



"The Heart of the Park... Where the Eagle Soars"

www.shandaken.us

Supervisor: (845) 688-7165

Police: (845) 688-9902

Town Clerk: (845) 688-5004

Justice Court: (845) 688-5005

Assessor: (845) 688-5003

Assessor Fax: (845) 688-5708

ZBA/ZEO/Planning: (845) 688-5008

Highway: (845) 688-9901

Fax: (845) 688-2041

P.O. Box 134, 7209 Rte. 28, Shandaken, NY 12480

Special Permit and/or Site Plan Review Application

Information Sheet

Requirements: The Zoning Law of the Town of Shandaken requires that all property uses requiring a special use permit be approved by the Planning Board (herein referred to as "PB") prior to the issuance of Building Permits and Certificates of Occupancy. The law has established eight (8) classes of districts and designated the applications on the Zoning Map incorporated into the law. The use regulations in each zoning district are set forth in the District Schedule of Use Regulations, §116.10 of the Zoning Codes. These codes may be reviewed online at: www.shandaken.us

Application: At least ten (10) days prior to the PB meeting, eight (8) copies of the application and all supporting documentation, plus four (4) hard copies of the plot plan and a PDF copy shall be submitted to the Building Department, together with applicable fees. The PB meets on the second Wednesday of each month at 7:00p.m. at the above noted address. Should you have any questions, please advise this department at least seven (7) days in advance so that you may be placed on the agenda for the Workshop Meeting which is held the last Wednesday of each month.

Supporting Documentation: A detailed plan for the proposed business or development, drawn to a readable scale and including all items indicated on the Site Plan Checklist, together with an AREA MAP, showing all adjacent properties, their owners, subdivisions and easements; a map of the applicant's contiguous holdings; and an existing conditions map, prepared by a licensed surveyor or professional engineer at a scale not less than 1" = 100' including metes and bounds description, locations of natural features, such as streams, wetlands, major rock or rock outcroppings, soil types and conditions, areas subject to flooding and landslides, major stands of trees and existing free-standing trees 12" or more in diameter at chest height within 25' of existing or proposed improvements and the location of existing man-made improvements of features such as buildings, roads, walls, fences, sidewalks, utilities and easements and a topographic map with contour intervals not greater than ten (10) feet, unless the PB requests lesser intervals.

Preliminary & Public Hearings: As previously stated, the above information should be submitted not less than ten (10) days prior to a preliminary meeting. The documents will be reviewed at a Preliminary Hearing, and if any further data is required, applicant will be advised. A Public Hearing will be scheduled in accordance with the procedures set forth in §116-42 of the Zoning Law and Chapter 274a of the Town Law. When the application is moved to Public Hearing, all owners of abutting property, and all owners of property directly opposite and across any public or private road must be notified by certified mail/return receipt. The applicant will be provided with an invoice and list of abutters and payment in full for such mailing is due immediately.

Decision: After review of all information at the Public Hearing, the recommendations of other agencies whose consultations are mandated by law, and consideration of the provisions of the Zoning Law and other applicable ordinances, the PB will approve, approve with conditions or deny the application. The filing of the decision with the Town Clerk, in the case of approval, is deemed a Special Permit.

Expiration: Under §116.45 of the Zoning Code, a Special Permit shall be deemed to authorize only one (1) particular special use, and shall expire if a building permit for the special use permit activity is not issued within one (1) year of the date of issuance of the Special Use Permit.

Town of Shandaken Fee Schedule

Effective October 2020

1. Pre-Application Review
2. Application for Special Permit and/or Site Plan Review

No Charge

\$150



Note: The listed in #2 is only applicable when the project does not trigger fees covered under items #3 and #4 listed below.

3. Planning Fees for New or Replacement Construction

Residential Development of Multiple Dwelling Units

\$150 per application, plus

\$25 per dwelling unit w/up to two (2) bedrooms, or

\$15 per bedroom per dwelling unit

Commercial Development

\$150 per application, plus

\$50 per 1,000 sqft of Building Footprint
or fraction thereof

4. Site Development Disturbance

Up to one (1) acre of disturbance

\$250 per application

More than one (1) less than ten (10) acres of disturbance

\$500 per application

More than ten (10) acres of disturbance

\$2,500 plus \$50 per acre above ten (10) acres of disturbance

Note: Site Development Disturbance applies to Special Permits and/or Site Plan Reviews which include grading, clearing, and demolition.

Special Permit and/or Site Plan Review Application

Applicant Information (if applicant is not the owner of the property, a notarized Agent Authorization form must be submitted)

Frank Cuevas
Name

Calandra Cruckshank (spouse)
Name of Owner if other than Applicant

Property Information

Section 12 Block 1-21 Lot 110 Zoning District HR Size _____ acres

Physical address: 58 Hatchery Hollow, B1, 12410 which is on the East
side of Oliveria road/street/lane, in the Hamlet of Big Indian,
within 250' feet of State/County Highway # 47 in the Town of
Shandaken.

Representative Information

N/A
Surveyor or Engineer (preparing the Site Plan)

Applicant
Other Representative

Mailing Address

Same as above
Mailing Address

City/State/Zip

City/State/Zip

Contact Number

Contact Number

Use

Current Use Residential

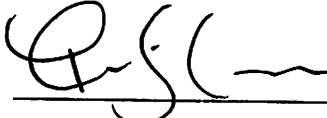
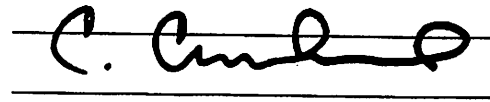
Proposed Use (attach additional pages if needed)

No change in use. Request for special permit for use
and installation of a 50' ham radio tower (40' tower - 10' mast)
Tower to be placed on foundation on primary lot observing
all required offsets.

STATEMENT

The undersigned as individual owner(s) or as a qualified officer of the corporate owner of the above described property, hereby apply for approval of the proposed use and/or site plan for the development of the property in accordance with the provisions of the Zoning Law of the Town of Shandaken and authorize entry upon the property for site inspections by Planning/Zoning Officials and their authorized representatives. Further, I do hereby affirm that all fees, permits, and charges applicable under the laws and ordinance of the State of New York and Town of Shandaken (including those required for any environmental impact studies, etc) will be paid; also, any legal or engineering fees required, including consultant fees, if warranted, will be paid by applicant(s). Fees are due and payable to: Town of Shandaken upon submission of the application. Any of the additional fees can be paid prior to the final hearing.

Signature(s)

Date

8/19/24

Note: Compliance with requirements shall be the sole responsibility of the applicant and/or his representative. Under the New York State SEQRL law, it is a requirement to fill out an EAF statement for submission with this application.

Attachment – Plot Plan

Section: 12 Block: 1-21 Lot: 110

Location of lot: B. S. Indian, NY Near RT 47 (Oliver Rd) & Hatchery Hollow Rd

Note: Plot plan must show the configuration of the lot (can be sketch plan) showing all buildings on the Parcel, giving the dimensions of each structure and must reflect the setbacks of each Structure from the property lines (front/rear/sides.) Sketch must be drawn to scale with scale indicated (if not providing professional drawings/plot.)

Site Plan Checklist

If the application includes the need for a Site Plan, the following checklist will simplify the items that will be required by the Planning Board. Please provide written responses to any required information that cannot be clearly reflected on the Site Plan. If you feel that the requirement is not applicable (N/A), you can check the box indicated. The final decision regarding whether information is necessary lies with the Planning Board.

Done N/A

- | | | |
|-------------------------------------|-------------------------------------|---|
| ☒ | ☐ | 1. Title of drawing, including name and address of applicant and person(s) responsible for preparation of such drawing. |
| ☒ | ☐ | 2. North arrow, scale and date. |
| ☒ | ☐ | 3. Accurate boundaries of the property plotted to scale. |
| ☒ | ☐ | 4. Existing watercourses. |
| ☐ | ☒ | 5. Grading and drainage plan showing existing and proposed contours at an appropriate interval to be specified by the Planning Board at the sketch plan conference, with two foot contour intervals and soils data generally required on that portion of any site proposed for development where general site grades exceed 5% or there may be susceptibility to erosion, flooding, or ponding. |
| ☐ | ☒ | 6. Location, proposed use, and height of all buildings. (not a building - proposed tower) |
| ☐ | ☒ | 7. Location, design, and construction materials of all parking and truck-loading areas, with access and egress drives thereto. |
| ☐ | ☒ | 8. Provision(s) for pedestrian access. |
| ☐ | ☒ | 9. Location of outdoor storage of equipment and materials, if any. |
| ☒ | ☐ | 10. Location, design, and construction materials of all existing or proposed site improvements, including drains, culverts, retaining walls, and fences. |
| ☐ | ☒ | 11. Description of the method of sewage disposal and the location, design, and construction materials of such facilities. |
| ☐ | ☒ | 12. Description of method of securing water supply and the location, design, and construction materials of such facilities. |
| ☐ | ☒ | 13. Location of fire and other emergency zones, including the location of the nearest water supply for fire emergencies. |
| ☐ | ☒ | 14. Location, design, and construction materials of all energy distribution facilities including electrical, gas, and solar energy. |
| ☐ | ☒ | 15. Location, size, design, and construction materials of all proposed signage. |
| ☐ | ☒ | 16. Location and proposed development of all buffer areas, including indications of existing vegetative cover. |

- ☐ ☒ 17. Location and design of outdoor lighting facilities, including data regarding when appropriate, lighting levels both within the site and at the site's boundaries.
- ☐ ☒ 18. Designation of the amount of building area proposed for retail sales, office use, or similar commercial activity.
- ☐ ☒ 19. Detailed landscaping plan and planting schedule including the number, size, type, and location of all canopy trees or understory trees, shrubs, and ground covers to be planted.
- ☐ ☒ 20. Building elevations and sections at a scale sufficient to delineate clearly the massing and the exterior materials, textures, and colors of all buildings and other structures shown on the Site Plan.
- ☐ ☒ 21. Other elements integral to the proposed development, as considered necessary By the Planning Board, including the identification of and State or County permits Required for the project's execution.

ALL ISSUES HAVE BEEN READ AND ADDRESSED FOR THE APPLICATION

Name of Applicant(s)

Frank Cuevas

Calandra Cruckshank

SBL

12. 1-21. 110

*******SHORT ENVIRONMENTAL ASSESSMENT FORM FOLLOWS*******

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information		
Frank Cuevas ~ Calandra Cruickshank ~ Tower Project		
Name of Action or Project: Amateur (Ham) Radio Tower Erection		
Project Location (describe, and attach a location map): 58 Hatchery Hollow Rd		
Brief Description of Proposed Action: Erection of a ham radio tower proposed at 50' (40' tower ~ 10' mast) within all required setbacks and on a foundation engineered to support per specifications of 4'x4' w/ 5'x5' disturbance of land.		
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	NO ☒	YES ☐
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: Local Town Special Use Permit & Build Permit	NO ☐	YES ☒
3. a. Total acreage of the site of the proposed action? N/A acres b. Total acreage to be physically disturbed? N/A acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? ~100 acres		
4. Check all land uses that occur on, are adjoining or near the proposed action: ☐ Urban ☐ Rural (non-agriculture) ☐ Industrial ☐ Commercial ☒ Residential (suburban) ☒ Forest ☐ Agriculture ☐ Aquatic ☐ Other(Specify): ☐ Parkland		

Tax Maps for Lot(s) 58 Hatchery Hollow, Big Indian Another Radio Tower Project


ULSTER COUNTY PARCEL VIEWER



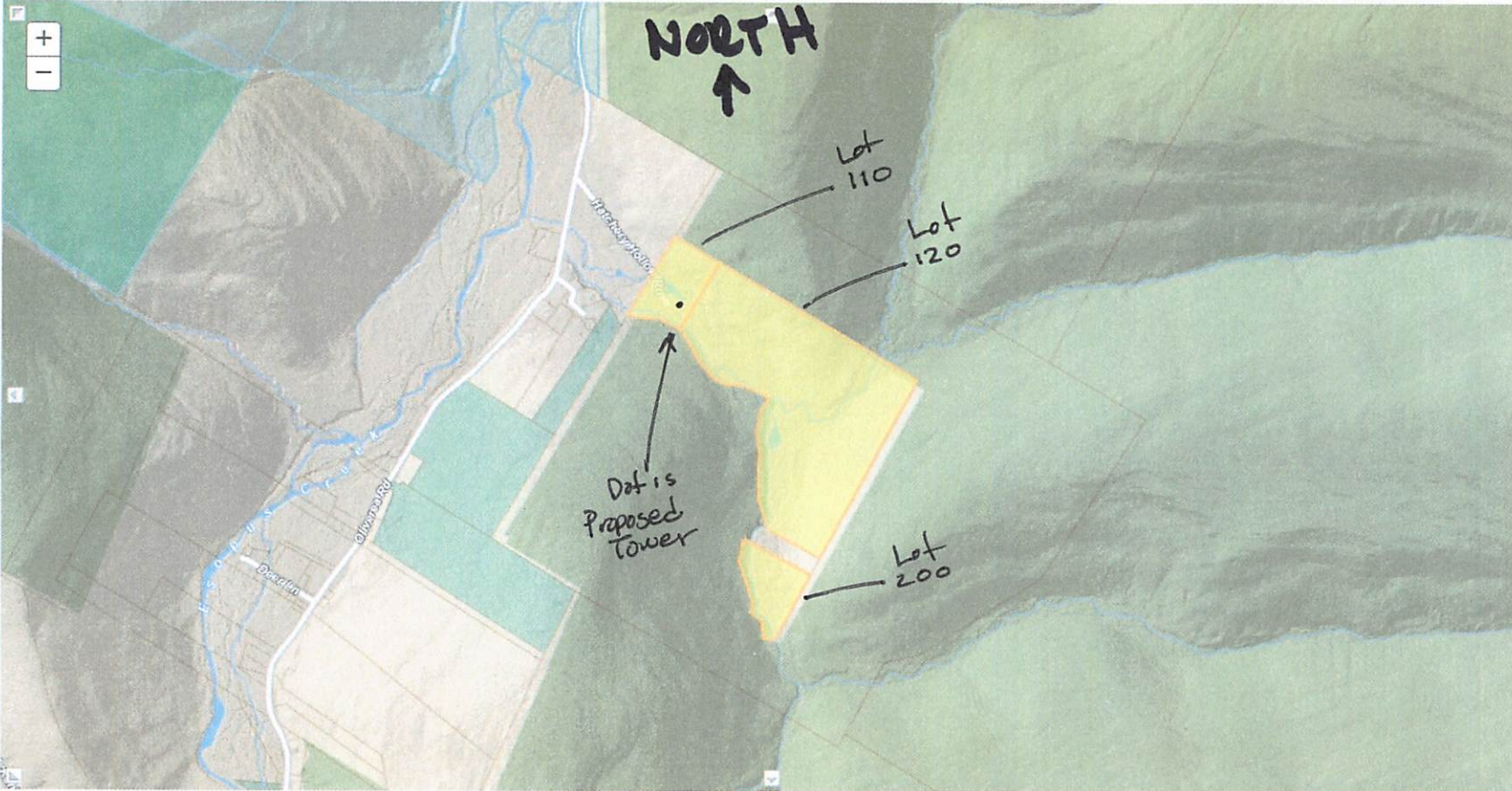
Basemaps

- 
 Ulster County Parcels
- 
 2025 Aerials
- 
 2025 Aerials Infrared
- 
 2021 Aerials
- 
 2021 Aerials Infrared
- 
 2016 Aerials
- 
 2016 Aerials Infrared
- 
 2013 Aerials
- 
 2012 Aerials
- 
 2009 Aerials

Map Layers

Measurements & Coordinates

Parcel Details

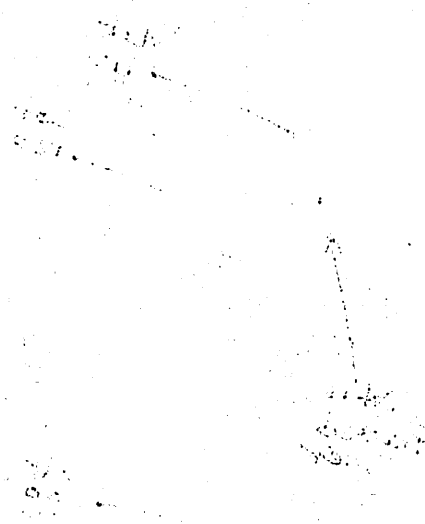


Search Results

Property Details	12 -1-21.110	Calandra Cruikshank	58-62 Hatchery Hollow Rd	Shandaken	P.O. Box 225	Big Indian NY	124100225	Res Multiple	10.35	4079	122
Property Details	12 -1-21.120	Calandra Cruikshank	77 Hatchery Hollow Rd	Shandaken	P.O. Box 225	Big Indian NY	12410	1 Family Res	79	4079	122
Property Details	12 -1-21.200	Calandra Cruikshank	Hatchery Hollow Rd	Shandaken	P.O. Box 225	Big Indian NY	12410	Res vac land	9.7	4079	122

(at base of gold not
in bin 75. washed material at
the gold mine on 9. 10. 1941

HTJON





ULSTER COUNTY PARCEL VIEWER

cruckshank

Search



Basemaps



2013 Aerials
Infrared



2009 Aerials



2009 Aerials
Infrared



2004 Aerials



2001 Aerials



USGS
Topographic



USGS Aerials
w/ Contours



Open Street
Map



World Grey

Map Layers

Measurements & Coordinates

Parcel Details

Search Results

Property Details	12-1-21.110	Calandra Cruickshank	58-62 Hatchery Hollow Rd	Shandaken	P.O. Box 225	Big Indian NY	124100225	Res Multiple	10.35	4079	122
Property Details	12-1-21.120	Calandra Cruickshank	77 Hatchery Hollow Rd	Shandaken	P.O. Box 225	Big Indian NY	12410	1 Family Res	79	4079	122
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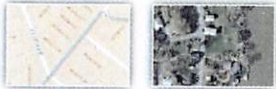
ULSTER COUNTY PARCEL VIEWER

cruckshank

Search



Basemaps



Ulster County
Parcels



2025 Aerials



2025 Aerials
Infrared



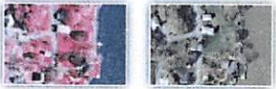
2021 Aerials



2021 Aerials
Infrared



2016 Aerials



2016 Aerials
Infrared



2013 Aerials



2013 Aerials
Infrared



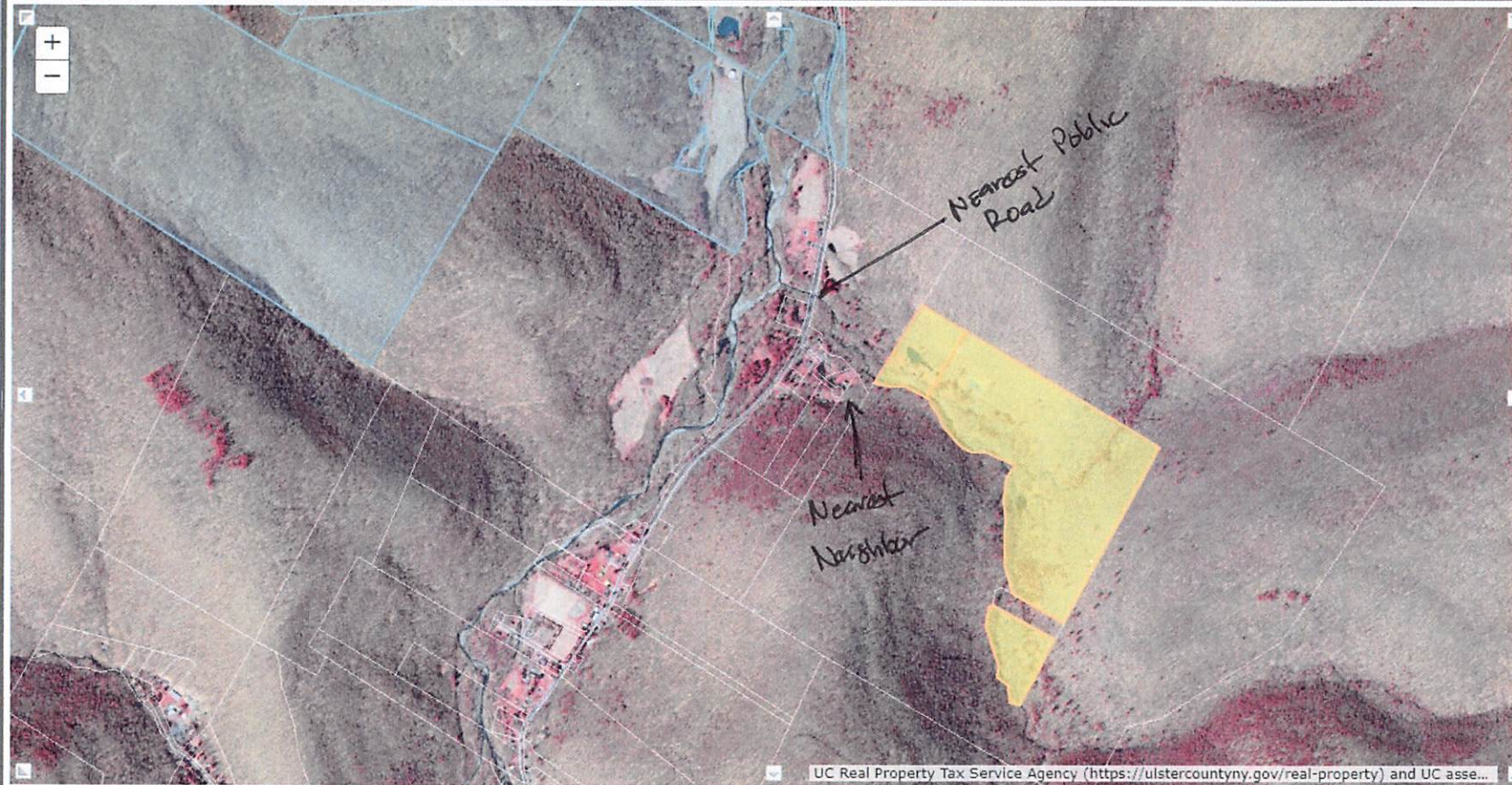
2009 Aerials

Map Layers

Measurements & Coordinates

Parcel Details

Search Results



UC Real Property Tax Service Agency (<https://ulstercountyny.gov/real-property>) and UC asse...

Property Details	12-1-21.110	Calandra Cruickshank	58-62 Hatchery Hollow Rd	Shandaken	P.O. Box 225	Big Indian NY	124100225	Res Multiple	10.35	4079	122
Property Details	12-1-21.120	Calandra Cruickshank	77 Hatchery Hollow Rd	Shandaken	P.O. Box 225	Big Indian NY	12410	1 Family Res	79	4079	122
Property Details	12-1-21.200	Calandra Cruickshank	Hatchery Hollow Rd	Shandaken	P.O. Box 225	Big Indian NY	12410	Res vac land	9.7	4079	122

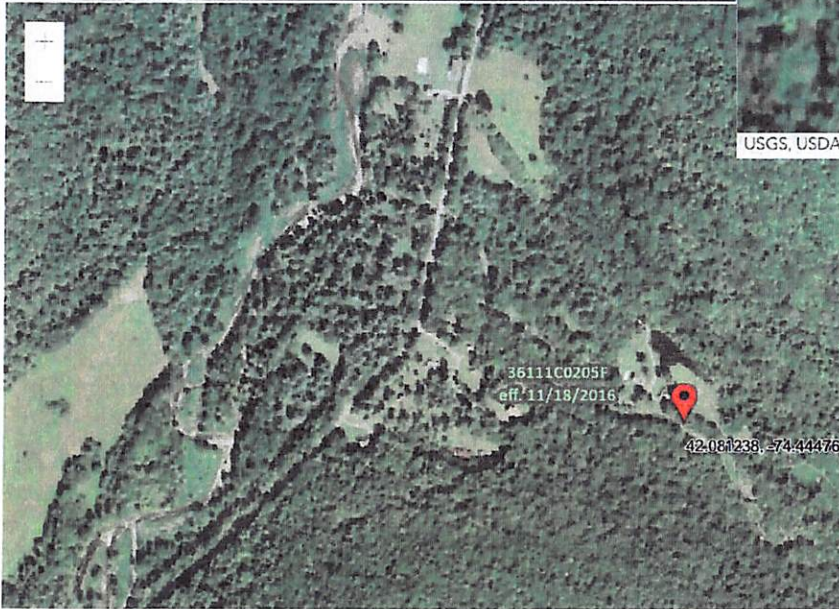
58 Hatchery Hollow Rd Big Indian, NY 12410

Ham Radio Tower Project (red pin)



USGS, USDA, The National Map: Orthoimagery. March 12, 2025.

Powered by Esri



USGS, USDA, The National Map: Orthoimagery. March 12, 2025.



USGS, USDA, The National Map: Orthoimagery. March 12, 2025.

Powered by Esri



East

Tower
Placement → □



↑ East

East View of
Proposed Tower
Site

→
Direction
of
Proposed
Tower

to wall-top
Powers Tower
at 2



WEST
↑

← Direction of
Proposed Tower

10000

Properly
to record

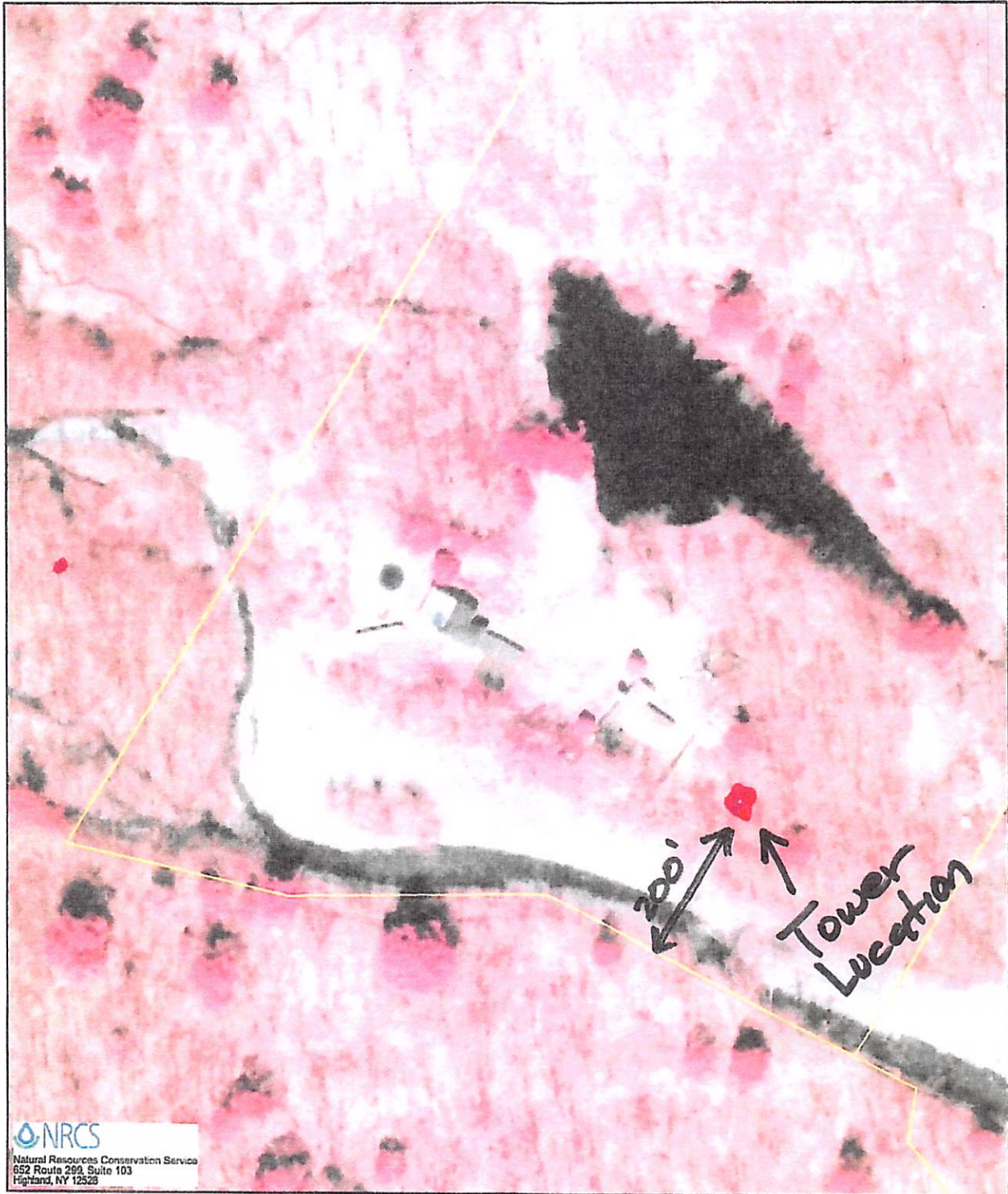
↑ North
North View from
Proposed Tower Site



58 Hatzhay Hollow, Big Indian

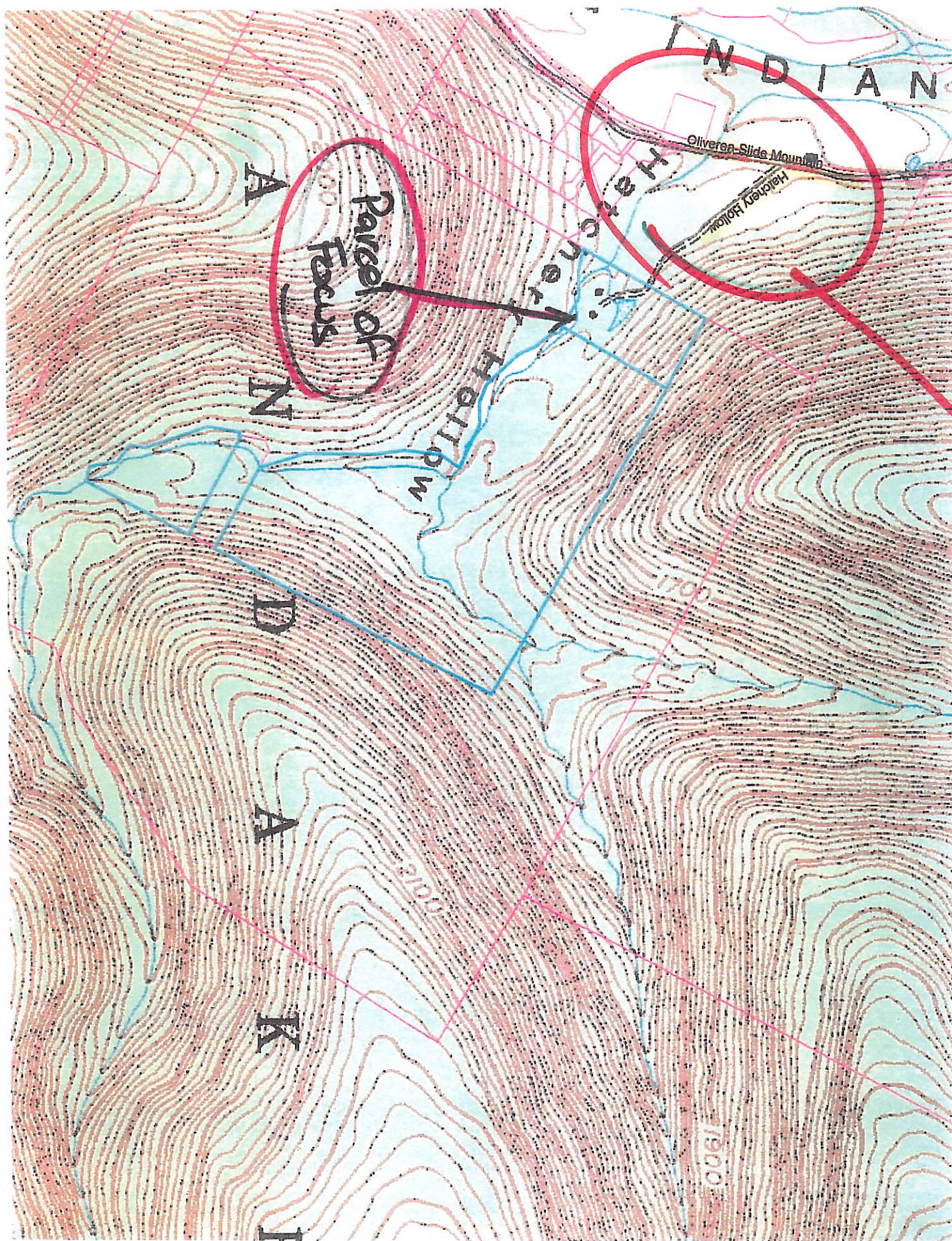
Cruickshank - Town of Shandaken

2001 Aerial Photo



 NRCS
Natural Resources Conservation Service
652 Route 299, Suite 103
Highland, NY 12528

0 100 200 400 Feet



Public Road Intersection

Cruickshank - Town of Shandaken

Wetland Map



NHCS
Natural Resources Conservation Service
1250 State Route 103
Shandaken, NY 12568

0 330 660 1,320 Feet

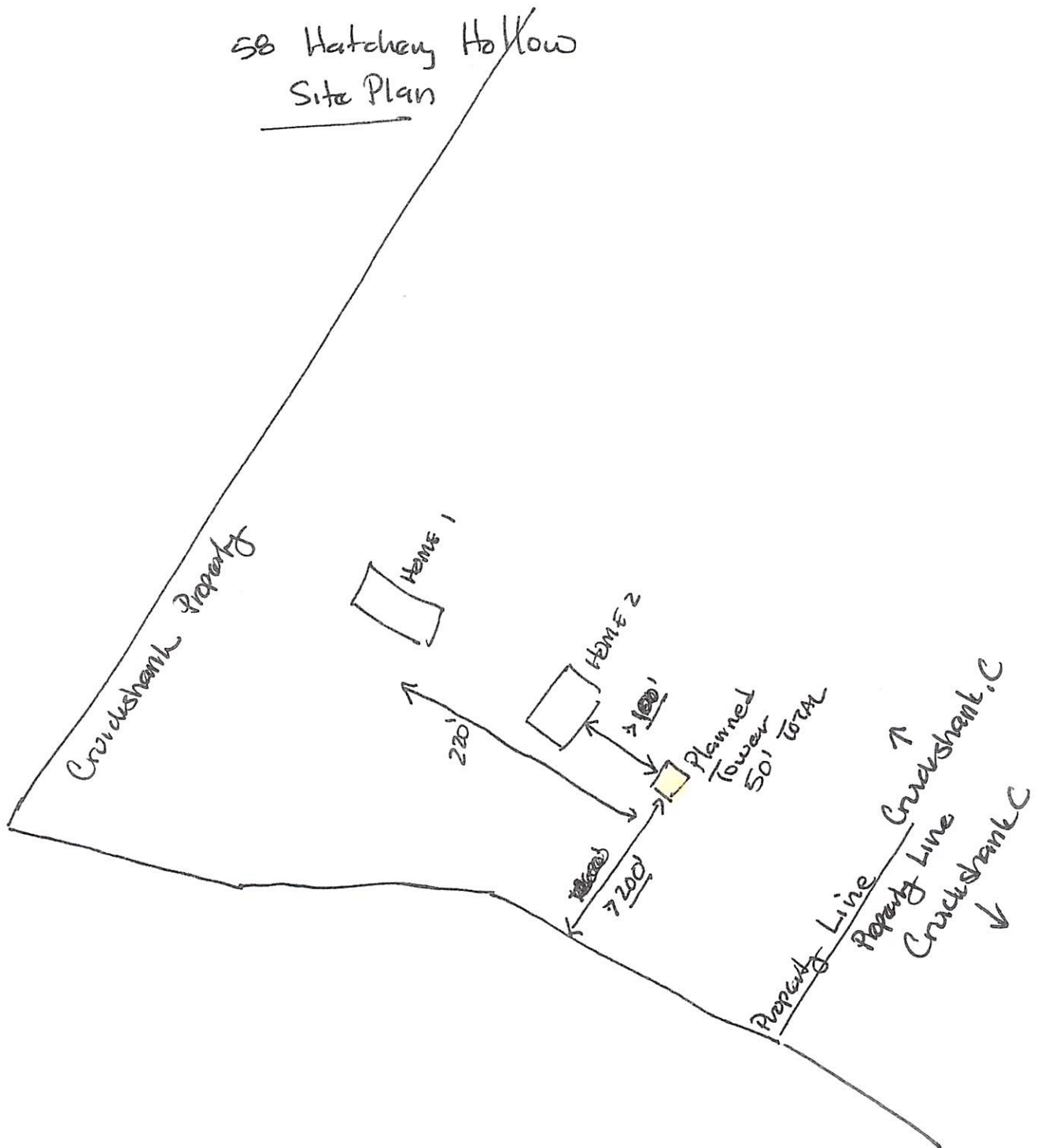
Parcel
of
Town



0 100 200 400 Feet

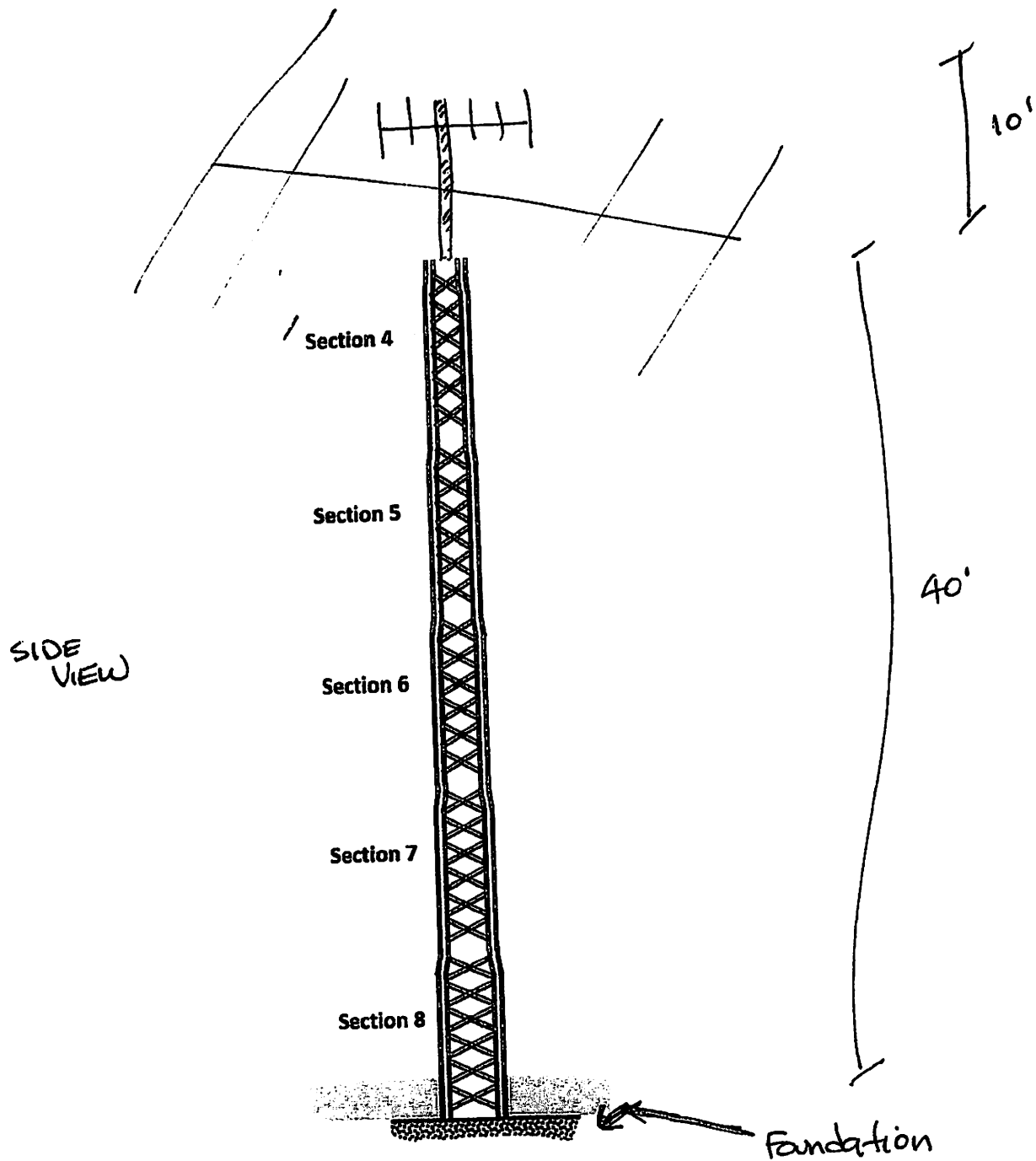
58 Hatchery Hollow
By Indian

58 Hatchery Hollow
Site Plan



58 Hatchway Hollow
Big Indian

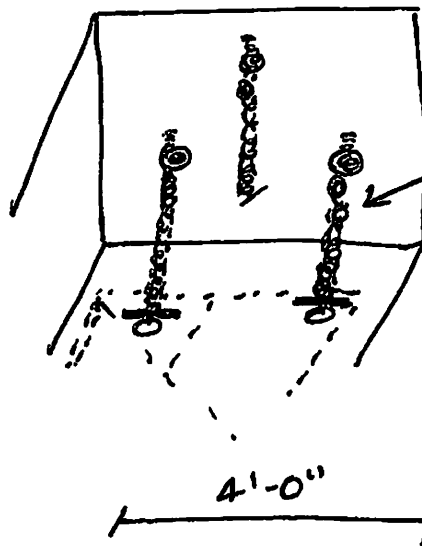
TBX Self Supporting Steel Tower
TOWER HEIGHT
40' Tower w/ 10' Mast



Steel Tower Foundation Foundation Plans

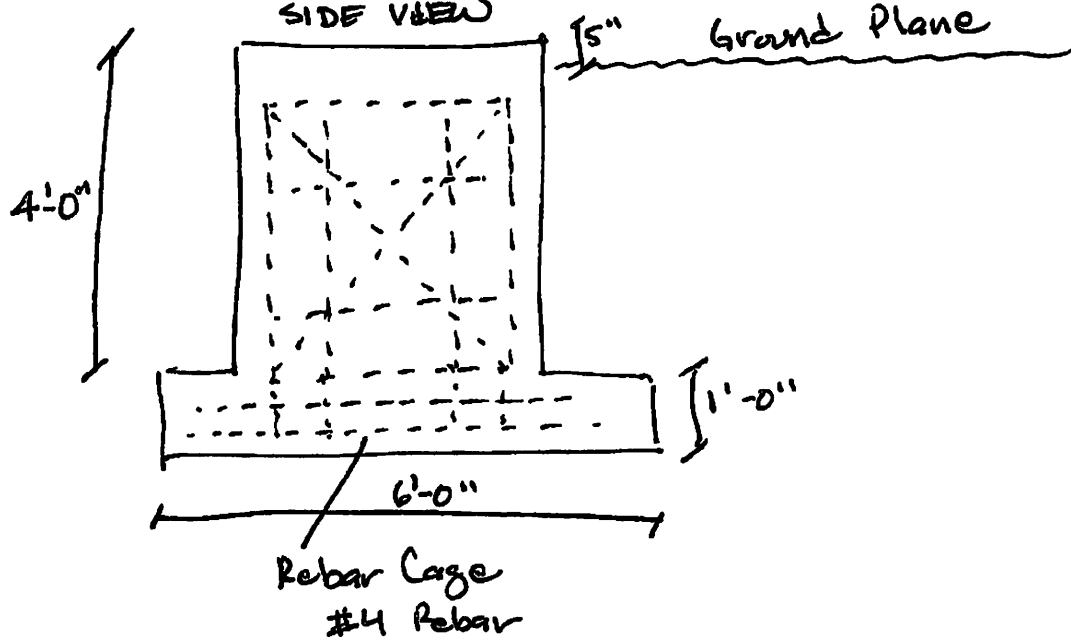
SB Hatchery Halls
By Indian

TOP VIEW



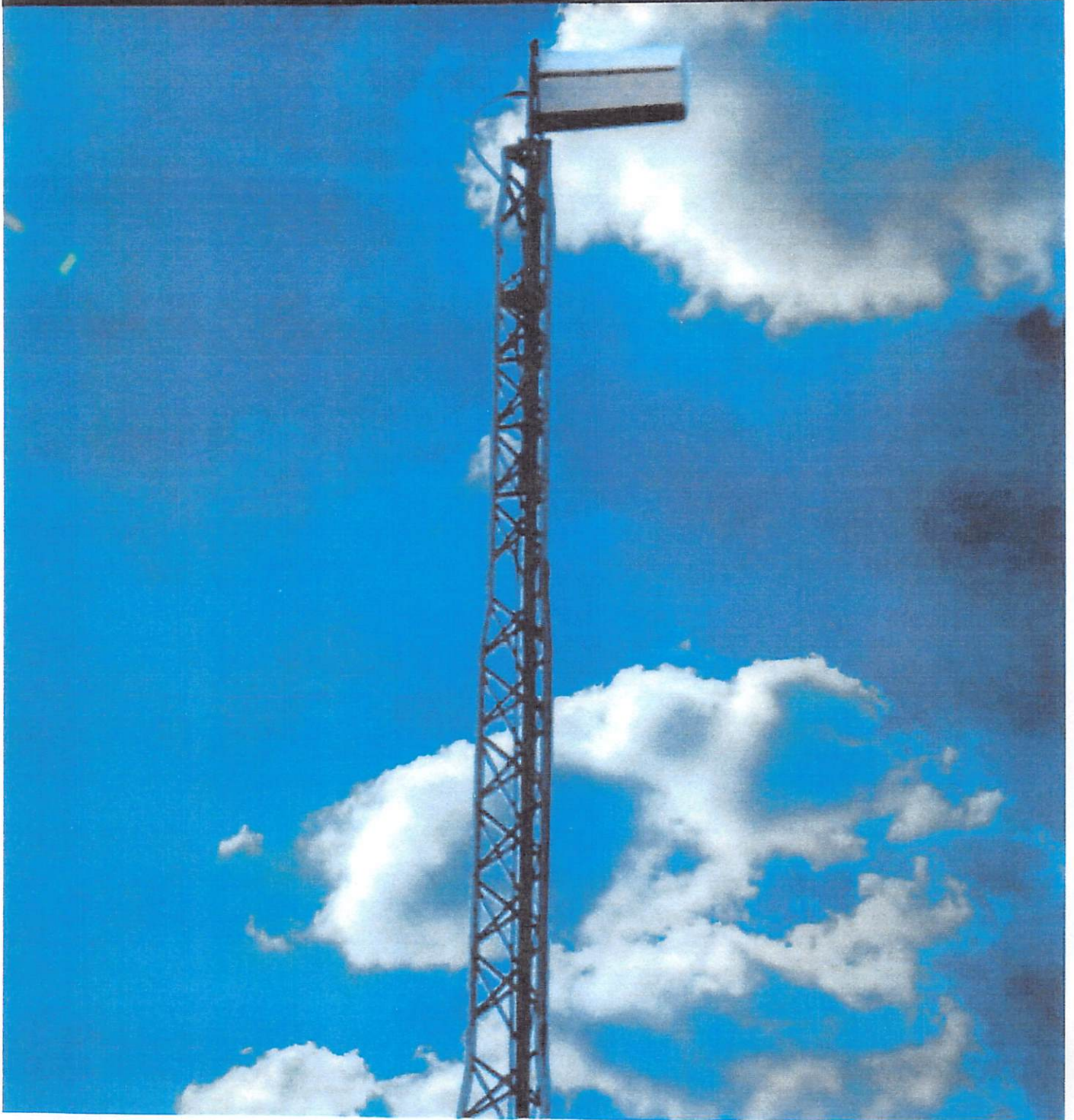
1" X 3' STEEL BOLTS
Protruding 5" above slab
Attached to rebar
w/ steel wiring
@ welded bolt bottom

SIDE VIEW



Concrete
Strength
4000 PSI
Trade Mix

TBX TOWERS



TBX TOWER

The TBX tower originated as the AX Tower through Rohn Products. This tower has been a leader in lightweight, self-supporting towers for over 50 years.

The TBX tower has gone through several generations of tower from AX to BX to TBX when Thomas Shelby assumed production of the tower line from Rohn Products.

TBX towers are manufactured in the USA and provide users with the following details:

- X Brace design with rivets at the ends and center as well as beaded channel legs all to provide greater strength
- Greater width and weight at the bottom of the tower to provide stability
- All steel and pre-galvanized for added life
- Easy to install rotors
- Three steps on one face supplied on top section.

The following pages should provide you with the information that you need to get started on your tower. We are always happy to assist you with any questions that may arise. Thomas Shelby & Co, Inc is committed to providing you with an excellent tower and superior customer service.



We can be contacted at:

Thomas Shelby & Company Inc.



TBX LEGS

Section #	LEG JOINT BOLTS			X (Top)	Y (Bottom)
	Location	QTY	Size		
2	Top	2	$\frac{3}{8} \times \frac{3}{4}$	$10\frac{7}{16}"$	$12\frac{11}{16}"$
	Bottom	2	$\frac{3}{8} \times \frac{3}{4}$		
3	Top	2	$\frac{3}{8} \times \frac{3}{4}$	$12\frac{13}{16}"$	$15\frac{1}{16}"$
	Bottom	2	$\frac{9}{16} \times 1$		
4	Top	2	$\frac{9}{16} \times 1$	$15\frac{3}{16}"$	$17\frac{7}{16}"$
	Bottom	2	$\frac{9}{16} \times 1$		
5	Top	2	$\frac{9}{16} \times 1$	$17\frac{5}{8}"$	$20\frac{1}{8}"$
	Bottom	2	$\frac{9}{16} \times 1$		
6	Top	2	$\frac{9}{16} \times 1$	$20\frac{5}{16}"$	$22\frac{13}{16}"$
	Bottom	2	$\frac{9}{16} \times 1$		
7	Top	2	$\frac{9}{16} \times 1$	23"	$25\frac{1}{2}"$
	Bottom	3	$\frac{9}{16} \times 1$		
8	Top	3	$\frac{9}{16} \times 1$	$25\frac{11}{16}"$	$28\frac{7}{16}"$
	Bottom	3	$\frac{9}{16} \times 1$		
8STR	Top	3	$\frac{9}{16} \times 1$	$28\frac{7}{16}"$	$28\frac{7}{16}"$
	Bottom	3	$\frac{9}{16} \times 1$		

Section 1

Section 2



Section 3



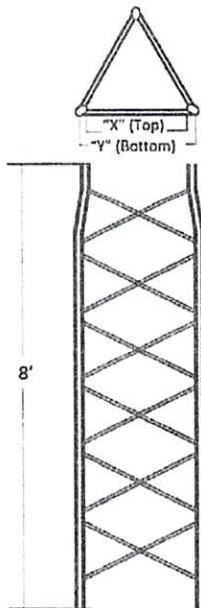
Section 4

Section 5

Section 6

Section 7

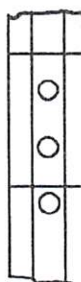
Section 8



Lock Washers



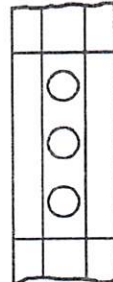
Lock Washers



Typical Leg Joint
Between
Sections 1-2
Sections 2-3

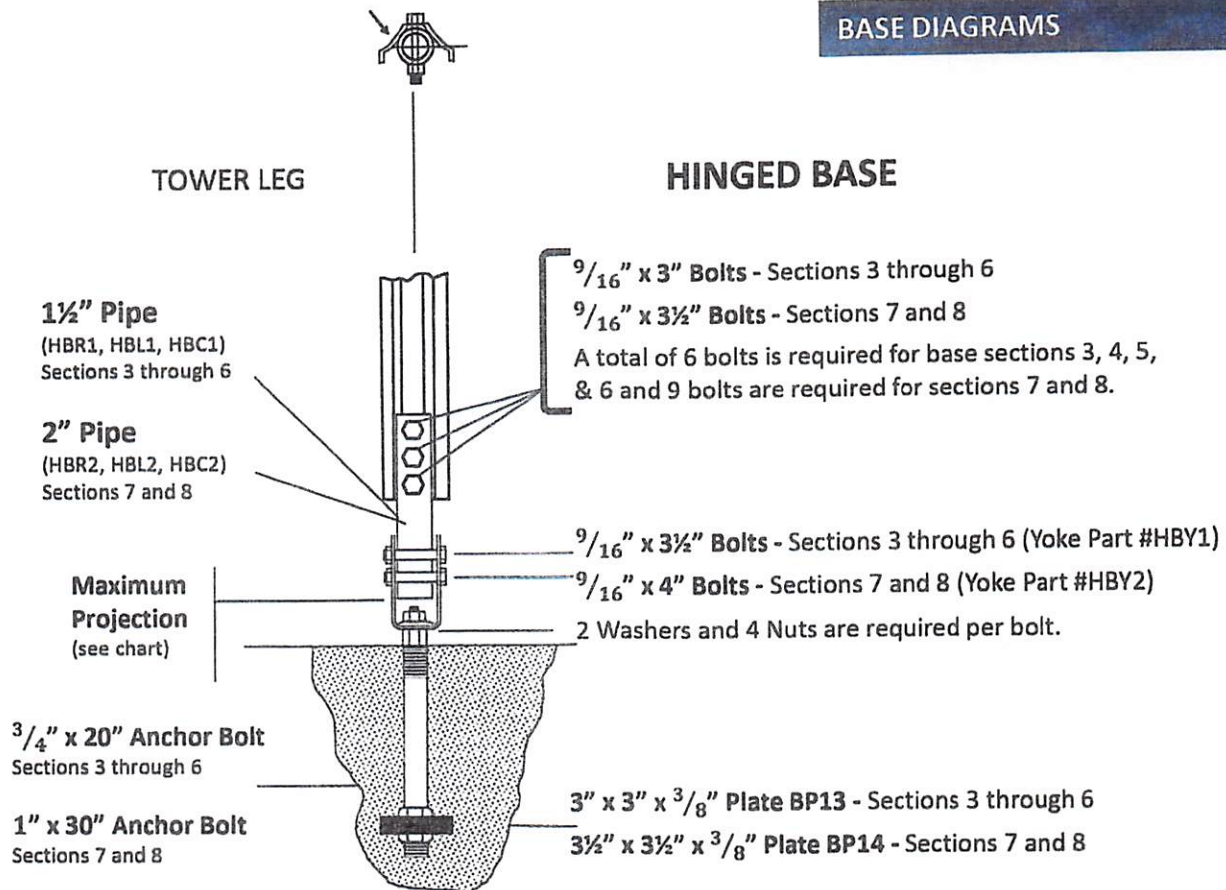


Typical Leg Joint
Between
Sections 3-4
Sections 4-5
Sections 5-6
Sections 6-7



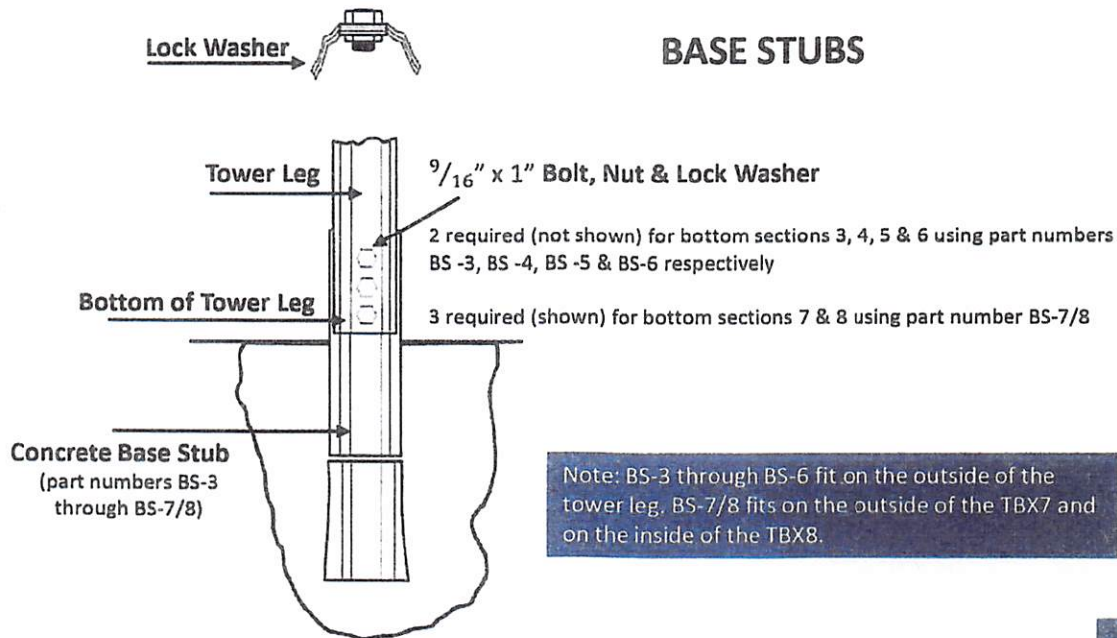
Typical Leg Joint
Between
Sections 7-8

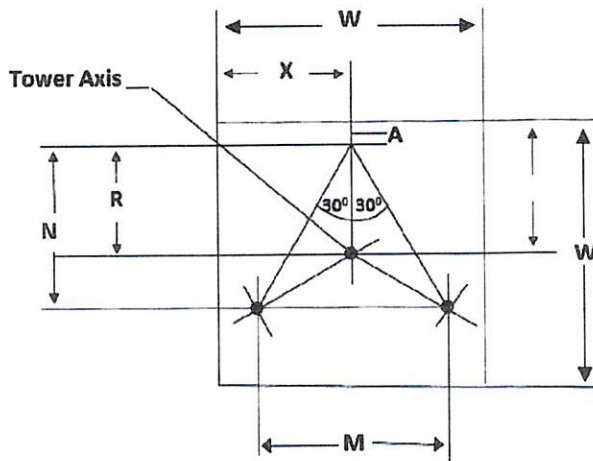
BASE DIAGRAMS



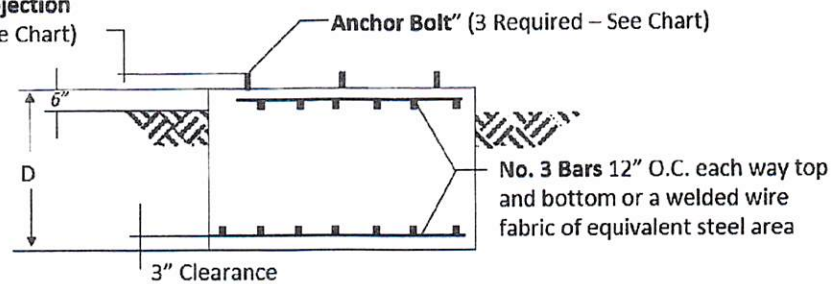
Lock Washer

BASE STUBS





**Maximum Bolt
Projection
(See Chart)**



Foundation Notes

1. Concrete, 3000PSI minimum, ultimate strength.
2. ASTM A-615 Grade 40 deformed re-bars.
3. All forms must be removed from concrete before placing compacted backfill.
4. Foundation designed for 2000 PSF soil.
5. It is recommended that a wood template be constructed by the user for holding anchor bolts at the proper dimensions while concrete is being poured.
6. Reinforcing is recommend for temperature and shrinkage control.
7. Welding is prohibited on reinforcing steel and embedment.

Cut Along This Line



UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

AMATEUR RADIO LICENSE

N2PTH



Licensee: This is your radio authorization in sizes suitable for your wallet and for framing. Carefully cut the documents along the lines as indicated.

The Commission suggests that the wallet size version be laminated (or another similar document protection process) after signing. The Commission has found, under certain circumstances, laser print is subject to displacement.

Cut Along This Line

Cut Along This Line

FCC Registration Number (FRN):

Special Conditions / Endorsements

NONE

Grant Date	Effective Date	Print Date	Expiration Date
07-31-2024	07-31-2024	07-31-2024	03-16-2033
File Number	Operator Privileges		Station Privileges
	General		PRIMARY

THIS LICENSE IS NOT TRANSFERABLE

(Licensee's Signature)

FCC 660 - August 2021

Cut Along This Line

Cut Along This Line

Call Sign / Number

Grant Date

Expiration Date

File Number

Operator Privileges

General

Station Privileges

PRIMARY

THIS LICENSE IS NOT TRANSFERABLE

Special Conditions / Endorsements
NONE

AMATEUR RADIO LICENSE

FCC Registration Number (FRN): 0008361511

FCC 660 - August 2021

(Licensee's Signature)
FEDERAL COMMUNICATIONS COMMISSION



Cut Along This Line

Cut Along This Line

Cut Along This Line

Federal
Legal Preemption of
local ordinances for
Amateur Radio

Memorandum Opinion and Order in PRB-1

Before the
Federal Communications Commission
Washington, DC 20554

FCC 85-506
36149

In the Matter of)
)
Federal preemption of state and) **PRB-1**
local regulations pertaining)
to Amateur radio facilities.)

MEMORANDUM OPINION AND ORDER

Adopted: September 16, 1985 ; Released: September 19, 1985

By the Commission: Commissioner Rivera not participating.

Background

1. On July 16, 1984, the American Radio Relay League, Inc (ARRL) filed a Request for Issuance of a Declaratory Ruling asking us to delineate the limitations of local zoning and other local and state regulatory authority over Federally-licensed radio facilities. Specifically, the ARRL wanted an explicit statement that would preempt all local ordinances which provably preclude or significantly inhibit effective reliable amateur radio communications. The ARRL acknowledges that local authorities can regulate amateur installations to insure the safety and health of persons in the community, but believes that those regulations cannot be so restrictive that they preclude effective amateur communications.

2. Interested parties were advised that they could file comments in the matter.¹ With extension, comments were due on or before December 26, 1984,² with reply comments due on or before January 25, 1985.³ Over sixteen hundred comments were filed.

Local Ordinances

3. Conflicts between amateur operators regarding radio antennas and local authorities regarding restrictive ordinances are common. The amateur operator is governed by the regulations contained in Part 97 of our rules. Those rules do not limit the height of an amateur

antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval procedures must be followed for antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus, under FCC rules some antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequently enact regulations limiting antennas and their support structures in height and location, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur operators maintain that they are precluded from operating in certain bands allocated for their use if the height of their antennas is limited by a local ordinance.

4. Examples of restrictive local ordinances were submitted by several amateur operators in this proceeding. Stanley J. Cichy, San Diego, California, noted that in San Diego amateur radio antennas come under a structures ruling which limits building heights to 30 feet. Thus, antennas there are also limited to 30 feet. Alexander Vrenios, Mundelein, Illinois, wrote that an ordinance of the Village of Mundelein provides that an antenna must be a distance from the property line that is equal to one and one-half times its height. In his case, he is limited to an antenna tower for his amateur station just over 53 feet in height.

5. John C. Chapman, an amateur living in Bloomington, Minnesota, commented that he was not able to obtain a building permit to install an amateur radio antenna exceeding 35 feet in height because the Bloomington city ordinance restricted “structures” heights to 35 feet. Mr. Chapman said that the ordinance, when written, undoubtedly applied to buildings but was now being applied to antennas in the absence of a specific ordinance regulating them. There were two options open to him if he wanted to engage in amateur communications. He could request a variance to the ordinance by way of a hearing before the City Council, or he could obtain affidavits from his neighbors swearing that they had no objection to the proposed antenna installation. He got the building permit after obtaining the cooperation of his neighbors. His concern, however, is that he had to get permission from several people before he could effectively engage in radio communications for which he had a valid FCC amateur license.

6. In addition to height restrictions, other limits are enacted by local jurisdictions—anti-climb devices on towers or fences around them; minimum distances from high voltage power lines; minimum distances of towers from property lines; and regulations pertaining to the structural soundness of the antenna installation. By and large, amateurs do not find these safety precautions objectionable. What they do object to are the sometimes prohibitive, non-refundable application filing fees to obtain a permit to erect an antenna installation and those provisions in ordinances which regulate antennas for purely aesthetic reasons. The amateurs contend, almost universally, that “beauty is in the eye of the beholder.” They assert that an antenna installation is not more aesthetically displeasing than other objects that people keep on their property, e.g. motor homes, trailers, pick-up trucks, solar collectors and gardening equipment.

Restrictive Covenants

7. Amateur operators also oppose restrictions on their amateur operations which are contained in the deeds for their homes or in their apartment leases. Since these restrictive

covenants are contractual agreements between private parties, they are not generally a matter of concern to the Commission. However, since some amateurs who commented in this proceeding provided us with examples of restrictive covenants, they are included for information. Mr. Eugene O. Thomas of Hollister, California, included in his comments an extract of the Declaration of Covenants and Restrictions for Ridgemark Estates, County of San Benito, State of California. It provides:

No antenna for transmission or reception of radio signals shall be erected outdoors for use by any dwelling unit except upon approval of the Directors. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any lot which may unreasonably interfere with the reception of television or radio signals upon any other lot.

Marshall Wilson, Jr. provided a copy of the restrictive covenant contained in deeds for the Bell Martin Addition #2, Irving, Texas. It is binding upon all of the owners or purchasers of the lots in the said addition, his or their heirs, executors, administrators or assigns. It reads:

No antenna or tower shall be erected upon any lot for the purposes of radio operations.

William J. Hamilton resides in an apartment building in Gladstone, Missouri. He cites a clause in his lease prohibiting the erection of an antenna. He states that he has been forced to give up operating amateur radio equipment except a hand-held 2 meter (144-148 MHz) radio transceiver. He maintains that he should not be penalized just because he lives in an apartment.

Other restrictive covenants are less global in scope than those cited above. For example, Robert Webb purchased a home in Houston, Texas. His deed restriction prohibited "transmitting or receiving antennas extending above the roof line."

8. Amateur operators generally oppose restrictive covenants for several reasons. They maintain that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some state that they impinge on First Amendment rights of speech. Others believe that a constitutional right is being abridged because, in their view, everyone has a right to access the airwaves regardless of where they live.

9. The contrary belief held by housing subdivision communities and condominium or homeowner's associations is that amateur radio installations constitute safety hazards, cause interference to other electronic equipment which may be operated in the home (television, radio, stereos) or are eyesores that detract from the aesthetic and tasteful appearance of the housing development or apartment complex. To counteract these negative consequences, the subdivisions and associations include in their deeds, leases or by-laws, restrictions and limitations on the location and height of antennas or, in some cases, prohibit them altogether. The restrictive covenants are contained in the contractual agreement entered into at the time of the sale or lease of the property. Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.

Supporting Comments

10. The Department of Defense (DOD) supported the ARRL and emphasized in its comments that continued success of existing national security and emergency preparedness telecommunications plans involving amateur stations would be severely diminished if state and local ordinances were allowed to prohibit the construction and usage of effective amateur transmission facilities. DOD utilizes volunteers in the Military Affiliate Radio Service (MARS),⁴ Civil Air Patrol (CAP) and the Radio Amateur Civil Emergency Service (RACES). It points out that these volunteer communicators are operating radio equipment installed in their homes and that undue restrictions on antennas by local authorities adversely affect their efforts. DOD states that the responsiveness of these volunteer systems would be impaired if local ordinances interfere with the effectiveness of these important national telecommunication resources. DOD favors the issuance of a ruling that would set limits for local and state regulatory bodies when they are dealing with amateur stations.

11. Various chapters of the American Red Cross also came forward to support the ARRL's request for a preemptive ruling. The Red Cross works closely with amateur radio volunteers. It believes that without amateurs' dedicated support, disaster relief operations would significantly suffer and that its ability to serve disaster victims would be hampered. It feels that antenna height limitations that might be imposed by local bodies will negatively affect the service now rendered by the volunteers.

12. Cities and counties from various parts of the United States filed comments in support of the ARRL's request for a Federal preemption ruling. The comments from the Director of Civil Defense, Port Arthur, Texas, are representative:

The Amateur Radio Service plays a vital role with our Civil Defense program here in Port Arthur and the design of these antennas and towers lends greatly to our ability to communicate during times of disaster.

We do not believe there should be any restrictions on the antennas and towers except for reasonable safety precautions. Tropical storms, hurricanes and tornadoes are a way of life here on the Texas Gulf Coast and good communications are absolutely essential when preparing for a hurricane and even more so during recovery operations after the hurricane has past.

13. The Quarter Century Wireless Association took a strong stand in favor of the Issuance of a declaratory ruling. It believes that Federal preemption is necessary so that there will be uniformity for all Amateur Radio installations on private property throughout the United States.

14. In its comments, the ARRL argued that the Commission has the jurisdiction to preempt certain local land use regulations which frustrate or prohibit amateur radio communications. It said that the appropriate standard in preemption cases is not the extent of state and local interest in a given regulation, but rather the impact of the regulation on Federal goals. Its position is that Federal preemption is warranted whenever local government regulations relate adversely to the operational aspects of amateur communication. The ARRL maintains that localities routinely employ a variety of land use devices to preclude the installation of effective amateur antennas, including height restrictions, conditional use permits, building setbacks and dimensional limitations on antennas. It sees a declaratory ruling of Federal preemption as necessary to cause municipalities to accommodate amateur operator needs in land use planning efforts.

15. James C. O'Connell, an attorney who has represented several amateurs before local zoning authorities, said that requiring amateurs to seek variances or special use approval to erect reasonable antennas unduly restricts the operation of amateur stations. He suggested that the Commission preempt zoning ordinances which impose antenna height limits of less than 65 feet. He said that this height would represent a reasonable accommodation of the communication needs of most amateurs and the legitimate concerns of local zoning authorities.

Opposing Comments

16. The City of La Mesa, California, has a zoning regulation which controls amateur antennas. Its comments reflected an attempt to reach a balanced view.

This regulation has neither the intent, nor the effect, of precluding or inhibiting effective and reliable communications. Such antennas may be built as long as their construction does not unreasonably block views or constitute eyesores. The reasonable assumption is that there are always alternatives at a given site for different placement, and/or methods for aesthetic treatment. Thus, both public objectives of controlling land use for the public health, safety, and convenience, and providing an effective communications network, can be satisfied. A blanket to completely set aside local control, or a ruling which recognizes control only for the purpose of safety of antenna construction, would be contrary to...legitimate local control.

17. Comments from the County of San Diego state:

While we are aware of the benefits provided by amateur operators, we oppose the issuance of a preemption ruling which would elevate 'antenna effectiveness' to a position above all other considerations. We must, however, argue that the local government must have the ability to place reasonable limitations upon the placement and configuration of amateur radio transmitting and receiving antennas. Such ability is necessary to assure that the local decision-makers have the authority to protect the public health, safety and welfare of all citizens.

In conclusion, I would like to emphasize an important difference between your regulatory powers and that of local governments. Your Commission's approval of the preemptive requests would establish a "national policy." However, any regulation adopted by a local jurisdiction could be overturned by your Commission or a court if such regulation was determined to be unreasonable.

18. The City of Anderson, Indiana, summarized some of the problems that face local communities:

I am sympathetic to the concerns of these antenna owners and I understand that to gain the maximum reception from their devices, optimal location is necessary. However, the preservation of residential zoning districts as "liveable" neighborhoods is jeopardized by placing these antennas in front yards of homes. Major problems of public safety have been encountered, particularly vision blockage for auto and pedestrian access. In addition, all communities are faced

with various building lot sizes. Many building lots are so small that established setback requirements (in order to preserve adequate air and light) are vulnerable to the unregulated placement of antennas. ...the exercise of preemptive authority by the FCC in granting this request would not be in the best interest of the general public.

19. The National Association of Counties (NACO), the American Planning Association (APA) and the National League of Cities (NLC) all opposed the issuance of an antenna preemption ruling. NACO emphasized that federal and state power must be viewed in harmony and warns that Federal intrusion into local concerns of health, safety and welfare could weaken the traditional police power exercised by the state and unduly interfere with the legitimate activities of the states. NLC believed that both Federal and local interests can be accommodated without preempting local authority to regulate the installation of amateur radio antennas. The APA said that the FCC should continue to leave the issue of regulating amateur antennas with the local government and with the state and Federal courts.

Discussion

20. When considering preemption, we must begin with two constitutional provisions. The tenth amendment provides that any powers which the constitution either does not delegate to the United States or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states. The Supremacy Clause, however, provides that the constitution and the laws of the United States shall supersede any state law to the contrary. Article III, Section 2. Given these basic premises, state laws may be preempted in three ways: First, Congress may expressly preempt the state law. See *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Or, Congress may indicate its intent to completely occupy a given field so that any state law encompassed within that field would implicitly be preempted. Such intent to preempt could be found in a congressional regulatory scheme that was so pervasive that it would be reasonable to assume that Congress did not intend to permit the states to supplement it. See *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). Finally, preemption may be warranted when state law conflicts with federal law. Such conflicts may occur when "compliance with both Federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142, 143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Furthermore, federal regulations have the same preemptive effect as federal statutes, *Fidelity Federal Savings & Loan Association v. de la Cuesta*, *supra*.

21. The situation before us requires us to determine the extent to which state and local zoning regulations may conflict with federal policies concerning amateur radio operators.

22. Few matters coming before us present such a clear dichotomy of view point as does the instant issue. The cities, counties, local communities and housing associations see an obligation to all of their citizens and try to address their concerns. This is accomplished through regulations, ordinances or covenants oriented toward the health, safety and general welfare of those they regulate. At the opposite pole are the individual amateur operators and their support

groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications. Aligned with the operators are such entities as the Department of Defense, the American Red Cross and local civil defense and emergency organizations who have found in Amateur Radio a pool of skilled radio operators and a readily available backup network. In this situation, we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the legitimate interests of local governments in regulating local zoning matters. The cornerstone on which we will predicate our decision is that a reasonable accommodation may be made between the two sides.

23. Preemption is primarily a function of the extent of the conflict between federal and state and local regulation. Thus, in considering whether our regulations or policies can tolerate a state regulation, we may consider such factors as the severity of the conflict and the reasons underlying the state's regulations. In this regard, we have previously recognized the legitimate and important state interests reflected in local zoning regulations. For example, in *Earth Satellite Communications, Inc.*, 95 FCC 2d 1223 (1983), we recognized that

...countervailing state interests inhere in the present situation... For example, we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the non-federal regulation is applied in a nondiscriminatory manner.

24. Similarly, we recognize here that there are certain general state and local interests which may, in their even-handed application, legitimately affect amateur radio facilities. Nonetheless, there is also a strong federal interest in promoting amateur communications. Evidence of this interest may be found in the comprehensive set of rules that the Commission has adopted to regulate the amateur service.⁵ Those rules set forth procedures for the licensing of stations and operators, frequency allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.

25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example, an antenna array for international amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify any particular height limitation below which a local government may not regulate, nor will we suggest the precise language that must be contained in local ordinances,

such as mechanisms for special exceptions, variances, or conditional use permits. Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.⁶

26. Obviously, we do not have the staff or financial resources to review all state and local laws that affect amateur operations. We are confident, however, that state and local governments will endeavor to legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy, as well as time-consuming and expensive litigation in this area. Amateur operators who believe that local or state governments have been overreaching and thereby have precluded accomplishment of their legitimate communications goals, may, in addition, use this document to bring our policies to the attention of local tribunals and forums.

27. Accordingly, the Request for Declaratory Ruling filed July 16, 1984, by the American Radio Relay League, Inc., IS GRANTED to the extent indicated herein and in all other respects, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION
William J. Tricarico
Secretary

Footnotes

¹Public Notice, August 30, 1984, Mimeo. No. 6299, 49 F.R. 36113, September 14, 1984.

²Public Notice, December 19, 1984, Mimeo. No. 1498.

³Order, November 8, 1984, Mimeo, No. 770.

⁴MARS is solely under the auspices of the military which recruits volunteer amateur operators to render assistance to it. The Commission is not involved in the MARS program.

⁵47 CFR Part 97.

⁶We reiterate that our ruling herein does not reach restrictive covenants in private contractual agreements. Such agreements are voluntarily entered into by the buyer or tenant when the agreement is executed and do not usually concern this Commission.