

# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~COUNTY~~

~~CITY~~

~~TOWN~~

~~VILLAGE~~

Local Law No. 6 of the year 2004

A local law *(Insert Title)* "Wireless Telecommunications Facilities Siting Law for the  
Town of New Scotland"

Be it enacted by the *(Name of Legislative Body)* of the

~~COUNTY~~

~~CITY~~

~~TOWN~~

~~VILLAGE~~

of New Scotland as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 6 of 2004 of the ~~(County)~~(City)(Town)(Village) of New Scotland ~~Town Board~~ on December 8, 2004, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_, above.

*Dean R. Deschene*

Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: December 8, 2004

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK  
COUNTY OF Albany

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

*Michael Trackey*

Signature

Town Attorney

Title

~~COUNTY~~  
~~CITY~~ of New Scotland  
Town  
~~VILLAGE~~

Date: December 8, 2004

## Appendix C

## State Environmental Quality Review

**SHORT ENVIRONMENTAL ASSESSMENT FORM**

For UNLISTED ACTIONS Only

**PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)**

1. APPLICANT/SPONSOR New Scotland Town Board	2. PROJECT NAME Local Law #6 of 2004
3. PROJECT LOCATION: Municipality <u>Town of New Scotland</u> County <u>Albany</u>	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map)  Town of New Scotland	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: Enactment of a Local Law to govern the placement, construction, and modification of Wireless Telecommunications Facilities.	
7. AMOUNT OF LAND AFFECTED: Initially _____ acres    Ultimately _____ acres    Entire Town	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input type="checkbox"/> Yes <input type="checkbox"/> No    If No, describe briefly N/A	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: N/A	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals:	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals: N/A	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE	
Applicant/sponsor name: <u>New Scotland Town Board</u>	Date: <u>10/8/04</u>
Signature: <u>Edward J. Clark</u>	

**If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with is assessment**

**PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)**

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4?  Yes  No If yes, coordinate the review process and use the FULL EAF.

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.  Yes  No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:

No

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:

No

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:

No

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:

No

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

No

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:

No

C7. Other impacts (including changes in use of either quantity or type of energy? Explain briefly:

No

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?

Yes  No If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?

Yes  No If Yes, explain briefly:

**PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)**

**INSTRUCTIONS:** For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question d of part ii was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide, on attachments as necessary, the reasons supporting this determination.

New Scotland Town Board  
Name of Lead Agency

November, 2004  
Date

Edward Clark  
Print or Type Name of Responsible Officer in Lead Agency

Supervisor  
Title of Responsible Officer

*Edward F. Clark*  
Signature of Responsible Officer in Lead Agency

*L. Michael Markley*  
Signature of Preparer (if different from responsible officer)

State Environmental Quality Review  
**NEGATIVE DECLARATION**  
Notice of Determination of Non-Significance

Project Number

Date: November \_\_\_\_\_, 2004

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The New Scotland Town Board as lead agency, has determined that the proposed action described below will not have a significant environmental impact and a Draft Impact Statement will not be prepared.

**Name of Action:**

Local Law #6 of 2004

**SEQR Status:** Type 1   
Unlisted

**Conditioned Negative Declaration:**  Yes  
 No

**Description of Action:**

Enactment of a Local Law to govern the placement, construction, and modification of Wireless Telecommunications Facilities.

**Location:** (Include street address and the name of the municipality/county. A location map of appropriate scale is also recommended.)

**Reasons Supporting This Determination:**

(See 617.7(a)-(c) for requirements of this determination ; see 617.7(d) for Conditioned Negative Declaration)

The local law provides additional protections for the enviroment.

**If Conditioned Negative Declaration**, provide on attachment the specific mitigation measures imposed, and identify comment period (not less than 30 days from date of pubication In the ENB)

**For Further Information:**

Contact Person: Edward Clark

Address: New Scotland Town Hall, 2029 New Scotland Town Hall,  
Slingerlands, New York 12159

Telephone Number: 518-439-4889

**For Type 1 Actions and Conditioned Negative Declarations, a Copy of this Notice is sent to:**

Chief Executive Officer , Town / City / Village of

Other involved agencies (If any)

Applicant (If any)

Environmental Notice Bulletin, 625 Broadway, Albany, NY 12233-1750 (Type One Actions only)

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# **LOCAL LAW NO. 6 FOR 2004**

**BE IT ENACTED** by the Town Board of the Town of New Scotland as follows:

## **Section 1. Purpose and Legislative Intent**

The purpose of this local law is the adoption of a comprehensive and balanced process for the siting of Wireless Telecommunications Facilities in an effort to accommodate the growth of these facilities and protect against any adverse impacts to public safety, welfare, character of the community, and aesthetic resources, including, but not limited to, views from and of the Helderberg Escarpment and John Boyd Thacher State Park. This local law seeks to minimize the impact of Wireless Telecommunications Facilities by encouraging the shared use of existing or future facilities, the use of suitable structures, and stealth technology in an effort to minimize the adverse visual effects of Wireless Telecommunications Facilities. Nothing in this local law is intended to prohibit or have the effect of prohibiting the provision of Personal Wireless Services nor shall it be used to unreasonably discriminate among providers of functionally equivalent services consistent with current Federal regulations.

## **Section 2. Title**

This Local Law shall be known and cited as the Wireless Telecommunications Facilities Siting Law for the Town of New Scotland.

## **Section 3. Severability**

- (A) If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law 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 Local Law, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- (B) Any Special Use Permit issued under this Local Law 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 4. Definitions

For purposes of this Local Law, 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.

1. **“Accessory Structure”** means any 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, tanks, and generators.
2. **“Applicant”** means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.
3. **“Application”** means all necessary and appropriate documentation that an Applicant submits in order to receive a Special Use Permit for Wireless Telecommunications Facilities.
4. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, personal Telecommunications services (PCS), microwave Telecommunications and services not licensed by the FCC, but not expressly exempt from the Town’s siting, building and permitting authority.
5. **“Antenna Array”** means one or more antennas used to provide wireless service.
6. **“Board”** means the Town Board of the Town of New Scotland, New York.
7. **“Building Inspector”** means Administrative Official of the Town of New Scotland and his duly authorized assistant responsible for administration and enforcement of Town law, rule or regulation applicable to the Town’s land use and building codes.
8. **“Co-location”** means the use of a Tower or other structure to support Antennas for the provision of wireless services without increasing the height or size of the Tower or other structure. For purposes of clarification, any application proposing to increase the height of the structure to be attached to shall be deemed a new tower and not a co-located facility.

9. **“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”.
10. **“Complete Application”** means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application as determined solely by the Planning Board.
11. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
12. **“FCC”** means that Federal Communications Commission, or its duly designated and authorized successor agency.
13. **“Height”** means, when referring to a Tower or other 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, lightning protection device or any other apparatus attached to the Tower or other structure.
14. **“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, radios, equipments 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 is a modification. A change in the effective radiated power (ERP) or a change in the radio frequency (RF) emissions from the Facility is a modification. A modification shall not include the replacement 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 adding, removing or changing anything.
15. **“NIER”** means Non-Ionizing Electromagnetic Radiation.
16. **“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.

17. **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’.
18. **“Personal Wireless Services” or “PWS” or “Personal Telecommunications Service” or “PCS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act, including but not limited to commercial mobile services, unlicensed wireless services and common carrier wireless exchange access service.
19. **“Planning Board”** means the Planning Board of the Town of New Scotland.
20. **“Telecommunication Site”** See definition for Wireless Telecommunications Facilities.
21. **“Special Use Permit”** means the official document or permit by which an Applicant is allowed to construct and use Wireless Telecommunications Facilities as granted or issued by the Town.
22. **“Service Provider”** means any provider of Personal Wireless Services, Personal Telecommunications Service or Personal Communication Service.
23. **“Stealth” or “Stealth Technology”** means minimizing 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, by using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
24. **“State”** means the State of New York.
25. **“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.
26. **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’.
27. **“Temporary”** means, in relation to all aspects and components of this Ordinance, something intended to, or that does, exist for fewer than ninety (90) days.
28. **“Town”** means the Town of New Scotland, New York.
29. **“Wireless Service Provider”** means the same as Service Provider (see preceding definition).

30. **“Wireless”** means the use of radio frequencies (RF) over the air or any other functional equivalent means of providing service over the air that does not primarily rely upon wires or cable for the provision of service.
31. **“Wireless Telecommunications Facilities”** means and includes a **“Telecommunications Tower”** and **“Tower”** and **“Telecommunications Site”** and **“Personal Wireless Facility”** means a structure, facility or location designated, 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 and kinds and structures that employ camouflage technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other structures that can be used to mitigate the visual impact of an Antenna or the functional equivalent of such, including all related facilities such as cabling, guy wires and associated anchors, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, Personal Telecommunications Services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the Town’s siting, building and permitting authority, excluding those used exclusively for the Town’s fire, police, or exclusively for private, non-commercial radio and television reception and private citizen’s bands, amateur radio and other similar non-commercial Telecommunications where the height of the facility is below the height limit of 45 feet.

## **Section 5. Overall Policy and Desired Goals for Special Use Permits for Wireless Telecommunications Facilities.**

In order to ensure that the placement, construction, modification and maintenance 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 Local Law, the Town hereby adopts an overall policy with respect to a Special Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

1. Implementing an Application process for person(s) seeking a Special Use Permit for Wireless Telecommunications Facilities;
2. Establishing a policy for examining an Application for and issuing a Special Use Permit for Wireless Telecommunications Facilities that is both fair and consistent;

3. Requiring, where not technologically or commercially impracticable, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers;
4. Requiring the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, so as to minimize 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.

## **Section 6. Authorization to Grant Special Use Permits**

The Planning Board is hereby authorized to approve, approve with modifications or disapprove Special Use Permits as provided herein and, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of Special Use Permits submitted for approval, subject to the conditions set forth herein, in the event any such requirements are found not to be required in the interest of the public health, safety or general welfare or are inappropriate to a particular special use permit.

## **Section 7. Area of Permitted Use**

Wireless Telecommunication Facilities are a special use in the Residential Forestry (RF) Zone, and are not permitted in any other zone.

## **Section 8. Special Use Permit Application and Other Requirements**

No Person shall be permitted to site, place, build, construct, modify or prepare any site for placement or use of, Wireless Telecommunications Facilities as of the effective date of this Local Law without having first obtained a Special Use Permit for Wireless Telecommunications Facilities.

- A) All Applicants for a Special Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this section. The Planning 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, re-certifying or not re-certifying, or

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

- B) The landowner shall sign the Application for a Special Use Permit for Wireless Telecommunications Facilities. An authorized representative of the landowner with knowledge of the contents and representations made therein and signing and attesting to the truth and completeness of the information may present the application on behalf of the owner. At the discretion of the Planning Board, any false or misleading statement in the Application may subject the Applicant to denial of the Application without further consideration or opportunity for correction. The applicant if not the landowner shall state his/her interest.
- C) The Planning Board may reject an Application which does not meet the requirements stated herein.
- D) The Applicant shall include a statement in writing:
  - 1. That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the Planning Board in writing, as well as all applicable and permissible local laws, ordinances, and regulations, including any and all applicable Town, State and Federal Laws, rules, and regulations;
  - 2. That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State. Proof of authorization to operate in the State shall be provided.
- E) No Wireless Telecommunications Facilities shall be installed or constructed until the Application is reviewed and approved by the Planning Board and the Special Use Permit and a building permit have been issued.
- F) All applications for the construction or installation of new Wireless Telecommunications Facilities shall contain the information hereinafter set forth. The Applicant, if not the landowner, shall sign the application. Where a certification is called for, such certification shall bear the signature and seal of

a Professional Engineer licensed in the State. The Application shall include the following information:

1. Documentation that demonstrates the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the Town. Such documentation shall include, but not be limited to propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites as requested by the Planning Board or its designee and shall show the service area and signal strength relationship between the proposed site and the adjoining planned, proposed, in-service or existing sites;
2. The name, address and phone number of the person preparing the report;
3. The name, address, and phone number of the property owner, operator, and Applicant, and to the legal status of the Applicant;
4. The postal address, 911 lot number and tax map parcel number of the property;
5. The land use designation in which the property is situated;
6. The size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines. A survey is required by a licensed New York State land surveyor, or qualified licensed New York State engineer;
7. A copy of the property deed and any easements or restrictions.
8. The location of the nearest residential structure and all property owners within 500 feet from the proposed site.
9. The location, size and height of all structures on the property, which is the subject of the Application;
10. The location, size and height of all proposed and existing antennas and all appurtenant structures;
11. The type, locations and dimensions of all proposed and existing landscaping, vegetation and fencing;

12. The number, type and design of the Tower and Antenna(s) proposed and the basis for the calculations of the Tower's capacity to accommodate multiple users;
13. The make, model and manufacturer of the Tower and Antenna(s);
14. A description of the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
15. The frequency, modulation and class of service of radio or other transmitting equipment;
16. The actual intended transmission and the maximum effective radiated power of the Antenna(s);
17. Direction of maximum lobes and associated radiation of the Antenna(s);
18. Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC and the provision of the calculations used to determine the cumulative NIER levels.
19. Certification that the proposed Antenna(s) will not cause interference with other telecommunications devices;
20. Copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;
21. Certification that a topographic and geomorphologic study and analysis has been conducted and that, taking into account the substrata and the proposed drainage plan, the site is adequate to assure the stability of the proposed Wireless Telecommunications Facilities as designed, on the proposed site.
22. Payment of an application fee as set forth in section 24.

G) In the case of a proposed new Tower, the Applicant shall be required to submit a detailed written report, identifying each alternative to a new Tower that was investigated, and demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within a radius of five (5) miles of the proposed site. Copies of written requests and responses for shared use shall be provided to the

Planning Board in the Application, along with any letters of rejection stating the reason for rejection.

- H) All new Towers will be stealth structures, unless the applicant is able to prove the technological impracticability of such. Towers disguised as trees will resemble existing trees in the environment and have branches from the top of the tower and antennas down to at least the top of the tree canopy. The density of the branches will be as deemed appropriate by the Planning Board. All accessory structures will be designed appropriately for the surrounding area.
- I) The Applicant shall certify that the Telecommunication Facility, foundation and attachments are designed and will be constructed to meet all local, Town, State and Federal structural requirements for loads, including wind and ice loads.
- J) The Applicant shall certify that the Wireless Telecommunications Facilities will be effectively grounded and bonded so as to protect persons and property and that appropriate surge protectors will be installed.
- K) An Applicant shall be required to submit an Environmental Assessment Form and a Visual Addendum. Based on the results of the Assessment, including the Visual Addendum, the Planning Board may require submission of a more detailed visual analysis.
- L) The Applicant shall furnish a Visual Impact Assessment, which shall include:
  - 1. A “Zone of Visibility Map” which shall be provided in order to determine locations from which the Tower may be seen.
  - 2. Pictorial representations of “before and after” views from key viewpoints both inside and outside of the Town as may be appropriate, 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. Pictorial representations should be taken at a location from which the view of the proposed tower is not obstructed.
  - 3. An assessment of the visual impact of the Tower, the Tower base, guy wires and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

- M) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed Wireless Telecommunications Facilities.
1. Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding 4 inches in diameter measured at a height of 4 feet above the ground, shall take place without the approval of the Planning Board. Clear-cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
  2. The landscape plan shall include evergreen tree plantings to screen the Wireless Facility from view. Unless otherwise permitted, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within (2) two years of planting shall be provided and shall be diligently maintained to protect their vitality or replaced throughout the use of the Wireless Facility.
  3. If the Visual Impact Analysis reveals that there is vegetation on or adjacent to the project site that must be retained for screening of the proposed Tower or Facility, the applicant shall document how such vegetation will be protected throughout the operational life of the Facility.
  4. Site work, with the exception of soil testing, surveying, and other necessary site location testing, is prohibited from being performed prior to the application approval and issuance of the Special Use Permit. Any violation of this section will, at the discretion of the Planning Board, subject the applicant to denial of the application without further consideration.
- N) Any and all representations made by the Applicant to the Town on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the Town.
- O) All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all local, State and federal laws, rules and regulations, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- P) Wireless Telecommunications Facilities shall contain a demonstration that the Facility will be sited so as to be the least visually intrusive reasonably possible and thereby have a minimal adverse visual effect on the environment

and the nature and character of the community, existing vegetation, and on the residents in the area of the Wireless Telecommunications Facility.

- Q) Both 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/or to harmonize with the natural surroundings, which shall include the utilization of stealth or concealment technology as may be required by the Planning Board.
- R) At a Telecommunications 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 of the land and be constructed or improved at the edge of fields and/or forests and to also assure minimal visual disturbance and reduce soil erosion. Equipment or vehicles may not be stored on the facility site.
- S) Regardless of location, any road or access used to the site is required to be assessed for storm water and erosion problems by a Licensed Professional Engineer. Once the Planning Board and/or Town Engineer has the opportunity to review this assessment, if they believe erosion and/or storm water problems exist, the Planning Board has the authority to require a plan to mitigate the impacts.
- T) A Person who holds a Special Use Permit for Wireless Telecommunications Facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted Wireless Telecommunications Facilities in strict compliance with all 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 National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. 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 Local Law shall obtain, at its own expense, all permits and licenses required by applicable law, 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) The applicant shall submit ten (10) copies of the Application. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities and to the Planning Board.
- W) An Applicant for a new Tower shall design the proposed Tower structurally to accommodate future demand for at least one (1) additional commercial application, e.g. future co-locations. The Tower shall be structurally designed to accommodate at least one (1) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:
1. The foreseeable number of FCC licenses available for the area;
  2. The kind of Wireless Telecommunications Facilities site and structure proposed;
  3. The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
  4. Available space on existing and approved Towers.
- X) The owner of the proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:
1. Respond within 60 days to a request for information from a potential shared-use applicant;
  2. Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
  3. Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to

accommodate a shared user without causing electromagnetic interference.

Failure to abide by the conditions outlined above may be grounds for revocation of the Special Use Permit for the Tower.

- Y) In order to better inform the public, in the case of a new Telecommunications Tower, the applicant shall, prior to the public hearing on the application, hold a "balloon test". The Applicant shall arrange to raise upon a temporary mast or, if approved by the Planning Board, on a cable/tether, a brightly colored balloon a minimum three (3) feet in diameter at the maximum height of the proposed new Tower. The dates, times and location of this balloon test (including a second date, in case of poor visibility on the initial date) shall be advertised by the Applicant in a notice at least seven (7) days and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the Town. The Applicant shall inform the Planning Board, 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 consecutive hours sometime between 7:00 AM and 4:00 PM on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A licensed New York State surveyor or qualified engineer shall verify that the height of the balloon is not less than the maximum height of the proposed new Tower.
- Z) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the Tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration Regulation Part 77 or its successors. This requirement shall be for any new tower or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided to the Planning Board in a timely manner.

The provision of this local law shall be applicable to any requested modification of a Special Use Permit.

## **Section 9. Location of Wireless Telecommunications Facilities**

- A) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the

following priorities, one (1) being the highest priority and five (5) being the lowest priority.

**“Priority List”:**

1. On other existing towers.
  2. On existing town-owned structures or facilities.
  3. On, in or adjacent to existing electrical power line transmission towers or power poles.
  4. On or adjacent to existing structures or facilities within the Town such as existing water towers, church steeples, silos etc.
- B) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.
- C) An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. 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 Planning Board why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.
- D) Notwithstanding the above, the Planning Board may approve any site where telecommunications towers are a special use in the above list of priorities, provided that the Planning Board 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.
- E) The Applicant shall submit a written report demonstrating the Applicant’s review of the above locations in order of priority, demonstrating the technological reason for the site selection.
- F) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Planning Board may, if otherwise

permitted by law, 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 historical district;
3. 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;
4. Conflicts with the provisions of this Local Law;
5. Conflict with the nature and character of the neighborhood;

#### **Section 10. Shared Use of Wireless Telecommunications Facilities And Other Structures**

- A) The Town shall prefer locating on existing structures instead of the construction of a new Tower.
- B) The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within five (5) miles of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used.
- C) An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit such use by the Applicant.
- D) Such shared use shall consist only of the minimum Antenna array technologically required to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.
- E) Payment of a Co-Location fee as set forth in section 24.

## **Section 11. Height of Telecommunications Tower(s)**

- A) The Applicant shall submit documentation justifying the total height of any requested Tower, Facility and/or Antenna and the basis therefore. 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.
- B) The maximum permitted height of a new Tower shall be forty-five (45) feet.
- C) No Tower constructed after the effective date of this Local Law, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with municipal, Town, State, and/or any Federal statute, law, local law, Town ordinance, code, rule or regulation.

## **Section 12. Appearance and Visibility of Wireless Telecommunications Facilities**

- A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law.
- B) Towers shall be galvanized and 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 Local Law.
- C) All new towers will be stealth structures, unless the applicant is able to prove the technological impracticability of such. Towers disguised, as trees will resemble existing trees in the environment and have branches from the top of the tower and antennas down to at least the top of the tree canopy. The density of the branches will be as deemed appropriate by the Planning Board. All accessory structures will be designed appropriately for the surrounding area.
- D) If lighting is required, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as permissible under State and Federal regulations.
- E) Unless otherwise prohibited by applicable FAA regulations, if lighting is required the lighting shall be shielded from ground scatter effects, such as

by using directional lenses focusing the light vertically or by physical shielding.

### **Section 13. Security of Wireless Telecommunications Facilities**

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access and also consistent with; Specifically:

1. All Antennas, Towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
2. 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 14. Signs**

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 an Antenna that has Radio Frequency (RF) or microwave transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be 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. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

### **Section 15. Lot Size and Setbacks**

Any proposed Tower and/or any other proposed Wireless Telecommunications Facility structure shall be located on a single parcel of land and shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: For a distance equal to 110% of the height of the proposed Tower or Wireless Telecommunications Facility structure, or the existing setback requirement for the applicable land use designation, whichever is greater. Setbacks shall apply to all components of the facility, including accessory facilities. For all areas the minimum setback shall be five hundred (500) feet from cluster residential areas and/or property lines

or non-compatible use easements or structures unrelated to the Wireless Facility.

## **Section 16. Retention of Expert Assistance and Reimbursement by Applicant**

- A) The Planning Board may retain consultants and/or experts necessary to assist the Town in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any requests for Re-certification. Any retained consultant and/or expert shall be selected from a list adopted by the Town Board.
- B) An Applicant shall deposit with the Planning Board funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of any Application including the construction and modification of the site, once permitted. An initial deposit of \$8,500.00 shall be filed with the Application. Any retained consultant and/or expert shall be selected from a list adopted by the Town Board. The Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for their services in reviewing the Application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the Applicant.
- C) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.
- D) Notwithstanding anything to the contrary in this section the Town Board may waive the fee associated with Special Use Permits for Non-Commercial Exceptions as noted in the definition of Wireless Telecommunication Facilities in Section 4, item 31.

## **Section 17. Special Use Permit**

- A) All Wireless Telecommunications Facilities existing on or before the effective date of this Local Law shall be allowed to continue as they presently exist, provided however, that an existing Wireless Telecommunications Facility must comply with this Local Law in the event of any planned modification, or any modification that will result in a change in the effective radiated power (ERP) from the Facility, or a change in the Radio Frequency (RF) emissions from the Facility or anything that could reasonably affect the health or safety of individuals.

## **Section 18. Public Hearing and Notification Requirements**

- A) Prior to the approval of any Application for a Special Use Permit for Wireless Telecommunications Facilities, a public hearing shall be held by the Planning Board, notice of which shall be published in the official newspaper of the Town no less than five (5) calendar days prior to the scheduled date of the public hearing. In order that the Town may notify nearby landowners, the Application shall contain the names and address of all landowners whose property is located within one thousand five hundred (1,500) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located.
- B) The Planning Board shall schedule the public hearing referred to in Subsection (A) of this section once it finds the Application is complete. The Planning Board, at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary.

## **Section 19. Action on an Application for a Special Use Permit For Wireless Telecommunications Facilities**

- A) The Planning Board will undertake a review of an Application pursuant to this Local Law in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution. The Planning Board shall decide upon the application within sixty-two (62) days after the public hearing. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy thereof mailed to the applicant.

- B) After the public hearing and after formally considering the Application, the Planning Board 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.
- C) If the Planning Board approves the Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within five (5) business days of the Planning Board's action, and the Special Use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Special Use Permit has been granted hereunder, no additional permits or approvals from the Planning Board, such as site plan approvals, shall be required by the Planning Board for the Wireless Telecommunications Facilities covered by the Special Use Permit.
- D) If the Planning Board denies the Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within five (5) business days of the Planning Board's action.

## **Section 20. Maintenance**

- A) All facilities shall be maintained to acceptable industry standards. All permitted facilities shall be inspected at least every second year for structural integrity, including but not limited to the effects of corrosion, by a New York State licensed engineer, and the applicant shall submit a report to the town building inspector.
- B) The Service Provider or owner of a Tower, as appropriate, shall annually file with the Planning Board a written report showing the cumulative effect of the NIER radio frequency (RF) levels at the site, as obtained from field measurements. Reports may be subject to verification by an independent testing company. The decision for verification shall rest with the Planning Board with the costs borne by the Applicant.
- C) The holder of a Special Use Permit granted under this Local Law shall provide to the Town Clerk the name and emergency contact information of the entity that performs maintenance activities for the facility.

## **Section 21. Re-certification of a Special Use Permit for Wireless Telecommunications Facilities**

- A) Between twelve (12) months and six (6) months prior to the five (5) year anniversary date after the effective date of the Special Use Permit and all subsequent five (5) year anniversaries of the effective date of the original Special Use Permit or re-certification for Wireless Telecommunications Facilities, the holder of a Special Use Permit for such Wireless Telecommunications Facilities shall submit a signed written request and an application fee as specified in section 24 to the Planning Board for re-certification. In the written request for Re-certification, the holder of such Special Use Permit shall note the following:
1. The name of the holder of the Special Use Permit for the Wireless Telecommunications Facilities;
  2. If applicable, the number or title of the Special Use Permit;
  3. The date of the original granting of the Special Use Permit;
  4. Whether the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, or otherwise visibly modified since the issuance of the Special Use Permit and if so, in what manner;
  5. If the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, or otherwise visibly modified, then whether the Planning Board approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
  6. That the Wireless Telecommunications Facilities are in compliance with the Special Use Permit and with all applicable codes, laws, rules and regulations;
  7. Re-certification that the Tower and attachments both are designed and constructed and continue to meet all local, Town, State and Federal structural requirements for loads, including wind and ice loads. Such Re-certification shall be by a Professional Engineer licensed in the State, the cost of which shall be borne by the Applicant.
- B) If after such review, the Planning Board determines that the permitted Wireless Telecommunications Facilities are in compliance with the Special Use Permit and all applicable statutes, laws, local laws, ordinances, codes,

rules and regulations, then the Planning Board will issue a Re-certification of the Special Use Permit for the Wireless Telecommunications Facilities, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review it is determined that the permitted Wireless Telecommunications Facilities are not in compliance with the Special Use Permit and all applicable status, laws, ordinances, codes, rules, and regulations, then the Planning Board may refuse to issue a Re-certification of the Special Use Permit for the Wireless Telecommunications Facilities, and in such event, such Wireless Telecommunications Facilities shall not be used after the date that the Applicant receives written notice of the decision by the Planning Board until such time as the Facility is brought into compliance. Any decision requiring the cessation of use of the Facility or imposing a penalty shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the Facility.

- C) If the Applicant has submitted all of the information requested and required by this Local Law, and if the review is not completed, as noted in subsection (B) of this section, prior to the five (5) year anniversary date of the Special Use Permit, or subsequent five (5) year anniversaries, then the Applicant for the permitted Wireless Telecommunications Facilities shall receive an extension of the Special Use Permit for up to six (6) months, in order for the completion of the review.
- D) If the holder of a Special Use Permit for Wireless Telecommunications Facilities does not submit a request for Re-certification of such Special Use Permit within the timeframe noted in subsection (A) of this section, then such Special Use Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit, or subsequent five (5) year anniversaries, unless the holder of the Special Use Permit adequately demonstrates that extenuating circumstances prevented a timely Re-certification request. If the Planning Board agrees that there were legitimately extenuating circumstances, then the holder of the Special Use Permit may submit a late Re-certification request or Application for a new Special Use Permit.

## **Section 22. Pre-Existing Special Use Wireless Telecommunications Facilities**

- A) Any and all towers authorized as a special use permit prior to the effective date of this Special Use Permit Wireless Telecommunication Facilities Law shall file with the Planning Board a written request for Re-certification within

6 months of the effective date of this Local Law. The holder of such Special Use Permit shall provide the following:

1. The name of the holder of the Special Use Permit for the Wireless Telecommunications Facilities;
  2. If applicable, the number or title of the Special Use Permit;
  3. The date of the original granting of the Special Use Permit;
  4. Whether the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, or otherwise visibly modified since the issuance of the Special Use Permit and if so, in what manner;
  5. If the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, or otherwise visibly modified, then whether the Planning Board approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
  6. Whether the Wireless Telecommunications Facilities are in compliance with the Special Use Permit and compliance with all applicable codes, laws, rules and regulations;
  7. The name and emergency contact information of the entity that performs maintenance activities for the facility; and
  8. The owner of the real property upon which the tower is sited.
- B) Between twelve (12) months and six (6) months prior to the five (5) year anniversary date after the effective date of this Local Law and all subsequent five (5) year anniversaries of the effective date of this Local Law, the holder of a Special Use Permit for such Wireless Telecommunications Facilities shall file a written request for Re-certification as provided in subsection (A).
- C) No application fee is required in order to re-certify a Pre-Existing Special Use Permit for Wireless Telecommunications Facilities, unless there has been a modification of the Wireless Telecommunication facility since the date of the issuance of the existing Special Use Permit. In the case of any modification, a fee established by the Town shall apply.

## **Section 23. 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:

1. Such Special Use Permit shall be non-exclusive;
2. Such Special Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the Town;
3. Such Special Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit, or for a material violation of this Local Law after prior written notice to the holder of the Special Use Permit.

## **Section 24. Application Fee**

Fees, as established by the Town Board by resolution, may be charged for the processing of applications and permits issued under this Local Law.

## **Section 25. Enforcement**

The Town of New Scotland Building Inspector shall have the power and duty to enforce the provisions of this law.

## **Section 26. Performance Security**

Prior to issuance of a Building Permit of Wireless Telecommunications facilities, 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 Planning Board, cash, or other form of security acceptable to the Planning Board as to type of security and the form and manner of execution, in an amount of at least \$10,000.00 and with such sureties as are deemed sufficient by the Planning Board to assure the faithful performance of the terms and conditions of this Local Law and conditions of any Special Use Permit issued pursuant to this Local Law. The full amount of the 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 27. 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 Building Inspector 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 28. Annual NIER Certification**

The holder of the Special Use Permit shall, annually, certify to the Planning Board that NIER levels at the site are within the threshold levels adopted by the FCC.

## **Section 29. Liability Insurance**

- A) A holder of a Special Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below:
1. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
  2. Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate;
  3. Workers Compensation and Disability: Statutory amounts.
- B) The commercial general liability insurance policy shall specifically include the Town and its officers, boards, employees, committee members, attorneys, agents and consultants as additional named insureds.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.

- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Building Inspector 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 Building Inspector 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 after the grant of the Special Use Permit, the holder of the Special Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

### **Section 30. Indemnification**

- A) Any application for Wireless Telecommunication Facilities that is proposed on Town-owned property, pursuant to this Local Law, shall contain a provision with respect to indemnification. Such provision shall require the Applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the 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 therefrom, 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 31. Fines**

- A) In the event of a violation of this Local Law or any Special Use Permit issued pursuant to this Local Law, the Town Board may impose and collect, and the holder of the Special Use Permit for Wireless Telecommunications Facilities shall pay to the Town, fines or penalties as set forth below.
- B) A violation of this Local Law is hereby declared to be an offense, punishable by a fine not exceeding (\$350.00) three hundred fifty dollars per day per occurrence or imprisonment for a period not to exceed 15 days, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than (\$350.00) three hundred fifty dollars per day nor more than (\$700.00) seven hundred dollars per day or imprisonment for a period not to exceed 15 days, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than (\$700.00) seven hundred dollars per day nor more than (\$1,000.00) one thousand dollars per day or imprisonment for a period not to exceed 15 days, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of this Local Law or regulation shall be deemed misdemeanors and for such purpose only all provisions of Law relating to misdemeanors shall apply to such violations. Each day's continued violation shall constitute a separate additional violation.
- C) Notwithstanding anything in this Local Law, 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 Local Law or any section of this Local Law. 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 Local Law, without limiting other remedies available to the Town.

## **Section 32. Default and/or Revocation**

- A) If Wireless Telecommunications Facilities are repaired, rebuilt, replaced, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Local Law or of the Special Use Permit, then the Building Inspector shall notify the holder of the Special Use Permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within ten (10) days of the date of the postmark of the Notice, or of the date of the

personal service of the Notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this Local Law, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Building Inspector may, at its sole discretion, order the violation remedied within twenty-four (24) hours.

- B) If within the period set forth in (A) above the Wireless Telecommunications Facilities are not brought into compliance with the provisions of this Local Law, or of the Special Use Permit, or substantial steps are not taken in order to bring the affected Wireless Telecommunications Facilities into compliance, then the Building Inspector may revoke such Special Use Permit for Wireless Telecommunications Facilities, and shall notify the holder of the Special Use Permit within forty-eight (48) hours of such action.

### **Section 33. Removal of Wireless Telecommunications Facilities**

- A) Under the following circumstances, the Planning Board 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 with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety (90) consecutive days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by Acts of God, in which case, repair or removal shall commence within 90 days of notification by the Building Inspector;
  2. Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
  3. Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or any other necessary authorization.
- B) If the Building Inspector makes a determination as noted in subsection (A) of this section, then the Building Inspector 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 Building Inspector may approve an interim temporary use agreement/permit, such as, for example, to enable the sale of the Wireless Telecommunications Facilities.

- C) The holder of the Special Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the Building Inspector. 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 Building Inspector.
- D) 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 Building Inspector may order officials or representatives of the Town to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Special Use Permit holder.
- E) If, pursuant to this section, 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 Building Inspector may take steps to declare the Wireless Telecommunications abandoned, and sell them and their components and keep the proceeds from such Facilities sale.
- F) Notwithstanding anything in this Section to the contrary, the Building Inspector 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 Planning Board, and an agreement to such plan shall be executed by the holder of the Special Use Permit and the Planning Board. 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 Section.

## **Section 34. Relief**

Any Applicant desiring relief, waiver or exemption of procedures required by this Local Law may request such, provided that the relief or exemption is contained in the original Application for either a Special Use Permit, or in the case of an existing or previously

granted Special Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. 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, the requested waiver or exemption will have no significant affect on the health and safety, including but not limited to the nature and character of the community, and welfare of the Town, its residents and other service providers.

### **Section 35. Adherence to State and/or Federal Rules and Regulations**

- A) To the extent that the holder of a Special Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, included, but not limited to, the FAA and the FCC. Specifically including in this requirement are any rules and regulations regarding height, lighting, security, electrical and radio frequency (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 36. Conflict with Other Laws**

Where this Local Law 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 Local Law shall apply.

## **Section 37. Effective Date**

**This Local Law shall be effective immediately upon passage and filing with the NYS Secretary of State.**

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 6 of 2004 of the ~~(County)(City)(Town)(Village)~~ of New Scotland ~~Town Board~~ on December 8, 2004, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_, above.

  
Clerk of the County legislative body, City, Town or Village Clerk  
or officer designated by local legislative body

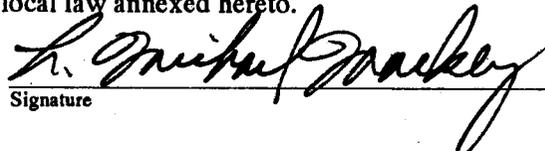
(Seal)

Date: December 8, 2004

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK  
COUNTY OF Albany

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

  
Signature  
Town Attorney  
Title

~~COUNTY~~  
~~City~~ of New Scotland  
~~Town~~  
~~Village~~

Date: December 8, 2004