireless telecommunications facilities, and requires license holders to complete a review of the facility under the National Environmental Protection Act (NEPA) and the National Historic Preservation Act (NHPA). These reviews assure that, in addition to review of impacts upon historic sites and structures, all Radio Frequency (RF) Emissions issues have been addressed at the federal level, an issue which the federal Telecommunications Act specifically exempts from municipal review.
- The NEPA review includes analysis of impacts on the natural environment and historic places. This application requirement seeks to ensure that the NEPA review is performed prior to, or at the same time, as the submission of the application.
- Determine whether the application meets the standard for having adequate right, title or interest in the property. For a nonowner of the site, the legal interest may include a lease, easement or purchase option. This information helps the Planning Board determine that the applicant meets FCC standards for radio frequency emissions, financial capability, and the right to develop their "build-out" capability. This information helps the Planning Board decide whether the application meets this standard for location. By identifying all structures and facilities above 150 feet, new opportunities for colocation may be discovered.
- Exempting rooftop antennas from mapping eliminates undue hardship on the applicant.

- Municipalities may also want to adjust the height requirement to suit local conditions. These issues can be discussed during the pre-application conference.
- One of the major concerns with these facilities is their aesthetic impact on the community. This information helps the Planning Board decide whether the application meets the standards for color, materials, landscaping, and lighting to address this concern.

Addendum 2 to 10/21/08 Planning Commission Meeting Minutes

This is from the TOWN OF LEDGEVIEW TOWER ZONING:

TOWN OF LEDGEVIEW TOWER ZONING INFO1

ARTICLE XXV Telecommunications Antennas and Towers
§ 135-234. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ALTERNATIVE TOWER STRUCTURE — Man-made structures such as elevated tanks, electric utility transmission line towers, nonresidential buildings and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers. Freestanding signs are not considered to be alternative tower structures.

ANTENNA — Any exterior apparatus designed for telephonic, radio or television communications through the sending and/or receiving of electromagnetic waves.

FAA — The Federal Aviation Administration.

FCC — The Federal Communications Commission.

GOVERNING AUTHORITY — The governing authority of the Town of Ledgeview.

HEIGHT — When referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

PREEXISTING TOWERS AND ANTENNAS — The meaning is set forth in § 135-235D of this article.

TOWER — Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, PCS (personal communications service) towers, alternative tower structures and the like.

§ 135-235. Applicability.

A.

District height limitations. The requirements set forth in this article shall govern the location of towers that exceed, and antennas that are installed at, a height in excess of the height limitations specified for each zoning district. The height limitations applicable to buildings and structures shall not apply to towers and antennas; however, in no case shall any tower exceed the following height limitations:

(1)

For a single user, up to 90 feet in height;

(2)

For two users, up to 120 feet in height; and

(3)

For three or more users, up to 150 feet in height.

B.

Public property. Antennas located on property owned, leased or otherwise controlled by the governing authority shall be exempt from the requirements of this article, provided that a license or lease authorizing such antenna or tower has been approved by the governing authority.

C.

Amateur radio; receive-only antennas. This article shall not govern any tower, or the installation of any antenna, that is under 70 feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively as a receive-only antenna.

D.

Preexisting towers and antennas. Any tower or antenna for which a permit has been properly issued prior to the effective date of this article shall not be required to meet the requirements of this article, other than the requirements of § 135-236E and F. Any such towers or antennas shall be referred to in this article as "preexisting towers" or "preexisting antennas."

§ 135-236. General guidelines and requirements.

A.

Purpose; goals. The purpose of this article is to establish general guidelines for the siting of towers and antennas. The goals of this article are to:

(1)

Encourage the location of towers in nonresidential areas and minimize the total number of towers throughout the community;

(2)

Strongly encourage the joint use of new and existing tower sites;

(3)

Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;

(4)

Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas; and

(5)

Enhance the ability of the providers of telecommunications services to provide such

services to the community quickly, effectively and efficiently.

B.

Principal or accessory use. Antennas and towers may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot coverage requirements and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this article shall not be deemed to constitute the expansion of a nonconforming use or structure.

C.

Inventory of existing sites. Each applicant for an antenna and/or tower shall provide to the Zoning and Planning Committee an inventory of its existing towers that are either within the jurisdiction of the governing authority, or within one mile of the border thereof, including specific information about the location, height and design of each tower. The Zoning and Planning Committee may share such information with other applicants applying for administrative approvals or conditional use permits under this article, or other organizations seeking to locate antennas within the jurisdiction of the governing authority; provided, however, that the Zoning and Planning Committee is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

D.

Aesthetics and lighting. The guidelines set forth in this subsection shall govern the location of all towers and the installation of all antennas governed by this article; provided, however, that the governing authority may waive these requirements if it determines that the goals of this article are better served thereby.

(1)

Towers shall maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

(2)

At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening and landscaping that will blend the tower facilities to the natural setting and built environment.

(3)

If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(4)

Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

(5)

Towers and antennas shall not be used for displaying any advertising. If FCC rules require that the owner's name be shown on the tower or antenna, it shall be posted no more than six feet above the ground on a placard no larger than 1 1/2 square feet.

E.

Federal requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this article shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna by the governing authority at the expense of the tower or antenna owner, or at the expense of the property owner in the case where the owner of the tower or antenna is leasing the property upon which the tower or antenna is installed.

F.

Building codes; safety standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state and local building codes, and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the governing authority concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within said 30 days, the governing authority may remove such tower at the expense of the tower or antenna owner, or at the expense of the property owner in the case where the owner of the tower or antenna is leasing the property upon which the tower or antenna is installed.

§ 135-237. Permitted uses.

A.

General. The uses listed in this section are deemed to be permitted uses and shall not require a conditional use permit. Nevertheless, all such uses shall comply with § 135-236 of this article and all other applicable articles.

B.

Specific permitted uses. The following uses are specifically permitted:

(1)

Installing an antenna on an existing alternative tower structure, so long as said additional antenna adds no more than 20 feet to the height of said existing structure; and

(2)

Installing an antenna on an existing tower of any height, including a preexisting tower, and further including the placement of additional buildings or other supporting equipment used in connection with said antenna, so long as the addition of said antenna adds no more than 20 feet to the height of said existing tower.

§ 135-238. Conditional use permits.

A.

General. The following provisions shall govern conditional use permits. The following refers to towers, antennas and any combination of towers and antennas, standing alone or in combination, which exceed 20 feet in height.

(1)

If the antenna is not a permitted use under § 135-237 of this article, then a conditional use permit shall be required prior to the placement of any antenna.

(2)

Towers and antennas may only be located in the Light Industrial (LI) and Heavy Industrial (HI) Zoning Districts. **[Amended 9-18-2007 by Ord. No. 2007-016]**

(3)

If a conditional use permit is granted, the governing authority may impose conditions to the extent the governing authority concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

(4)

Any information of an engineering nature that the applicant submits, whether civil, mechanical or electrical, shall be certified by a licensed professional engineer.

B.

Information required. Each applicant requesting a conditional use permit under this article shall submit a scaled site plan and a scaled elevation view and other supporting drawings, calculations and other documentation, signed and sealed by appropriate licensed professionals, showing the location and dimensions of all improvements, including information concerning topography frequency coverage, antenna height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses and other information deemed by the governing authority to be necessary to assess compliance with this article.

C.

Factors considered in granting conditional use permits. The governing authority shall consider the following factors in determining whether to issue a conditional use permit, although the governing authority may waive or reduce the burden on the applicant of one or more of these criteria if the governing authority concludes that the goals of this article are better served thereby:

(1)

Height of the proposed tower.

(2)

Capacity of the tower structure for additional antenna equipment to accommodate expansion, or to allow for collocation of another provider's equipment.

(3)

Proximity of the tower to residential structures and residential district boundaries.

(4)

Nature of uses on adjacent and nearby properties.

(5)

Surrounding topography.

(6)

Surrounding tree coverage and foliage.

(7)

Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

(8)

Proposed ingress and egress.

(9)

Availability of suitable existing towers and other structures as discussed in Subsection D of this section.

D.

Availability of suitable existing towers or other structures. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the governing authority that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate that no existing antenna or structure can accommodate the applicant's proposed antenna may consist of any of the following:

(1)

No existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements.

(2)

Existing towers or structures are not of sufficient height to meet the applicant's engineering requirements.

(3)

Existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.

(4)

The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

(5)

The fees, costs or contractual provisions required by the owner to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

(6)

The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

E.

Setbacks and separation. The following setbacks and separation requirements shall apply to all towers and antennas for which a conditional use permit is required; provided, however, that the governing authority may reduce the standard setbacks and separation requirements if the goals of this article would be better served thereby.

(1)

Towers must be set back a distance equal to the height of the tower from any off-site residential structure or any parcel of land zoned residential.

(2)

Towers, guys and accessory facilities must satisfy the minimum zoning district setback requirements.

F.

Landscaping. The following requirements shall govern the landscaping surrounding towers for which a conditional use permit is required; provided, however, that the governing authority may waive such requirements if the goals of this article would be better served thereby:

(1)

Tower facilities shall be landscaped with a mixture of deciduous and evergreen trees and shrubs that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least four feet wide outside the perimeter of the compound.

(2)

In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived altogether.

(3)

Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property perimeter may be sufficient buffer.

§ 135-239. Removal of abandoned antennas and towers.

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of receipt of notice from the governing authority notifying the owner of such abandonment. If such antenna or tower is not removed within said 90 days, the governing authority may remove such antenna or tower at the expense of the tower or antenna owner, or at the expense of the property owner in the case where the owner of the tower or antenna is leasing the property upon which the tower or antenna is installed. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.