

Town of Amherst, NY
Monday, June 5, 2017

Chapter 203. Zoning

PART 6.. USE REGULATIONS

§ 6-7. Telecommunication Facility Standards

6-7-1. **Definitions.**

ACCESSORY STRUCTURE OR FACILITY

An accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to generators or other emergency power supply equipment, utility or transmission equipment storage sheds or cabinets, or fencing.

ANTENNA OR ANTENNAE

A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, personal telecommunications services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the Town's siting, building and permitting authority.

APPLICATION

All necessary and appropriate documentation that an applicant submits in order to receive a special use permit for wireless telecommunications facilities.

CO-LOCATION

The use of a single tower or structure to support antennae from multiple providers of wireless services.

COMMERCIAL IMPRACTICABILITY OR COMMERCIALLY IMPRACTICABLE

The inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a particular return on investment or profit, standing alone, shall not deem a situation to be "commercially impracticable" and shall not render an act or the terms of an agreement "commercially impracticable."

HEIGHT

The distance measured from the pre-existing grade level to the highest point on the tower or structure, including any antenna or lightning protection device.

MODIFICATION OR MODIFY

The addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennae, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components,

vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is technically equivalent to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility.

PERSON

Any individual, corporation, estate, trust, partnership, joint-stock company, an association of two or more persons having a joint common interest, or any other entity.

PERSONAL WIRELESS FACILITY

See definition for "wireless telecommunications facilities."

PERSONAL WIRELESS SERVICES OR PWS OR PERSONAL TELECOMMUNICATIONS SERVICE OR PCS

The same meaning as defined and used in the Telecommunications Act of 1996.

PETITIONER

Any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.

TELECOMMUNICATION SITE

See definition for "wireless telecommunications facilities."

SPECIAL USE PERMIT

The official document or permit by which a petitioner is allowed to construct and use wireless telecommunications facilities as granted or issued by the Town.

STEALTH OR STEALTH TECHNOLOGY

Minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

TELECOMMUNICATIONS

The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

TELECOMMUNICATIONS STRUCTURE

A structure used in the provision of services described in the definition of "wireless telecommunications facilities."

TEMPORARY

Temporary in relation to all aspects and components of this local law, something intended to, or that does, exist for fewer than 90 days.

WIRELESS TELECOMMUNICATIONS FACILITIES (WTF)

Includes "telecommunications tower" and "tower" and "telecommunications site" and "personal wireless facility" and any commercial equipment or location used in connection with the provision of wireless communication services, including cellular telephone services, personal communications services, radio and television broadcast services and private radio communications services, which are regulated by the Federal Communications Commission both in accordance with the Telecommunications Act of 1996 and other federal laws. A

telecommunication facility shall include antenna(e), principal and accessory telecommunication equipment and supporting masts, monopoles and structures, buildings and appurtenances servicing same.

6-7-2. **Purpose.** The purpose of this Section is to:

- A. Implement an application process for persons seeking a special use permit for WTFs;
- B. Establish a policy for examining an application for and issuing a special use permit for WTF that is both fair and consistent.
- C. Promote and encourage, wherever possible, the sharing and/or co-location of facilities-WTF among service providers;
- D. Promote and encourage, wherever possible, the placement, height, appearance and quantity of WTFs in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such WTFs, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. Stealth technology will be strongly encouraged to ensure that WTFs are compatible with surrounding land use.
- E. Promote and encourage the site development standards which preserve the character of residential areas and which ensure that adequate screening and stealth technology is used.
- F. Ensure that WTFs are limited to those for which the petitioner has demonstrated a need for service essentially within the Town of Amherst.

6-7-3. **Special Use Permit Application and Other Requirements.**

- A. No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, WTFs as of the effective date of this Section without having first obtained a special use permit for a WTF. Notwithstanding anything to the contrary in this Section, no special use permit shall be required for those non-commercial exceptions noted in the definition of WTFs.
- B. All petitioners for a special use permit for a WTF or any modification of such facility shall comply with the requirements set forth in this Section. The ZBA is the officially designated agency or body of the Town to whom applications for a special use permit for a WTF must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for a WTF. The Town may at its discretion delegate or designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the ZBA with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for a WTF.
- C. An application for a special use permit for WTFs shall be signed on behalf of the petitioner by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the petitioner, shall also sign the application. At the discretion of the Town, any false or misleading statement in the application may subject the petitioner to denial of the application without further consideration or opportunity for correction.
- D. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Town.
- E. The petitioner shall include a statement in writing:

- (1) That the petitioner's proposed WTFs shall be maintained in a safe manner, and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the ZBA in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, state and federal laws, rules, and regulations;
 - (2) That the construction of the WTFs is legally permissible, including, but not limited to the fact that the petitioner is authorized to do business in the state, and that the petitioner is licensed by the FCC to provide wireless telecommunications service in the Town.
- F. No WTF shall be installed or constructed until the application is reviewed and approved by the ZBA, and the special use permit and all appropriate building, electrical, plumbing and fire prevention permits have been issued.
- G. All applications for the construction or installation of new WTFs shall contain the information hereinafter set forth. The application shall be signed by an authorized individual on behalf of the petitioner. Where a certification is called for, such certification shall bear the signature and seal of a professional engineer licensed in the State of New York. The application shall include the following information:
- (1) Documentation that demonstrates the need for the WTF to provide service primarily and essentially within the Town. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;
 - (2) The name, address and phone number of the person preparing the report;
 - (3) The name, address, and phone number of the property owner, operator, and petitioner, and to include the legal form of the petitioner;
 - (4) The postal address and tax map parcel number of the property;
 - (5) The zoning district in which the property is situated;
 - (6) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines along with the setback dimensions from the WTF to the abutting property lines;
 - (7) The location and use of all structures within 500 feet from the WTF;
 - (8) The location, size and height of all structures on the property which is the subject of the application;
 - (9) The location, size and height of all proposed and existing antennae and all appurtenant structures;
 - (10) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
 - (11) The number, type and design of the tower(s) and antenna(e) proposed and the basis for the calculations of the tower's capacity to accommodate multiple users;
 - (12) The make, model and manufacturer of the tower and antenna(e);
 - (13) A description of the proposed tower and antenna(e) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - (14) The frequency, modulation and class of service of radio or other transmitting equipment;

- (15) The actual intended transmission and the maximum effective radiated power of the antenna(e);
 - (16) Direction of maximum lobes and associated radiation of the antenna(e);
 - (17) Certification that the cumulative NIER levels at the proposed site are within the threshold levels adopted by the FCC;
 - (18) Certification that the proposed antenna(e) will not cause interference with other telecommunications devices;
 - (19) A copy of the FCC license applicable for the intended use of the WTF;
 - (20) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed WTFs on the proposed site.
 - (21) A statement of the proposed emergency power supply. The storage of fuel on the site shall be identified. The type of fuel and quantities shall be provided. If lead acid batteries are proposed, a statement of battery classification and location shall be submitted. The statement shall provide the cumulative acid weight of all batteries at the proposed facility. Upon approval of the application for the WTF, the petitioner shall provide this information to the local fire department.
- H. In the case of a new tower, the petitioner shall be required to submit a written report demonstrating its efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within the Town. Such report shall include an investigation of every Tower and every structure with a height exceeding 60 feet from finished grade within two miles of the proposed location of the new tower. Copies of written requests and responses for shared use shall be provided to the Town in the application, along with any letters of rejection stating the reason for rejection.
- I. The petitioner shall certify that the telecommunication facility, foundation and attachments are designed and will be constructed to meet all local, Town, state and federal structural requirements for loads, including wind and ice loads.
- J. The petitioner shall certify that the WTFs will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- K. A petitioner shall be required to submit a written report identifying buried conductors within 50 feet of any non-building mounted WTF.
- L. A petitioner may be required to submit an environmental assessment analysis and a visual addendum. Based on the results of the analysis, including the visual addendum, the Town may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the pre-application meeting.
- M. The petitioner shall furnish a visual impact assessment, which shall include:
- (1) A "Zone of Visibility Map" which shall be provided in order to determine locations from which the WTF may be seen.
 - (2) Pictorial representations of "before and after" views from key viewpoints both inside and outside of the Town as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; 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, travelers or residents. Guidance will be provided,

concerning the appropriate key sites at a pre-application meeting.

- (3) An assessment of the visual impact of the tower base, guy wires and accessory structures from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- N. The petitioner shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed WTFs.
- O. Any and all representations made by the petitioner to the Town on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Town.
- P. All utilities at a WTF site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the Town, including specifically, but not limited to, the applicable building, plumbing, electrical and fire codes of the Town, the National Electrical Safety Code and the National Electrical Code where appropriate.
- Q. All WTFs shall be sited so as to be the least visually intrusive reasonably possible and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the WTF.
- R. Both the WTF and any accessory structure that are higher than or not contained within fencing, walls or other visual screening shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings. This shall include the utilization of stealth or concealment technology as may required by the Town.
- S. At a telecommunications site, an access road, turnaround space and parking shall be provided to assure adequate emergency and service access. Access road construction shall be suitable for the weight of vehicles that will use the road during construction and maintenance activities, as approved by the Building Department. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- T. A person who holds a special use permit for a WTF shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted WTFs in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, state, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding codes, rules and regulations, the more stringent shall apply.
- U. A holder of a special use permit granted under this ordinance shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the petitioner.
- V. An applicant shall submit to the ZBA one original and nine copies of the completed application. The Town of Amherst reserves the right to request additional copies of the completed application if deemed necessary by the Town. Written notification of the application shall be provided in accordance with the provisions of the Zoning Ordinance of the Town of Amherst and applicable NYS laws. The Town Planning Department shall be provided with a copy of the application.

- W. The petitioner shall examine the feasibility of designing a proposed tower to accommodate future demand for a minimum of five additional commercial applications, for example, future co-locations. The tower shall be structurally designed to accommodate a minimum of five additional antenna arrays equal to those of the petitioner, and located as close to the petitioner's antenna as possible without causing interference. This requirement may be waived, provided that the petitioner, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:
- (1) The foreseeable number of FCC licenses available for the area;
 - (2) The kind of WTF site and structure proposed;
 - (3) The number of existing and potential licenses without WTFs spaces/sites;
 - (4) Available space on existing and approved towers.
- X. The owner of the proposed new tower, and his or her successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:
- (1) Respond within 60 days to a request for information from a potential shared-use petitioner;
 - (2) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;
 - (3) Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
 - (4) Failure to abide by the conditions outlined above may be grounds for revocation of the special use permit for the tower.
- Y. There shall be a pre-application meeting with the Building Department, the Planning Department and the Town's designated consultant. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting, at the discretion of the Building Department, may also include a site visit. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the petitioner.
- Z. The holder of a special use permit shall notify the Town of any intended modification of a WTF and shall apply to the Town to modify, relocate or rebuild a WTF.
- AA. The petitioner will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration (FAA) Regulation Part 77. This requirement shall be for any new tower or for any existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.
- AB. All information necessary to satisfy SEQRA requirements.

6-7-4. **Location of WTFs.**

- A. Petitioners for WTFs shall locate, site and erect said WTFs in accordance with the following priorities, one being the highest priority and seven being the lowest priority.
 - (1) On existing towers or other structures without increasing the height of the tower or structure;
 - (2) On Town-owned properties;
 - (3) On existing towers or other structures when a material increase in height is required;
 - (4) On properties in areas zoned for industrial use;
 - (5) On properties in areas zoned for business or non-residential use;
 - (6) On properties in areas zoned for agricultural use.
 - (7) On properties in areas zoned for residential use.
- B. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected.
- C. A petitioner may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the petitioner must explain to the reasonable satisfaction of the ZBA why co-location is commercially impracticable or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.
- D. Notwithstanding the above, the ZBA may approve any site located within an area in the above list of priorities, provided that the ZBA finds that the proposed site is in the best interest of the health, safety and welfare of the Town and will further the policies and goals set forth in § 6-7-2.
- E. The petitioner shall submit a written report demonstrating the petitioner's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.

6-7-5. Shared Use of WTFs and Other Structures.

- A. Locating on existing towers or other structures without increasing the height, shall be preferred by the Town, as opposed to the construction of a new tower. The petitioner shall submit a comprehensive report inventorying existing towers and other suitable structures within two miles of the location of any proposed new tower, unless the petitioner can show that some other distance is more reasonable and demonstrate conclusively why an existing tower or other suitable structure can not be used.
- B. A petitioner intending to locate on an existing tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the petitioner.
- C. Such shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.
- D. Tower structures existing prior to the effective date of this ordinance, in compliance with all of the Town's ordinances prior to the effective date of this ordinance, but which are not in compliance with the current ordinance, are legally non-conforming structures and may continue in existence as legally non-conforming structures.

6-7-6. Height of Telecommunications Towers.

- A. The maximum permitted height of a new WTF shall be 100 feet. The maximum permitted height of the WTF may be exceeded if the petitioner provides satisfactory technical justification to the ZBA.
- B. The petitioner shall submit documentation justifying the total height of any tower, facility and/or antenna and the basis therefore. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

6-7-7. Appearance and Visibility of WTFs.

- A. WTFs shall not be artificially lighted or marked, except as required by law.
- B. Towers shall be galvanized or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements established by the Building Department of the Town of Amherst.
- C. If lighting is required, the petitioner shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under applicable regulations.
- D. No freestanding lattice towers or guyed towers shall be permitted.
- E. Visual screening, including but not limited to landscaping, walls and fences, shall be approved by the ZBA. The Town's landscape architect and consultant shall provide recommendations to the ZBA regarding visual screening.
- F. No outside storage of vehicles, materials or waste shall be allowed, except for limited periods when the facility is undergoing additions, repair, renovations, modifications or servicing.
- G. The facility shall be maintained in good order and repair at all times in accordance with applicable Town regulations.

6-7-8. Security of WTFs. All WTFs and antennae shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A. All antennae, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.
- B. All antennae, towers and auxiliary structures shall be properly bonded and grounded to protect the facility and surrounding properties from lightning discharges.
- C. All towers and accessory structures shall be surrounded by a fence or wall that completely provides visual screening of all accessory structures associated with the WTF. This Section shall not apply to signage as required in § 6-7-9.
- D. There shall be no permanent climbing pegs within 20 feet of the ground adjacent to the tower.
- E. Towers shall have a fenced, restricted zone, equal in distance to $\frac{1}{4}$ of the tower height in each direction surrounding the tower to ensure safety from ice/debris fall. This area may be reduced by the Town for structures with flush-mounted antennae. The restricted zone will not apply to facilities with antennae mounted inside the structure or facilities mounted on existing utility poles or structures.

6-7-9. **Signage.** A WTF shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the antenna(e) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the petitioner and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

6-7-10. **Lot Size and Setbacks.** All proposed towers not mounted on existing buildings or structures and any other proposed WTF structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed tower or WTF structure plus 10 percent of the height of the tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater. In addition, the facility shall be separated from residential property lines, school property lines, designated historical districts, historical landmarks and historical sites by the minimum distance of 500 feet. The ZBA may modify this condition if the facility is attached to an existing nonresidential structure, or if an easement has been granted or other agreement with all property owners within 500 feet has been reached. In an agricultural district, the WTF shall be located a minimum of 500 feet from any dwelling unit. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

6-7-11. **Retention of Expert Assistance and Reimbursement by Petitioner.**

- A. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any requests for recertification.
- B. A petitioner shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of any application including the construction and modification of the site, once permitted. The initial deposit shall be \$5,000. The placement of the \$5,000 with the Town shall precede the pre-application meeting. The Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for its services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$1,000, the petitioner shall immediately, upon notification by the Town, replenish said escrow account so that it has a minimum balance of \$5,000 or a lesser amount if stipulated by the Town. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the petitioner.
- C. The total amount of the funds needed as set forth in subsection B of this Section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

6-7-12. **Action on an Application for a Special Use Permit for WTFs.**

- A. The Building Department and the Planning Department of the Town of Amherst and the designated consultant will undertake a review of an application pursuant to this local law in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and the petitioner's desire for a timely resolution.

- B. The Building Department of the Town of Amherst and/or the designated consultant may refer any application or part thereof to any advisory or other committee for a non-binding recommendation.
- C. The site plan for the proposed WTF shall be reviewed by the Planning Department before a hearing is held by the ZBA. The Planning Department shall submit a written report to the ZBA containing its analysis of the proposal under the standards set forth in the applicable sections of this Zoning Ordinance. The Planning Department analysis is advisory in nature and is not binding on the ZBA. This review of the site plan by the Planning Department shall supersede all other site plan review requirements as established in the Zoning Ordinance.
- D. After the public hearing and after formally considering the application, the ZBA may approve, approve with conditions, or deny a special use permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the petitioner.
- E. If the ZBA denies the special use permit for WTFs, then the petitioner shall be notified of such denial in writing within 10 calendar days of the Town's action.
- F. The timeframe for action on special use permit applications for WTFs shall be consistent with all applicable FCC regulations.
[Added 8-1-2011 by L.L. No. 19-2011]

6-7-13. **Recertification of a Special Use Permit for WTFs.**

- A. Between 12 months and six months prior to the five-year anniversary date after the effective date of the special use permit and all subsequent five-year anniversaries of the effective date of the original special use permit for WTFs, the holder of a special use permit for such WTFs shall submit a signed written request to the Town for recertification. In the written request for recertification, the holder of such special use permit shall note the following:
 - (1) The name of the holder of the special use permit for the WTFs;
 - (2) If applicable, the number or title of the special use permit;
 - (3) The date of the original granting of the special use permit;
 - (4) Whether the WTFs have been moved, re-located, rebuilt, or otherwise visibly modified since the issuance of the special use permit and if so, in what manner;
 - (5) If the WTFs have been moved, re-located, rebuilt, or otherwise visibly modified, then whether the Town approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
 - (6) That the WTFs are in compliance with the special use permit and compliance with all applicable codes, laws, rules and regulations;
 - (7) Recertification that the tower and attachments both are designed and constructed and continue to meet all local, Town, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a professional engineer licensed in the State of New York, the cost of which shall be borne by the petitioner.
 - (8) The holder of the special use permit shall certify to the Town that the cumulative NIER levels at the site are within the threshold levels adopted by the FCC.
- B. If, after such review, the Town determines that the permitted WTFs are in compliance with the special use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and

regulations, then the Town shall issue a recertification of the special use permit for the WTFs, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review it is determined that the permitted WTFs are not in compliance with the special use permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the Town may refuse to issue a recertification special use permit for the WTFs, and in such event, such WTFs shall not be used after the date that the petitioner receives written notice of the decision by the Town until such time as the WTF is brought into compliance. Any decision requiring the cessation of use of the WTF or imposing a penalty shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the WTF.

- C. If the petitioner has submitted all of the information requested and required by this local law, and if the review is not completed, as noted in subsection B of this Section, prior to the five-year anniversary date of the special use permit, or subsequent five-year anniversaries, then the petitioner for the permitted WTFs shall receive an extension of the special use permit for up to six months, in order for the completion of the review.
- D. If the holder of a special use permit for WTFs does not submit a request for recertification of such special use permit within the time-frame noted in subsection A of this Section, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent five-year anniversaries, unless the holder of the special use permit adequately demonstrates that extenuating circumstances prevented a timely recertification request. If the Town agrees that there were legitimately extenuating circumstances, then the holder of the special use permit may submit a late recertification request or application for a new special use permit.

6-7-14. **Extent and Parameters of Special Use Permit for WTFs.** The extent and parameters of a special use permit for WTFs shall be as follows:

- A. Such special use permit shall be non-exclusive.
- B. Such special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the Town within 30 days of such assignment, transfer, or conveyance.
- C. Such special use permit may, following a hearing upon due prior notice to the petitioner, be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this local law after prior written notice to the holder of the special use permit.

6-7-15. **Application Fee.**

- A. At the time that a person submits an application for a special use permit for a new WTF or for a co-location on an existing WTF, such person shall pay a non-refundable application fee of \$1,500 to the Town.
- B. No application fee is required in order to rectify a special use permit for WTFs unless there has been a visible modification of the WTF since the date of the issuance of the existing special use permit for which the conditions of the special use permit have not previously been modified. In the case of any modification, the fees provided in subsection A shall apply.

6-7-16. **Performance Security.** The petitioner must submit an analysis, certified by a NYS licensed professional engineer, of the cost of removal of the WTF and surrounding property restoration. The petitioner shall, at the petitioner's cost and expense, be required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount approved by the ZBA, but not less than twice the certified cost of said removal. The full amount of the bond or security shall remain in full force and effect throughout the

term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit.

6-7-17. **Reservation of Authority to Inspect WTFs.** In order to verify that the holder of a special use permit for WTFs and any and all lessees, renters, and/or licensees of WTFs place and construct such facilities, including towers and antennae, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennae and buildings or other structures constructed or located on the permitted site.

6-7-18. **Indemnification.**

- A. Any application for WTFs that is proposed for Town property, pursuant to this local law, shall contain a provision with respect to indemnification. Such provision shall require the petitioner, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.
- B. Notwithstanding the requirements noted in subsection A of this Section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a special use permit for WTFs.

6-7-19. **Default or Revocation.**

- A. If WTFs are repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this local law or of the special use permit, then the Town shall notify the holder of the special use permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within 30 days of the date of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other Section of this local law, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Town may, at its sole discretion, order the violation remedied within 24 hours.
- B. If within the period set forth in subsection A above the WTFs are not brought into compliance with the provisions of this ordinance, or of the special use permit, or substantial steps are not taken in order to bring the affected WTFs into compliance, then the Town may revoke such special use permit for WTFs, and shall notify the holder of the special use permit within 48 hours of such action.

6-7-20. **Removal of WTFs.**

- A. Under any of the following circumstances, the Town may determine that the health, safety and welfare interests of the Town warrant and require the removal of WTFs.

- (1) WTFs with a permit have been abandoned (i. e., not used as WTFs) for a period exceeding 90 consecutive days or a total of 180 days in any 365 day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days. The owner or user of the WTFs shall notify the Town within 10 days of the discontinuance of the use of the facilities or any part thereof.
 - (2) Permitted WTFs fall into such a state of disrepair that it creates a health or safety hazard.
 - (3) WTFs have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, or any other necessary authorization.
- B. If the Town makes such a determination as noted in subsection A of this Section, then the Town shall notify the holder of the special use permit for the WTFs within 48 hours that said WTFs are to be removed.
- C. The holder of the special use permit, or its successors or assigns, shall dismantle and remove such WTFs, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Town. However, if the owner of the property upon which the WTFs are located wishes to retain any access roadway to the WTFs, the owner may do so with the approval of the Town.
- D. If WTFs are not removed or substantial progress has not been made to remove the WTFs within 90 days after the permit holder has received notice, then the Town may order officials or representatives of the Town to remove the WTFs at the sole expense of the owner or special use permit holder.
- E. If, the Town removes, or causes to be removed, WTFs, and the owner of the WTFs does not claim and remove it from the site to a lawful location within 30 days, then the Town may take steps to declare the WTFs abandoned, and sell all equipment and components thereof.
- F. Notwithstanding anything in this Section to the contrary, the Town may approve a temporary use permit/agreement for the WTFs, for no more 90 days, during which time a suitable plan for sale, lease, sub-lease, removal, conversion, or re-location of the affected WTFs shall be developed by the holder of the special use permit, subject to the approval of the Town, and an agreement to such plan shall be executed by the holder of the special use permit and the Town. If such a plan is not developed, approved and executed within the 90-day time period, then the Town may take possession of and dispose of the affected WTFs in the manner provided in this Section.

6-7-21. **Relief.** The ZBA may grant relief, waiver or exemption from any aspect or requirement of this local law. Any petitioner desiring relief, waiver or exemption from any aspect or requirement of this local law may request such at the pre-application meeting, provided that the relief or exemption is contained in the original application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the petitioner. The petitioner shall bear all costs of the Town in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the petitioner demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the Town, its residents and other service providers.

6-7-22. **Adherence to State and Federal Rules and Regulations.**

- A. To the extent that the holder of a special use permit for WTFs has not received relief, or is otherwise exempt, from appropriate state and/or Federal agency rules or regulations, then the holder of such a special use permit shall adhere to, and comply with, all applicable rules,

regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

- B. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special use permit for WTFs, then the holder of such a special use permit shall conform the permitted WTFs to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.