

Chapter 122

TELECOMMUNICATIONS FACILITIES

[HISTORY: Adopted by the Town Board of the Town of Conklin 8-12-1998 by L.L. No. 5-1998. Amendments noted where applicable.]

GENERAL REFERENCES

Planning Board — See Ch. 33.

Fire prevention and building construction — See Ch. 73.

Zoning — See Ch. 140.

§ 122-1. Purpose and legislative intent.

The Telecommunications Act of 1996¹ affirmed the Town of Conklin's authority concerning the placement, construction and modification of wireless telecommunications facilities. The Town Board of the Town of Conklin finds that wireless telecommunications facilities may pose a unique hazard to the health, safety, public welfare and environment of the Town of Conklin and its inhabitants. The town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the town and of significant benefit to the town and its residents. In order to ensure that the placement, construction or modification of wireless telecommunications facilities is consistent with the town's land use policies, the town is adopting a single, comprehensive, wireless telecommunications facilities application and permit process. The intent of this chapter is to minimize the negative impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities and protect the health, safety and welfare of the Town of Conklin.

§ 122-2. Title.

This chapter may be known and cited as "The Wireless Telecommunications Facilities Siting Law for the Town of Conklin."

§ 122-3. Definitions; word usage.

- A. For purposes of this chapter and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations and their derivations shall have the meanings given in this section.
- B. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. Editor's Note: See 47 U.S.C. § 332.

ACCESSORY FACILITY OR STRUCTURE — 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 utility or transmission equipment storage sheds or cabinets.

APPLICANT — Any individual, corporation, estate, trust partnership, joint-stock company, association of two or more persons, limited liability company or entity submitting an application to the Town of Conklin for a special use permit for wireless telecommunications facilities.

APPLICATION — The form approved by the Board, together with all necessary and appropriate documentation that an applicant submits in order to receive a special use permit for wireless telecommunications facilities.

ANTENNA — A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to, radio, television, cellular, paging, personal telecommunications services (PCS) and microwave telecommunications.

BOARD — The Town Board of the Town of Conklin.

CAMOUFLAGED TOWER — Any tower or supporting structure that, due to design, location or appearance, partially or completely hides, obscures, conceals or otherwise disguises the presence of the tower and one or more antennas or antenna arrays affixed thereto.

COLLOCATION — The use of the same telecommunications tower or structure to carry two or more antennas for the provision of wireless services by two or more persons or entities.

COMMERCIAL IMPRACTICABILITY or COMMERCIALLY IMPRACTICABLE — The meaning in this chapter and any special use permit granted hereunder as is defined and applied under the New York Uniform Commercial Code (UCC).

COMPLETED APPLICATION — An application that contains all information and/or data necessary to enable the Board to evaluate the merits of the application and to make an informed decision with respect to the effect and impact of wireless telecommunications facilities on the town in the context of the permitted land use for the particular location requested.

DIRECT-TO-HOME SATELLITE SERVICES or DIRECT BROADCAST SERVICE OR DBS — Only programming transmitted or broadcast by satellite directly to subscribers' premises without the use of ground receiving equipment, except at the subscribers' premises or in the uplink process to the satellite.

EAF — The Environmental Assessment Form approved by the New York Department of Environmental Conservation.

EPA — State and/or Federal Environmental Protection Agency or its duly assigned successor agency.

FAA — The Federal Aviation Administration or its duly designated and authorized successor agency.

FCC — The Federal Communications Commission or its duly designated and authorized successor agency.

FREESTANDING TOWER — A tower that is not supported by guy wires and ground anchors or other means of attached or external support.

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

NIER — Non-ionizing electromagnetic radiation.

PERSON — Any individual, corporation, estate, trust, partnership, joint-stock company or association of two or more persons having a joint common interest or governmental 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 1996 Telecommunications Act.

TELECOMMUNICATIONS SITE — See definition for "wireless telecommunications facilities."

SPECIAL USE PERMIT — The official document or permit by which an applicant is allowed to construct and use wireless telecommunications facilities as granted or issued by the town.

STATE — The State of New York.

TELECOMMUNICATIONS — The transmission and 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 — In relation to all aspects and components of this chapter, something intended to or that does exist for fewer than 90 days.

TOWN — The Town of Conklin, New York.

WIRELESS TELECOMMUNICATIONS FACILITIES or TELECOMMUNICATIONS TOWER or TELECOMMUNICATIONS SITE or PERSONAL WIRELESS FACILITY — A structure or location designed or intended to be used or used to support antennas. It includes, without limit, freestanding towers, guyed towers, monopoles and similar structures that employ camouflage technology, including but not limited to structures such as a multistory building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, personal telecommunications services or microwave telecommunications, but excluding those used exclusively for fire, police and other municipal dispatch telecommunications or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.

§ 122-4. Overall policy and desired goals for special use permits.

In order to ensure that the placement, construction and modification of wireless

telecommunications facilities protects the town's health, safety, public welfare, environmental features and other aspects of the quality of life specifically listed elsewhere in this chapter, the Board adopts an overall policy with respect to a special use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

- A. Implementing an application process for person(s) seeking a special use permit for wireless telecommunications facilities.
- B. Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent.
- C. Establishing reasonable time frames for granting or not granting a special use permit for wireless telecommunications facilities or recertifying or not recertifying or revoking the special use permit granted under this chapter.
- D. Promoting and encouraging, wherever possible, the sharing and/or collocation of wireless telecommunications facilities among service providers.
- E. Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner as to minimize adverse aesthetic impacts to 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.

§ 122-5. Special use permit application and other requirements.

- A. All applicants for a special use permit for wireless telecommunications facilities shall, in addition to the other requirements in this chapter, comply with the requirements set forth in this section. The Board is the officially designated agency or body of the community to whom applications for a special use permit for wireless telecommunications facilities 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 wireless telecommunications facilities. The Board may at its discretion delegate or designate other official agencies of the town to accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for wireless telecommunications facilities.
- B. An application for a special use permit for wireless telecommunications facilities shall be signed on behalf of the applicant 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 applicant, shall also sign the application. At the discretion of the Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- C. Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the Board.
- D. The applicant shall include a statement in writing:

- (1) That the applicant's proposed wireless telecommunications facilities 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 Board in writing, as well as all applicable and permissible local codes, ordinances and regulations, including any and all applicable county, state and federal laws, rules and regulations.
- (2) That the construction of the wireless telecommunications facilities is legally permissible, including but not limited to the fact that the applicant is authorized to do business in New York State.

E. No wireless telecommunications facilities shall be installed or constructed until the site plan is reviewed and approved by the Board and the special use permit has been issued. All applications for the construction or installation of new wireless telecommunications facilities shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a licensed professional engineer registered in the state. Where this section calls for certification, such certification shall be by a qualified New York State licensed professional engineer acceptable to the town, unless otherwise noted.

- (1) Name, address and phone number of the person preparing the report.
- (2) Name, address and phone number of the property owner, operator and applicant, to include the legal form of the applicant.
- (3) Postal address and Tax Map parcel number of the property.
- (4) Zoning district or designation in which the property is situated.
- (5) Size of the property stated both in square feet and lot line dimensions and a diagram showing the location of all lot lines.
- (6) Location of nearest residential structure.
- (7) Location of nearest habitable structure.
- (8) Location, size and height of all structures on the property which is the subject of the application.
- (9) Location, size and height of all proposed and existing antennas and all appurtenant structures.
- (10) Type, size and location of all proposed and existing landscaping, including fencing.
- (11) The number, type and design of the telecommunications tower(s) antenna(s) proposed and the basis for the calculations of the telecommunications tower's capacity to accommodate multiple users.
- (12) The make, model and manufacturer of the tower and antenna(s).
- (13) A description of the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting.
- (14) The frequency, modulation and class of service of radio or other transmitting

equipment.

- (15) Transmission and maximum effective radiated power of the antenna(s).
 - (16) Direction of maximum lobes and associated radiation of the antenna(s).
 - (17) Applicant's proposed tower maintenance and inspection procedures and related system of records.
 - (18) Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC.
 - (19) Certification that the proposed antenna(s) will not cause interference with existing telecommunications devices, though the certifying engineer need not be approved by the Board.
 - (20) A copy of the FCC license applicable for the use of wireless telecommunications facilities.
 - (21) 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, the site is adequate to assure the stability of the proposed wireless telecommunications facilities on the proposed site, though the certifying engineer need not be approved by the Board.
 - (22) Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites.
 - (23) Applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new telecommunications tower that it constructs.
- F. In the case of a new telecommunications tower, the applicant shall be required to submit a written report demonstrating its efforts to secure shared use of existing telecommunications tower(s) or use of existing buildings or other structures within the town. Copies of written requests and responses for shared use shall be provided to the Board.
- G. The applicant shall furnish written certification that the telecommunications tower, foundation and attachments all are designed and constructed (as-built) to meet all local, county, state and federal structural requirements for loads, including wind and ice loads.
- H. After construction and prior to receiving a certificate of compliance, the applicant shall furnish written certification that the wireless telecommunications facilities are grounded and bonded so as to protect persons and property and are installed with appropriate surge protectors.
- I. The applicant shall submit a completed long-form EAF and a completed Visual EAF addendum. The Board may require submission of a more detailed visual analysis based on the results of the Visual EAF addendum. Applicants are encouraged to seek preapplication meetings with the Town Board to address the scope of the required visual assessment.
- J. If requested by the Board, the applicant shall furnish a Visual Impact Assessment which

shall include:

- (1) A Zone of Visibility Map, which shall be provided in order to determine locations where the tower may be seen.
 - (2) Pictorial representations of before and after views from key viewpoints both inside and outside of the town, including but not limited to state highways and county roads; local parks; other public lands; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. The Board or its consultants or experts will provide guidance concerning the appropriate key sites at a preapplication meeting.
 - (3) An assessment of the visual impact of the tower base, guy wires and accessory buildings from abutting and adjacent properties and streets.
- K. Any and all representations made by the applicant to the Board, 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 Board.
- L. The applicant shall, in a manner approved by the Board, effectively screen from view its proposed wireless telecommunications facilities base and all related facilities and structures.
- M. All utilities from wireless telecommunications facilities sites shall be installed underground and in compliance with all laws, rules and regulations of the town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate. The Board may waive or vary the requirements of undergrounding installation of utilities whenever, in the opinion of the Board, such variance or waiver shall not be detrimental to the health, safety, general welfare and environment, including the visual and scenic characteristics of the area.
- N. All wireless telecommunications facilities shall be sited so as to have the minimal adverse visual effect on the environment and its character and the residences in the area of the wireless telecommunications facilities sites.
- O. Accessory facilities shall maximize use of building materials, colors and textures designed to harmonize with the natural surroundings.
- P. At a telecommunications site, an access road and parking shall be provided to assure adequate emergency and service access. 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 vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- Q. A person who holds a special use permit for wireless telecommunications facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted wireless telecommunications facilities in strict compliance with all then-current technical, safety and safety-related codes adopted by the town, county, 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.

- R. A holder of a special use permit granted under this chapter shall obtain, at its own expense, all permits and licenses required by applicable rule, regulation or law 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 applicant.
- S. With respect to this application process, the Board will normally seek to have lead agency status, pursuant to SEQRA. The Board shall conduct an environmental review of the proposed project in combination with its review of the application under this chapter.
- T. An applicant shall submit no fewer than eight copies of the entire completed application to the Board and a copy of the application to the legislative body of any adjacent town or city and to the County Planning Agency.
- U. The applicant shall examine the feasibility of designing a proposed telecommunications tower to accommodate future demand for at least two additional commercial applications, for example, future collocations. The scope of this examination shall be determined by the Board. The telecommunications tower shall be structurally designed to accommodate at least two additional antenna arrays equal to those of the applicant and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the telecommunications tower is not technologically feasible or is commercially impracticable and creates an unnecessary and unreasonable burden, based upon:
 - (1) The number of FCC licenses foreseeably available for the area.
 - (2) The kind of wireless telecommunications facilities site and structure proposed.
 - (3) The number of existing and potential licenses without wireless telecommunications facilities spaces/sites.
 - (4) Available space on existing and approved telecommunications towers.
- V. The applicant shall submit to the Board a letter of intent committing the owner of the proposed new tower and his/her successors in interest to negotiate in good faith for shared use of the proposed tower by other telecommunications providers in the future. This letter shall be filed with the Board. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit. The letter shall commit the new tower owner and his/her successors in interest to:
 - (1) Respond within 60 days to a request for information from a potential shared-use applicant.
 - (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.

- W. Unless waived by the Board, there shall be a preapplication meeting. The purpose of the preapplication meeting will be to address issues which will help to expedite the review and permitting process. A preapplication meeting shall also include a site visit if required by the Board or its consultants. Where the application is for the shared use of an existing telecommunications tower(s) or other high structure, the applicant should seek to waive any section or subsection of this chapter that may not be required. At the preapplication meeting, the waiver requests, if appropriate, will be decided by the Board and its consultants. Costs of the town's consultants to prepare for and attend the preapplication meeting will be borne by the applicant.

§ 122-6. Location of facilities.

A. Proposed property sites.

- (1) Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, Subsection A(1)(a) being the highest priority and Subsection A(1)(d) being the lowest priority:
 - (a) On existing telecommunications towers or other tall structures.
 - (b) Collocation on a site with existing wireless telecommunications facilities or structures.
 - (c) On municipally owned properties owned by the Town of Conklin.
 - (d) On other property in the town, in accordance with the following zoning priorities, with Subsection A(1)(d)[1] being the highest priority and Subsection A(1)(d)[8] being the lowest priority:
 - [1] Industrial Development/Transportation District.
 - [2] Economic Development District.
 - [3] Industrial Development District.
 - [4] Limited Industrial District.
 - [5] General Commercial District.
 - [6] Neighborhood Commercial District.
 - [7] Agricultural.
 - [8] Residential.
- (2) If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or

- reasons why such a permit should be granted for the proposed site and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.
- (3) An applicant may not bypass sites of higher priority by stating the site presented is the only site leased or selected. An application shall address collocation as an option, and if such option is not proposed, the applicant must explain why collocation is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting collocation shall not be a valid basis for any claim of commercial impracticability or hardship.
 - (4) Notwithstanding the above, the Board may approve any site located within an area in the above list of priorities, provided that the Board finds that the proposed site is in the best interest of the health, safety and welfare of the town and its inhabitants.
- B. The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.
- C. The applicant shall, in writing, identify and disclose the number and locations of any additional sites that the applicant has been, is or will be considering, reviewing or planning for wireless telecommunications facilities in the town and all municipalities adjoining the town, for a two-year period following the date of the application.
- D. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Board may disapprove an application for any of the following reasons:
- (1) Conflict with safety and safety-related codes and requirements.
 - (2) Conflict with traffic needs or traffic laws or definitive plans for changes in traffic flow or traffic laws.
 - (3) Conflict with the historic nature of a neighborhood or historical district.
 - (4) The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning or land use designation.
 - (5) The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the town or employees of the service provider or other service providers.
 - (6) Conflicts with the provisions of this chapter.

§ 122-7. Shared use of facilities and other structures.

A. Application.

- (1) Shared use of existing wireless telecommunications facilities shall be preferred by the town, as opposed to the proposed construction of a new telecommunications tower.

Where such shared use is unavailable, location of antennas on other preexisting structures shall be considered and preferred. The applicant shall submit a comprehensive report inventorying existing towers and other appropriate structures within four miles of any proposed new tower site, unless the applicant can show that some other distance is more reasonable and outlining opportunities for shared use of existing facilities and the use of other preexisting structures as a preferred alternative to new construction.

- (2) An applicant intending to share use of an existing telecommunications tower or other structure shall be required to document the intent of the existing owner to share use. In the event of an application to share the use of an existing telecommunications tower which does not increase the height of the telecommunications tower, the Board shall waive such requirements of the application required by this chapter as may be for good cause shown.

- B. Such shared use shall consist only of the minimum antenna array technologically required to provide service within the town, to the extent practicable, unless good cause is shown.

§ 122-8. Height of tower(s).

- A. The applicant must submit documentation justifying to the Board the total height of any telecommunications tower and/or antenna and the basis therefor. Such justification shall be to provide service within the town, to the extent practicable, unless good cause is shown.
- B. Telecommunications towers shall be no higher than the minimum height necessary. Unless waived by the Board upon good cause shown, the presumed maximum height shall be 140 feet, based on three collocated antenna arrays and ambient tree height of 80 feet.
- C. The maximum height of any telecommunications tower and attached antennas constructed after the effective date of this chapter shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, county, state and/or any federal law and/or regulation.

§ 122-9. Visibility of facilities.

- A. Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
- B. Telecommunications towers shall be of a galvanized finish or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Board and shall be maintained in accordance with the requirements of this chapter.
- C. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within 1,500 feet of all property lines of the parcel on which the wireless telecommunications facilities are located.

§ 122-10. Security of facilities.

All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. Specifically as follows:

- A. All antennas, 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 run into.
- B. Transmitters and telecommunications control points must be installed such that they are readily accessible only to persons authorized to operate or service them.

§ 122-11. Signage.

Wireless telecommunications facilities shall contain a sign no larger than four square feet to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point of the site. The sign shall not be lighted unless the Board shall have allowed such lighting or unless such lighting is required by applicable provisions of law. The sign shall be approved by the Board before installation. No other signage, including advertising, shall be permitted on any facilities, antennas, antenna supporting structures or antenna towers, unless required by law.

§ 122-12. Lot size and setbacks.

- A. All proposed wireless telecommunications facilities shall be set back from abutting parcels, recorded rights-of-way and road and street lines a distance sufficient to substantially contain on-site icefall or debris from a tower or tower failure and to preserve the privacy and sanctity of any adjoining properties.
- B. Wireless telecommunications facilities shall be located with a minimum setback from any property line a distance equal to the height of the wireless telecommunications facility or the existing setback requirement of the underlying zoning district, whichever is greater. Further, any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

§ 122-13. Retention and reimbursement of expert assistance.

- A. The Board may hire any consultant and/or expert necessary to assist the Board in reviewing and evaluating the application and any requests for recertification.
- B. An applicant shall deposit with the town funds sufficient to reimburse the town for all reasonable costs of consultant and expert evaluation and consultation to the Board in connection with the review of any application. The Town Board, by resolution, shall set the initial deposit. These funds shall accompany the filing of an application and the town will maintain a separate escrow account for all such funds. The town's consultants/experts shall bill or invoice the town no less frequently than monthly for its services in reviewing the application and performing its duties. If at any time during the review process this escrow account has a balance less than \$2,500, applicant shall immediately, upon notification by the town, replenish said escrow account so that it has a balance of at least \$2,500. Such

additional escrow funds must 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 billing or invoicing at the conclusion of the review process, the difference shall be promptly refunded to the applicant.

- C. The total amount of the funds 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 by the Board or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as required and requested by the town, shall be paid by the applicant.

§ 122-14. Special use permit exceptions.

- A. No person shall be permitted to site, place, build, construct or modify or prepare any site for the placement or use of wireless telecommunications facilities as of the effective date of this chapter without having first obtained a special use permit for wireless telecommunications facilities. Notwithstanding anything to the contrary in this section, no special use permit shall be required for those exceptions noted in the definition of wireless telecommunications facilities.
- B. New construction, including routine maintenance on existing wireless telecommunications facilities, shall comply with the requirements of this chapter.
- C. All wireless telecommunications facilities existing on or before the effective date of this chapter shall be allowed to continue as they presently exist; provided, however, that any modification to existing wireless telecommunications facilities must comply with this chapter.

§ 122-15. Public hearing required.

- A. Prior to the approval of any application for a special use permit for wireless telecommunications facilities, a public hearing shall be held by the Board, notice of which shall be published in the official newspaper of the town no fewer than 10 calendar days prior to the scheduled date of the public hearing. In order that the town may notify nearby landowners, the applicant, at least three weeks prior to the date of said public hearing, shall be required to provide names and address of all landowners whose property is located within 1,500 feet of any property line of the lot on which the proposed new wireless telecommunications facilities are proposed to be located.
- B. The Board shall schedule the public hearing referred to in Subsection A of this section once it finds the application is complete. The Board, at any stage prior to issuing a special use permit, may require such additional information as it deems necessary.

§ 122-16. Action on application for special use permit.

- A. The Board will undertake a review of an application pursuant to this chapter in a timely fashion, consistent with its responsibilities with SEQRA, 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 need to be involved and the applicant's desire for a

timely resolution.

- B. The Board may refer any application or part thereof to the Town Planning Board or other advisory committee for a nonbinding recommendation.
- C. Except for necessary building permits and subsequent certificates of compliance, no additional permits or approvals from the town shall be required for wireless telecommunications facilities covered by this chapter.
- D. After the public hearing and after formally considering the application, the Board may approve and issue 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 applicant.
- E. If the Board approves the special use permit for wireless telecommunications facilities, then the applicant shall be notified of such approval in writing within 10 calendar days of the Board's action, and the special use permit shall be issued within 30 days after such approval.
- F. If the Board denies the special use permit for wireless telecommunications facilities, then the applicant shall be notified of such denial in writing within 10 calendar days of the Board's action.

§ 122-17. Recertification of special use permit.

- A. At any time 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 fifth anniversaries of the effective date of the original special use permit for wireless telecommunications facilities, the holder of a special use permit for such wireless telecommunications facilities shall submit a signed written request to the Board 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 wireless telecommunications facilities.
 - (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 wireless telecommunications facilities have been moved, relocated, rebuilt or otherwise modified since the issuance of the special use permit and, if so, in what manner.
 - (5) If the wireless telecommunications facilities have been moved, relocated, rebuilt or otherwise modified, then whether the Board approved such action, and under what terms and conditions, and whether those terms and conditions were met.
 - (6) Any requests for waivers or relief of any kind whatsoever from the requirements of this chapter and any requirements for a special use permit.
 - (7) That the wireless telecommunications facilities are in compliance with the special use permit and in compliance with all applicable codes, laws, rules and regulations.

- (8) Recertification that the telecommunications tower and attachments both are designed and constructed (as-built) and continue to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a qualified New York state licensed professional engineer acceptable to the town, the cost of which shall be borne by the applicant.
- B. If, after such review, the Board determines that the permitted wireless telecommunications facilities are in compliance with the special use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Board shall issue a recertification special use permit for the wireless telecommunications facilities, which may include any new provisions or conditions that are mutually agreed upon or required by applicable statutes, laws, local laws, ordinances, codes, rules and regulations. If, after such review, the Board determines that the permitted wireless telecommunications facilities are not in compliance with the special use permit and all applicable statutes, local laws, ordinances, codes, rules and regulations, then the Board may refuse to issue a recertification special use permit for the wireless telecommunications facilities, and in such event, such wireless telecommunications facilities shall not be used after the date that the applicant receives written notice of such decision by the Board. Any such decision shall be in writing and supported by substantial evidence contained in a written record.
- C. If the applicant has submitted all of the information requested by the Board and required by this chapter and if the Board does not complete its review, as noted in Subsection B of this section, prior to the five-year anniversary date of the special use permit or subsequent fifth anniversaries, then the applicant for the permitted wireless telecommunications facilities shall receive an extension of the special use permit for up to six months, in order for the Board to complete its review.
- D. If the holder of a special use permit for wireless telecommunications facilities 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 fifth anniversaries, unless the holder of the special use permit adequately demonstrates to the Board that extenuating circumstances prevented a timely recertification request. If the Board 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.

§ 122-18. Extent and parameters of special use permit.

The extent and parameters of a special use permit for wireless telecommunications facilities shall be as follows:

- A. Such special use permit shall be nonexclusive.
- B. Such special use permit shall not be assigned, transferred or conveyed without the express prior written consent of the Board, and such consent shall not be unreasonably withheld or delayed.
- C. Such special use permit may, following a hearing upon due prior notice to the applicant, be

revoked, canceled or terminated for a violation of the conditions and provisions of the special use permit for wireless telecommunications facilities or for a material violation of this chapter after prior written notice to the applicant and the holder of the special use permit.

§ 122-19. Application fee.

- A. At the time that a person submits an application for a special use permit for a new telecommunications tower, such person shall pay an application fee in an amount to be determined by the Board from time to time pursuant to resolution.
- B. No application fee is required in order to recertify a special use permit for wireless telecommunications facilities, unless there has been a modification of the wireless telecommunications facilities since the date of the issuance of the existing special use permit. In the case of any modification, the fees provided in Subsection A shall apply.

§ 122-20. Performance security.

The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly 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 of at least \$75,000 and with such sureties as are deemed sufficient by the Board to assure the faithful performance of the terms and conditions of this chapter and conditions of any special use permit issued pursuant to this chapter. 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 the removal of the wireless telecommunications facilities and any necessary site restoration is completed. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the special use permit and shall entitle the Board to revoke the special use permit after prior written notice to the applicant and holder of the permit and after a hearing upon due prior notice to the applicant and holder of the special use permit.

§ 122-21. Inspections.

- A. In order to verify that the holder of a special use permit for wireless telecommunications facilities, and any and all lessees, renters and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, 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, antennas and buildings or other structures constructed or located on the permitted site.
- B. The town shall pay for costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information or necessary access to such facilities, including towers, antennas and appurtenant or associated facilities or refusal to otherwise cooperate with the town with respect to an inspection or if violations of this chapter are found to exist, in which case the

holder, lessee or licensee shall reimburse the town for the cost of the inspection.

- C. Payment of such costs shall be made to the town within 30 days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is/are appealed in accordance with the procedures set forth in this chapter, said reimbursement payment must still be paid to the town and the reimbursement shall be placed in an escrow account established by the town specifically for this purpose, pending the final decision on appeal.

§ 122-22. Annual NIER certification.

The holder of the special use permit shall, annually, certify in writing to the town that NIER levels at the site are within the threshold levels adopted by the FCC. The certifying engineer need not be approved by the town.

§ 122-23. Liability insurance.

- A. A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage and umbrella insurance coverage, for the duration of the special use permit in amounts as set forth below:
 - (1) Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate.
 - (2) Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate.
 - (3) Workers' compensation and disability: statutory amounts.
- B. The commercial general liability insurance policy shall specifically include the town and its officers, boards, employees, committee members, attorneys, agents and consultants as additional named insureds.
- C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the town with at least 30 days' prior written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the town at least 15 days before the expiration of the insurance which such policies are to renew or replace.
- F. Before construction of a permitted wireless telecommunications facilities is initiated, but in no case later than 15 days after the grant of the special use permit, the holder of the special use permit shall deliver to the town a copy of each of the policies or certificates representing the insurance in the required amounts.

§ 122-24. Indemnification.

- A. Any special use permit issued pursuant to this chapter shall contain a provision with respect

to indemnification. Such provision shall require the holder of the special use permit, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless and exempt the town, officials of the town, its officers, agents, servants and employees, from any and all penalties, damage 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 construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of wireless telecommunications facilities within the town. 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 wireless telecommunications facilities.

§ 122-25. Fines; penalties for offenses.

- A. In the event of a violation of this chapter or any special use permit issued pursuant to this chapter, the Board may impose and collect, and the holder of the special use permit for wireless telecommunications facilities shall pay to the town, fines or penalties as set forth below.
- B. A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance or regulation shall be deemed misdemeanors, and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.
- C. Notwithstanding anything in this chapter, the holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit. The town may also seek injunctive relief to prevent the continued violation of this chapter, without limiting other remedies available to the town.

§ 122-26. Default and/or revocation.

- A. If wireless telecommunications facilities are repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the

provisions of this chapter or of the special use permit, then the Board shall notify the holder of the special use permit, in writing, of such violation. Such notice shall specify the nature of the violation or noncompliance and that the violations must be corrected within seven days of the date of the postmark 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 chapter, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Board may, at its sole discretion, order the violation remedied within 24 hours.

- B. If within the period set forth in Subsection A above the wireless telecommunications facilities are not brought into compliance with the provisions of this chapter or of the special use permit or substantial steps are not taken in order to bring the affected wireless telecommunications facilities into compliance, then the Board may revoke such special use permit for wireless telecommunications facilities and shall notify the holder of the special use permit within 48 hours of such action.

§ 122-27. Removal of wireless telecommunications facilities.

- A. Under the following circumstances, the Board may determine that the health, safety and welfare interests of the town warrant and require the removal of wireless telecommunications.
 - (1) Wireless telecommunications facilities with a permit have been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 days or a total of 180 days in any three-hundred-sixty-five-day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days.
 - (2) Permitted wireless telecommunications facilities fall into such a state of disrepair that it creates a health or safety hazard.
 - (3) Wireless telecommunications facilities 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 Board makes such a determination as noted in Subsection A of this section, then the Board shall notify the holder of the special use permit for the wireless telecommunications facilities within 48 hours that said wireless telecommunications facilities are to be removed. The Board may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facilities.
- C. The holder of the special use permit or its successors or assigns shall dismantle and remove such wireless telecommunications facilities 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 Board. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the Board.

- D. If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within 90 days after the permit holder has received notice, then the Board may order officials or representatives of the town to remove the wireless telecommunications facilities at the sole expense of the owner or special use permit holder.
- E. If the town removes or causes to be removed wireless telecommunications facilities and the owner of the wireless telecommunications facilities does not claim the property and remove it from the site to a lawful location within 10 days, then the town may take steps to declare the wireless telecommunications facilities abandoned and sell it and its components.
- F. Notwithstanding anything in this section to the contrary, the Board may approve a temporary use permit/agreement for the wireless telecommunications facilities, for no more 90 days, during which time a suitable plan for removal, conversion or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the Board, 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 ninety-day time period, then the town may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section.

§ 122-28. Relief.

Any applicant desiring relief or exemption from any aspect or requirement of this chapter may request such from the Board at a preapplication 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, at the sole discretion of the Board. However, the burden of proving the need for the requested relief or exemption is solely on the applicant to prove to the satisfaction of the Board. The applicant shall bear all costs of the Board or the town in considering the request, and the relief shall not be transferable to a new or different holder of the permit or owner of the tower or facilities without the specific written permission of the Board. Such permission shall not be unreasonably withheld or delayed. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant effect on the health, safety and welfare of the town, its residents and other service providers.

§ 122-29. Periodic regulatory review by the Board.

- A. The Board may at any time conduct a review and examination of this entire chapter.
- B. If after such a periodic review and examination of this chapter the Board determines that one or more provisions of this chapter should be amended, repealed, revised, clarified or deleted, then the Board may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted and in the best interests of the town, the Board may repeal this entire chapter at any time.
- C. Notwithstanding the provisions of Subsections A and B of this section, the Board may at any time and in any manner (to the extent permitted by federal, state or local law) amend,

add, repeal and/or delete one or more provisions of this chapter.

§ 122-30. Adherence to state and/or federal rules and regulations.

- A. To the extent that the holder of a special use permit for wireless telecommunications facilities 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 wireless telecommunications facilities, then the holder of such a special use permit shall conform the permitted wireless telecommunications facilities 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.

§ 122-31. Conflict with other laws.

Where this chapter differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the county, state or federal government, the law, rule or regulation which is more restrictive or protective of the town and the public shall apply.

§ 122-32. Authority.

This chapter is enacted pursuant to the Municipal Home Rule Law. This chapter shall supersede the provisions of Town Law to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other applicable statute.

§ 122-33. Notices.

Any and all notices, communications, proof of insurance, annual NIER certification or other correspondence directed to the town thereunder shall be sent to the attention of the Town Clerk and a copy sent to the town's consultants, if any.

§ 122-34. Severability.

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

- B. Any special use permit issued under this chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect by a competent authority or is overturned by a competent authority, the permit shall be void in total, upon determination by the Town Board.