

CHAPTER 43

WIRELESS TELECOMMUNICATIONS TOWERS

43-1-1 **PURPOSE.** The purpose of this Chapter is to establish general guidelines for the siting of wireless communications towers and antennas. The goals of this Chapter are to:

- (A) protect residential areas and land uses from potential adverse impacts of towers and antennas;
- (B) encourage the location of towers in non-residential areas;
- (C) minimize the total number of towers throughout the community;
- (D) strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
- (E) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
- (F) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;
- (G) enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;
- (H) consider the public health and safety of communication towers; and
- (I) avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

In furtherance of these goals, the Village shall give due consideration to its comprehensive plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

43-1-2 **RELATIONSHIP TO ZONING CODE.** This Chapter is closely related to and shall be interpreted together with the Zoning Code, **Chapter 40** of the Village Code of Ordinances. All terms contained in this Chapter shall have the meanings as when used in **Chapter 40**, unless the context clearly indicates otherwise. However, in the event of any conflict between this Chapter and **Chapter 40**, this Chapter shall control.

43-1-3 **DEFINITIONS.** As used in this Chapter, the following terms shall have the meanings set forth below:

Alternative Tower Structure means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

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.

Backhaul Network means the lines that connect a provider's towers/cell sites to **one (1)** or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Height means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.

Preexisting towers and preexisting antennas means any tower or antenna for which a building permit or conditional permitted use permit has been properly issued prior to the effective date of this Code, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

Tower means any structure that is designed and constructed primarily for the purpose of supporting **one (1)** or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

Village refers to the Village of New Berlin.

Zoning Code refers to **Chapter 40** of the Code of Ordinances of the Village of New Berlin.

Zoning Committee means the committee of the Village Board having jurisdiction over zoning matters.

43-1-4 APPLICABILITY.

(A) **New Towers and Antennas.** All new towers or antennas in the Village shall be subject to these regulations, except as provided in **Sections 43-1-2(B)** through **(D)**, inclusive.

(B) **Amateur Radio Station Operators/Receive Only Antennas.** This Chapter shall not govern any tower, or the installation of any antenna, that is under **seventy (70) feet** in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas.

(C) **Preexisting Towers or Antennas.** Preexisting towers and preexisting antennas shall not be required to meet the requirements of this Chapter, other than the requirements of **Sections 43-1-5(F)** and **43-1-5(G)**.

(D) **AM Array.** For purposes of implementing this Chapter, an AM array, consisting of **one (1)** or more tower units and supporting ground system which functions as **one (1)** AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

43-1-5 GENERAL REQUIREMENTS.

(A) **Principal or Accessory Use.** Antennas and towers may be considered either principal or accessory uses under the Zoning Code. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

(B) **Lot Size.** For purposes of determining whether the installation of a tower or antenna complies with zoning district 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 lot.

(C) **Inventory of Existing Sites.** Each applicant for an antenna or tower shall provide along with its application an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the Village or within **one (1) mile** of the border thereof, including specific information about the location, height, and design of each tower. The Village may share such information with other applicants applying for administrative approvals or conditional use permits under this Chapter or other organizations seeking to locate antennas within the jurisdiction of the Village, provided, however that the Village is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

(D) **Aesthetics.** Towers and antennas shall meet the following requirements:

- (1) Towers shall either 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 them into the natural setting and surrounding buildings.
- (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.

(E) **Lighting.** Towers shall not be artificially lighted unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

(F) **State or Federal Requirements.** All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or 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 Chapter shall bring such towers and antennas into compliance with such revised standards and regulations within **six (6) months** of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or 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 at the owner's expense.

(G) **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 or 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 Village 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 **thirty (30) days** to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said **thirty (30) days** shall constitute grounds for the removal of the tower or antenna at the owner's expense.

(H) Towers and antennas shall be regulated and permitted pursuant to this Chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities.

(I) **Franchises.** Owners and/or operators of towers or antennas shall certify, that all franchises required by law for the construction and/or operation of a wireless communication system in the Village have been obtained and shall file a copy of all required franchises with the Zoning Committee.

(J) **Public Notice.** For purposes of this Chapter, any conditional permitted use request, variance request, or appeal of an administratively approved use or conditional permitted use shall require public notice to all abutting property owners and all property owners of properties that are located within the corresponding separation distance listed in **Section 43-1-8(B)(5)(ii)**, Table 2, in addition to any notice otherwise required by the Zoning Code.

(K) **Signs.** No signs shall be allowed on an antenna or tower.

(L) **Buildings and Support Equipment.** Buildings and support equipment associated with antennas or towers shall comply with the requirements of **Section 43-1-9**.

(M) **Multiple Antenna/Tower Plan.** The Village encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

43-1-6 PERMITTED USES.

(A) **General.** The uses listed in this Section are deemed to be permitted uses and shall not require administrative approval or a special use permit.

(B) **Permitted Uses.** The following uses are specifically permitted:

- (1) Antennas or towers located on property owned, leased, or otherwise controlled by the Village, provided a license or lease authorizing such antenna or tower has been approved by the Village, and irrespective of the applicable zoning district.

43-1-7 ADMINISTRATIVELY APPROVED USES.

(A) **General.** The following provisions shall govern the issuance of administrative approvals for towers and antennas.

- (1) The Zoning Committee may administratively approve the uses listed in this Section.
- (2) Each applicant for administrative approval shall apply to the Village Clerk providing the information set forth in **Sections 43-1-8(B)(1)** and **43-1-8(B)(3)** of this Chapter and a nonrefundable fee of **Three Hundred Fifty Dollars (\$350.00)** to reimburse the Village for the costs of reviewing the application. The Village Clerk shall transmit the application to the Zoning Committee.

- (3) The Zoning Committee shall review the application for administrative approval and determine if the proposed use complies with **Sections 43-1-5, 43-1-8(B)(4) and 43-1-8(B)(5)** of this Chapter.
- (4) The Zoning Committee shall respond to each such application within **sixty (60) days** after receiving it by either approving or denying the application. If the Zoning Committee fails to respond to the applicant within said **sixty (60) days**, then the application shall be deemed to be denied.
- (5) In connection with any such administrative approval, the Zoning Committee may, in a case involving shared use, administratively waive any zoning district setback requirements in **Section 43-1-8(B)(4)** or separation distances between towers in **Section 43-1-8(B)(5)** by up to **fifty percent (50%)**.
- (6) In connection with any such administrative approval, the Zoning Committee may, in order to encourage the use of monopoles, administratively allow the reconstruction of an existing tower to monopole construction.
- (7) If an administrative approval is denied, the applicant's administrative remedy shall be limited to filing an application for a special use permit pursuant to **Section 43-1-8**.

(B) **List of Administratively Approved Uses.** The following uses may be approved by the Zoning Committee after conducting an administrative review:

- (1) Locating a tower or antenna, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna, in any industrial zoning district.
- (2) Locating antennas on existing structures or towers consistent with the terms of subsections (a) and (b) below.
 - (a) **Antennas on Existing Structures.** Any antenna which is not attached to a tower may be approved by the Zoning Committee as an accessory use to any commercial, industrial, professional, institutional, or multi-family structure of **eight (8)** or more dwelling units, provided:
 - (i) The antenna does not extend more than **thirty (30) feet** above the highest point of the structure;
 - (ii) The antenna complies with all applicable FCC and FAA regulations; and
 - (iii) The antenna complies with all applicable building codes.
 - (b) **Antennas on Existing Towers.** An antenna which is attached to an existing tower may be approved by the Zoning Committee and, to minimize adverse visual impacts associated with the proliferation and clustering of towers, collocation of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:
 - (i) A tower which is modified or reconstructed to accommodate the collocation of an additional

antenna shall be of the same tower type as the existing tower, unless the Zoning Committee allows reconstruction as a monopole.

(ii) **Height.**

- a. An existing tower may be modified or rebuilt to a taller height, not to exceed **thirty (30) feet** over the tower's existing height, to accommodate the collocation of an additional antenna.
- b. The height change referred to in subsection (ii)(a) may only occur one time per communication tower.
- c. The additional height referred to in subsection (ii)(a) shall not require an additional distance separation as set forth in **Section 43-1-8**. The tower's pre-modification height shall be used to calculate such distance separations.

(iii) **Onsite Location.**

- a. A tower which is being rebuilt to accommodate the collocation of an additional antenna may be moved onsite within **fifty (50) feet** of its existing location.
- b. After the tower is rebuilt to accommodate collocation, only one tower may remain on the site.
- c. A relocated onsite tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to **Section 43-1-8(B)(5)**. The relocation of a tower hereunder shall in no way be deemed to cause a violation of **Section 43-1-8(B)(5)**.
- d. The onsite relocation of a tower which comes within the separation distances to residential units or residentially zoned lands as established in **Section 43-1-8(B)(5)** shall only be permitted when approved by the Zoning Committee.

- (3) New towers in non-residential zoning districts. Locating any new tower in a non-residential zoning district other than industrial, provided a licensed professional engineer certifies the tower can structurally accommodate the number of shared users proposed by the applicant; the Zoning Committee concludes the tower is in conformity with the goals set forth in Section 43.1 and the requirements of **Section 43-1-5**; the tower meets the setback requirements in **Section 43-1-8(B)(4)** and separation distances in **Section 43-1-8(B)(5)**; and the tower meets the following height and usage criteria:

- (a) for a single user, up to **ninety (90) feet** in height;
 - (b) for **two (2)** users, up to **one hundred twenty (120) feet** in height; and
 - (c) for **three (3)** or more users, up to **one hundred fifty (150) feet** in height.
- (4) Installing a cable microcell network through the use of multiple low-powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.

43-1-8 SPECIAL USE PERMITS.

(A) **General.** The following provisions shall govern the issuance of special use permits for towers or antennas by the Plan Commission:

- (1) If the tower or antenna is not a permitted use under **Section 43-1-6** of this Chapter or permitted to be approved administratively pursuant to **Section 43-1-7** of this Chapter, then a special use permit shall be required for the construction of a tower or the placement of an antenna in all zoning districts.
- (2) Applications for special use permits under this Section shall be subject to the procedures and requirements of the Zoning Code, except as modified in this Section.
- (3) In recommending the grant of a special use permit, the Plan Commission may suggest conditions to the extent the Plan Commission 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.
- (5) An applicant for a special use permit shall submit the information described in this Section and a non-refundable fee of **Three Hundred Fifty Dollars (\$350.00)** plus a commitment to reimburse the Village its out-of-pocket costs for a review by a licensed engineer.

(B) **Towers.**

- (1) **Information Required.** In addition to any information required for applications for special use permits pursuant to the Zoning Code, applicants for a special use permit for a tower shall submit the following information:
 - (a) A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), zoning classification of the site and all properties within the applicable separation distances set forth in **Section 43-1-8(B)(5)**, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information

deemed by the Zoning Committee to be necessary to assess compliance with this Chapter.

- (b) Legal description of the parent tract and leased parcel (if applicable).
- (c) The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.
- (d) The separation distance from other towers described in the inventory of existing sites submitted pursuant to **Section 43-1-5(C)** shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the exiting tower(s), if known.
- (e) A landscape plan showing specific landscape materials.
- (f) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
- (g) A description of compliance with **Sections 43-1-5(C), (D), (E), (F), (G), (J), (L), and (M), 43-1-8(B)(4), and (B)(5)** and all applicable federal, state or local laws.
- (h) A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
- (i) Identification of the entities providing the backhaul network for the tower(s) described in the application and other towers and antennas owned or operated by the applicant in the municipality.
- (j) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
- (k) A description of the feasible location(s) of future towers or antennas within the Village based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.

(2) **Factors Considered in Granting Special Use Permit for Towers.**

In addition to the standards for consideration of special use permit applications pursuant to the Zoning Code, the Plan Commission shall consider the following factors in determining whether to recommend issuance of a special use permit, although the Plan Commission may recommend waiver or reduction of the burden on the applicant of one or more of these criteria if the Plan Commission concludes that the goals of this Chapter are better served thereby:

- (a) Height of the proposed tower;
- (b) Proximity of the tower to residential structures and residential district boundaries;
- (c) Nature of uses on adjacent and nearby properties;
- (d) Surrounding topography;
- (e) Surrounding tree coverage and foliage;

- (f) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (g) Proposed ingress and egress; and
- (h) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in **Section 43-1-8(B)(3)** of this Chapter.

(3) **Availability of Suitable Existing Towers, Other Structures, or Alternative Technology.**

No new tower shall be recommended unless the applicant demonstrates to the reasonable satisfaction of the Plan Commission that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's a proposed antenna. An applicant shall submit information requested by the Plan Commission related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

- (a) No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.
- (b) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
- (c) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- (d) 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.
- (e) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonably. Costs exceeding new tower development are presumed to be unreasonable.
- (f) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- (g) The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

- (4) **Setbacks.** The following setback requirements shall apply to all towers for which a special use permit is required; provided, however, that the Plan Commission may recommend reduction of the standard setback requirements if the goals of this Chapter would be better served thereby:
 - (a) Towers must be set back a distance equal to at least **seventy-five percent (75%)** of the height of the tower from any adjoining lot line.
 - (b) Guys and accessory buildings must satisfy the minimum zoning district setback requirements.
- (5) **Separation.** The following separation requirements shall apply to all towers and antennas for which a special use permit is required; provided, however, that the Plan Commission may reduce the standard separation requirements if the goals of this Chapter would be better served thereby.
 - (a) **Separation From Off-Site Uses/Designated Areas.**
 - (i) Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 1, except as otherwise provided in Table 1.
 - (ii) Separation requirements for towers shall comply with the minimum standards established in Table 1.

Table 1:

Off-site Use/Designated Area	Separation Distance
Single-family or duplex residential units ¹	200 feet or 300% height of tower whichever is greatest
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired.	200 feet or 300% height of tower ²
Vacant unplatted residentially zoned lands ³	100 feet or 100% height of tower whichever is greater
Existing multi-family residential units greater than duplex units	100 feet or 100% height of tower whichever is greatest
Non-residentially zoned lands or non-residential uses	None; only setback apply

¹Includes modular homes and mobile homes used for living purposes.

²Separation measured from base of tower to closest building setback line.

³Includes any unplatted residential use properties without a valid preliminary subdivision plan or valid development plan approval and any multi-family residentially zoned land greater than duplex.

(b) **Separation Distances Between Towers.**

- (i) Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distance (listed in linear feet) shall be shown in Table 2.

Table 2:

Existing Towers – Types

	Lattice	Guyed	Monopole 75 Ft In Height or Greater	Monopole Less Than 75 Ft in Height
Lattice	5,000	5,000	1,500	750
Guyed	500	500	1,500	750
Monopole 75 Ft In Height or Greater	1,500	1,500	1,500	750
Monopole Less Than 75 Ft in Height	750	750	750	750

- (6) **Security Fencing.** Towers shall be enclosed by security fencing not less than **six (6) feet** in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the Plan Commission may waive such requirements, as it deems appropriate.
- (7) **Landscaping.** The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however, that the Plan Commission may waive such requirements if the goals of this Chapter would be better served thereby.
- (a) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least **four (4) feet** wide outside the perimeter of the compound.
- (b) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.
- (c) 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.

43-1-9 BUILDINGS OR OTHER EQUIPMENT STORAGE.

(A) **Antennas Mounted on Structure or Rooftops.** The equipment cabinet or structure used in association with antennas shall comply with the following:

- (1) The cabinet or structure shall not contain more than **two hundred twenty-five (225) square feet** of gross floor area or be more than **fifteen (15) feet** in height. In addition, for buildings and structures which are less than **sixty-five (65) feet** in height, the related unmanned equipment structure, if over **one hundred fifty (150) square feet** of gross floor area or **eight (8) feet** in height, shall be located on the ground and shall not be located on the roof of the structure.
- (2) If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than **ten percent (10%)** of the roof area.
- (3) Equipment storage buildings or cabinets shall comply with all applicable building codes.

(B) **Antennas Mounted on Utility Poles or Light Poles.** The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:

- (1) In residential districts, the equipment cabinet or structure may be located:
 - (a) In a front or side yard provided the cabinet or structure is no greater than **three (3) feet** in height or **sixteen (16) square feet** of gross floor area and the cabinet/structure is located a minimum of **fifteen (15) feet** from all lot lines. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of at least **forty-three – forty-eight (43-48) inches** and a planted height of at least **thirty-six (36) inches**.
 - (b) In a rear yard, provided the cabinet or structure is no greater than **five (5) feet** in height or **twenty-five (25) square feet** in gross floor area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of **eight (8) feet** and a planted height of at least **thirty-six (36) inches**.
- (2) In commercial or industrial districts the equipment cabinet or structure shall be no greater than **five (5) feet** in height or **twenty-five (25) square feet** in gross floor area. The structure or cabinet shall be screened by an evergreen hedge with an ultimate height of **eight (8) feet** and a planted height of at least **thirty-six (36) inches**.

(C) **Antennas Located on Towers.** The related unmanned equipment structure shall not contain more than **two hundred twenty-five (225) feet** of gross floor area or be more than **fifteen (15) feet** in height, and shall be located in accordance with the minimum yard requirements of the zoning district in which located.

(D) **Modification of Building Size Requirements.** The requirements of **Sections 43-1-9(A)** through **(C)** may be modified by the Zoning Committee in the case of administratively approved uses or by the Plan Commission in the case of uses permitted by special use to encourage collocation.

43-1-10 REMOVAL OF ABANDONED ANTENNAS AND TOWERS. Any antenna or tower that is not operated for a continuous period of **twelve (12) months** shall be considered abandoned, and the owner of such antenna or tower shall remove the same within **ninety (90) days** of receipt of notice from the Village notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said **ninety (90) day** shall be ground to remove the tower or antenna 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 using the tower.

43-1-11 NONCONFORMING USES.

(A) **No Expansion of Nonconforming Use.** Towers that are constructed, and antennas that are installed, in accordance with the provisions of this Chapter shall not be deemed to constitute the expansion of a nonconforming use or structure.

(B) **Preexisting Towers.** Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this Chapter.

(C) **Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas.** Notwithstanding **Section 43-1-10**, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a special use permit and without having to meet the separation requirements specified in **Sections 43-1-8(B)(4)** and **43-1-8(B)(5)**. The type, height, and location of the tower onsite shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within **one hundred eighty (180) days** from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in **Section 43-1-10**.

43-1-12 SPECIAL PROCEDURES FOR SPECIAL USE DETERMINATIONS. The procedures for special uses shall be the same as in the Zoning Code with respect to a public hearing and approval of the special use by ordinance of the corporate authorities. However, the following requirements, peculiar to the Telecommunications Act, shall apply:

(A) If the applicant shows that the antenna tower and the equipment to be installed thereon meet all requirements of the FCC, the Plan Commission shall disallow and disregard evidence regarding the environmental effects (including interference) of radio frequency emissions, and the Village Board shall disregard any such evidence in making its final determination.

(B) All findings of the Plan Commission shall be in writing and shall be based on substantial evidence.

(C) Since the Telecommunications Act requires a written record, there shall be a certified shorthand reporter present at any public hearing, and a written transcript shall be prepared of any public hearing.

(D) The Village Board shall not take final action on a special use permit application until all fees required to be paid, including reimbursement of the cost of an engineering review, have been paid.

(Ord. No. 13-05; 04-17-13)

[ED. NOTE: This Chapter is also an extension of the Zoning Code as it establishes land use regulations.]