Article IXA. Telecommunications Facilities

[Added 5-25-2005 by L.L. No. 3-2005]

§ 116-62.1. Purpose and intent.

A. The purpose of this article is to establish predictable and balanced regulations for the siting of telecommunications facilities in order to accommodate the growth of such facilities while protecting the public against any adverse impacts on aesthetic resources and the public safety and welfare. The Town of Shandaken wants to accommodate the need for telecommunications facilities while regulating their location and number, minimizing adverse visual impacts through proper design, siting and screening, avoiding potential physical damage to adjacent properties, and encouraging joint use of tower structures.

B. The article also seeks to minimize the total number of telecommunications towers in the community by encouraging shared use of existing and future towers and the use of existing tall buildings and other high structures, in order to further minimize adverse visual effects from telecommunications towers.

C. This article is not 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.

§ 116-62.2. Special use permit required, existing facilities.

A. The Planning Board is hereby authorized to review and approve, approve with modifications or disapprove special use permits for telecommunications facilities pursuant to this article. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are reasonable related to and incidental to the proposed telecommunications facility, including, but not limited to, the use of camouflage of the tower structure and/or antenna to reduce visual impact.

B. Except as provided below, no telecommunications facility shall hereafter be erected, moved, reconstructed, changed or altered and no existing structure shall be modified to serve as a telecommunications facility, except after obtaining a special use permit in conformity with this article.

C. Telecommunications antenna placed on existing telecommunications towers or on existing structures do not require a special use permit, unless it will be modified in such a way as to increase its height, or a new accessory structure would be built.

D. The Planning Board may waive any or all of the requirements for approval for applicants proposing minor changes to existing facilities and for applicants proposing the use of camouflage for a telecommunications tower when the Board finds that such camouflage significantly reduces visual impact to the surrounding area. However, the Board may not waive the requirement that a public hearing be held on the application.

E. No special permit shall be issued, with the exception of Town-owned sites, until the applicant provides proof that space on the telecommunications tower has been leased or will be operated by at least two cellular communication providers licensed by the FCC to provide service to the public.

[Amended 4-7-2008 by L.L. No. 2-2008]

F. Any modifications of an existing facility shall require notification to be submitted to the Zoning Enforcement Officer for review. For the purposes of this subsection, "modification" is defined as any alteration, change or proposed change from that which was originally submitted as an application.

§ 116-62.3. Criteria for issuance of special permit.

No special use permit relating to a telecommunications facility shall be authorized by the Planning Board unless it finds that such facility:

A. Is necessary to provide adequate service to locations that the applicant is not able to serve with existing facilities;

B. Conforms to all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration, and other federal agencies; and

C. Will be designed and constructed in a manner which minimizes visual impact to the extent practical;

D. Is the most appropriate site among those available within the technically feasible area for the location of a telecommunications facility.

§ 116-62.4. Submission requirements.

A. Project participants.

(1) Provide the names, addresses, phone and fax numbers of the following involved parties, as appropriate:

(a) The landowner of the project site to be purchased or leased;

(b) The service provider-corporate and point of contact [include the FCC license number and certificate of need as a public utility (as/if applicable)];

(c) Engineering consultant(s);

(d) Legal representative(s); and

(e) Other authorized service providers proposing to collocate on the tower now or in the near future.

(2) Where collocation is proposed, provide the names, addresses and phone numbers of the current owner(s) of the tower, building or structure upon which the collocation was considered or is proposed.

B. Site description.

(1) Provide a narrative description of the proposed project site, including:

(a) Existing site improvements, including access, utilities, and the presence of existing towers, buildings, or other structures;

(b) Vegetative cover [e.g., plant cover types, species, tree types (average, minimum, and maximum heights) relative condition (health) of the vegetation; and tree stand density]

(c) Slopes;

(d) Soils and the depth to bedrock;

(e) Wetlands and surface water bodies;

(f) Site drainage;

(g) Any special plant and animal habitats contained on the NYSDEC Natural Heritage Program database; and

(h) Any historic or archeological resources on the site and any historic resources adjacent to the site.

(2) Where collocation is proposed, provide to-scale site plans and elevations of the existing tower, building or structure to be used for collocation.

(3) Provide plans, elevations, and details showing the proposed electronic communications facilities and existing antennas located on the tower.

C. Site plan and construction details.

(1) Provide a detailed, labeled, and to-scale site plan that includes the following information:

(a) Scale, North arrow, date and name of preparer;

(b) Project site boundaries (if part of a larger parcel, include a map of the larger, parent parcel and the location of the area to be acquired or leased for the project);

(c) Abutting property owners, names and addresses;

(d) All bodies of water; wetlands; permanent or intermittent streams; and mean high-water mark for larger water bodies on or adjoining the project site;

(e) Existing and proposed topographic contours at two-foot intervals in and within 200 feet of all proposed areas to be disturbed;

(f) All existing and proposed buildings, structures, roads, utilities, and driveways;

(g) Existing vegetation cover types and tree lines;

(h) The proposed limits of vegetation disturbance and/or clearing related to the proposed construction of the site access, tower, and accessory structures;

(i) All trees four inches or greater in size (diameter at breast height, DBH) to be removed;

(j) All proposed plantings; and

(k) All existing and proposed drainage and erosion control and stormwater management facilities.

(2) For any new or improved access roads or driveways, provide a grading plan, center-line profile, and cross sections (every 100 feet showing proposed and existing contours at two-foot intervals) and identify the construction material(s) (e.g., gravel, asphalt).

(3) Provide detailed construction plans and elevation of the proposed tower, antennas, equipment shelters (enclosed building, structure, cabinet, shed or box to contain batteries and electrical equipment). Show all foundations, piers, structural supports, cross arms, guy wires and anchors, antenna-mounting mechanisms and signage. Label the size, material and provide color sample of all towers, antennas, and accessory

structures (e.g., equipment shelters, security fencing, signage). Applicants should make every effort to construct the towers below the maximum height of land in the surrounding areas.

(4) The Planning Board reserves the right to consider applications that offer the most comprehensive cell phone coverage to the Town.

D. Site access, construction and operation.

(1) Describe the type, location, and size of any road and/or driveway providing existing and proposed access to the proposed tower site.

(2) Describe any proposed temporary or permanent improvements, including any proposed vegetation removal, site drainage, crossing of streams or wetlands and installation of impervious, paved surfaces and utilities.

E. Visual impact analysis. Provide a visual impact analysis for the proposed project as described in Appendix I (Model Visual Impact Analysis VIA) pp. 45-52 of The Planning and Design Manual for the Review of Applications for Wireless Telecommunications Facilities, March 2001 (available from Zoning Enforcement Officer, Town of Shandaken).

F. Telecommunications data The following documentation shall accompany the initial application for new base transceiver station (BTS) facility construction or collocation. Two distinct classes of proposed sites are "coverage" sites and "capacity" sites. Some items listed below may not be required in cases where the Planning Board agrees that the proposed site is suitable as proposed. Such cases might arise when it is known that a site will not cause significant visual impact and when the proposed site will not force the selection of more controversial neighboring BTS sites at a later date.

(1) Initial application documents relevant to BTS coverage sites.

(a) The search ring map with alternate sites marked.

(b) Existing cellular/PCS coverage propagation plot showing existing operational neighboring sites up to five miles beyond the boundary of the municipality. This will help the municipality understand the need for more BTS sites and where they might be located.

(c) Same as above except add in all proposed sites that are not the subject of the current application. This will aid the municipality in gaining a picture of the network planning and to what extent the subject proposed BTS is required.

(d) Same as above except add in the subject of the current application and a reasonable number of alternate sites (one plot per proposed site, antenna elevation at the required height) evaluated by the applicant. In particular, note the need for future BTS facilities and carefully note the expected location of a search ring to assure it is not more controversial than that which results from other alternate sites.

(e) A narrative of sufficient detail to allow the municipality to understand why individual sites are deemed not viable (technical and/or visual) and why the proposed site stands out as the best visual prospect of all the alternate sites.

(2) Initial application documents relevant to BTS capacity sites.

(a) History plot of busy hour capacity approaching sector capacity. This plot allows forecasting increasing user demand in a given cell sector that, unless addressed, will cause undue blocked or dropped calls.

(b) Propagation plots to demonstrate the rf coverage of the existing BTS sites and the proposed capacity sites and alternative sites if applicable (one plot per site).

(c) A narrative or outline that addresses the antenna height required for the new capacity site and the reduction of antenna height (if so proposed) that results at neighboring sites. Such antenna height reductions may provide the opportunity for removal of tower sections so as to reduce the existing visual impact.

(d) Utilities. Describe existing utility services (e.g., electric, telephone, etc.) to the project site and any improvements necessary to construct and operate the proposed project.

(e) Other regulatory permits and approvals.

[1] The applicant shall identify all permits or approvals necessary from local, state or federal agencies for this proposed project; Provide names and phone numbers of key points of contact with said agencies; Provide copies of written approvals and other permits received.

[2] Provide adequate documentation from the New York State Office of Parks, Recreation and Historic Preservation that the project will not have any impact on archeological resources or any structures or areas eligible for or inclusion on the National or New York State Historic Registers. If the Historic Preservation Office determines that there is a potential for impacts to archeological or historic resources, then provide its recommendations for mitigation of those resources.

[3] Provide adequate documentation from the New York State Department of Environmental Conservation regarding the presence or absence of any protected species (natural heritage information).

G. Collocation.

(1) The tower provider shall allow Town and Emergency Services space for, and access of, antennae needed for such services free of rental charges. The Town or Emergency Services provider will pay for installation and maintenance only.

(2) The shared use of existing telecommunications towers or other structures shall be preferred to the construction of new facilities. Where practical and feasible, applicants should design a proposed telecommunications service facility to accommodate future demand for similar facilities which comply with the design standards set forth herein.

(3) Any special use permit application, renewal or modification thereof shall include proof that reasonable efforts have been made to collocate within an existing telecommunications facility or upon an existing structure within a reasonable distance, regardless of municipal boundaries, of the site. The applicant must demonstrate that the proposed telecommunications facility cannot be accommodated on existing telecommunications facilities due to one or more of the following reasons:

(a) The planned equipment would exceed the structural capacity of existing and approved telecommunications facilities or other structures, considering existing and planned use for those facilities;

(b) The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably prevented;

(c) Existing or approved telecommunications facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably;

(d) Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures; and

(e) The property owner or owner of the existing telecommunications facility or other structure refuses to allow such collocation or requests an unreasonably high fee for such collocation compared to current industry rates.

H. Fall zones. Telecommunications facilities shall be constructed so as to minimize the potential safety hazards and be located in such a manner that if the facility should fall, it will remain within the property boundaries and avoid habitable structures, public streets, utility lines and other telecommunications facilities.

I. Setbacks. Telecommunications facilities shall comply with all existing setbacks within the affected zone. Setbacks shall apply to all tower parts, including guy wire anchors, and to any accessory facilities. Additional setbacks may be required by the Planning Board to contain on-site substantially all icefall or debris from tower failure and/or to preserve privacy of adjoining residential and public property.

J. Lighting. Applicants must comply with the FAA requirements.

K. Visibility and aesthetics.

(1) Towers shall be a galvanized finish or painted gray above the surrounding treeline and painted gray, green, black or similar colors designed to blend into the natural surroundings below the surrounding treeline unless other standards are required by the FAA. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.

(2) Accessory uses shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

(3) All towers, buildings, facilities, fences and related structures shall be designed to blend with the natural and/or man-made surroundings to the maximum extent practicable.

(4) Structures offering slender silhouettes (i.e., monopoles or guyed tower) may be preferable to freestanding lattice structures except where such freestanding structures offer capacity for future shared use. The Planning Board may consider the type of structure being proposed and the surrounding area.

(5) The applicant must examine the feasibility of designing a proposed telecommunications tower to accommodate future demand for additional facilities.

L. Vegetation and screening.

(1) Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter shall take place prior to approval of the special use permit. Clear-cutting of all trees in a single contiguous area shall be minimized to the extent possible.

(2) The Planning Board may require appropriate vegetative buffering around the fences of the tower base area, accessory structures and the anchor points of guyed towers to buffer their view from neighboring residences, recreation areas, waterways, historic or scenic areas, or public roads.

M. Access and parking.

(1) A road and parking will be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Road construction shall be consistent with standards for private roads (See Code of the Town of Shandaken Subdivision of Land, § 105-18I.) and shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

(2) Equipment or vehicles shall not be stored on the facility site.

N. Signage. The use of any portion of a telecommunications facility for signs for promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons is prohibited. The Planning Board may require the installation of signage with safety information.

O. Security.

(1) Towers, anchor points around guyed towers, and accessory structures shall each be surrounded by fencing not less than six feet in height.

(2) There shall be no permanent climbing pegs within 15 feet of the ground.

(3) Motion-activated or staff-activated security lighting around the base of a tower or accessory structure entrance may be provided if such lighting does not project off the site.

(4) A locked gate at the junction of the accessway and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into the public thoroughfare.

P. Engineering standards.

(1) All telecommunications facilities shall be built, operated and maintained to acceptable industry standards. Each application must contain a site plan for the facility containing the signature of an engineer licensed by the State of New York.

(2) The applicant shall maintain the telecommunications service facility in good condition, including, but not limited to, structural integrity of the mount and security barrier, painting, maintenance of stealth camouflaging, and maintenance of the buffer areas and landscaping. The facility owner shall submit to the Zoning Enforcement Officer an inspection report, if required by the owner's insurance carrier, by an accepted tower maintenance company certifying the continued safety of the facility.

§ 116-62.5. Enforcement.

Enforcement of this article shall be the duty of the Code Enforcement Officer in accordance with Chapter 12 of the Code of the Town of Shandaken.

§ 116-62.6. Abandonment and removal.

At the time of submission of the application for a telecommunications facility, the applicant shall submit a contract agreement to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower or tower pad used as a telecommunications facility if such facility becomes technologically obsolete or ceases to perform its originally intended function for more than 12 consecutive months. Upon removal, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soils.