

Local Law 1 1998:
December 21, 1998

Telecommunication Tower Law

Be it enacted by the Town Board of the Town of Portville as follows:

ARTICLE I: Short title. Authority and Applicability

- A. This law shall be known as the "Telecommunication Tower Law"
- B. The Town Board of the Town of Portville has the authority to adopt this local law pursuant to sections 10 and 11 of the Municipal Home Rule Law
- C. This law shall apply to the jurisdiction of the Town of Portville

ARTICLE II: Findings/Purpose

- A. The purpose of these regulations is to promote the health, safety and general welfare of the residents of the Town of Portville to provide standards for the safe provision of telecommunications consistent with applicable Federal and State regulations and to protect the natural features and aesthetic character of the Town with special attention to open space, vistas, farm land and wooded areas.

ARTICLE III: Definitions

- A. Telecommunication Tower – Any structure greater than thirty five (35) feet in height, which is capable of receiving and/or transmitting signals for the purpose of communication.

ARTICLE IV: Application of Special Permit Regulations

- A. No telecommunication tower, except those approved prior to the effective date of this section, shall be used unless in conformity with these regulations. No telecommunication tower shall hereafter be erected, moved, reconstructed, changed or altered in conformity with these regulations. No existing structure shall be modified to serve as a telecommunication tower unless in conformity with these regulations.
- B. Applicants proposing to collocate on a previously approved telecommunication tower do not require a special permit. They are, however, subject to Site Plan Review in accordance with Section (1)(a)(iii) below. The Town of Portville Planning Board or the agent of the Planning Board may require the applicant to submit any of the items under (3)(a) below as part of the Site Plan Review Process.
- C. The regulations shall apply to all property within the Town of Portville. Telecommunication Towers shall be specifically excluded from all other Local Laws and/or Ordinances.
 - 1. Shared Use of Existing Tall Structures. At all times, shared use of existing tall structures (for example municipal water towers, multi-story buildings, church steeples, farm silos etc.), and existing or approved towers shall be preferred to the construction of new towers.
 - a. An applicant proposing to share use of an existing tall structure shall be required to submit:
 - i. A completed application for a special permit.
 - ii. Documentation of intent from the owner of the existing facility to allow shared use.
 - iii. A site plan. The site plan shall show all existing and proposed structures and improvements including antennae, roads, buildings, guy wires and anchors, parking and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility, shall be indicated on the site plan.
 - iv. An engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing tall structure, and explaining what modifications, if any, will be required in order to certify to the above.
 - v. A completed short EAF (Environmental Assessment Form) and a completed visual EAF addendum.
 - vi. A copy of its Federal Communications Commission (FCC) license.
 - b. If an applicant proposing to share use of an existing tall structure submits complete and satisfactory documentation in accordance with subsection (1)(a) above, and if modifications

indicated according subsection (1)(a) are deemed insignificant by the Board, and after the Board conducts a public hearing and complies with all SEQRA provisions, the Board shall grant a special permit without further review under this section. If the Board determines that any modifications indicated according to subsection (1)(a) are significant, it may require further review according to subsections (6) through (17).

2. **New Telecommunication Tower.** The Board may consider new telecommunication tower when the applicant demonstrates that shared use of existing tall structures and existing or approved towers is impractical. An applicant shall be required to present an adequate report inventorying all existing tall structures and existing or approved towers within a reasonable distance of the proposed site. This distance shall be determined by the Board after consultation with the applicant. The report shall outline opportunities for shared use of these existing facilities as an alternative to a proposed new tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each existing tall structure and existing or approved tower as well as documentation of the physical, technical and/or financial reasons why shared usage is not practical in each case. Written requests and responses for shared use shall be provided.

3. **Shared Usage of an Existing Tower Site for Placement of a New Tower.** Where shared use of existing tall structures, and existing or approved towers, is found to be impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with subsection (2) above. Any proposals for a new telecommunication tower on an existing tower site shall also be subject to the requirements of subsections (5) through (17) below.

4. **New Tower at a New Location.** The Board may consider a new telecommunications tower on a site not previously developed with an existing tower when the applicant demonstrates that shared use of existing tall structures, and existing or approved towers, is impractical, and submits a report as described in subsection (2) above; and when the Board determines that shared use of an existing tower site for a new tower is undesirable based upon the applicant's investigation in accordance with subsection (3). Any proposal for a new telecommunication tower shall also be subject to the requirements of subsections (5) through (17) below.

5. **New Towers: Future Shared Use.** The applicant shall design a proposed new telecommunications tower to accommodate future demand for reception and transmitting facilities. The applicant shall submit to the board a letter of proposed tower by other telecommunications providers in the future. This letter shall be filed with the building inspector prior to issuance of the building permit. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special permit. The letter shall commit the new tower owner and his/her successors in interest to:

- a. Respond within 90 days to a request for information from a potential shared-use applicant.
- b. Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers.
- c. Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charge may include but is not limited to a pro rate share of the cost of site selection, planning, project administration, land cost, site design, construction and maintenance financing, return on equity, equipment to accommodate a share user without causing electromagnetic interference.

6. **Site Plan Review: Submission Requirements.**

- a. An applicant shall be required to submit a site plan in accordance with Article VI Section 6.1, 6.2 Article VIII Section 8.1, 8.2, 8.3, and Article IX Section 9.1, 9.2, 9.3, and 9.4. The site shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire and anchors, antennae, parking and landscaping, and shall include grading plans for new facilities and roads.
- b. **Supporting Documentation** – The applicant shall submit a complete short EAF, a complete short EAF, a complete Visual Environmental Assessment Form (visual EAF addendum), and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower and justification for any clearing required. The applicant shall also submit a copy of its Federal Communications Commission (FCC) license.

7. **Lot Size and Setbacks.** All proposed telecommunications towers and accessory structures shall be located on a single parcel and shall be setback from abutting parcels and street line a distance sufficient to substantially contain on-site ice-fill or debris from tower failure and preserve the privacy of any adjoining residential properties.

- a. Lot size of parcels containing a tower shall be determined by the amount of land required to meet the setback requirements. If the land is to be leased the entire area required shall be leased from a single parcel unless the Board determines that this provision may be waived.
- b. Telecommunication Towers shall comply with all existing setback requirements of the Town of Portville, or shall be located with a minimum setback from the property line equal to one half (1/2) of the height of the tower, whichever is greater. Accessory structures shall comply with the minimum setback requirements in the Town of Portville.

8. Visual Impact Assessment. The board may require the applicant to undertake a visual impact assessment which may include:

- a. A "Zone of Visibility Map" shall be provided in order to determine locations where the tower may be seen.
- b. Pictorial representations of "before and after" views from key viewpoints both inside and outside of the town including but not limited to: state highways and other major roads, sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The board shall determine the appropriate key sites at a pre-submission conference with the applicant.
- c. Assessment of alternative tower designs and color schemes, as described in subsection (9) below.
- d. Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines for abutting properties and streets.

9. New Tower Design. Alternative designs shall be considered for new towers, including lattice and single pole structures. The design of a proposed new tower shall comply with the following:

- a. Any new tower shall be designed to accommodate future shared use by other telecommunications providers.
- b. Unless specifically required by other regulations, a tower shall have a finish (either painted or unpainted) that minimizes its design of visual impact.
- c. The maximum height of any of any new tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and/or federal law and/or regulation. The Board at its discretion may modify this requirement if the applicant can justify the need to exceed this height limitation.
- d. The Board may request a review of the application by a Board appointed qualified engineer in order to evaluate the need for, and the design of, any new tower with any associated cost born by the applicant.
- e. Accessory structures shall maximize the use of building materials, colors and textures designed to blend with the natural surroundings.
- f. No portion of any tower or accessory structure shall be used for a sign or other advertising purpose, including but limited to, company name, phone numbers, banners, and streamers.

10. Existing Vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding four (4) inches in diameter (measured to a height of four (4) feet off the ground), shall take place prior to the approval of the special permit.

11. Screening. Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where a site abuts a residential property or public property, including streets, screening shall be required.

12. Access. Adequate emergency and service shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbances and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

13. Parking. Parking shall be provided to assure adequate emergency and service access. The Board shall determine the number of required spaces based upon recommendation from the applicant. No parking spaces shall be located in any required yard.

14. Fencing. The tower and any accessory structures shall be adequately enclosed by a fence, design of which shall be approved by the Board. This requirement may be waived by the Board if the applicant demonstrates that such measures are unnecessary to ensure the security

of the facility.

15. Removal. The applicant shall submit to the Board a letter of intent committing the tower owner, and his/her successors in interest, to notify the building inspector within thirty (30) days of the discontinuance of use of the tower. This letter shall be filed with the building inspector prior to issuance of a building permit (assuming the telecommunication tower is approved according to this section). Obsolete or unused towers and accessory structures shall be removed from any site within four (4) months of such notification. Failure to notify and/or to remove the obsolete or unused tower in accordance with these regulations, shall be a violation of this chapter and shall be punishable according to Article V Section 1.

16. Intermunicipal Notification for new Towers. In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that an existing tall structure or existing telecommunications tower in a neighboring municipality be considered for shared use, and to assist in the continued development of County 911 Services, the Board shall require that:

- a. An applicant who proposes a new telecommunication tower shall notify in writing the legislative body of each municipality that borders the town of Portville, the Town of Portville Planning Board, and the Director of the Cattaraugus County Emergency Services. Notification shall include the exact location of the proposed tower, and a general description of the project including, but not limited to, the height of the tower and its capacity for future shared use.
- b. Documentation of this notification shall be submitted to the Board at the time of application.

17. Notification of Nearby Landowners. The applicant shall be required to mail notice of the public hearing directly to all landowners whose property is located within five hundred (500) feet of the property line of the parcel on which a new tower is proposed. Notice shall also be mailed to the administrator of any state or federal parklands from which the proposed tower would be visible if constructed. Notification, in all cases, shall be made by certified mail. Documentation of this notification shall be submitted to the Board prior to the public hearing.

ARTICLE V: Removal of Special Use Permit Structures

Section 1: Removal of any Special Use Permit Structure(s) that are abandoned or are no longer usable shall be dismissed and the site put back to the specifications set forth in the Special Use Permit at the time of Construction. There shall be an escrow account set up to insure that the demolition of the structure can be carried out in the event that the owner is not financially able to dismantle the structure at the time of discontinuance of said facility. The escrow account shall be 10% of the total cost to erect the structure at the origin of the structure. All demolition shall be complete within a 120 days of notification to the owner that demolition of the structure must commence after said notification has been given by the Town of Portville Planning Board by registered mail. If this is not carried out in the time frame of 120 days then the Town of Portville Planning Board will ask for bids for demolition of the structure and be awarded to the lowest of the bidders, with the money to be paid from the escrow account. In the event that there is not ample monies in the account the balance will be paid by the Town of Portville and added to the following years property taxes. Failure to notify the Town of Portville that the structure is no longer in use constitutes a fine of \$250.00 per day.