

LOCAL LAW NO. 1

FOR THE YEAR 2001

TOWN OF SPRINGPORT, CAYUGA COUNTY, NEW YORK

AMENDING ZONING LAW OF THE TOWN OF SPRINGPORT, SPECIFICALLY, ADDING A NEW ARTICLE REGULATING THE CONSTRUCTION AND MAINTENANCE OF TELECOMMUNICATION FACILITIES.

ARTICLE REGULATIONS FOR THE CONSTRUCTION AND MAINTENANCE OF TELECOMMUNICATION FACILITIES

Section Purpose

The purpose of this Article is to provide and promote the health, safety, and general welfare of the residents of the Town to regulate and control land used and to provide standards for the safe provisions of telecommunications consistent with applicable Federal and State regulations; to minimize the total number of telecommunication towers in the community by encouraging shared use of existing and future towers, and the use of existing tall buildings and other high structures; and to minimize adverse visual effects from telecommunication towers by requiring standards for visual impact assessment and appropriate landscaping.

Section Definitions

A. Telecommunication Facility: Any commercial equipment used in connection with the provision of two-way wireless communication services, including cellular telephone services, personal communication services, and private radio communication services, regulated by the Federal Communication Commission in accordance with the Telecommunications Act of 1996, as the same may be amended from time to time, and other Federal law. A Telecommunication Facility shall include Telecommunication Towers (including, but not limited to, monopoles, guyed wire towers or lattice towers), Antenna(e), Telecommunication Accessory Facilities and Alternate Tower Structures.

B. Telecommunication Tower: Any structure on which transmitting and/or receiving Antenna(e) are located.

C. Antenna: A system of electrical conductors that transmit or receive radio frequency waves, including, but not limited to, radioavigation, radio, television, and microwave communications having a frequency range generally from 10 hertz to 300,000 megahertz.

D. Telecommunication Accessory Facility: Any accessory facility that serves the principle use located on the same lot as the principle use and clearly incidental or subordinate to, and

B. Procedure

1. An application for a Telecommunication Facility Building Permit in the form approved for such purposes may be obtained from the Code Enforcement Officer or the Town Clerk at the Town Hall located at Route 326, Union Springs, New York.

2. The application for a Special Permit for telecommunication facilities shall include, without altering any other application requirements set forth in this Article or elsewhere in the Zoning Law, the following:

(a) A site plan in accordance with the provisions and requirements of this Article which shall include, without limitation:

- (i) The exact location including geographic coordinates of the proposed telecommunication facility including any towers, guy wires and anchors, if applicable;
 - (ii) The maximum height of the proposed facility, including all appurtenances;
 - (iii) A detail of tower type, if any, including engineering drawings from the tower manufacturer (monopole, guyed wire, freestanding, lattice or other);
 - (iv) The location, type and intensity of any lighting on the tower;
 - (v) Property boundaries and names of all adjacent landowners;
 - (vi) Proof of the landowner's consent to the erection of the facility and agreement to abide by the provisions of this law if the applicant is not the landowner;
 - (vii) The location of all other structures on the property and all structures on any adjacent property within 100 feet of the property lines, together with the distance of these structures from any proposed tower;
 - (viii) The location, nature and extent of any proposed fencing, landscaping, and/or screening;
 - (ix) The location and nature of any proposed utility easements and access roads or drives; and
 - (x) A description and details concerning all electronic security measures.
- (b) Compliance with the State Environmental Quality Review Act (SEQR).

customary in connection with the area, extent and purpose of the principle use, including, but not limited to, transmission equipment and supporting mast, wires, switching stations, storage and equipment buildings, or other structures.

E. Alternate Tower Structure: Man-made trees, clock towers, bell steeples, light poles, barn silos, and/or similar alternative design mounting structures that serve the purpose to camouflage or conceal the presence of antenna(e) or towers.

F. FAA: Federal Aviation Administration.

G. FCC: Federal Communication Commission.

Section Zoning Requirements

A. Special Permit In all Zoning Districts within the Town Telecommunication Facilities shall be erected only upon issuance of a Special Permit as approved by the Zoning Board of Appeals pursuant to the standards and criteria hereinafter set forth.

B. Exceptions Application for a Special Permit shall not be required under the following limited circumstances:

1. A new, previously nonexistent non-commercial use which is accessory to a lawfully existing residential use.
2. An approved special conditioned use lawful at the time it was established and in existence prior to the effective date of this Article.

Notwithstanding anything to the contrary contained herein, any modification, reconstruction, alteration, extension, or enlargement of any of the aforementioned specific uses shall be permitted only upon the same lot as in existence as of the effective date of this Article and upon issuance of a Special Permit in accordance with the standards, criteria, and regulations set forth herein.

Section Application and Special Approval Requirement

A. General No Telecommunication Facility shall hereafter be established, erected, moved, modified, altered, reconstructed, extended, or enlarged unless and/or until a written application for a Telecommunication Facility Building Permit shall have been made to the Town Code Enforcement Officer; the application and/or other fees as may be required have been paid; and the application has been approved by the Zoning Board of Appeals and a Special Permit has been issued to the applicant.

(c) Proof of written notice of the application to all property owners within 1,000 feet of the fall zone.

(d) An affirmative statement, sworn to under the penalties of perjury, that the applicant will negotiate in good faith with any subsequent applicant seeking to co-locate a telecommunication facility on the initial applicant's structure. This agreement shall commit the initial applicant and landowner and their respective successors in interest to:

(i) Respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant;

(ii) Negotiate in good faith for shared use by third parties;

(iii) Allow shared use if an applicant agrees in writing to pay reasonable charges for same; and

(iv) Make no more than a reasonable charge for shared use, based upon generally accepted accounting principles. The charge may include, but is 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, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference or causing uses on the site to emit electromagnetic radiation in excess of levels permitted by the FCC.

(e) An agreement for removal of the facility above-referred to as required pursuant and in accordance with Section

(f) A list of the names, addresses, and telephone numbers of all users located, or proposed to be co-located on the facility.

(g) Copies of all documents submitted to the FCC or any other governmental agency having jurisdiction thereof.

(h) Documents authorizing the FCC to release information to the Town for confirmation of the continuing use of the facility by the owner and co-located users and, the owner's, and other user's authority to use and maintain the facility.

(i) Site plans for all telecommunication facilities must bear the seal of a professional engineer licensed to practice in the State of New York. Every facility shall be built, operated and maintained to acceptable industry standards, including, but not limited to, the most recent, applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI).

(j) The Town Planning Board may require additional information, such as line-of-site drawings, detailed elevation maps, visual simulations, before and after renderings, and alternate tower designs to more clearly identify adverse impacts for the purpose of their mitigation as herein set forth below.

3. The application and related documents shall be filed with the Code Enforcement Officer at the Town Hall.

4. Within five (5) days of the filing of the application and materials with the Code Enforcement Officer and payment of the required application fee, the Code Enforcement Officer shall refer the same to the Town Planning Board for the purpose of review and recommendations to ensure that the proposed Telecommunication Facility is within the intent of the comprehensive planning activities of the Town. The Town Planning Board shall have thirty (30) days from its next regularly scheduled meeting within which to report. As may be deemed appropriate, the Town Planning Board may submit the application to the Cayuga County Planning Board for an informal review. The Town at the expense of the applicant, may employ its own consulting assistants to examine the application and related documentation and make recommendations as to whether the criteria for granting the Special Permit have been met, including whether the applicant's conclusions regarding need, location, safety analysis, visual analysis, and structural inspection, are valid and supported by generally accepted and reliable engineering and technical data and standards.

5. The Town Planning Board shall, after review, report its recommendations to the Zoning Board of Appeals. Within forty-five (45) days after receiving a report from the Town Planning Board, the Zoning Board of Appeals shall schedule and conduct a public hearing for the purpose of considering the application for a Special Permit in accordance with Section 1106.

C. Deposit and Payment of Fees

1. At the time of filing of the application with the Code Enforcement Officer, the applicant shall pay to the Code Enforcement Officer an application fee in the amount of \$1,500.00.

2. Upon due notice to the applicant by the Town Planning Board, the applicant shall be required to deposit with the Town Planning Board, in advance, in addition to the application fee above-referred to, a sum of money not to exceed \$50,000.00 which sum shall be used to pay costs and expenses incurred by the Town for such engineering, scientific or technical consulting (consulting assistants) services as in its sole judgment and discretion the Town Planning Board may deem appropriate to assist in the review and examination of the application and related documentation. It shall be the sole responsibility of the applicant to deliver to, and deposit with, the Town Planning Board the sum required prior to the Town Planning Board reporting its recommendations and referring the application to the Zoning Board of Appeals. Upon the receipt of such sums, the Planning Board shall deliver same to the Town Supervisor to be held as hereinafter provided.

3. Upon receipt of such sums as may be required for deposit in sub-paragraph (2) above, the Town Supervisor shall cause such monies to be placed in a separate non-interest bearing

account in the name of the Town and shall keep a separate record of all such monies so deposited and the name of the applicant for which such sums were deposited.

4. Upon the receipt and approval by the Town Board of itemized vouchers from an engineer and/or scientific or technical consultant for services rendered on behalf of the Town pertaining to the application review and examination, the Town Supervisor shall cause such vouchers to be paid out of the monies so deposited, and shall furnish copies of such vouchers to the applicant at the same time such vouchers are submitted to the Town.

5. The Town Board shall review and audit all such vouchers and shall approve payment of only such engineering and consulting fees as are reasonable in amount and necessarily incurred by the Town in connection with the review, consideration, and examination of the application. For purposes of the foregoing:

(a) A fee or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge by engineers or consultants to the Town for services performed in connection with the review, examination or approval of a similar project; and

(b) A fee or part thereof is necessarily incurred if it was charged by the engineer or consultant for a service which was rendered in order to protect or promote the health, safety or other vital interests of the residents of the Town, protect public or private property from damage, assure the proper and timely construction of a Telecommunication Facility, protect the legal interests of the Town and avoidance of claims and liability, and such other interests as the Town Board may deem relevant.

6. Notwithstanding anything to the contrary contained in this local law, an applicant shall not be required to pay for any part of engineering and/or consulting service fees incurred by the Town performed in connection with matters including but not limited to those resulting from complaints by third parties, as to which the Town Board determines the applicant had no responsibility or was beyond the reasonable control of the applicant.

7. Any excess monies held on deposit by the Town after payment of all vouchers submitted shall be returned to the applicant within ten (10) days after the next regularly scheduled meeting of the Town Board at which such vouchers shall have been approved for payment.

Section 1305 General Criteria

A. In addition to any other general requirements and standards applicable to all Special Permits as set forth in Section no Special Permit or renewal thereof or modification of an existing special conditioned approval relating to a Telecommunication Facility shall be granted by the Zoning Board of Appeals unless it shall find that such Telecommunication Facility:

- (1) is necessary to meet current or reasonable expected demands for services; and
- (2) conforms with all Federal and State laws and all applicable rules or

- regulations promulgated by the FCC, FAA, or any other Federal agencies having jurisdiction thereof; and
- (3) is considered a public utility in the State of New York; and
 - (4) is sited, designed and constructed in a manner which minimizes visual impact to the extent practical and minimizes adverse impacts upon migratory birds and other wildlife; and
 - (5) complies with all other requirements of this law, unless expressly superseded herein; and
 - (6) is the most appropriate site among those available within the technically feasible area for the location of a Telecommunication Facility; and
 - (7) when including the construction of a tower, such tower is designed to accommodate future shared use by at least two (2) other telecommunication service providers. Any subsequent location of telecommunication equipment by other service providers on specifically designed for shared use facilities shall not require a new or modified Special Permit if there would be no increase in the height of the tower. However, the additional equipment will require site plan review.

B. Any Special Permit issued on site plan approval hereunder shall be valid only for the dimensions and number of structures for the Telecommunication Facility contained in the original application as so approved. Any subsequent changes or modification shall require a new application for same following the procedures set forth in this Article.

C. Every facility shall be inspected at least every fifth year for structural integrity by a N.Y.S. licensed engineer. A copy of the inspection report shall be submitted to the Code Enforcement Officer. Any unsafe condition revealed by such report shall be corrected within ten (10) days of notification of the same to the record landowner on which the facility is constructed. The time period for correction may, upon application of the landowner or owner of the facility, be extended by the Town Planning Board; if it is impracticable to complete the correction within said ten (10) days and if there is no imminent danger to life, limb, or other person's property. If the unsafe condition is not corrected within the applicable time period, or if the required inspection is not provided to the Town, the Special Permit for construction or maintenance of the facility may, after a hearing by the Zoning Board of Appeals on at least ten (10) days prior notice to the owner of record given by certified mail, return receipt requested, or other equally effective manner of providing notice, be revoked by such Zoning Board of Appeals. Revocation may occur only if the Zoning Board of Appeals finds either:

- (1) that the required inspection has not been provided or
- (2) that there is an unsafe condition which poses a risk of bodily injury or significant property damage.

Upon such revocation, the facility shall be removed or dismantled to the point of removing all unsafe conditions.

D. Granting of the Special Permit does not relieve the applicant of the responsibility of

obtaining any other permission, consent, approval, or variance from any other Federal, State, County or local government which may be required.

E. Wherever the criteria or regulations set forth in this Article conflict any other standards required in any other Article of the Zoning Law, any other statute or local law, ordinance or regulation of the Town of Scipio, the more restrictive shall apply; except for Telecommunication Tower height restrictions which are governed by these special use standards.

Section Co-location and Shared Use

A. Preference The shared use of existing Telecommunication Facilities or other Alternative Tower Structures shall be preferred to the construction of new facilities. Any Special Permit application, renewal or modification thereof, shall include proof that reasonable efforts have been made to co-locate within an existing Telecommunication Facility or upon an existing Alternative Tower Structure. The application shall include an adequate inventory report specifying existing Telecommunication Facilities within a reasonable distance of the proposed site. The inventory report shall contain an evaluation outlining opportunities for shared use of existing facilities and other Alternative Tower Structures as an alternative to the proposed location.

B. Demonstration The applicant must demonstrate that the proposed Telecommunication Facility cannot be accommodated on an existing Telecommunication Facility site within the inventory due to one or more of the following reasons:

- (1) The planned equipment would exceed the structural capacity of the existing and approved Telecommunication Facility or other Alternative Tower Structure taking into consideration the existing use, and reasonably anticipated future use, for those facilities or structure;
- (2) The planned equipment would cause radio frequency interference with other existing or planned equipment which cannot reasonably be prevented;
- (3) Existing or approved Telecommunication Facilities or other Alternative Tower Structures do not have space and cannot be modified to provide space on which the proposed equipment can be placed so that it can function effectively and reasonably;
- (4) Other technical reasons make it impractical to place the equipment proposed by the applicant on the existing facilities or structures; or
- (5) The owner of the existing Telecommunication Facility or other Alternative Tower Structure has refused to allow such co-location. Written requests for, and refusals to allow, such co-location shall be provided.

Section Dimensional Requirements

A. Fall Zones A fall zone around any Telecommunication Tower constructed as part of a Telecommunication Facility must have a radius at least equal to the height of the Telecommunication Tower and any attached Antenna(e). The entire fall zone may not include public roads and must be located on property either owned or leased by the applicant or for which the applicant has obtained an easement, and may not, except as set forth below, contain any structure other than those associated with the Telecommunication Facility. If the facility is attached to an existing structure, relief may be granted by a new variance by the Zoning Board of Appeals, on a case by case basis, if it is determined by such Board that such variance is appropriate after submission of competent evidence. The Board may impose any conditions reasonably necessary to protect the public or other property from potential injury.

B. Setbacks and Lot Size All Telecommunication Facilities shall comply with the setback, frontage, minimum lot size, and fall zone requirements of this Article. To the extent there is a conflict with other dimensional requirements within the Zoning Law, the more restrictive provision shall govern. The size of the leased or owned lot shall be, at a minimum, sufficiently large to include the entire fall zone. All lots leased or owned for the purpose of construction and/or maintenance of a Telecommunication Tower as part of a Telecommunication Facility shall conform, at a minimum, to the lot size requirements of the size of lot necessary to encompass the entire fall zone, whichever requirement results in a larger lot. Notwithstanding any other provision to the contrary of any other Article of this Zoning Law, the front, side, and rear yard requirements in which a Telecommunication Facility is erected shall apply, not only to a Telecommunication Tower, but also to all tower parts including guy wires and anchors, and to any Telecommunication Accessory Facilities.

Section Lighting and Marking

A. Telecommunication Towers shall not be artificially lighted and marked except to assure human safety within the requirements of the FAA. Notwithstanding the foregoing, an applicant may be required to install additional lighting and marking, even if not required by the FAA, if in the judgment of the Zoning Board of Appeals such a requirement would be of direct benefit to public safety and would not unduly adversely effect residents of any surrounding property.

Section Appearance and Buffering

A. Signs Prohibited The use of any part or portion of a Telecommunication Facility for signs, promotional, or advertising purposes, including, but not limited to, company name, phone numbers, banners, streamers, and balloons is prohibited.

B. Visibility The Telecommunication Facility shall have the least practical visual effect on the environment as determined by the Town Planning Board and the Zoning Board of Appeals. Any Telecommunication Tower that is not subject to FAA marking standard requirement shall

otherwise:

- (1) have a galvanized finish or be painted gray above the surrounding tree line and gray or green below the tree line as deemed appropriate by the Zoning Board of Appeals; or
- (2) be disguised or camouflaged to blend in with the natural surroundings to the extent that such alteration does not impair the ability of the facility to perform its designed function.

Telecommunication Towers shall be designed and sited so as to avoid, whenever possible, application of FAA lighting and marking requirements.

C. Accessory Facilities Telecommunication Accessory Facilities shall maximize the use of building materials, colors, and textures designed to blend in with the natural surroundings.

D. Equipment/Vehicles Equipment or vehicles not used in direct support of renovations or repairs to any Telecommunication Facility shall not be stored or parked on the facility site.

E. Screening Deciduous or evergreen tree planting shall be required to screen portions of the tower from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public or private property, including streets, the following vegetative screening shall be required.

F. Vegetation For all towers, at least one row of native evergreen shrubs or trees forming a continuous hedge at least ten (10) feet in height at the time of planting shall be planted to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of the berm.

G. Existing Vegetation Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of four feet from the ground) shall take place prior to approval of the Special Permit use. Clear-cutting of all trees in a single contiguous area exceeding 10,000 square feet shall be prohibited.

Section Access and Parking

A. Access Ways Access ways shall make maximum use of existing public or private roads to the extent practicable. New access ways or roads constructed solely for Telecommunication Facilities shall be constructed consistent with standards for private roads and shall at all times minimize ground disturbances and vegetation cutting to within the top of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. Public road construction standards may be waived in meeting the objective of this Section.

shall be upon application to the Zoning Board of Appeals.

B. Financial Security The Zoning Board of Appeals, as a condition to the grant and issuance of a Special Permit, shall require the applicant to post and provide a bond or other financial security for the removal of the Telecommunication Facility and property restoration, with the Town named as the assignee, in an amount equal to at least one and one-half (1 1/2) times the cost of installation of the Telecommunication Tower and Accessory Structures, but not less than \$40,000.00.

C. Bond Adjustment At times of modification or renewal of the Special Permit, the Zoning Board of Appeals may adjust the required amount of the financial security or bond to adequately cover increases in the cost of removal of the Telecommunication Facility and property restoration.

Section Nature of Special Permits

A. Term of Permit Upon the approval of the application by the Zoning Board of Appeals, a Special Permit shall be issued to the applicant allowing for construction and maintenance of the Telecommunication Facility for a term of five (5) years.

B. No Assignment or Transfer The Special Permit shall not be assignable or transferable. In the event that an applicant has received a Special Permit and wants to transfer its Telecommunication Facility to another person or entity, the new person or entity must make application for a Special Permit pursuant to this local law.

C. Renewals A Special Permit may be renewed as set forth in Section below. Each renewal permit shall allow for the use and maintenance of the Telecommunication Facility for a term of five (5) years.

D. Transfer of Ownership In the event of a transfer of ownership of the Telecommunication Facility, the proposed new owner may apply for a Special Permit following the "renewal" provisions set forth in Section below.

Section Renewals

A. Application Any person or entity who owns or operates a Telecommunication Facility pursuant to a Special Permit issued under this Article may make application for renewal of that Special Permit by application to the Zoning Board of Appeals.

B. Time of Application An application for renewal of a Special Permit shall be made no more than twelve (12) months, but not less than six (6) months prior to the expiration of the existing Special Permit.

C. Approval Requirements An application for renewal of a Special Permit shall not be approved unless the Zoning Board of Appeals shall find that the general criteria requirements set forth in Sections through of this local law have been met, or are continuing to be met, by the Telecommunication Facility.

D. Engineer's Report In addition, the application for renewal of a Special Permit must include a copy of the engineer's structural integrity report required pursuant to Section

E. Expedited Application An application for renewal of a Special Permit may be made upon the applicant's original application for approval, with notations as to which aspects of those application materials remain unchanged, and which aspects of those application materials have changed. All changes in the application for renewal information shall be highlighted and detailed by the applicant.

F. Renewal Fee The application for renewal of a Special Permit shall be accompanied by a filing/licensing fee of \$500.00.

Section Penalties

Violation of the provisions herein constitute an unclassified misdemeanor. Penalties for violations of this Article shall be as follows:

A. For a first offense, the penalty shall be a fine in an amount not less than Five Hundred Dollars (\$500.00) and not more than One Thousand Dollars (\$1,000.00), or a sentence of imprisonment for a term not to exceed ten (10) days, or both;

B. For a second offense, committed within five (5) years of a prior conviction, the penalty shall be a fine in an amount not less than One Thousand Dollars (\$1,000.00) and not more than Two Thousand Dollars (\$2,000.00), or a sentence of imprisonment for a term not to exceed twenty (20) days, or both;

C. Each different day that a violation continues shall be deemed a separate violation; and

D. On conviction for any violation, penalty may also include the revocation of any license or permit issued pursuant to this Article.

Section Effective Date

This Local Law shall take effect immediately upon its filing in the Office of the Secretary of State or on the twentieth (20th) day after it shall have adopted, whichever shall appear first.