ARTICLE IX
WIRELESS AND TELECOMMUNICATION FACILITIES

Section 901: Authority

Under authority granted by 24 V.S.A. Chapter 117, the Town of Wilmington adopts this Wireless Telecommunication Facility Zoning Bylaw.

Pursuant to 24 V.S.A. § 4414(12), the Development Review Board shall have the authority to regulate construction, alteration, siting and design, development, decommissioning and dismantling of Wireless Telecommunication Facilities in the Town of Wilmington.

Section 902: Purpose

The purpose of this Article of the bylaw is to promote the public health, safety, welfare, and convenience of the residents of the Town of Wilmington, while encouraging the advancement of the telecommunication needs of the Town's residents.

Section 903: Consistency with Federal and State Law - Severability

This bylaw is intended to be consistent with the Telecommunications Act of 1996 and Title 24, Chapter 117 of Vermont Statutes Annotated. If any section of this bylaw is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this bylaw.

Section 904: Definitions

The following terms shall have the meanings indicated:

Wireless Telecommunication Service: Any commercial mobile service, wireless service, common carrier wireless exchange service, cellular service, personal communication service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

Wireless Telecommunication Facility: Any tower or other support structure, including antennae, that will extend 20 or more feet vertically, and any accompanying structure, building, access road, service utility or equipment that broadcasts or receives radio frequency waves carrying Wireless Telecommunication Services.

Wireless Telecommunication Service Provider: Any person or entity providing Wireless Telecommunication Services.

Section 910: Permit Requirements & Exemptions

A. Permits Required:
   1. Wireless Telecommunication Facilities may be approved as Conditional Uses upon compliance with the provisions of this bylaw in all zoning districts.
   2. No visual modification shall commence until approval has been signed by the Development Review Board and a zoning Permit has been issued.
   3. Wireless Telecommunication Facilities may be approved as Permitted Uses when located primarily inside existing buildings or structures.

B. Exemptions:
   1. No Permit shall be required for a Wireless Telecommunication Facility that is used exclusively for municipal radio dispatch service or emergency radio dispatch service and which does not exceed 50 feet in elevation.
   2. This bylaw shall not apply to amateur activities, including radio, citizens band radio, AM or FM residential radio.

Section 911: Permit Application Requirements

In addition to information otherwise required in the Town of Wilmington's zoning bylaws, applicants shall include the following supplemental information:

A. The applicant's legal name, address and telephone number. If the applicant is not a natural person, the applicant shall provide the appropriate form of authorization as required by municipality, including but not limited to, state in which it is incorporated and the name and address of its resident agent.

B. The name, title, address and telephone number of the person to whom correspondence concerning the application should be sent.

C. The name, address and telephone number of the person to be contacted and who is authorized to act in the event of an emergency regarding the structure or safety of the facility.

D. The name, address and telephone number of the owner or lessee of the property on which the Wireless Telecommunication Facility will be located. Applicant shall provide authorization from the owner or lessee, in the format required by municipality, which authorizes applicant to act on behalf of owner or lessee. In addition applicant shall submit a copy of the executed contract with the owner or lessee of the existing structure.

E. The names and addresses of all adjoining property owners. Adjoining property owners shall be determined without regard to any public right-of-way.

F. A vicinity map, showing the entire vicinity within a 1,000 foot radius of the Facility, including the location of any tower, topography, public and private roads and driveways, buildings and structures, utilities, water bodies, streams, wetlands, landscape features, historic sites and necessary wildlife habitats. It shall indicate the property lines of the proposed Facility site parcel and all easements or rights of way needed for access from a public way to the Facility.

G. The location of the Facility on a USGS Topographic Map or a GIS-generated map compatible with Vermont Center for Geographic Information (VCGI) standards and encompassing the area within at least a two-mile radius of the proposed tower site.

H. Elevations and proposed site plans, prepared by a licensed engineer, architect or other professional acceptable to the DRB, of the Facility showing all facades and indicating all exterior materials and colors of towers, buildings and equipment, as well as all landscaping, utility wires, guy wires and screening. (All plans shall be drawn at a minimum scale of 1 inch = 50 feet).

I. In the case of a site that is forested, the approximate average elevation of the existing vegetation within 50 feet of any tower base.

J. The construction sequence and time schedule for completion of each phase of the entire project.

K. A report from a licensed engineer, architect or other professional acceptable to the DRB:

1. Describes any tower's design and elevation,
2. Documents the elevation above grade for all proposed mounting positions for antennas to be collocated on a tower and the minimum distances between antennas,
3. Describes a tower's capacity, including the number, elevation and types of antennas that the tower is proposed to accommodate.

L. In the case of new Facilities, demonstration that existing towers and structures or other structures proposed by applicant within 5 miles of the proposed site cannot reasonably be modified to provide adequate coverage and adequate capacity to the community.

M. Description of potential changes or additions to existing structures or towers that would enable them to provide adequate coverage.

N. Description of the output frequency, number of channels and the power output per channel for each antenna. In the alternative, a coverage map may be provided.

O. Demonstration of the Facility's compliance with the standards set forth in this bylaw or other applicable standards.

P. Proof that at the proposed Facility site the applicant will be in compliance with all FCC regulations, standards and requirements, and includes a statement that the applicant commits to continue to maintain compliance with all FCC regulations, standards and requirements for radio frequency radiation (RFR).

Q. Other information as determined by the Development Review Board or an independent reviewer as necessary to evaluate the application.

R. A letter of intent committing the Facility owner and its successors to Permit shared use of any tower if the additional users agree to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC regulations, standards and requirements and the provisions of this Bylaw and all other applicable laws.

S. A copy of the executed contract with the owner of the existing structure where an application for additional antennas or other equipment is to be installed on an existing Facility.

T. To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete Environmental Assessment (EA) draft of final report describing the probable impacts of the Facility, or a written statement by the applicant that an EA is not required for the facility.

U. Computer-generated photo simulations showing the proposed facility from the public roads and adjacent property from which it may be visible and indicating the projection of any towers or structure above the approximate average height of the existing vegetation within 200 feet of the tower base.

Section 920: Independent Consultants

Upon submission of an application for a Wireless Telecommunication Facility Permit, the Development Review Board may retain independent consultants whose services shall be paid for by the applicant. These consultants shall be qualified professionals in telecommunications engineering, structural engineering, monitoring of electromagnetic fields and such other fields as determined by the Development Review Board. The consultant(s) shall work at the Development Review Board's direction and shall provide the Development Review Board such reports and assistance, as the Development Review Board deems necessary to review an application and in conformance with the Selectboard's Independent Technical Review Criteria Policy.

Section 930: Balloon Test

The Development Review Board may require the applicant to fly a four-foot diameter brightly colored balloon at the location and maximum elevation of any proposed tower. If a balloon test is required, the applicant shall advertise the date, time, and location of this balloon test at least 7 days in advance of the test in a newspaper with a general circulation in the Town. The applicant shall also inform the Development Review Board, in writing, of the date, time and location of the test, at least 15 days in advance of the test.

The balloon shall be flown for at least eight consecutive daylight hours on two days. If visibility and weather conditions are inadequate for observers to be able to clearly see the balloon test, further tests may be required by the Development Review Board.

Section 940: Criteria for Approval and Conditions

An application for a Wireless Telecommunication Facility Permit may be approved after a hearing when the Development Review Board finds all the following criteria have been met:

A. General Criteria:

1. The Facility will not be built on speculation. If the applicant is not a Wireless Telecommunication Service Provider, the Development Review Board shall require the applicant to provide a copy of a contract or letter of intent showing that a Wireless Telecommunication Service Provider is legally obligated to locate a Wireless Telecommunication Facility on lands owned or leased by the applicant.
2. The Facility shall be designed to provide reasonable future opportunity for co-location of other equipment. Where a facility is designed to host equipment from more than one wireless telecommunications provider on a single site, the engineering report required pursuant to Section 911 hereof shall also address and justify the proposed choice between vertical co-location of antennas on a single tall structure or horizontal clustering of antennas on multiple shorter structures.
3. The applicant shall provide written documentation that the facility will be in compliance with all FCC standards and requirements regarding radio frequency radiation.
4. The Facility will be properly identified with appropriate warnings indicating the presence of radio frequency radiation.
5. The applicant will maintain adequate insurance on the Facility.

6. Application for new tower facility or Accessory Structure shall not be approved unless the Development Review Board finds that the facilities planned cannot be accommodated on an existing or approved telecommunications structure or another existing building or structure for one of the following reasons:
   a. The proposed equipment would exceed the structural or spatial capacity of the existing facility and the existing facility cannot be reinforced, modified or replaced to accommodate planned equipment at a reasonable cost.
   b. The proposed equipment would materially impact the usefulness of other equipment at the existing facility and such impact cannot be mitigated or prevented at a reasonable cost.
   c. The proposed equipment, alone or together with existing equipment, would create radio frequency interference and/or radio frequency radiation in violation of federal standards.
   d. Existing towers and structures cannot accommodate the proposed equipment at an elevation necessary to function reasonably or are too far from the area of needed coverage to function adequately.
   e. Co-location of the equipment upon an existing tower would cause an undue aesthetic impact.

7. The Facility will not destroy or significantly imperil necessary wildlife habitat or that all reasonable means of minimizing the destruction or imperilment of such habitat or species will be utilized.

8. The Facility will not generate undue noise.

9. The Facility will not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor.

10. The Facility will not have an undue adverse aesthetic impact. In determining whether a facility has an undue adverse aesthetic impact, the Development Review Board shall consider the following factors:
    a. The results of the balloon test, if conducted.
    b. The extent to which the proposed towers and equipment, ground-mounted equipment, antennas as well as building and structures accessory to the tower(s), to have been designed to blend into the surrounding environment through the use of vegetative screening, camouflage, architectural design, and/or imitation of natural features and other means appropriate to specific site. A planted vegetative screen shall be a minimum of ten feet in depth, with a minimum height of six feet and shall have the potential to grow to a height of at least 15 feet at maturity.
    c. The extent that the construction of access roads or improvements thereto, have been designed to follow the contour of the land and will be constructed within forest or forest fringe areas and not open fields.
    d. The duration and frequency with which the Facility will be viewed on a public highway or from public property.
    e. The degree to which the Facility will be screened by existing vegetation, topography, or existing structures.
    f. Background features in the line of sight to the Facility that obscure or make the Facility more conspicuous.

g. The distance of the Facility from the point of view and the proportion of the facility that is above the skyline.
h. The sensitivity or unique value of a particular view affected by the Facility.
i. Any significant disruption of a viewshed that provides context to an important historic or scenic resource.

B. Bond Requirements
The Development Review Board may require that the applicant provide a bond or other form of financial guarantee acceptable to the Board to cover the cost of removal of the Facility, should the Facility be abandoned or cease to operate. (See Section 960: Removal of Abandoned or Unused Facilities)

C. Facility and Site Design
1. Where a facility is designed to host equipment from more than one wireless telecommunications provider on a single site, the engineering report required pursuant to Section 911 hereof, shall also address and justify the proposed choice between vertical co-location of antennas on a single tall structure or horizontal clustering of antennas on multiple shorter structures.

2. The Facility will not project more than 20 feet above the average elevation of the tree line measured or other effective horizon (e.g. surrounding roof tops) within 100 feet of the highest vertical element of the Wireless Telecommunication Facility, unless the proposed elevation is reasonably necessary to provide adequate Wireless Telecommunication Service capacity or coverage or to facilitate co-location of facilities. In this event, the Development Review Board may approve additional height, so long as that additional height will not cause an undue visual impact on the scenic character or appearance of the neighborhood or the Town, in general.

3. The minimum distance from the base of any tower to any property line is not less than 100 % of the total elevation of the tower, including antenna or equipment.

4. The Facility will not be illuminated by artificial means and will not display any lights or signs or lettering except for such lights and signs as required by Federal Aviation Administration, federal or state law, or this bylaw. When required, the application must employ the least visually obtrusive marking and/or lighting scheme Permitted by FAA regulations.

5. The Development Review Board may condition a Permit on the provision of appropriate fencing.

6. A planted vegetative screen shall have a minimum height of 6 feet and shall have the potential to grow to a height of at least 15 feet at maturity.

7. Existing on-site vegetation outside the immediate site area of the facility shall be preserved or improved. Disturbance to existing topography shall be minimized. However, applicant shall be required to alter existing topography if such alteration shall minimize the visual impact of the facility as seen from surrounding properties or other vantage points.

8. Utility or service lines shall be designed and located so as to minimize or prevent disruption to the scenic character or beauty of the Town. Utility or service lines which run underground are preferred.

Section 950: Continuing Obligations for Wireless Telecommunication Facilities

A. Maintenance

1. Facilities must be maintained. Maintenance shall include, but not be limited to, painting, assurance of structural integrity of towers, antennas, facility perimeter fencing and care of landscaping and any planted vegetative screening.

2. Failure to maintain facility will result in punitive action, which may include fines, removal and potential demolition.

Section 960: Removal of Abandoned or Unused Facilities

A. Unless otherwise approved by the Development Review Board, an abandoned or unused Wireless Telecommunication Facility shall be removed within 90 days of abandonment or cessation of use.

B. Abandonment or cessation of use shall be deemed if: the facility fails to operate for a period of 30 consecutive days.

C. Facilities constructed in violation of Permit conditions or application representations shall be removed or corrected within 90 days of notification of violation.

D. Unused portions of a Wireless Telecommunication Facility shall be removed within 90 days of the time that such portion is no longer used. Note: Replacement of portions of a Facility previously removed shall require a new Permit, pursuant to Section 910 (A).

E. If the Facility or any unused portions hereof is not removed within the 90 days, as required above, the Development Review Board/Town of Wilmington may cause the Facility to be removed. The costs of removal shall be assessed against the Facility owner. (See Section 940.B, Bond Requirements).

Section 970: Temporary Wireless Communication Facilities

A. Temporary facilities may be allowed for periods up to 90 days for a special event.
B. Maximum height for a temporary facility is 100 feet from grade.
C. Temporary facilities must comply with all applicable portions of these regulations.
D. Temporary Wireless Communication Facilities must obtain a temporary use Permit from the Selectboard of the Town of Wilmington.

Section 980: Facility Modifications

Any substantial changes, additions, or alterations to a previously approved Facility shall require a new Permit application.

Section 990: Application Fees

A fee schedule for the Permitting of permanent tower facilities and temporary wireless communication facilities shall be established by the Selectboard, which may include reasonable fees to cover the administrative costs of application processing and tracking.