

§ 1. Legislative Intent

(A) The purpose of this section is to establish general guidelines and requirements for the siting of wireless communications towers and antennas. The goals of this section are to:

- 1) Protect residential areas and land uses from potential adverse impacts of wireless telecommunication facilities and antennas.
- 2) Encourage the location of towers in nonresidential areas.
- 3) Minimize the total number of towers throughout the community.
- 4) Strongly encourage the use of existing towers as a primary option rather than the construction of additional single-use towers.
- 5) Encourage users of towers and antennas to locate them to the extent possible, in areas where the adverse impact on the community is minimal.
- 6) Promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new tower structures to support antennas and telecommunications facilities.
- 7) Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening and innovative camouflaging techniques.
- 8) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently.
- 9) Consider the public safety of communication towers.
- 10) Avoid potential damage to adjacent properties from tower failure through proper engineering and careful siting of tower structures.

(B) In furtherance of these goals, the Village of Matinecock shall give due consideration to the Village's Comprehensive Master Plan, Zoning Map, existing land uses and environmentally sensitive areas, in approving sites for the location of towers and antennas.

§ 2. Definitions.

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

ABANDONED — Any facility which has not been operational for six consecutive months.

ACCESSORY STRUCTURE — A structure such as a storage shed or other type of enclosure for equipment, equipment cabinets, support structures for equipment or other appurtenances used in conjunction with the operation of a wireless-telecommunications facility as defined herein and located on the same lot as the WTF.

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

ANTENNA ARRAY – a set or group of antennas aligned at the same height for a particular carrier of wireless services.

ANTENNA SUPPORT STRUCTURE — Any building or structure, other than a freestanding tower, used to support antennas used in personal wireless services.

APPLICANT — A person, firm, organization or company applying for either an Antenna Location Permit (hereinafter referred to as "ALP") or a special permit under the provisions of this section. An applicant must qualify as a wireless carrier/service provider as defined herein.

APPLICATION — a request to the City for a either an ALP or a Special Permit for a WTF under the provisions of this section. The application shall include all necessary, appropriate, and written documentation, verbal statements, and representations, in whatever form or forum submitted or made by an applicant to the B D A concerning such request.

BUILDING DEPARTMENT ADMINISTRATOR – the head of the Village Building Department (hereinafter referred to as “BDA”).

CAMOUFLAGE — The construction of facilities to house or support a WTF so that the towers and/or antennas blend readily with the landscape, neighborhood, and adjacent architectural features.

COLLOCATION — Placement of two or more wireless telecommunications facilities upon a single structure (including but not limited to existing freestanding WTF structures, buildings, water towers, etc.).

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

EAF — The environmental assessment form approved by the New York State Department of Environmental Conservation.

ENGINEER — Any person licensed by the State of New York to practice engineering services.

EQUIPMENT — Computers, batteries, generators, transmission equipment and cabinets, etc., which are utilized to power and/or operate a wireless telecommunications facility.

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.

FACILITY — A wireless telecommunications facility.

FREESTANDING WIRELESS TELECOMMUNICATIONS FACILITY — A structure such as a monopole or lattice tower, constructed or existing specifically for the purposes of supporting antenna(s) and/or equipment used in conjunction with the operation of one or more wireless telecommunications facilities.

HEIGHT — The distance measured vertically from the average level of the curb of the lowest adjoining street or from the lowest point within a radius of two hundred (200) feet measured from the facility, whichever is lower, to the highest point on the building, structure, or freestanding wireless telecommunications facility as prescribed in the Ordinances of the Village of Matinecock.

INCUMBENT WIRELESS TELECOMMUNICATIONS FACILITY — Any wireless telecommunications facility legally constructed, erected and operated as of the date of adoption of this Chapter, or one erected under a Special Permit issued by the Planning Board in accordance with this Chapter and for which all applicable permits have been acquired from all appropriate government authorities.

NIER – Non-ionizing electromagnetic radiation.

NONCOMPLIANT STRUCTURE or NONCOMPLIANT USE — A structure or use that does not conform to the regulations of the district in which it is situated.

PREEXISTING TOWERS AND PREEXISTING ANTENNAS — Any tower or antenna which was legally constructed prior to the effective date of this Chapter, or for which building permits were legally issued prior to the effective date of this Chapter but have not yet been constructed, so long as such permits are current and not expired.

PUBLIC UTILITY — Any company authorized (either by the New York State Public Service Commission, a municipality or other such authority) to provide water, electric, gas or telephone services to the public.

PUBLIC UTILITY STRUCTURE — Any structure erected for the purposes of providing a public utility service, including, but not limited to, water towers, electric transmission towers/poles and telephone poles.

SITE — The property, including all buildings and structures located thereon, on which a wireless telecommunications facility is, or is proposed to be, located.

SEQRA — State Environmental Quality Review Act

SPECIAL USE PERMIT — The permit granted by the Planning Board, by which an applicant is allowed to apply to the BDA for a Building Permit to construct and use a wireless telecommunications tower (hereinafter referred to as "SUP").

STEALTH TECHNOLOGY/STEALTH STRUCTURE — A method of installing/constructing wireless telecommunications facilities which conceals, hides or camouflages their presence.

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 — Any structure used in, associated with or necessary for the provision of wireless services as described in the definition of "wireless telecommunications facility."

TOWER — A type of structure used to support wireless telecommunications facilities.

VILLAGE – the Village of Matinecock.

VILLAGE BOARD – the governing body of the Village of Matinecock

WIRELESS CARRIER/SERVICE PROVIDER — Any company which is licensed by the FCC to operate wireless telecommunications facilities.

WIRELESS TELECOMMUNICATIONS FACILITY — Antenna(s) and associated equipment and/or structures (including, but not limited to, monopoles, lattice towers, etc.) used to transmit and/or receive audio, video, data and other information using radio frequency energy and other electronic or electromagnetic systems. The antenna(s) and equipment of each wireless carrier will be considered a wireless telecommunications facility (hereinafter referred to as "WTF").

§ 3. Applicability

Any WTF which is established, installed, erected, constructed, reconstructed or significantly altered subsequent to the date of adoption of this Chapter must conform to the provisions herein. Except as provided for herein, no permit for any new free standing WTF shall be issued unless a SUP is granted by the Planning Board. However, for a collocation installation, an ALP shall be issued as long as the requirements of this code are satisfied. The Planning Board shall review all applications which require a SUP for WTFs, hold a public hearing and approve the application with modifications, or disapprove applications as provided for herein. Notwithstanding the foregoing, no SUP shall be required, and the BDA shall have the authority to review and approve, approve with modifications or disapprove applications for ALPs for WTFs for collocation or as provided for herein.

§ 4. Exceptions.

Except as provided for herein, the provisions of this Chapter shall not apply to:

A. Satellite dish antennas which are regulated separately.

§ 5. Existing Facilities

- A. All WTFs lawfully existing under the regulations in effect at the time of the creation of said WTF, although not conforming to or complying with other provision of this Chapter, may be allowed to continue in its present usage as a pre-existing, nonconforming use and shall be treated as a nonconforming use, as provided for in this section, provided that a certificate of existing use, certifying that it was legally constructed prior to the effective date of this Chapter, is obtained from the BDA.

No such nonconforming WTF shall be altered or modified in any way, unless it is brought into compliance with the provisions of this Chapter. Nothing contained herein shall be construed to limit or prohibit the routine maintenance such WTFs.

- B. Any nonconforming WTF, if discontinued for six (6) months or longer shall be resumed without full compliance with the provisions of this Chapter.

§ 6. Antenna Location Permits.

- A. The BDA is authorized to issue ALPs for the following WTFs, provided that all of the requirements set forth herein are met.

- (1) Nonresidential zoning districts.

- (a) Collocation of WTFs on towers and which contain one or more WTFs which have been approved in accordance with this Chapter or which qualify as incumbent freestanding WTFs as defined herein, provided that, in the case of collocation on an existing freestanding WTF, the height of the existing structure is not increased, and provided that all height, setback and design requirements as set forth in §1-9 herein are met. All accessory structures, including, but not limited to, equipment, equipment cabinets, equipment sheds/shelters, etc., must also comply with the standards set forth in §1-9 herein.

- B. Application requirements. The BDA may promulgate appropriate application forms to assist in the completion and evaluation of an Application for ALPs. The following materials shall be submitted in triplicate to the BDA, who shall certify that the Application is complete before the Application for an ALP is reviewed and is issued:

- (1) Name, address and telephone number of the applicant.
- (2) Name, address and telephone number of the owner of the property on which the WTF will be located.
- (3) Section, Block and Lot number(s) of the property on which the proposed WTF will be located.
- (4) A copy of an agreement between the applicant and the owner of the site which authorizes the use of the site as a location for the proposed WTF.
- (5) A location map to scale indicating the location of the proposed WTF.
- (6) An up-to-date survey of the property prepared, signed and sealed by an engineer or surveyor licensed by the State of New York.
- (7) A site plan or plans to scale specifying the location of the proposed WTF on the property. All setbacks of the WTF from front, rear and side yards shall be shown. (If the WTF is located upon an existing structure, the setbacks of the existing structure from front, rear and side yards shall be shown and the location of the WTF on the existing structure, including all dimensions, shall be shown).
- (8) Elevations showing the height of all proposed antennas, equipment and supporting structures (i.e., monopoles, towers, etc.) from ground level. Dimensions of all antennas and equipment and the distances of each from the top of any structures upon which they are located shall also be shown.
- (9) Construction/engineering drawings to be reviewed by the BDA to determine whether the proposed WTF meets with all applicable building, fire and safety codes and showing that the WTF includes appropriate deicing equipment.

- (10) Completed long-form environmental assessment form (EAF), together with a visual assessment addendum.
- (11) A cash deposit or bond from a surety company that is both an admitted carrier in the State of New York and has an A.M. Best's Rating of B- or better, or a Best's rating of 4 or better.
 - (a) The cash deposit or bond must be in an amount equal to two hundred (200%) percent of the estimated cost of removing any freestanding WTF, if it is abandoned, and of restoring the site.
 - (b) In the event that a penalty, fine or financial obligation is assessed pursuant to the provisions of this Chapter, the BDA or the Controller may deduct the amount of such penalty from the cash deposit.
 - (c) The applicant must maintain the required cash deposit or bond at all times to assure the faithful performance of the terms and conditions of this Chapter and the conditions of any SUP 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 SUP and/or until the removal of the WTF, 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 SUP and shall entitle the Village Board to revoke the SUP 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 SUP.
- (12) A certificate of public liability insurance naming the Village as additional insured for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the SUP in amounts as set forth below and in §1-18 herein:
 - (a) Commercial general liability covering personal injuries, death and property damage: \$2,000,000.00 per occurrence/\$3,000,000.00 aggregate;
 - (b) Automobile coverage: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
 - (c) Workers' compensation and disability: statutory amounts.
- (13) A copy of any Federal Communications Commission licenses and approvals allowing the applicant to operate a WTF.
- (14) Certification by a licensed professional engineer that the proposed WTF will not cause interference with existing communication devices and that electromagnetic radiation levels at the proposed site are within any threshold levels that have been adopted by the Federal Communications Commission.

§ 7. Permit Criteria-Priority List

- A. Criteria for issuance of a SUP. The Planning Board shall review all WTFs applications which require SUPs and approve the application, provided that all requirements of this Local, County, State and Federal are met, or approve with recommendations, or deny the application.
 - (1) Suggested Priority List
 - (a) To the greatest extent possible, all new WTFs in the Village shall be located on sites in the following order of priority:
 1. Collocation with existing telecommunications facilities.
 2. Collocation on properties located in commercial or industrial zoning districts
 4. Properties located in commercial or industrial zoning districts
 4. Properties located in other nonresidential zoning districts
 5. Properties located in residential zoning districts
 - (b) 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 could not be selected. The applicant must satisfactorily demonstrate to the Planning Board the reason or reasons why a SUP 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.

- (c) An applicant may not bypass sites of higher priority by stating that 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.

B. The applicant shall, in writing, identify and disclose the number and locations of any additional sites that the applicant has, is or will be considering, reviewing or planning for WTFs within the Village, and all sites within two miles of the border of the Village.

C. The Planning Board may prescribe such appropriate conditions to minimize any adverse effect and provide safeguards as may be required in order to consider and protect the public health, safety and welfare of the community. The Village Board may require any landscaping or other measures which it deems necessary to preserve and protect: the character of the neighborhood, the public health and safety and property values.

§ 8. Special Use Permit – Application Requirements and Procedure.

- A. Upon application for a WTF SUP, a nonrefundable application fee of \$5,000.00 shall be paid to the Village by the Applicant. If the application seeks permission for collocation on an existing tower or antenna support structure with no increase in height of the tower or antenna support structure, the application fee shall be \$2,000.00.
- B. Application Requirements. All applicants for a SUP for a WTF or any modification of such WTF shall comply with the requirements set forth in this section. The following materials shall be submitted to BDA, who shall review the application for completeness, before forwarding it to the Planning Board for review:
 - (1) An application for a SUP for a WTF 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 property owner, if different from the applicant, shall also sign the application. At the discretion of the Planning 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.
 - (2) The application shall include a written statement:
 - (a) That the applicant's proposed WTF shall be maintained in a safe manner and in compliance with all conditions of the SUP,
 - (b) That the construction of the WTF will conform with all applicable local, county, state and federal laws, rules and regulations, and ordinances.
 - (c) That the applicant is authorized to do business in the State of New York.
 - (3) All applications for the construction of a new WTF shall be accompanied by a WTF engineering report containing the information hereinafter set forth. The report shall be prepared, signed and sealed by professional engineer or registered architect licensed in the State of New York. Where this section calls for certification, such certification shall be by a qualified New York State licensed professional engineer acceptable to the Village. The application shall include, in addition to the other requirements for the SUP, the following information:
 - (a) Documentation that demonstrates the need for the WTF to provide service primarily within the Village.
 - (b) The name, address, and telephone number of the person preparing the report.
 - (c) The name, address, and telephone number of the property owner, lessee, operator and applicant, including the legal basis for the applicant's authority.
 - (d) The legal description, postal address, and tax map designation of the property.

- (e) The zoning district in which the property is situated.
- (f) The size of the property, stated both in square feet and lot line dimensions.
- (g) A survey of the property indicating the dimensions of the property, the location and height of all structures, the location, size and height of all proposed and existing towers, antennas, and accessory structures, and the type, size and location of all proposed and existing landscaping and fencing.
- (h) Indicate the location of all residential structures within seven hundred fifty (750) feet, in the case of a freestanding tower and within two hundred and fifty (250) feet in the case of all other WTF applications.
- (j) The names, addresses, and telephone numbers of all owners of other freestanding towers or existing antenna support structures located within a one-half-mile radius of the proposed WTF including Village-owned property. The address and location of each such freestanding tower or antenna support structure shall be indicated.
- (k) The number, type and design of the WTF's proposed antenna(s) and the basis for the calculations of the WTF's capacity to accommodate multiple users.
- (l) The make, model and manufacturer of the WTF and antenna(s).
- (m) A description of the proposed WTF and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting.
- (n) The frequency, modulation and class of service of radio or other transmitting equipment.
- (o) The transmission and maximum effective radiated power of the antenna(s).
- (p) The direction of maximum lobes and associated radiation of the antenna(s).
- (q) The applicant must identify its utilization of the most recent technological design. In doing so submit a plan of the proposed project.
- (r) The applicant's proposed WTF maintenance and inspection procedures and related system of records.
- (s) Certification, including such documentation as the Planning Board shall require, that NIER levels at the proposed site are within the threshold levels adopted by the FCC.
- (t) A certification that the construction and placement of the proposed freestanding tower and the proposed antenna(s) will not interfere with public safety communications, the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and nonresidential properties, or other existing telecommunications devices.
- (u) A copy of the FCC license applicable for the use of the WTF.
- (v) Certification that a topographic and geomorphologic study and analysis has been conducted and, taking into account the subsurface and substrata and the proposed drainage plan, that the site is adequate to assure the stability of the proposed wireless telecommunications tower on the proposed site.
- (w) Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites.
- (x) The 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 WTF that it constructs.
- (y) Certification that the WTF, foundation and attachments are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. If the WTF is subsequently approved and constructed, similar "as-built" certification indicating that the WTF has been constructed in accordance with all standards shall be furnished prior to the Village issuance of a SUP.

- (z) An affidavit attesting to the fact that the applicant made diligent, but unsuccessful, efforts to install or collocate the applicant's WTF on freestanding towers or antenna support structure owned by other persons located within a one-half-mile radius of the proposed WTF.
- (aa) Certification that the proposed site of the WTF does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
- (4) The applicant shall present an evaluation of at least three alternative sites comparing the characteristics of each with the requirements of the proposed WTF and demonstrating why the alternate sites would be incompatible for collocation. Reasons supporting incompatibility could include, but not be limited to the following:
 - (a) Existing structures and/or towers are not of sufficient height to meet the applicant's engineering requirements within the geographic service area described.
 - (b) Existing structures and/or towers do not have sufficient structural strength to support the applicant's antennas and equipment.
 - (c) The applicant's proposed antenna or antennas would cause electromagnetic interference with the antenna or antennas of the existing WTFs.
 - (d) The cost or contractual provisions required by the owner of an existing WTF site, or to adapt an existing WTF site for sharing, would exceed the cost of erecting a new site.
- (5) The applicant shall furnish written certification that the WTF and related facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- (6) The applicant shall submit a completed long-form EAF and a completed visual EAF addendum. Based on the results of the visual EAF addendum, the Planning Board may require submission of a more detailed visual analysis. Applicants are encouraged to seek pre-application meetings with the Planning Board to address the scope of the required visual assessment.
- (7) A visual impact assessment which shall include:
 - (a) A "zone of visibility" map which shall be provided in order to determine locations where the WTF may be seen.
 - (b) Pictorial representations of "before" and "after" views from key viewpoints both inside and outside of the Village to be determined by the Planning Board, including, but not limited to, major roads, county and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the WTF is visible to a large number of visitors, travelers, or residents. The Village will provide guidance concerning the appropriate key views in evaluating the site.
 - (c) An assessment of the visual impact of the WTF base and accessory structures from abutting and adjacent properties and streets.
 - (d) Color photo simulations showing the proposed site of the WTF with a photo-realistic representation of the proposed WTF as it would appear viewed from the closest residential property and from adjacent roadways.
 - (e) To the extent practicable, a visual impact assessment must include simulations of the proposed WTF in all seasons, including "leaf-off" simulation in winter season.
- (8) All utilities serving any WTF site shall be when possible installed underground and in compliance with all laws, rules and regulations of the Village, including, specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

- (9) A demonstration that the WTF will be sited so as to have the least adverse visual effect on the environment and its character, on existing vegetation, and the residences in the area of the WTF site.
 - (10) Both the WTF and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and with the natural surroundings.
 - (11) Access and parking for vehicles 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 potential.
 - (12) The applicant shall submit twelve (12) copies of the completed application and such additional copies as may be determined. A copy of the application shall be provided to the legislative body of all adjacent municipalities and to the Nassau County Planning Commission. The responsibility of providing such notification shall be borne by the applicant, who shall file an affidavit of compliance with the Village.
 - (13) If the applicant is proposing the construction of a freestanding tower, the applicant shall examine the feasibility of designing a tower to accommodate future demand for at least two (2) additional commercial applications. The scope of this examination shall be determined by the Planning Board. The WTF 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 WTF is not technologically feasible or is commercially impracticable and creates an unnecessary and unreasonable burden, based upon:
 - (a) The number of FCC licenses potentially available for the area.
 - (b) The kind of WTF site and structure proposed.
 - (c) The number of existing and potential licenses without WTF spaces/sites.
 - (d) Available space on existing and approved telecommunications towers.
- C. Upon receipt of a Complete Application, unless waived by the Planning Board, there shall be a pre-submission conference with the BDA. The purpose of this conference will be to address issues which will help to expedite the review and permitting process. Where the application is for the shared use of an existing telecommunications tower or antenna support structure, the applicant can seek to waive any application requirements that may not be applicable. At the pre-application meeting, the waiver requests, if appropriate, will be decided by the Village. Costs of the Village's consultants to prepare for and attend the pre-application meeting shall be borne by the applicant.
- D. Within three (3) months following the pre-submission conference, ten (10) copies of the Completed Application and all supporting documents shall be submitted to the Secretary of the Planning Board. The Planning Board shall hold a public hearing within sixty two (62) days of said submission. Notice of such hearing shall be given by at least one publication in the official newspaper of the Village not less than five (5) days before the date of such hearing. Notice of the public hearing, specifying the relief requested, on a form required by the Planning Board, shall be sent by mail to each owner or occupant of all parcels of property located within a radius of seven hundred fifty (750) feet measured from all points of the subject property lines, by certified mail, return receipt requested. Said Notice shall be postmarked not more than twenty (20) days before or less than five (5) days prior to the date set for the public hearing. An Affidavit of Mailing, together with the certified letter postal receipts, shall be filed with the Planning Board.
- E. The Planning Board shall, within sixty two (62) days of the close of the public hearing, make a determination to approve the application, approve the application with conditions, or deny the application.

- F. The recommendation of the Planning Board shall be filed in the office of the Village Clerk within five (5) days, and a copy thereof mailed to the applicant.
- G. The holder of a SUP shall notify the Building Department of any intended modification of a WTF. Review of an amendment or modification to an existing SUP shall contain the same information as a new Application and shall be acted upon in the same manner as the review of the original Application.
- H. Any and all representations made by the applicant to the Planning 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 Council.

§ 9. Height and design requirements.

The following requirements must be met for all proposed WTFs:

A. Height.

- (1) No antenna or any other transmitting or receiving device used in conjunction with a WTF may extend more than twenty (20) feet above the top of the structure upon which it is placed. This height shall be measured from the bottom of the antenna assembly (including any masts, supports, etc., used to affix an antenna to a building or other structure) to the top.
- (2) The height of any proposed freestanding WTF shall be the minimum necessary in order to meet the service needs of the wireless carrier (applicant), unless the support structure, i.e., monopole, tower, etc., is being constructed in order to allow collocation by other wireless carriers. In such cases, the height of the WTF shall be the minimum necessary in order to meet the needs of the applicant together with the anticipated needs of the additional carriers being accommodated for at the site, but in no case higher than one hundred (100) feet. Collocation and/or the ability to collocate may be provided for at lower heights on the support structure.
- (3) The height of any accessory structure used in conjunction with the operation of a WTF, including but not limited to equipment sheds and shelters, shall not exceed twelve (12) feet.

B. Setbacks

- (1) The following setback requirements shall apply to all towers for which a special use permit is required:
 - (a) Towers and/or antennas shall comply with all existing setback requirements of the zoning district where the tower or antenna is proposed.
 - (b) Accessory buildings shall satisfy the minimum zoning district setback requirements in the zoning district where the tower or antenna is proposed.

C. Design, screening and camouflaging.

- (1) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical equipment, mechanical equipment and visible accessory structures must be of a neutral color and similar material that is identical to, or closely compatible with, the color and material of the supporting structure so as to make the antenna and other equipment as visually unobtrusive as possible.
- (2) Where feasible, concealment of antennas within existing structures should be used to reduce visual impacts.
- (3) Where feasible, the use of stealth technology or stealth structures shall be utilized to minimize the visual impacts of freestanding WTFs.
- (4) All new freestanding WTFs must be designed to allow collocation by one or more additional wireless carriers.
- (5) All accessory structures, such as equipment, equipment cabinets, etc., used in conjunction with a WTF which is located on a building, must be located either on the roof of the building, within the building or in a separate structure on the property which is screened by landscaping and/or fencing to the satisfaction of the Planning Board.

- (6) All equipment, equipment cabinets, etc. used in conjunction with the operation of either a new freestanding WTF, a collocated WTF on an existing freestanding structure or a WTF on a public utility structure shall be enclosed in an equipment shed or shelter.
- (7) Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.
- (8) Landscaping must be used to screen all new freestanding WTFs and a landscape plan must be submitted with any applications to erect freestanding WTFs. The Planning Board may require landscaping or buffer areas in order to enhance compatibility with adjacent land uses. Landscaping shall be installed on the outside of any fencing. Existing on-site vegetation shall be preserved to the maximum extent practicable. The base of the tower and any accessory structures shall be landscaped.
- (9) All new freestanding WTFs and associated accessory structures shall be enclosed by fencing not less than six (6) feet in height and shall also be equipped with appropriate anti-climbing devices. Fencing shall be of chain link, wood or other approved alternative.
- (10) WTFs shall not be artificially lighted, unless required by the Federal Aviation Administration or federal or state law.
 - (a) If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views and properties.
- (11) No signage or other identifying markings of a commercial nature for the purpose of advertising shall be permitted upon any tower or alternative tower structure.

§ 10. Planning Board Consultants; Reimbursement by Applicant.

- A. The Planning Board and/or BDA may hire any consultant and/or expert necessary to assist in reviewing and evaluating the application and any requests for recertification.
- B. An applicant shall deposit with the Village funds sufficient to reimburse the Planning Board and BDA for all reasonable costs of consultant and expert evaluation in connection with the review of any application. The initial minimum deposit shall be \$7,500.00. These funds shall accompany the filing of an application, and the Village will maintain a separate escrow account for all such funds. The Village's consultants/experts shall bill or invoice the City no more 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 \$2,500.00, the applicant shall immediately, upon notification by the Village, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the Village before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Village 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 reasonably required and requested by the Village, shall be paid by the applicant.

§ 11. Other Provisions.

- A. The Planning Board shall be the lead agency pursuant to the State Environmental Quality Review Act (SEQRA). In addition, the Planning Board shall review the application pursuant to its site plan review authority, including any environmental criteria or considerations contained therein.
- C. The Planning Board may refer any application or part thereof to any other agency or committee for comments and nonbinding recommendations.
- D. The Planning Board may require an applicant to supplement any information that the Board considers inadequate or that the applicant has failed to supply. The Planning Board may make recommendations to the applicant for revision or deny an application on the basis that the applicant has not satisfactorily supplied the information required in this subsection.

- E. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Planning Board shall consider the following factors in reaching a decision:
- (1) Public health, safety and welfare related codes and requirements.
 - (2) Traffic needs or traffic laws, or definitive plans for changes in traffic flow or traffic laws.
 - (3) The historic nature of a neighborhood or historical district.
 - (4) The use or construction of a WTF which is contrary to an already stated purpose of a specific zoning or land use designation.
 - (5) The placement and location of a WTF which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the Village, or employees of the service provider or other service providers.
 - (6) Surrounding tree coverage and foliage
 - (7) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
 - (8) Conflicts with the provisions of this Chapter.
 - (9) The public necessity of the proposed WTF.
 - (10) Whether the proposed WTF will have an adverse visual impact.
 - (11) Whether the proposed WTF will serve to diminish property values.
 - (12) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of new towers and/or structures.

§ 12. Extent and parameters of special use permit; responsibilities of owners and operators.

The extent and parameters of a SUP for a WTF shall be as follows:

- A. Such SUP shall not be assigned, transferred or conveyed without the express prior written consent of the Planning Board, and such consent shall not be unreasonably withheld or delayed provided the applicant pays a fee to the Village in an amount as may from time to time be promulgated by the Village Board.
- B. Such SUP 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 SUP for the WTF, or for a material violation of this Chapter after prior written notice to the applicant and the holder of the SUP.
- C. A holder of a SUP granted under this Chapter shall obtain, at its own expense, all permits and licenses required by applicable law, rule or regulation and must maintain the same, in full force and effect, for as long as required by the Village or other governmental entity or agency having jurisdiction over the applicant.
- D. Applicants shall submit information on the proposed radio frequency emissions of their proposed WTF and demonstrate how this meets FCC standards. Applicants shall submit evidence of compliance with FCC standards on a yearly basis to the Village. If new, more restrictive standards are adopted, the antennas shall be made to comply, or continued operations may be restricted by the Village Board. The cost of verification of compliance shall be borne by the owner and operator of the tower.
- E. All wireless telecommunication facilities shall be certified by an engineer to be structurally sound and in conformance with the requirements of the Building Code and all other construction standards set forth by the Village's Code and federal and state law. Such certification shall be submitted with an application pursuant to this Chapter and every three years thereafter. The owner of the WTF may be required by the Village to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the WTF is jeopardized.

- F. Owners of a WTF and owners of an antenna support structure shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- G. Owners of a WTF shall install and maintain towers, antennas, antenna attachments, accessory structures, wires, cables, fixtures and all other equipment of the WTF in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- H. All WTFs and antenna support structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life, health, safety, welfare or property of any person.
- J. All maintenance or construction of WTFs and antenna support structures shall be performed by licensed maintenance and construction personnel.
- I. All WTFs shall maintain compliance with current RF emission standards of the FCC.
- J. In the event that the use of a WTF is discontinued by the WTF owner, the WTF owner shall provide written notice to the Village of its intent to discontinue use and the date when the use shall be discontinued.

§ 13. Adherence to state and/or federal rules and regulations.

- A. To the extent that the holder of a SUP for a WTF has not received relief or is otherwise exempt from appropriate state and/or federal agency rules or regulations, then the holder of such a SUP 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 SUP for a WTF, then the holder of such a SUP shall conform the permitted WTF 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.

§ 14. Security against unauthorized access.

All WTFs and antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. Specifically:

- A. All antennas, towers and accessory structures 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 shall be installed such that they are readily accessible only to persons authorized to operate or service them.

§ 15. Reservation of authority to inspect facilities.

- A. In order to verify that the holder of a SUP for a WTF and any and all lessees, renters, and/or licensees of WTFs, place, construct and maintain such facilities, including towers, antennas, antenna attachments and accessory structures, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the Village shall have authority to enter onto the property upon which the WTF is located to inspect all facets of said permit holder's, renter's, lessee's, licensee's, or owner's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas, antenna attachments, accessory structures, buildings or other structures constructed or located on the permitted site.
- B. The Village reserves the right to conduct such inspections at any time, upon reasonable notice to the property owner and operator of the WTF. All expenses related to such inspections by the Village shall be borne by the owner of the WTF.

§ 16. Annual NIER certification.

The holder of the SUP shall, annually, certify in writing to the Village that NIER levels at the site are within the threshold levels adopted by the FCC. The certifying engineer must be licensed to practice engineering in the State of New York.

§ 17. Liability insurance.

- A. A holder of a SUP for a WTF 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 SUP in amounts as set forth below:
 - (1) Commercial general liability covering personal injuries, death and property damage: \$2,000,000.00 per occurrence/\$3,000,000.00 aggregate;
 - (2) Automobile coverage: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
 - (3) Workers' compensation and disability: statutory amounts.
- B. The commercial general liability insurance policy shall specifically include the Village as an additional named insured.
- C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State of New York 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 City with at least thirty (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 City at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.
- F. Before construction of a permitted WTF is initiated, but in no case later than fifteen (15) days after the grant of the SUP, the holder of the SUP shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.

§ 18. Indemnification.

- A. Any application for a WTF that is proposed for City property shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the City, 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 there from, 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 WTF. 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 City.
- B. Notwithstanding the requirements noted in Subsection A of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a SUP for a WTF.

§ 19. Automatic Disconnect in the event of failure of a wireless telecommunications facility

- A. All carriers shall have installed at their WTFs the ability to disable the use of the WTF at an off site monitoring location.
- B. In the event of a malfunction the carrier shall have the ability to discontinue the use.
- C. There shall be placed at the entrance to the WTF a sign indicating the owner, address and telephone number for emergency contacts.
- D. Any malfunction of a WTF, which shall endanger the health safety and general welfare of the community shall cause the carrier to notify the Building Department in writing within twenty-four (24) hours of the event.
- E. Failure on the part of the carrier to provide the Building Department of this notification, shall be grounds to suspend the operating license for a period no less than thirty (30) days. The carrier shall present to the City Council the reason for failure to notify the City.

§ 20. Removal of abandoned or unsafe wireless telecommunications facilities.

- A. If it has been determined that a WTF is abandoned or has become unsafe or that there have been recurring, repeated or continuing violations of any of the provisions of this Chapter, the BDA may revoke an ALP or special permit.
- B. Upon written notice to the former holder of the revoked permit, the WTF shall be removed.
- C. The City shall have the right to remove any abandoned or unsafe WTF, and is entitled to utilize the performance bond provided for under §1-6(B)(11) of this Chapter to cover the costs related thereto.
- D. Upon revocation of any permit issued pursuant to this Chapter, the provisions of § 1-22 of this Chapter, shall be applicable, if deemed necessary by the BDA.

§ 21. Penalties for offenses.

- A. Any person who attempts to erect, erects or substantially modifies a WTF without having first obtained the necessary permits or permissions described in this Chapter shall be deemed in violation of this Chapter. Any responsible party or other persons convicted by a court of competent jurisdiction of violating any provision of this Chapter shall be punished by a fine not to exceed \$5,000.00 or by imprisonment not to exceed thirty (30) days, or both. The court shall have the power and authority to place any person guilty of violation of this Chapter on probation and to suspend or modify any fine or sentence. As a condition of such suspension, the court may require payment of restitution or impose other punishment allowed by law.
- B. If any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained in violation of this Chapter or without obtaining any required permits or permissions, or if any building, structure or land is used in violation of this Chapter, the City, in addition to any other remedies, may institute proceedings to prevent such unlawful violation or to correct or abate such violations. Each and every day such violation continues may be deemed a separate offense.

§ 22. Special provisions and severability.

- A. If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.
- B. This Chapter supersedes all ordinances and local laws or parts thereof adopted prior hereto which are in conflict herewith, to the extent of such conflict.