

ARTICLE 12 WIRELESS TELECOMMUNICATIONS FACILITIES

Section 12.1 Purpose and Legislative Intent

The Telecommunications Act of 1996 affirmed the Town of Elm City's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. North Carolina General Statutes governing the regulation of Wireless Telecommunication Facilities, §160A, Article 19, Part 3E., provide for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.

The Town of Elm City finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the Town 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 insure 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 Article is to minimize the 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 Elm City.

Section 12.2 Title

This Article shall be known and cited as the Wireless Telecommunications Facilities Ordinance for the Town of Elm City.

Section 12.3 Severability

- A. If any word, phrase, sentence, part, section, subsection, or other portion of this Article 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 Article, 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 pursuant to this Article 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.

Section 12.4 Definitions

For purposes of this Article, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. 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.

- A. “**Accessory Facility or Structure**” means 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.
- B. “**Applicant**” means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.
- C. “**Application**” means all necessary and required documentation that an Applicant submits in order to receive a Special Use Permit or a Building Permit for Wireless Telecommunications Facilities. An “**amended application**” provides information or material in furtherance of permitting after the original submittal of the application.
- D. “**Antenna**” means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
- E. “**Board**” means the Town of Elm City Board of Adjustment.
- F. “**Co-location**” means the use of an approved telecommunications structure to support Antenna for the provision of wireless services.
- G. “**Commercial Impracticability**” or “**Commercially Impracticable**” means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
- H. “**Completed Application**” means an Application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an Application.
- I. “**DAS**” or “**Distributive Access System**” means a technology using antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.
- J. “**FAA**” means the Federal Aviation Administration, or its duly designated and authorized successor agency.

- K. **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
- L. **“Height”** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
- M. **“Maintenance”** means plumbing, electrical or mechanical work that may require a building permit but that does not constitute a Modification to the WTF.
- N. **“Modification”** or **“Modify”** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site as a co-location is a modification.
- O. **“Necessary”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting or acting in a manner that prohibits the provision of service as intended and described in the narrative of the Application.
- P. **“NIER”** means Non-Ionizing Electromagnetic Radiation.
- Q. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
- R. **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’.
- S. **“Personal Wireless Services”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PTS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
- T. **“Repairs and Maintenance”** means the replacement or repair of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.
- U. **“Special Use Permit”** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use Wireless Telecommunications Facilities as granted or issued by the Town.

- V. **“Stealth” or “Stealth Technology”** means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. Stealth technology includes such technology as DAS or its functional equivalent or camouflage where the tower is disguised to make it less visually obtrusive and not recognizable to the average person as a WTF.
- W. **“State”** means the State of North Carolina.
- X. **“Stealth” or “Camouflage”** means disguising a tower or wireless telecommunications facility so as to make it less visually obtrusive and not recognizable to the average person as a wireless telecommunications facility.
- Y. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
- Z. **“Telecommunication Site”** See definition for Wireless Telecommunications Facilities.
- AA. **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’.
- BB. **“Temporary”** means temporary in relation to all aspects and components of this Ordinance, something intended to, or that does, exist for fewer than ninety (90) days.
- CC. **“Tower”** means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.
- DD. **“Wireless Telecommunications Facility or Facilities (WTF or WTFs)”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility”**. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types, kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

EE. **“Zoning Permit”** (or see **“Zoning Certificate”** in Article 15) means a permit issued by the Zoning Administrator that authorized the recipient to make use of the property in accordance with the requirements of the Unified Development Ordinance.

Section 12.5 Overall Procedure and Desired Outcomes for Approving and Issuing Permits for Wireless Telecommunications Facilities

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the Town’s health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Article, the Town hereby adopts an overall procedure with respect to the review, approval and issuance of permits for Wireless Telecommunications Facilities for the express purpose of achieving the following outcomes:

- A. Requiring a Special Use Permit for any new, co-location or modification of a Wireless Telecommunications Facility as required or otherwise specified in this Article (a co-location facility may be exempted from the Special Use Permit requirement);
- B. Implementing an Application process for person(s) seeking approval of Wireless Telecommunications Facilities;
- C. Establishing a procedure for examining an application and issuing a Special Use Permit, Zoning Permit and/or Building Permit for Wireless Telecommunications Facilities that is both fair and consistent;
- D. Promoting and requiring, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers;
- E. Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology.
- F. In approving a Wireless Telecommunications Facility, the Town shall find that the facility shall be the most appropriate site in regards to being the least visually intrusive among those available in the Town given the facts and circumstances.

Section 12.6 Exceptions from a Special Use Permit for Wireless Telecommunications Facilities

- A. No Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of a Wireless Telecommunications Facility as of the effective date of this Article without having first obtained a Special Use Permit and building permit for a Wireless Telecommunications Facility as defined in Section 12.5 of this Article or an administratively granted authorization (Zoning Permit or Building Permit) as defined in Section 12.5 of this Article, whichever is applicable.

Notwithstanding anything to the contrary in this section, no Special Use Permit shall be required for those non-commercial exceptions noted in Section 12.7, unless deemed in the public interest by the Town.

- B. If constructed as required by permit, all legally permitted Wireless Telecommunications Facilities that existed on or before the effective date of this Article shall be allowed to continue as they presently exist, provided however, that they are operating as originally permitted and that any modification of an existing Wireless Telecommunications Facility not permitted under this Article will require the complete facility and any new installation to comply with this Article, as will anything changing the structural load.
- C. Any Repair and Maintenance of a Wireless Telecommunications Facility that does not increase the height of the structure, alter the profile, increase the footprint or otherwise exceed the conditions of the Special Use Permit does not require an application for a Special Use Permit but may require a building permit. However, no additional construction or site modification shall not be considered to be Repair or Maintenance.

Section 12.7 Exclusions

The following shall be exempt from this Article:

- A. Any facilities expressly exempt from the Town's siting, building and permitting authority.
- B. Any reception or transmission devices expressly exempted under the Telecommunications Act of 1996.
- C. Facilities used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications.
- D. Facilities used exclusively for providing unlicensed spread spectrum technologies, such as IEEE 802.11a, b, g services (e.g. Wi-Fi and Bluetooth) where the facility does not require a new tower or increase the structure height to which it is being attached.

Section 12.8 Special Use Permit Application and Other Requirements for a New Wireless Telecommunications Facility or for Increasing the Footprint, Height, Profile or Number of Co-locations of the Structure to Be Attached To

All Applicants for a Special Use Permit for new Wireless Telecommunications Facilities, including new towers or support structures or that otherwise increases the footprint, height, profile or number of co-locations or any modification of such facility beyond the conditions of an approved Special Use Permit shall comply with the requirements set forth in this Article. The Town Board of Adjustment (Board) is the officially designated

agency or body of the Town 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 or revoking special use permits for Wireless Telecommunications Facilities. The Board may at its discretion delegate or designate the Town Planning Board or other official agencies or officials of the Town or expert consultants to accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting or revoking Special Use Permits for Wireless Telecommunications Facilities.

- A. All Applicants shall closely follow the instructions for preparing an Application for a Wireless Telecommunications Facility prior to the submittal of an Application for a Special Use Permit. Not closely following the instructions without permission to deviate from such shall result in a tolling of the otherwise required 45 day notification period until the receipt of a properly completed and complete Application. The Applicant shall be notified in writing within 45 days of submission of an Application as to the completeness of the Wireless Telecommunications Facility Application and any deficiencies. An amended Application shall be required to correct any deficiencies.
- B. When placing wireless facilities on government-owned property or facilities, only non-commercial wireless carriers and users are exempt from the permitting requirements of this Article, but only to the extent expressly set forth here within.
- C. The Town may deny applications not meeting the requirements stated herein or which are otherwise not complete. In the event the Application is denied, the portion of the Wireless Telecommunications Facility Application Fee remaining from the retainer shall be refunded, but the Special Use Permit Application Fee is not refundable.
- D. No Wireless Telecommunications Facilities shall be installed, constructed or modified until the Application is reviewed and approved by the Board, the Special Use Permit has been approved, Zoning Permit issued and a Building Permit approved.
- E. 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 to have been relied upon in good faith by the Town. Any verbal representation shall be treated as if it were made in writing.
- F. An Application for a Special Use Permit for a Wireless Telecommunications Facility shall be signed on behalf of the Applicant by the person vested with the authority to bind and commit the Applicant to the conditions of the Special Use Permit and 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.
- G. The Applicant must provide documentation to verify it has the right to proceed as proposed on the Site. This requires an executed copy of the lease with the

landowner or landlord or a signed letter of agency acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.

- H. The Applicant shall include a statement in writing:
1. That the applicant's proposed Wireless Telecommunications Facility 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 Town, State and Federal Laws, rules, and regulations; and
 2. That the construction of the Wireless Telecommunications Facility is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
- I. Where a certification is called for in this Article, such certification shall bear the signature and seal of a Professional Engineer licensed in the State.
- J. In addition to all other required information as stated in this Article, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing facility shall submit an Application containing the information hereinafter set forth as a condition of approval of the Special Use Permit prior to the release of a Zoning Permit and subsequent request for or issuance of a Building Permit.

Ownership and Management

1. The Name, address and phone number of the person preparing the Application;
2. The Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
3. The Postal address and tax map parcel number of the property;
4. A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;
5. Written acknowledgement that any new Telecommunications Tower shall be designed to structurally support a minimum of six antenna arrays and shall be managed so as not to restrict, prevent or prohibit competition among carriers;
6. 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 new Telecommunication Tower that it constructs;

Zoning and Planning

1. The Zoning District or designation in which the property is situated;
2. The size of the property footprint on which the structure to be attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
3. The location, size and height of all existing and proposed structures on the property on which the structure is located and that is the subject of the Application;

4. A site plan showing the footprint and the type, location and dimensions of access drives, landscaping and buffers, fencing and any other requirements of site plans;
5. Elevations showing the profile or the vertical rendition of the Wireless Telecommunications Facility identifying proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the pre-existing grade, materials, colors and lighting;
6. When considering a modification to an existing Wireless Telecommunications Facility, provide all users and attachments to the Facility, including the-all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
7. Azimuth, size and center line height location of all proposed and existing antennas on the supporting structure;
8. The type and design of the Wireless Telecommunications Facility, the number of antenna arrays proposed and the basis for the calculations of the Wireless Telecommunications Facility's capacity to accommodate the required number of antenna arrays for which the structure must be designed;
9. 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 new Telecommunication Tower that it constructs;

Safety

1. If modifying an existing Wireless Telecommunications Facility:
 - a. the age of the Facility in years, including the date of granting original permit;
 - b. a description of the type of tower, e.g. guyed, self-supporting lattice or monopole;
 - c. The make, model, type and manufacturer of the Facility and the structural design calculations, certified by a Professional Engineer licensed in the State, proving the Facility's capability to safely accommodate the facilities of the Applicant without change or modification or if any change or modification of the Facility is needed, a detailed narrative explaining what changes are needed, why they are needed and who will be responsible to assure that the changes are made;
 - d. a copy of the installed foundation design, as well as a geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for the tower site or other structure;
 - e. For a Tower that is five (5) years old or older, or for a guyed Tower that is three (3) years old or older, a copy of the latest ANSI Report done pursuant to the latest edition of ANSI-EIA/TIA 222F (Annex E) and any subsequent amendments for any self-supporting Tower. If an ANSI report has not been done pursuant to the preceding schedule, an ANSI report shall be done and submitted as part of the Application. No Building Permit shall be issued for any Wireless Facility where the structure being attached to is in need of remediation, unless and until all remediation work needed has been completed or a schedule for the remediation work has been approved by the Town Planning Department. In all instances proof of remediation must be provided;

2. A Structural Report signed by a Professional Engineer licensed to do business in the State and bearing that engineer's currently valid stamp, showing the structural adequacy of the proposed structure to accommodate the proposed Wireless Telecommunications Facility, including any equipment shelter, unless the equipment shelter is located on the ground or lowest floor of a building;
 3. If attaching to a structure other than a Tower or where the proposed attachment is within 30 feet of areas to which the public has or could reasonably have or gain access to, documentation shall be provided, including all calculations, proving that the potential exposure to RF Radiation (i.e. NIER or Non-Ion Emitting Radiation), will be in compliance with the most recent Federal Communications Commission regulations governing RF Radiation and exposure thereto, and further denoting the minimum distance from any antennas an individual may safely stand without being exposed to RF radiation in excess of the FCC's permitted standards and any portion(s) of the structure that would be exposed to RF radiation in excess of the FCC's permitted standards. In compliance with the FCC's regulations, in such an instance the RF Radiation from all wireless facilities at that location shall be included in the calculations to show the cumulative effect on any area of the building or structure deemed accessible by the public or workers. Such report or analysis shall be signed and sealed by a Professional Engineer licensed in the State; or
 4. In an instance involving a Tower where the new Wireless Facilities will be ten (10) meters or more above ground level, signed documentation such as the FCC's "Checklist to Determine whether a Facility may be Categorically Excluded" shall be provided to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC's RF Emissions regulations. If not categorically excluded, a complete RF Emissions study is required to enable verification of compliance, including providing all calculations so that such may be verified prior to issuance of a Building Permit;
 5. In certain instances, the Town may deem it appropriate to have an on-site RF survey of the facility done after the construction or modification and activation of the Facility, such to be done under the direction of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations prior to issuance of a Certificate of Compliance;
 6. If any section or portion of the structure to be attached to is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with plastic chain and striped warning tape, as well as placing RF Radiation signs as needed and appropriate to warn individuals of the potential danger;
 7. A signed statement that the Applicant will expeditiously remedy any interference with other telecommunications or wireless devices or services.
- K. The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed Wireless Telecommunications Facility-is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any situation where the application would serve to increase the height of the Wireless Telecommunications Facility. If this analysis determines that an FAA determination

is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

- L. Application for New Wireless Telecommunications Facility versus Co-location
1. the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Wireless Telecommunications Facilities or the use of alternative buildings or other structures within the Town that are at or above the surrounding tree height or the tallest obstruction and are within one (1) mile of the proposed tower. Copies of written requests and responses for shared use shall be provided to the Town in the Application, along with any letters of rejection stating the reason for rejection.
 2. Telecommunications Towers shall be prohibited in Residential Districts, Historic Districts or Renaissance Districts unless the Applicant provides documentation (i.e. evidence) to demonstrate that the Telecommunications Tower is necessary, that the area cannot be served from outside the District, that no existing or previously approved Wireless Telecommunications Facility can reasonably be used for the antenna placement instead of the construction of a new Wireless Telecommunications Facility or instead of increasing the height of an existing Wireless Telecommunications Facility, and that no alternative Wireless Telecommunications Facility or alternative type of Wireless Telecommunications Facility can be used to provide Wireless Telecommunications Service to the District.
 3. In order to better inform the public, in the case of a new Telecommunication Tower, the applicant shall hold a "balloon test" prior to the initial public hearing on the application. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a ten (10) foot in length brightly colored balloon at the maximum height of the proposed new Tower.
 4. At least fourteen (14) days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than fourteen (14) days after the conduct of the balloon test. The sign shall be at least four feet (4') by eight feet (8') in size and shall be readable from the road by a person with 20/20 vision.
 5. Such sign shall be placed off, but as near to, the public right-of-way as is possible.
 6. Such sign shall contain the times and date(s) of the balloon test and contact information.
 7. The dates, (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the Town and as agreed to by the Town. The Applicant shall inform the Town in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four (4) consecutive hours between 10:00 am and 2:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with pictures from various locations of the balloon shall be provided with the application.
 8. The Applicant shall notify all property owners and residents located within one-

thousand five hundred feet (1,500) of the nearest property line of the subject property of the proposed construction of the Tower and Wireless Facility and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least fourteen (14) days prior to the conduct of the balloon test and shall be delivered by first-class mail.

9. The Wireless Telecommunications Facility shall be structurally designed to accommodate at least six (6) Antenna Arrays as regards the load and stress created on the structure, with each array to be sited in such a manner as to provide for flush attachments to the greatest extent possible with the minimum separation necessary without causing interference. An Intermodulation Study Model shall be submitted to justify design claims as relate to interference. A claim of interference because of a need to have greater than six feet (6') of vertical clearance between facilities, measured from the vertical centerline of one array to the vertical centerline of another, must be proven by technical data showing that there is no technological alternative that would enable the service to be provided that would require less vertical space, and not merely verbal or written assertions. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Wireless Telecommunications Facility is not reasonably feasible of if co-location is technically or commercially impracticable. The Applicant shall provide information necessary to determine whether co-location is reasonably feasible based upon:
 - a. The kind of Wireless Telecommunications Facility site and structure proposed;
 - b. Available space on existing and approved Wireless Telecommunications Facilities;
 10. The owner of a proposed new Wireless Telecommunications Facility, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Wireless Telecommunications Facility by other Wireless service providers in the future, and shall:
 - a. Respond within 60 days to a request for information from a potential shared-use Applicant;
 - b. Negotiate in good faith concerning future requests for shared use of the new *Wireless* Telecommunications Facility by other Telecommunications providers;
 - c. Allow shared use of the new Wireless Telecommunications Facility 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 Wireless Telecommunications Facility or equipment to accommodate a shared user without causing electromagnetic interference;
 - d. Failure to abide by the conditions outlined above may be grounds for revocation of the Special Use Permit.
- M. The Applicant shall provide certification with documentation (i.e. structural analysis) including calculations that the Telecommunications Facility-and foundation and

attachments, rooftop support structure, water tank structure, or any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) guidelines.

- N. All Applications for proposed Wireless Telecommunications Facilities shall contain a demonstration that the Facility is sited and designed so as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved, and thereby will have the least adverse visual effect on the environment and its character, on existing vegetation, and on the community in the area of the Wireless Telecommunications Facility. The Town expressly reserves the right to require the use of Stealth or Camouflage technology or techniques such as DAS (Distributive Antenna System technology) or its functional equivalent to achieve this goal and such shall be subject to approval by the Board.
- O. The Applicant shall furnish a Visual Impact Assessment, which shall include:
1. a computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage;
 2. Pictorial representations (photo simulations) of "before and after" views from key viewpoints inside of the Town as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key sites at the pre-application meeting. The applicant shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;
 3. A written description of the visual impact of the proposed facility, including, as applicable, the tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need for or appropriateness of screening.
- P. The Applicant shall demonstrate and provide in writing and by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility.
- Q. The Wireless Telecommunications Facility 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 to harmonize with the natural surroundings. This shall include the utilization of stealth or camouflage or concealment technology as may be required by the Town.
- R. All utilities at a Wireless Telecommunications Facility site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

- S. At a Wireless Telecommunications Facility site an access road, turn around space 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 the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- T. All Wireless Telecommunications Facility shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, State, or United States, including but not limited to the most recent editions of the ANSI Code, 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 and practices referred to are codes and practices that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- U. A holder of a Special Use Permit granted under this Article shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.
- V. There shall be a pre-application meeting for all intended applications. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process and certain issues or concerns the Town may have. A pre-application meeting shall also include a site visit, if there has not been a prior site visit for the requested facility. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a retainer based on the fixed hourly rate to be set in the Town's Fee Schedule applied to the anticipated time customarily needed for the review of similar applications.
- W. An Applicant shall submit to the Town the number of completed Applications determined to be needed at the pre-application meeting. However, applications will not be transmitted to the Board for consideration until the application is deemed complete.
- X. If the proposed site is within *two* (2) miles of another jurisdiction, written notification of the Application shall be provided to the legislative body of all such adjacent municipalities as applicable and/or requested.
- Y. The holder of a Special Use Permit shall notify the Town of any intended Modification of a Wireless Telecommunication Facility and shall apply to the Town to modify, relocate or rebuild a Wireless Telecommunications Facility.

- Z. As a condition of the issuance of a Special Use Permit, the Board of Adjustment shall require that prior to the release of a Zoning Permit and a request for a Building Permit or issuance of a Building Permit for construction of the Wireless Telecommunications Facility an Application shall be presented to the Town of Elm City for a specific carrier that documents that the Facility is necessary for that carrier to serve the community and that co-location on an existing Telecommunications Structure or other structure is not reasonably feasible within the applicant's search ring. Collocation on an existing structure is not reasonably feasible if co-location is technically or commercially impractical or impracticable or the owner of the Wireless Telecommunications Facility is unwilling to enter into a contract for such use at fair market value. Sufficient documentation (i.e. evidence) to support such claims shall be submitted with a Wireless Telecommunications Facility Application for the first carrier to determine whether co-location on existing structures is reasonably feasible.

Section 12.9 Requirements for an Application for the First Antenna to be Attached to an Approved Wireless Telecommunications Structure Within the Parameters of an Approved Special Use Permit

- A. The fixed Application fee for review of Wireless Telecommunications Facilities Applications for locating an antenna array on an approved Wireless Telecommunications Facility within the parameters of an approved Special Use Permit shall be as set forth in the Town's Schedule of Fees.
- B. An application to increase the parameters of an approved Wireless Telecommunications Facility as relates to conditioned height, profile, number of co-locations or footprint shall not qualify for treatment as an attachment to an approved Wireless Telecommunications Facility within the parameters of an approved Special Use Permit under this Article.
- C. There shall be no Special Use Permit required for an application to attach the first antenna array on an approved Wireless Telecommunications Facility within the parameters of an approved Special Use Permit, unless for good cause such shall be required by the Board of Adjustment, Technical Review Committee or Zoning Administrator. Instead, approval shall consist of the issuance of a Zoning Permit and subsequent request for a Building Permit from the appropriate administrative officer.
- D. Documentation shall be provided to demonstrate that the Applicant has the legal right to proceed as proposed on the Site, including an executed copy of the lease with the owner of the facility proposed to be attached to, or a letter of agency, showing the right of the Applicant to attach to the structure.
- E. A Pre-Application meeting shall be held. Before the Pre-Application meeting, the Applicant shall be provided instructions for completing an Application. Said instructions are to be controlling as regards the form and substance of the issues addressed in the Instructions and must be followed. Prior to the Pre-Application

meeting, the Applicant shall prepare and submit the Project Information Form and submit the retainer fee, but shall not prepare or submit the Application.

- F. The Applicant shall include a written statement that:
1. The Applicant's proposed Wireless Telecommunications Facility shall be maintained in a safe manner, and in compliance with all conditions of all applicable permits and authorizations, without exception, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, State and Federal Laws, rules, and regulations; and
 2. 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 the State.
- G. An application for the first antenna to be attached to an approved Wireless Telecommunications Facility subsequent to the issuance of the Special Use Permit and prior to issuance of a building permit for construction of the Wireless Telecommunications Facility shall contain the requirements of the Streamlined Process for Review of Co-locations in Section 12.10 and the following information:

Facility Description and Documentation of the Facility as Necessary

1. A detailed narrative description and explanation of the specific objective(s) for the new Wireless Telecommunications Facility, expressly including and explaining the purpose for the facility, such as coverage and/or capacity, technical requirements, and the identified boundaries of the specific geographic area of intended coverage;
2. Technical documentation that proves the design of the Wireless Telecommunications Facility is what is necessary to provide the type and coverage of the service primarily and essentially within the Town. Such documentation shall include a propagation study of the proposed site and all adjoining planned, proposed or existing sites, that demonstrates a significant gap in coverage and/or, if a capacity issue is involved, to include an analysis of the current and projected usage (traffic studies) using generally accepted industry methods and standards so as to conclusively prove the need for what is proposed. To enable the Town to make its decision as regards to the design of the Wireless Telecommunications Facility, the Town may require the provision of all technical or engineering data and information used by the Applicant that is Necessary to enable an informed decision to be made to assure compliance with the intent of this Article and that is based upon a written record, not to include information that by applicable law or regulation is deemed to be confidential or proprietary;
3. All of the modeling information (i.e. data) inputted into the software used to produce the propagation studies, including, but not limited to any assumptions made, such as ambient tree height, which shall include the completion of the town's Propagation Study Data Form;
4. A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facility, as well as a copy of the five (5) and ten (10) year build-out plan required by the FCC;

5. The frequency, modulation and class of service of radio or other transmitting equipment;
6. The maximum transmission power capability of all radios, as designed, if the Applicant is a cellular or functional equivalent carrier, or the maximum transmission power capability, as designed, of all transmission facilities if the Applicant is not a cellular or functional equivalent carrier;
7. The actual intended transmission power stated as the maximum effective radiated power (ERP), both in dBm's and watts;
8. A statement certifying that the Wireless Telecommunications Facility and all attachments thereto are in compliance with the conditions of the approved Special Use Permit.

Ownership and Management

1. The Name, address and phone number of the person preparing the Application;
2. The Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
3. The Postal address and tax map parcel number of the property;
4. A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities.

Section 12.10 Streamlined Requirements for an Application to Co-locate on an Existing Telecommunications Facility within the Parameters of an Approved Special Use Permit

- A. The fixed Application fee for review of Wireless Telecommunications Facilities Applications for co-locating an antenna array on an existing Wireless Telecommunications Facility shall be as set forth in the Town's Schedule of Fees.
- B. An application to increase the parameters of an approved Wireless Telecommunications Facility as relates to conditioned height, profile, number of co-locations or footprint shall not qualify for treatment as an attachment to an existing Tower or other structure under this Article.
- C. There shall be no Special Use Permit required for an application to modify or to co-locate an antenna array on an existing and properly permitted Wireless Telecommunications Facility so long as the co-location or modification does not exceed the parameters of the conditions of the approved Special Use Permit, unless for good cause such shall be required by the Board of Adjustment, Technical Review Committee or Zoning Administrator. Instead, approval shall consist of the issuance a Zoning Permit and subsequent submission of request for a Building Permit from the appropriate administrative officer.
- D. Documentation shall be provided to demonstrate that the Applicant has the legal right to proceed as proposed on the Site, including an executed copy of the lease with the owner of the facility proposed to be attached to, or a letter of agency, showing the right of the Applicant to attach to the structure.

- E. A Pre-Application meeting shall be held Before the Pre-Application meeting, the Applicant shall be provided instructions for completing an Application. Said instructions are to be controlling as regards the form and substance of the issues addressed in the Instructions and must be followed. Prior to the Pre-Application meeting, the Applicant shall prepare and submit the Project Information Form and submit the retainer fee, but shall not prepare or submit the Application at that time.
- F. The Applicant shall include a written statement that:
1. The Applicant's proposed Wireless Telecommunications Facility shall be maintained in a safe manner, and in compliance with all conditions of all applicable permits and authorizations, without exception, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, State and Federal Laws, rules, and regulations; and
 2. 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 the State.
- G. An application for attaching an antenna array under this section shall contain the following information:

Facility Description

1. A detailed narrative description and explanation of the specific objective(s) for the new facility, or the modification of an existing wireless facility, expressly including and explaining the purpose for the facility, such as lack of coverage, and/or capacity, and the identified boundaries of the specific geographic area of intended coverage;
2. Documentation that the design of the facility is what is **necessary** for the service to serve the community (i.e. that the placement on the Wireless Telecommunications Structure is the lowest available height Necessary and that the design produces the least visual effect and is designed to operate within the conditions of the approved Special Use Permit as regards to the height, profile, type and number of co-locations and footprint);
3. A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facility, as well as a copy of the five (5) and ten (10) year build-out plan required by the FCC;
4. The frequency, modulation and class of service of radio or other transmitting equipment;
5. The maximum transmission power capability of all radios, as designed, if the Applicant is a cellular or functional equivalent carrier, or the maximum transmission power capability, as designed, of all transmission facilities if the Applicant is not a cellular or functional equivalent carrier;
6. The actual intended transmission power stated as the maximum effective radiated power (ERP), both in dBm's and watts;
7. A statement certifying that the Wireless Telecommunications Facility and all attachments thereto are in compliance with the conditions of the approved Special Use Permit;

Ownership and Management

1. The Name, address and phone number of the person preparing the Application;
2. The Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
3. The Postal address and tax map parcel number of the property;
4. A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities.

Zoning and Planning

1. The Zoning District or designation in which the property is situated;
2. The size of the property on which the structure to be attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
3. The location, size and height of all existing and proposed structures on the property on which the structure is located and that is the subject of the Application;
4. A site plan showing the footprint, location and dimensions of access drives, landscaping and buffers, fencing and any other requirements of site plans.
5. Elevations showing the vertical rendition of the Wireless Telecommunications Facility identifying all users, attachments, and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
6. The azimuth, size and center line height location of all proposed and existing antennae on the supporting structure;
7. The number, type and model of the Antenna(s) proposed, along with a copy of the specification sheet(s) for the antennas;

Safety

1. The age of the tower in years, including the date of the grant of the original permit or authorization for the Tower;
2. A description of the type of tower, e.g. guyed, self-supporting lattice or monopole;
3. The make, model, type and manufacturer of the Telecommunications Structure and the structural design calculations, certified by a Professional Engineer licensed in the State, proving the structure's capability to safely accommodate the facilities of the Applicant without change or modification, or if any change or modification of the structure is needed, a detailed narrative explaining what changes are needed, why they are needed and who will be responsible to assure that the changes are made;
4. A copy of the installed foundation design, as well as a geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for the tower site or other structure;
5. For a Tower that is five (5) years old or older, or for a guyed Tower that is three (3) years old or older, a copy of the latest ANSI Report done pursuant to the latest edition of ANSI-EIA/TIA 222F – Annex E for any self-supporting Tower. If an ANSI report has not been done pursuant to the preceding schedule, an ANSI report shall be done and submitted as part of the Application. No Zoning Permit

- or Building Permit shall be issued for any Wireless Facility where the structure being attached to is in need of remediation, unless and until all remediation work needed has been completed or a schedule for the remediation work has been approved by the Town Zoning Administrator;
6. A Structural Report signed by a Professional Engineer licensed to do business in the State and bearing that engineer's currently valid stamp, showing the structural adequacy of the Wireless Telecommunications Facility to accommodate the proposed modification or antenna array co-location, including any equipment shelter, unless the equipment shelter is located on the lowest floor of a building;
 7. If attaching to a structure other than a Tower or where the proposed attachment is within 30 feet of areas to which the public has or could reasonably have or gain access to, documentation shall be provided, including all calculations, proving that the potential exposure to RF Radiation (i.e. NIER or Non-Ion Emitting Radiation), will be in compliance with the most recent Federal Communications Commission regulations governing RF Radiation and exposure thereto, and further denoting the minimum distance from any antennas an individual may safely stand without being exposed to RF radiation in excess of the FCC's permitted standards and any portion(s) of the structure that would be exposed to RF radiation in excess of the FCC's permitted standards. In compliance with the FCC's regulations, in such an instance the RF Radiation from all wireless facilities at that location shall be included in the calculations to show the cumulative effect on any area of the building or structure deemed accessible by the public or workers. Such report or analysis shall be signed and sealed by a Professional Engineer licensed in the State; or
 8. In an instance involving a Tower where the new Wireless Telecommunications Facility will be ten (10) meters or more above ground level, signed documentation such as the FCC's "Checklist to Determine whether a Facility may be Categorically Excluded" shall be provided to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC's RF Emissions regulations. If not categorically excluded, a complete RF Emissions study is required to enable verification of compliance, including providing all calculations so that such may be verified prior to issuance of a Building Permit;
 9. If any section or portion of the structure to be attached to is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with yellow and black striped warning tape or a suitable warning barrier, as well as placing RF Radiation signs as needed and appropriate to warn individuals of the potential danger;
 10. A signed statement that the Applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.
- H. To protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use

camouflage or stealth techniques to match as closely as possible the color and texture of the structure.

- I. If attaching to a water tank, mounting on the top of the tank or the use of a corral shall only be permitted if the Applicant can prove that to locate elsewhere will prohibit or have the effect of prohibiting the provision of service. The provisions of the preceding subsection (H) of this section shall also apply to any attachment to a water tank.
- J. The Applicant shall provide a certification by a Professional Engineer licensed in the State, along with documentation (a structural analysis), including calculations, that prove that the Wireless Telecommunications Facility-and its foundation as proposed to be utilized are designed and were constructed to meet all local, Town, State, Federal and ANSI structural requirements for loads, including wind and ice loads and the placement of any equipment on the roof a building after the addition of the proposed new facilities.
- K. So as to be the least visually intrusive Wireless Telecommunications Facility reasonably possible given the facts and circumstances involved, and thereby have the least adverse visual effect and create the least intrusive or lowest profile or visual silhouette reasonably possible, unless it can be proven that such would be technologically impracticable, all antennas attached to a tower or other structure shall be flush mounted or as near to flush mounted as is possible without prohibiting or having the effect of prohibiting the provision of service so as minimize the visual profile of the antennas, or prove technically, with hard data and a detailed narrative, that flush mounting can not be used and would serve to prohibit or have the effect of prohibiting the provision of service.
- L. Unless it is deemed inappropriate or unnecessary by the Town given the facts and circumstances, the Applicant shall demonstrate and provide in writing and by drawing how it shall effectively buffer and screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility up to a height of ten (10) feet. Such plan shall be subject to approval by the Town.
- M. The Wireless Telecommunications Facility 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 to harmonize with the natural surroundings. This shall include the utilization of stealth, camouflage or concealment technology as may be required by the Town and as is not impracticable under the facts and circumstances.
- N. All utilities installed for a new Wireless Telecommunications Facility shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the Town and the NC State Building Code administered by the County of Wilson, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

- O. If deemed necessary or appropriate, an access road, turn around space 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 the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion and shall comply with any local or State regulations for the construction of roads. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the Application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations.

Section 12.11 Location of Wireless Telecommunications Facilities

- A. Applicants for Telecommunications Towers shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, in the following order:
1. On existing Town-owned Wireless Telecommunications Facilities without increasing the height of the tower or structure.
 2. On existing Wireless Telecommunications Facilities without increasing the height of the tower or structure.
 3. On Town-owned properties or facilities.
 4. On properties in areas zoned for Business use.
 5. On properties in areas zoned for Rural (Agricultural) use.
 6. On properties in areas zoned for Residential use.
 7. On properties in designated Historic Districts.
- B. Applicants for all other Wireless Telecommunications facilities (e.g. Distributed Antenna Systems or buildings) shall locate, site and construct said Wireless Telecommunications Facilities in accordance with the following priorities, in order:
1. On existing Town-owned Wireless Telecommunications Facilities without increasing the height of the structure.
 2. On existing Wireless Telecommunications Facilities without increasing the height of the structure.
 3. On Town-owned properties or facilities.
 4. On properties in areas zoned for Business use.
 5. On properties in areas zoned for Rural (Agricultural) use.
 6. On properties in areas zoned for Residential use.
 7. On properties in designated Historic Districts.
- C. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation and justification must be provided as to why a site of all higher priority designations 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 Wireless Telecommunications Facility as proposed.

- D. An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected or because there is an existing lease with a landowner. An Application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Town why co-location is technically or commercially impracticable. Agreements between Wireless Telecommunications Facility owners limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.
- E. Notwithstanding the above, the Town may approve any site located within an area in the above list of priorities, provided that the Town finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the Town may direct that the proposed location be changed to another location that is more in keeping with the goals of this *Article* and the public interest as determined by the Town.
- F. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town may disapprove an Application for any of the following reasons:
1. Conflict with safety and safety-related codes and requirements;
 2. Conflict with the historic nature or character of a neighborhood or district;
 3. The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
 4. The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers;
 5. The placement and location of a Wireless Telecommunications Facility would result in a conflict with or compromise in or change the nature or character of the surrounding area;
 6. Conflicts with the provisions of this Article;
 7. Failure to submit a complete Application as required under this Article.
- G. Notwithstanding anything to the contrary in this Article, for good cause shown, such as the ability to utilize a shorter or less intrusive facility elsewhere and still accomplish the primary service objective, the Town may require the relocation of a proposed site, including allowing for the fact that relocating the site chosen by the Applicant may require the use of more than one (1) site to provide substantially the same service if the relocation could result in a less intrusive facility or facilities, singly or in combination. The existence of a lease entered into prior to the approval of an application shall not be deemed justification for the requested location.

Section 12.12 Shared Use of Wireless Telecommunications Facilities

- A. The Town requires the co-location of antenna arrays on existing Wireless Telecommunications Facilities as opposed to the construction of a new Wireless

Telecommunications Facility or increasing the height, footprint or profile beyond the conditions of the approved Special Use Permit for an existing Wireless Telecommunications Facility, unless such is proven to be technologically impracticable. The Applicant shall submit a comprehensive report inventorying all existing Wireless Telecommunications Facilities and other suitable structures within one (1) mile of the location of any proposed new Wireless Telecommunications Facility, unless the Applicant can show that some other distance is more appropriate and reasonable and demonstrate conclusively why an existing Wireless Telecommunications Facility or other suitable structure cannot be used.

- B. An Applicant intending to locate on an existing Wireless Telecommunications Facility shall be required to document the intent of the existing owner to permit its use by the Applicant.
- C. Such shared use shall consist only of the minimum Antenna array technologically **necessary** to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

Section 12.13 Type and Height of Wireless Telecommunications Facilities

- A. All new towers shall be of the monopole type, unless such is able to be proven to be technologically impracticable. No new towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly granted.
- B. The Applicant shall submit documentation justifying the total height of any Wireless Telecommunications Facility or Antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to produce the studies at the requested height and a minimum of ten feet (10') lower height to enable verification of the need for the requested height.
- C. For a new Wireless Telecommunications Facility a reduction in the identified size of the identified service area of 10% or less of the predicted service area shall not be deemed justification for exceeding the otherwise allowable height of a Wireless Telecommunications Facility.
- D. The maximum permitted total height of a new Wireless Telecommunications Facility shall be one hundred twenty feet (120') above pre-construction ground level, unless it can be proven that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the community. The maximum permitted height is not an as-of-right height, but rather the maximum permitted height, absent proof of the technological need for a greater height.
- E. For a wireless facility to be located on an existing Wireless Telecommunications Facility, such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown. A reduction in the size of the identified service area of 10% or less of the predicted service area shall not be deemed justification for increasing the height of a facility.

- F. Notwithstanding the preceding subsection (D) of this section, Wireless Telecommunications Facilities shall be no taller than the minimum height technologically necessary to enable the provision of wireless service coverage or capacity as needed within the community (i.e. the Town, and its jurisdiction).
- G. Documentation substantiating the height necessary to provide for the placement of an antenna array to provide wireless service to the community shall be submitted by the Applicant prior to issuance of a Building Permit for a new Wireless Telecommunications Facility, but shall not be required prior to issuance of the Special Use Permit unless the requested height exceeds the 120 foot maximum permitted height. Such documentation shall be provided with an Application for the first attachment of an antenna array and for any proposed increase in the previously permitted height.
- H. Relief from the maximum height for new Wireless Telecommunications Facilities shall only be considered where evidence substantiates a taller height is necessary for the provision of wireless service to the community, to the exclusion of any alternative option that is not technologically or commercially impracticable, and where denial of a taller height would have the effect of prohibiting the provision of wireless service to the community. Such documentation shall be provided prior to consideration of a Special Use Permit when the requested height exceeds the 90 foot maximum height.
- I. Prior to issuing a Zoning Permit or Building Permit for the co-location of an antenna array on an existing Wireless Telecommunications Facility, an Applicant shall demonstrate that the co-location is located appropriately on the Wireless Telecommunications Facility with the overall goal being to preserve the structural capacity of the Wireless Telecommunications Facility for future co-locations and to minimize the visual intrusiveness and impacts.
- J. In determining the necessary height for a Wireless Telecommunications Facility, or the height or placement of a co-location on a Wireless Telecommunications Facility, the signal strengths provided shall be the threshold or lowest signal strength at which the customer equipment will or is designed to function, which may be required to be determined by the manufacturer's published specifications for the customer equipment.
- K. As the Town has made the policy decision that more towers of a shorter height is in the public interest, as opposed to fewer taller towers, spacing, or the distance between towers, shall be such that the service may be provided without exceeding the maximum permitted height, unless **technically or commercially impractical**.

Section 12.14 Visibility of Wireless Telecommunications Facilities

- A. Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by federal regulations.

- B. **Stealth:** All new Wireless Telecommunications Facilities, including but not limited to towers, shall utilize Stealth or Camouflage techniques and technology, unless such can be shown to be either Commercially or Technologically Impracticable.
- C. **Dual Mode:** In order to minimize the number of antenna arrays and thus the visual impact, the Town may require the use of dual mode antennas to be used, including by two different carriers, unless it can be proven that such will not work technologically and that such would have the effect of prohibiting the provision of service in the Town.
- D. **Wireless Telecommunications Facilities Finish/Color:** Structures shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Article.
- E. **Lighting:** If lighting is legally required or proposed, 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. For any Wireless Telecommunications Facility for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.
- F. In the event a Wireless Telecommunications Facility that is lighted is modified, at the time of the modification the Town may require that the Tower be retrofitted with the technology set forth in the preceding subsection (E) if it has not already done so.
- G. **Flush Mounting:** All new or replacement antennas, except Omni-directional whip antennas, shall be flush-mounted or as close to flush-mounted as is technologically possible on any Wireless Telecommunications Facility, so long as such does not have the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), unless the Applicant can prove that it is technologically impracticable.
- H. **Placement on Building – Facie:** If attached to a building, all antennas shall be mounted on the facie of the building and camouflaged so as to match the color and, if possible, texture of the building or in a manner so as to make the antennas as visually innocuous and undetectable as is possible given the facts and circumstances involved.

Section 12.15 Security of Wireless Telecommunications Facilities

All Wireless Telecommunications Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A. All Wireless Telecommunications Facilities, including Antennas, Towers and other supporting structures, such as guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
- B. Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

Section 12.16 Signage

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to 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 on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

Section 12.17 Setbacks

- A. All proposed Telecommunications Towers and any other proposed Wireless Telecommunications Facility attachment structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or other Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Telecommunications Structure, otherwise known as the Fall Zone, or the existing setback requirement of the underlying zoning district, whichever is greater. Any Accessory structure shall be located within the footprint as approved in the Special Use Permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The Fall Zone shall be measured from the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile. Further, the nearest portion of any access road *leading* to a wireless Telecommunications facility shall be no less than fifteen (15) feet from the nearest property line.
- B. There shall be no development of habitable buildings within the Fall Zone set forth in the preceding subsection (1).

Section 12.18 Retention of Expert Assistance Cost to be Borne by Applicant

- A. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the Application, including the construction and modification of the facility or site, once permitted, and any site inspections.

- B. To prevent the taxpayers from having to bear the cost related to the issue of the regulation of Wireless Telecommunications Facilities, an Applicant shall pay to the Town a retainer fee based on the fixed hourly rate to be set in the Town's Fee Schedule applied to the anticipated time customarily required for the review of similar applications to cover all reasonable costs of consultant and expert evaluation and consultation with the Town in connection with the review of any Application, and where applicable, any lease negotiation, the pre-approval evaluation, and including the construction and modification of the site, once permitted. The placement of the initial retainer with the Town shall precede the pre-application meeting or any work being done as regards to processing an application. The Town will maintain accounting for the expenditure of all such funds. The Town's consultants/experts shall invoice the Town for all time expended in its services in reviewing the Application, including the construction and modification of the site, once permitted. If at any time during the process this retainer fee has a balance of less than one-fourth (1/4) of the initial payment, and if the Application as originally submitted was not complete or has been amended, the Applicant shall immediately, upon notification by the Town, provide a retainer equivalent to one-half (1/2) of the initial retainer. Such additional funds shall be deposited with the Town before any further action or consideration is taken on the Application. In the event that the amount paid to the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the Applicant subsequent to the issuance of a Certificate of Occupancy.
- C. The fixed fee is the hourly rate of consultants and experts retained to review Wireless Telecommunications Facilities Applications, but the total amount of the funds needed as set forth in subsection (2) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.
- D. Records of all outside costs associated with the review and permitting process shall be maintained and available for public inspection, in compliance with applicable North Carolina law.

Section 12.19 Procedural Requirements for a Special Use Permit

- A. The procedures established for Special Uses in Article 3 Section 3.3.3.C shall apply where wireless telecommunications facilities require a Special Use Permit as required or otherwise specified in this Article.
- B. The Town shall schedule the required public hearing before the Board of Adjustments once it finds the Application is complete and is not required to set a date if the Application is not complete. The Town, at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary as such relates to the issue of the siting, construction or modification of a Wireless Telecommunications Facility.

- C. A Special Use Permit shall only be issued for a Wireless Telecommunications Structure upon Board review and approval with the condition that a Zoning Permit and Building Permit for said Telecommunications Structure shall not be issued until an Applicant has provided substantiating documentation under the section governing the placement of the first antenna array prior to construction of a new Wireless Telecommunications Facility.

Section 12.20 Action on an Application for a Special Use Permit for Wireless Telecommunications Facilities

- A. The Town will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time, and in certain instances as required by law, 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 Town may refer any Application or part thereof to any advisory or other committee for a non-binding recommendation.
- C. After the public hearing and after formally considering the Application, the Town Board of Adjustment may approve, approve with conditions, or deny a Special Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the Applicant.
- D. If the Town Board of Adjustment approves the Special Use Permit for the Wireless Telecommunications Facility, then the Applicant shall be notified of such approval at the Board Meeting and in writing within 30 calendar days of the Town's action, and the Special use Permit shall be issued within thirty (30) days after such approval. Except for necessary construction plan documents, building permits, and subsequent Certificates of Compliance or Occupancy, once a Special Use Permit has been granted hereunder, no additional site plan or zoning approvals, shall be required by the Town for the Wireless Telecommunications Facilities covered by the Special Use Permit. Each modification or co-location of an antenna array shall require the submission of a Wireless Telecommunications Facility Application and Building Permit Application.
- E. If the Town denies the Special Use Permit for the Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial at the Board Meeting and in writing within 30 calendar days of the Board's action and shall set forth in writing the reason or reasons for the denial.

Section 12.21 Extent and Parameters of Special Use Permit for Wireless Telecommunications Facilities

The extent and parameters of a Special Use Permit for Wireless Telecommunications Facilities shall be as follows:

- A. Such Special Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the Town.
- B. Following an opportunity to cure and, if not cured within the time frame set forth in the notice of violation, a hearing upon due prior notice to the Applicant, such Special Use Permit may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit, or for a material violation of this Article_or other applicable law, rule or regulation. Notice of a violation and of the date, time and place of a hearing shall be provided by registered mail to the last known address of the holder of the Special Use Permit.

Section 12.22 Application Fee

At the time that a person submits an Application for a Special Use Permit for a new Wireless Telecommunications Facility, such person shall pay a non-refundable application fee set forth in the Town's Fee Schedule as may be amended or changed from time to time.

Section 12.23 Removal and 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 \$75,000.00 for a tower and with such sureties as are deemed sufficient by the Town to assure the faithful performance of the terms and conditions of this Article and conditions of any Special Use Permit issued pursuant to this Article. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Special Use Permit.

Section 12.24 Reservation of Authority to Inspect Wireless Telecommunications Facilities

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.

Section 12.25 Liability Insurance

- A. A holder of a Special Use Permit for Wireless Telecommunications Structures 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; and
 - 2. Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate; and
 - 3. A \$3,000,000 Umbrella coverage; and
 - 4. Workers Compensation and Disability: Statutory amounts.
- B. For a Wireless Telecommunications Facility on Town property, the Commercial General Liability insurance policy shall specifically name the Town and its officers, Boards, employees, committee members, attorneys, agents and consultants as additional insured.
- 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 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 Town at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- F. Before construction of a permitted Wireless Telecommunications Facility is initiated, but in no case later than fifteen (15) days prior to the grant of the Building 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.
- G. A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the Town shall not be deemed to comply with this Article.

Section 12.26 Indemnification

- A. Any application for Wireless Telecommunication Facilities that is proposed for Town property, pursuant to this Article, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by this Article, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, and its officers, Boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising 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 Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

- B. Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a Special Use Permit for Wireless Telecommunications Facilities.

Section 12.27 Fines

- A. In the event of a violation of this Article or any Special Use Permit issued pursuant to this Article, the Town 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 in Article 14, Section 14.2 this Ordinance.
- B. Notwithstanding anything in this Article, 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 Article or any section of this Ordinance. 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 Article, without limiting other remedies available to the Town.

Section 12.28 Default and/or Revocation

If a Wireless Telecommunications Structure or Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Article or of the Special Use Permit, then the Town shall notify the holder of the Special Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as in Article 14, and if a violation is not corrected to the satisfaction of the Town in a reasonable period of time the Special Use Permit shall be subject to revocation.

Section 12.29 Removal of Wireless Telecommunications Structures and Facilities

- A. The owner of any Wireless Telecommunications Facility or wireless facility shall be required to provide a minimum of thirty (30) days written notice to the Town Clerk prior to abandoning any Wireless Telecommunications Facility or wireless facility.
- B. Under the following circumstances, the Town may determine that the health, safety, and welfare interests of the Town warrant and require the removal of Wireless Telecommunications Facilities.

1. Wireless Telecommunications Facilities that have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days of abandonment;
 2. Permitted Wireless Telecommunications Structures or Facilities fall into such a state of disrepair that it creates a health or safety hazard;
 3. Wireless Telecommunications Structures or 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 and the Special Permit may be revoked.
- C. If the Town makes such a determination as noted in subsection (1) of this section, then the Town shall notify the holder of the Special Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the Town may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.
- D. 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 ninety (90) days of receipt of written notice from the Town. 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 Town.
- E. If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the permit holder has received notice, then the Town 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.
- F. If, the Town removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the Town may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.
- G. Notwithstanding anything in this Article to the contrary, the Town may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more than ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Special Use Permit, subject to the approval

of the Town, and an agreement to such plan shall be executed by the holder of the Special Use Permit and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Article and utilize the bond in Section 12.21.

Section 12.30 Relief

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Article may request such at the pre-Application meeting, provided that the relief or exemption is contained in the submitted 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 Wireless Telecommunications Facility and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the Town, its residents and other service providers.

Section 12.31 Periodic Regulatory Review by the Town

- A. The Town may at any time conduct a review and examination of this entire Article.
- B. If after such a periodic review and examination of this Article, the Town determines that one or more provisions of this Article should be amended, repealed, revised, clarified, or deleted, and then the Town may take whatever measures are necessary in accordance with applicable Ordinance in order to accomplish the same. It is noted that where warranted, and in the best interests of the Town, the Town may repeal this entire Article at any time.
- C. Notwithstanding the provisions of subsections (A) and (B) of this Section, the Town 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 Article.

Section 12.32 Adherence to State and/or Federal Rules and Regulations

- A. To the extent that the holder of a Special Use Permit for a Wireless Telecommunications Facility 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 twenty-four (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.

Section 12.33 Conflict with Other Laws

Where this Article differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the Town, State or federal government, this Article shall apply.

Section 12.34 Effective Date

This Article shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

Section 12 35 Authority

This Article is enacted pursuant to applicable authority granted by the State and Federal Government.