

TOWN OF CAMBRIDGE

COMPREHENSIVE PLAN

Public Review Draft

December 2007

Appendix H

Model Cell Tower Regulations

Cellular Tower Regulation

Introduction:

The federal Telecommunications Act of 1996, 47 U.S.C. §§ 151 *et seq.*, 332, sets federal policy on cellular telephone towers and, in essence, pre-empts local law or regulation that would ban cellular towers. (Moratoria with a specific end date tied to the passage of local legislation are generally permitted. In 2003, Fort Ann imposed a moratorium on new cellular telephone towers until regulations could be drafted.) Local laws may regulate cellular towers so long as regulations do not result in a prohibition of service and do not discriminate among providers. Local governments must also act promptly upon applications – that is they cannot let applications languish indefinitely (a sort of pocket veto) and denials must be in writing and supported by substantial evidence. Thus, local governments still have wide latitude in regulating cellular telephone towers in terms of siting and design. All cellular towers must also comply with federal regulations regarding radio emission effects (non-ionizing electrical radiation or “NIER”), which are beyond the scope of this memorandum except to the extent that any local law/regulation should require proof that same will be met. (Local governments cannot set their own levels). The Town of Cambridge currently has no law directly applicable to cellular towers other than the need for a building permit. The Town also has no law or specific regulation related to wind-powered generators. The Town Comprehensive Plan sets forth a detailed policy and suggests specific legislation such structures. Information for a potential policy is set forth below.

Town Policy:

Town of Cambridge Comprehensive Plan Committee agrees with the policy of the Adirondack Park Agency (APA) with respect to cellular telephone towers and has adopted a policy based on the APA’s policy. One aspect of the APA policy is that it:

seeks substantial invisibility of new towers through concealment, co-location and consolidation of visual intrusions as preferred methods to reduce visibility. Also recognizes avoiding mountain tops and ridges, use of topographic/vegetative foreground/background, minimizing structure height and bulk, color, use of existing building as ways to accomplish reducing visibility.

APA, *Community Chat*, vol.2, issue 2, February 2002. (The APA policy is available at <http://www.apa.state.ny.us/Documents/Policies.html>.)

The Town of Cambridge policy incorporates the concept of demonstrated need. If incorporated into a law, the applicant must demonstrate the need for the use of the site at issue by plotting or mapping the radii of its signals with strength and coverage depicted. Upon review, the need may be satisfied by locating with existing facilities or in adjacent towns or villages. Fort Ann proposed a law in 2003 that required applicants to meet with an industry consultant hired by the town to help explain the application process and assess need. A special permit that

is not legally excessive could help defray such cost. The idea of needing a special permit to build a cellular telephone facility has been used by many municipalities, and is incorporated in the policy.

It should be noted that in municipalities with zoning, some do not allow towers in residential areas except by variance. In those cases, the cellular companies are entitled to “public utility” status and face only a diminished threshold for the grant of a variance. In that case, the “proposed facility need only establish that there are gaps in service, that the location of the proposed facility will remedy those gaps and that the facility presents a minimal intrusion on the community.” *Site Acquisitions, Inc. v. Town of New Scotland*, slip opinion, December 18, 2003, at 3, (Sup. Ct. App. Div. 3d Dep’t). Aesthetic impact on a community, however, still can be a factor in a denial. Sites that are within a certain number of feet of a county road (500) may also face Washington county regulation.

The policy of the Town of Cambridge follows.

Town of Cambridge Cellular Telephone and Wind Generator Tower Policy

The Town of Cambridge (the “Town”) seeks substantial invisibility of new towers through concealment, co-location and consolidation of visual intrusions as preferred methods to reduce visibility. It also recognizes avoiding mountain tops and ridges, use of topographic/vegetative foreground/background, minimizing structure height and bulk, color, use of existing building as ways to accomplish reducing visibility.

This policy specifically addresses telecommunication facilities covered by the federal Telecommunications Act of 1996, that is, every type of wireless and radio emission device including cellular telephone, microwave, AM and FM radio and television, as well as personal wireless services (PWS), and wind generation towers.

This policy recognizes the potential compatibility of a system for personal communication signals (cellular telephones, PCS (personal communications services), wireless digital communications, etc.) in already developed areas and segments of streets and roadways where there is access to existing electrical and telephone infrastructure required for these facilities and where substantial invisibility can be achieved.

New telecommunications towers in the Town will be located to avoid undue adverse impacts in such a manner as to be substantially invisible and in the vicinity of existing settlements or those portions of highway corridors where existing telephone and electric power is accessible to the proposed facility. Facilities must also be designed and sited to avoid or minimize impact to nearby land uses. Co-location of facilities is preferred so long as substantial indivisibility is achieved.

New tower proposals will be presented with supporting information regarding the proposed facility location, alternative support infrastructure, designs and locations and future facility plans, adequate to determine whether the cumulative impacts of the proposed tower will result in undue adverse impacts on the Town. Applicants will be required to provide the best available data and visual representations in order to maximize Town and public understanding of the proposed project. In addition, the Town will require photographs from areas surrounding sites, and drawings of proposed sites and projects as part of permit applications. Further, an applicant, as part of the cost of an application, must, to the extent allowable by law, pay for the services of a consultant hired by the Town to evaluate the merits of the application, including the determination of need for such facilities.

This policy is further based on the concept of demonstrated need. The applicant must demonstrate the need for the use of the site at issue by plotting or mapping the radii of its signals with strength and coverage depicted. Upon review, the need may be satisfied by locating with existing facilities or in adjacent towns or villages.

This policy applies with equal force to the Town, and it is the intent of this policy to deter the Town from erecting cellular or wind generation facilities on any Town-owned property.

As used in this policy, a “substantially invisible” communication facility and its appurtenant support facilities and access road(s) will not be readily apparent as to size, composition, or color and the structure(s) will, to the maximum extent practicable, blend with the background vegetation, other structures or other landscape features as seen from all significant potential public viewing points and as documented by simulation and other visual analysis methods. Potential public viewing points include public roads, navigable waters and other public places. Substantial invisibility is intended to be applied on a site specific basis and may be achieved by consolidation of existing visual intrusions and/or by the development of facilities within lawfully existing buildings, and/or by providing substantial screening of concealment of the structure itself.

Preferred methods to reduce visibility include: avoiding locating facilities on mountain tops and ridge lines; concealing any structure by careful siting, using topographic or vegetative foreground or backdrop; minimizing structure height and bulk; using color to blend with surroundings; using existing buildings to locate facilities whenever possible; using architecturally compatible buildings to house ground equipment; and otherwise using best available technology that avoids or minimizes visual impacts.

When none of the above preferred methods achieve substantial invisibility, camouflage in scale with the surroundings may be proposed in order to blend the facility with the visual setting.

Consolidation of visual intrusion occurs when equipment is co-located on a single existing tower or on a new tower immediately adjacent to a lawful pre-existing facility. Consolidation of visual intrusions also occurs when telecommunications equipment is attached to other pre-existing tall structures, such as utility poles, water tanks, or buildings. In developed areas existing buildings, overhead utility poles and similar structures may host telecommunication equipment and achieve substantial invisibility even when the telecommunication device is in plain view juxtaposed to the existing structure. This policy is intended to maintain the visual quality and character of the site and to avoid undue adverse impacts to scenic vistas, locally important viewsheds, and historic resources. It should be noted that there is an indefinite threshold where the consolidation of visual intrusions becomes overbearing and considered clutter with the resulting undue adverse impacts on the Town. As part of the alternatives analysis required of the applicant, methods of avoiding or reducing clutter in a viewshed through consolidation at a site with more than one tower or multiple sets of equipment on a single tower will be necessary as part of the Town review and permitting process. Another method is the use of façade mounted antennas that fit a building's pre-existing architecture.

This policy is intended to require the removal of obsolete or abandoned telecommunications facilities. A plan for timely removal of any related telecommunications structures which become obsolete or are abandoned will be required as an element of any proposal for a new facility. The Town will require guarantees to assure removal and/or restoration of the site, as well as the maximum bond allowable by law. Facilities shall be deemed abandoned after one or more years of inactivity.

Suggested Model Legislation:

The website of the New York Planning Federation, <http://www.nypf.org/towers.htm>, contains additional information including model legislation for municipalities with or without zoning. The model legislation for a municipality partially modified for a Town like Cambridge without zoning is attached for reference, but must be modified to incorporate all of the elements of the above policy. The NYPF suggestion is to link the legislation to a site plan review law, which Cambridge does not have. The NYPF also notes that formally defining the “construction of telecommunications towers” as a Type 1 action under the State Environmental Quality Review Act (SEQR) (which must be applied to the Town Comprehensive Plan as well) would assure an opportunity for municipal review so long as the granting of a permit is involved.

New York Planning Federation - Model Telecommunication Tower Regulation for Municipalities

SECTION XXX: TELECOMMUNICATION TOWERS

(1) Enabling Authority:

The Planning Board is hereby authorized to review and approve, approve with modifications, or disapprove special use permits and site plans consistent with _____ (Town Law §274-a & 274-b).

(2) Definitions:

(a) Telecommunication Tower - A structure on which transmitting and/or receiving antenna(e) are located.

(b) Antenna - A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include but not be limited to radionavigation, radio, television, wireless and microwave communications. The frequency of these waves generally range from 10 hertz to 300,000 megahertz.

(c) Accessory Facility - An accessory facility serves the principle use, is subordinate in area, extent and purpose to the principle use, and is located on the same lot as the principle use. Examples of such facilities include transmission equipment and storage sheds.

[(d) Special Use (a.k.a. Conditional Use) - A use which is deemed allowable within a given zoning district, but which is potentially incompatible with other uses and, therefore, is subject to special standards and conditions set forth for such use subject to approval by the _____ (Planning Board).]

(3) Purpose:

The purpose of these supplemental regulations is to promote the health, safety and general welfare of the residents of the Town, 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 _____.

These regulations are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services nor shall they be used to unreasonably discriminate among providers of

All definitions are offered as samples. Use existing definitions in your municipal regulations if preferred.

Planning Board or Legislative Body can also approve special uses. Amend model language for local preference.

Note any special resource areas or scenic values if present.

This language affirms key consistency with the federal Telecommunications Act of 1996.

[This language can be greatly enhanced as set forth above.]

functionally equivalent services consistent with current federal regulations.

4) Application of Special Use Regulations:

(a) No transmission tower shall hereafter be used, erected, moved, reconstructed, changed or altered except after approval of a special use permits and in conformity with these regulations. No existing structure shall be modified to serve as a transmission tower unless in conformity with these regulations.

With zoning include a cross reference to the Table of Permitted Uses and define the zones where towers will be allowed.[Cambridge would probably reference the entire Town].

(b) These regulations shall apply to all property within the following zones: (see table)

(4)(c) Exceptions to these regulations are limited to (i) new uses which are accessory to residential uses and (ii) lawful or approved uses existing prior to the effective date of these regulations.

In (4)(c)(i) Consider placing a maximum height limit on the uses accessory to residences (e.g. not to 200 ft in height as measured ...).[Application of APA type information would be more effective than a straight height limitation.]

(d) Where these regulations conflict with other laws and regulations of the _____ (Town), the more restrictive shall apply, except for tower height restrictions which are governed by these special use standards.

(5) Special Use Standards:

(a)(i) Site Plan - An applicant shall be required to submit a site plan as described in Section(s) _____. The site plan shall show all existing and proposed structures and improvements including roads and shall include grading plans for new facilities and roads. The site plan shall also include documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antennae and justification for any land or vegetation clearing required.

Cross reference to sections describing site plan procedures. [Note: in Cambridge none exist].

(ii) Additionally, the Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF) and a landscaping plan addressing other standards listed within this section with particular attention to visibility from key viewpoints within and outside of the municipality as identified in the Visual EAF. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF.

A model Visual EAF can be found as an appendix to SEQR (6 NYCRR Part 617).

(b)(i) Shared Use - At all times, shared use of existing towers shall be preferred to the construction of new towers. Additionally, where such shared use is unavailable, location of antenna on pre-existing

structures shall be considered. An applicant shall be required to present an adequate report inventorying existing towers within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities and use of other pre-existing structures as an alternative to a new construction.

(ii) An applicant intending to share use of an existing tower shall be required to document intent from an existing tower owner to share use. The applicant shall pay all reasonable fees and costs of adapting an existing tower or structure to a new shared use. Those costs include but are not limited to structural reinforcement, preventing transmission or receiver interference, additional site screening, and other changes including real property acquisition or lease required to accommodate shared use.

(iii) In the case of new towers, the applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers as well as documenting capacity for future shared use of the proposed tower. Written requests and responses for shared use shall be provided.

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

Generally, FAA has jurisdiction to review all towers over 200 ft. in height as well as smaller towers within 20,000 feet of an airport. FAA can cite a tower as a hazard to navigation or can require illumination and distinctive painting (bands of orange/white).

(5)(d)(i) Visibility - All towers and accessory facilities shall be sited to have the least practical adverse visual effect on the environment.

(ii) Towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). 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. In all cases, structures offering slender silhouettes (i.e. monopoles or guyed tower) shall be preferable to free-standing structures except where such free-standing structures offer capacity for future shared use. Towers should be designed and sited so as to avoid, whenever possible,

application of FAA lighting and painting requirements.

(5)(d)(iii) Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

(e) Existing Vegetation - Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four (4) inches in diameter (measured at a height of four (4) feet off the ground) shall take place prior to approval of the special permit use. Clearcutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.

(f) Screening - Deciduous or evergreen tree plantings may be required to screen portions of the tower from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten feet in height within two years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

(g) Access and Parking - 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 and shall at all times minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. Public road standards may be waived in meeting the objectives of this subsection.

(6) Authority to Impose Conditions:

The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed telecommunication tower special use or site plan.

(a) Removal Upon Abandonment: Such

Towers are generally designed as either monopoles, guyed, or lattice-work structures. Applicants should always be asked to explain why they are choosing a certain design. In unique circumstances where visual resource protection is profoundly important, specialty design options have been used to conceal equipment through, for example, use of mock trees or farm silos or use of radio frequency neutral materials that can simulate an architectural feature or color.

Amend this section to reflect correct authorized board and use of special use or/and site plan tools

conditions may include provisions for dismantling and removal of towers and accessory facilities upon abandonment of use.