

SECTION 17. SPECIAL PROVISIONS

Section 17. Zoning: Telecommunications Towers and Facilities

17.1. Findings. The Becker Joint Planning Board finds:

Subd. 1. The Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act") grants the federal communications commission exclusive jurisdiction over the regulation of the environmental effects of radio frequency emissions from telecommunications facilities and the regulation of radio signal interference among users of the radio frequency spectrum.

Subd. 2. Consistent with the Act, the regulation of towers and telecommunications facilities in the town will not have the effect of prohibiting any person from providing wireless telecommunications services. The general purpose of this subsection is to regulate the placement, construction and modification of telecommunication towers and facilities in order to protect the health, safety and welfare of the public, while not unreasonably interfering with the development of the competitive wireless telecommunications market place in the town. Specifically, the purposes of this chapter are:

- (a) to regulate the location of telecommunication towers and facilities;
- (b) to protect residential areas and land uses from potential adverse impacts of telecommunication towers and facilities;
- (c) to minimize adverse visual impacts of telecommunication towers and facilities through design, siting, landscaping, and innovative camouflaging techniques;
- (d) to promote and encourage shared use and co-location of telecommunication towers and antenna support structures;
- (e) to avoid damage to adjacent properties caused by telecommunication towers and facilities by ensuring that those structures are soundly and carefully designed, constructed, modified, maintained and promptly removed when no longer used or when determined to be structurally unsound;
- (f) to ensure that telecommunication towers and facilities are compatible with surrounding land uses;
- (g) to facilitate the provision of wireless telecommunications services to the residents and businesses of the town in an orderly fashion.

17.3. Definitions.

Subd. 1. For purposes of this chapter the following terms have the meanings given them, except where the context clearly indicates a different meaning:

Subd. 2. "Antenna support structure" means a building, athletic field lighting, water tower, or other structure, other than a tower, that can be used for location of telecommunications facilities.

Subd. 3. "Applicant" means a person who applies for a permit to develop, construct, build modify or erect a tower under this chapter.

Subd. 4. "Application" means the process by which the owner of a tract of land within the town submits a request to develop, construct, build, modify or erect a tower upon that land.

Subd. 5. "Engineer" means an engineer licensed by the state of Minnesota.

Subd. 6. "Person" means any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

Subd. 7. "Stealth" means designed to blend into the surrounding environment; examples of stealth facilities include, without limitation, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and telecommunications towers designed to appear other than as a tower, such as light poles, power poles, and trees.

Subd. 8. "Telecommunications facilities" means cables, wires, lines, wave guides, antennas or any other equipment or facilities associated with the transmission or reception of communications located or installed on or near a tower or antenna support structure; the term does not include:

- (a) A satellite earth station antenna two meters in diameter or less located in an industrial or commercial district;
- (b) A satellite earth station antenna one meter or less in diameter, wherever located.

Subd. 9. "Telecommunications tower" or "tower" means a self-supporting lattice, guyed, or monopole structure constructed from grade that supports telecommunications facilities.

17.05. Development of towers; approvals required.

Subd. 1. Conditional use. A tower is a conditional use in all zoning districts within the town. A tower may not be constructed in any district unless a conditional use permit has been issued by, and site plan approval obtained from, the Town Board, and a building permit has been issued by the building official.

Subd. 2. Town property. The town may authorize the use of town property for towers in accordance with the procedures of this code. The town has no obligation to allow the use of town property for this purpose.

17.07 Application process.

Subd. 1. A person desiring to construct a tower must submit an application for site plan approval and for a conditional use permit, to the town zoning administrator.

Subd. 2. An application to develop a tower must include:

- (a) name, address and telephone number of the applicant;
- (b) name, address and telephone numbers of the owners of the property on which the tower is proposed to be located;
- (c) legal description of the parcel on which the tower is proposed to be located;
- (d) written consent of the property owner(s) to the application;

- (e) a scaled site plan depicting the parcel and proposed tower, including the proposed landscaping, camouflage, lighting and fencing;
- (f) written evidence from an engineer that the proposed structure meets the structural requirements of this code;
- (g) written information demonstrating the need for the tower at the proposed site in light of the existing and proposed wireless telecommunications network(s) to be operated by persons intending to place telecommunications facilities on the tower;
- (h) a copy of relevant portions of a lease signed by the applicant and property owner(s), requiring the applicant to remove the tower and associated telecommunications facilities upon cessation of operations on the leased site, or, if a lease does not yet exist, a written agreement to include such a provision in the lease to be signed;
- (i) such other information as the zoning administrator reasonably requests; and
- (j) an application fee established from time to time by resolution of the Town Board.

Subd. 3. Board action. Requests for site plan approval and conditional use permit approval will be processed contemporaneously, according to the provisions of this ordinance. The Board may attach conditions to the approval of the site plan and conditional use permit as the Board determines to be reasonably necessary.

17.9. Performance standards.

Subd. 1. Co-location capability. Unless the applicant presents clear and convincing evidence that co-location is not feasible, a new tower may not be built, constructed or erected in the town unless the tower is capable of supporting at least two telecommunications facilities comparable in weight, size, and surface area to each other.

Subd. 2. Setback requirements. A tower must comply with the following setback requirements:

- (a) A tower must be located on a single parcel and must be set back from the parcel boundaries a distance equal to or greater than the height of the tower unless an engineer specifies in writing that the collapse of the tower will occur within a lesser distance under reasonably foreseeable circumstances.
- (b) Setback requirements for towers are measured from the base of the tower to the property line of the parcel on which it is located.

Subd. 3. Engineer certification. Towers must be designed and certified by an engineer to be structurally sound and in conformance with the Uniform Building Code, and any other standards set forth in this code.

Subd. 4. Height restriction. A tower may not exceed the lesser of 185 feet in height or a height equivalent to ten feet more than the distance from the base of the tower to the nearest point of any property line. Measurement of tower height must include the tower

structure itself, the base pad, and any other telecommunications facilities attached thereto. Tower height is measured from grade.

- Subd. 5. Lighting. Towers may not be artificially lighted except as required by the Federal Aviation Administration. At time of construction of a tower, in cases where there are residential uses located within a distance that is three times the height of the tower from the tower, dual mode lighting must be requested from the Federal Aviation Administration. Notwithstanding this provision, the town may approve the placement of an antennae on an existing or proposed lighting standard, provided that the antennae is integrated with the lighting standard.
- Subd. 6. Exterior finish. Towers not requiring Federal Aviation Administration painting or marking must have an exterior finish as approved in the site plan.
- Subd. 7. Fencing. Fences constructed around or upon parcels containing towers, antenna support structures, or telecommunications facilities must be constructed in accordance with the applicable fencing requirements in the zoning district where the tower or antenna support structure is located, unless more stringent fencing requirements are required by Federal Communications Commission regulations.
- Subd. 8. Landscaping. Landscaping on parcels containing towers, antenna support structures or telecommunications facilities must be in accordance with landscaping requirements as approved in the site plan. Utility buildings and structures accessory to a tower must be architecturally designed to blend in with the surrounding environment and to meet setback requirements that are compatible with the actual placement of the tower. Ground mounted equipment must be screened from view as required by the screening standards in the Zoning District in which it is located
- Subd. 9. Accessory buildings and equipment. No more than one accessory building is permitted per tower. Accessory buildings may be no more than 300 square feet in size. Telecommunications facilities not located on a tower or in an accessory building must be of stealth design.
- Subd. 10. Security. Towers must be reasonably posted and secured to protect against trespass. All signs must comply with applicable sign regulations.
- Subd. 11. Design. Towers must be of stealth design as approved in the site plan unless the town determines that such design is not feasible due to the lack of comparable vertical structures in the vicinity of the proposed site.
- Subd. 12. Non-tower facilities. Telecommunications facilities not attached to a tower may be permitted as an accessory use to any antenna support structure at least 75 feet in height (except residential occupancies of three stories or less), or any existing tower, regardless of any other provision of this code, provided that the owner of the telecommunications facility, by written certification to the building official, establishes the following facts at the time plans are submitted for a building permit:
- (a) that the height from grade of the telecommunications facilities and antennae support structure does not exceed the maximum height from grade of the antenna support structure by more than 20 feet;
 - (b) that the antenna support structure and telecommunications facilities comply with the Uniform Building Code;

- (c) that the telecommunications facilities located above the primary roof of an antenna support structure are set back one foot from the edge of the primary roof for each one foot in height above the primary roof of the telecommunications facilities. This setback requirement does not apply to antennas that are mounted to the exterior of antenna support structures below the primary roof, but that do not protrude more than six inches from the side of the antenna support structure.

Subd. 13. Removal of Towers. Abandoned or unused towers and associated above-ground facilities must be removed within twelve months of the cessation of operations of the telecommunications facility at the site unless an extension is approved by the Town Board. Any tower and associated telecommunications facilities that are not removed within 12 months of the cessation of operations at a site are declared to be public nuisances and may be removed by the town and the costs of removal assessed against the property pursuant to Ch. 463, Minnesota Statutes.

17.11. Additional requirements.

Subd. 1. Inspections. The town may conduct inspections at any time, upon reasonable notice to the property owner and the tower owner to inspect the tower for the purpose of determining if it complies with the Uniform Building Code and other construction standards provided by this ordinance, federal and state law. The expense related to the inspections will be borne by the property owner. Based upon the results of an inspection, the building official may require repair or removal of a tower.

Subd. 2. Maintenance. Towers must be maintained in accordance with the following provisions:

- (a) Tower owners must employ ordinary and reasonable care in construction and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public.
- (b) Tower owners must install and maintain towers, telecommunications facilities, wires, cables, fixtures and other equipment in compliance with the requirements of the National Electric Safety Code and all Federal Communications Commission, state, and local regulations, and in such a manner that they will not interfere with the use of other property.
- (c) Towers, telecommunications facilities, and antenna support structures must be kept and maintained in good condition, order, and repair.
- (d) Maintenance or construction on a tower, telecommunications facilities or antenna support structure must be performed by qualified maintenance and construction personnel.
- (e) Towers must comply with radio frequency emissions standards of the Federal Communications Commission.
- (f) If the use of a tower is discontinued by the tower owner, the tower owner must provide written notice to the town of its intent to discontinue use and the date when he use will be discontinued.

17.13. Variances.

Subd. 1. An applicant may request a variance to the setback, separation, buffer requirements, or maximum height provisions of this section according to the procedures set forth in subsection of this code. The Joint Planning Board may grant the requested variance if the applicant demonstrates with written or other satisfactory evidence that:

- (a) The location, shape, appearance or nature of use of the proposed tower will not substantially detract from the aesthetics of the area nor change the character of the neighborhood in which the tower is proposed to be located;
- (b) The variance will not create a threat to the public health, safety or welfare;
- (c) In the case of a requested modification to the setback requirement, that the size of parcel upon which the tower is proposed to be located makes compliance impossible, and the only alternative for the applicant is to locate the tower at another site that poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land;
- (d) In the case of a request for modification of separation requirements, if the person provides written technical evidence from an engineer that the proposed tower and telecommunications facilities must be located at the proposed site in order to meet the coverage needs of the applicant's wireless communications system and if the person agrees to create approved landscaping and other buffers to screen the tower from being visible to the residential area;
- (e) In the case of a request for modification of the maximum height limit, that the modification is necessary to:
 - (1) facilitates co-location of telecommunications facilities in order to avoid construction of a new tower; or
 - (2) to meet the coverage requirements of the applicant's wireless communications system, which requirements must be documented with written, technical evidence from an engineer;
- (f) The requested variance satisfies the criteria set forth in section of this ordinance.