

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
DEC 10 2001

MISCELLANEOUS
& STATE RECORDS

23

~~County~~
~~City~~ of Poland
Town
~~Village~~

Local Law No. 3 of the year 16 2001

A local law amending the Town of Poland ZONING ORDINANCE to cover Telecommunication
(Insert Title)
Facilities.

Be it enacted by the Town Board of the
(Name of Legislative Body)

~~County~~
~~City~~ of Poland as follows:

~~Village~~ The purpose of this law is to maximize services and benefits to the community by accommodating the need for these facilities while at the same time minimizing their adverse impacts by regulating their location and number; protecting residential areas and land uses from potential physical damage; minimizing aesthetic and visual impacts through careful siting, design, landscaping, screening and innovative camouflaging techniques; and encouraging shared use/co-location of existing and new communications facilities as a primary option rather than the construction of additional single-use towers. A COPY OF THE LAW IS ATTACHED.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2001 of the (County)(City)(Town)(Village) of Poland was duly passed by the TOWN BOARD on December 4 2001, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____ and was (approved)(not disapproved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 19____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of the (County)(City)(Town)(Village) of _____ on _____ 19____, and was (approved)(disapproved)(repassed after disapproval) by the _____ 19____. Such local law was submitted to the people by _____ of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 19____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not disapproved)(repassed after disapproval) by the _____ 19____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 19____, in accordance with the applicable provisions of law.

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

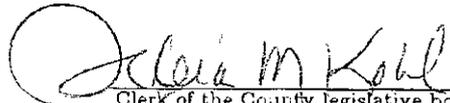
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the City of _____, having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of the County of _____, State of New York, has been submitted to the electors at the General Election of November _____, 19____ pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county and of a majority of the qualified electors of the towns of said county considered as a unit at said general election, became operative.

(If any other form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.


DEBRA M. KOHL
Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

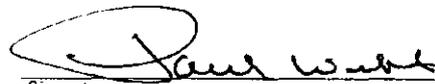
(Seal)

Date: December 4, 2001

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK
COUNTY OF Montgomery

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.


Signature

Attorney
Title

County _____
City _____ of Doland
Town _____
Village _____

Date: 12/4/2001

Town of Poland

Local Law No. 36 of the year 2001

A local law amending the Town of Poland ZONING ORDINANCE to cover Telecommunication Facilities

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

SECTION 1. LEGISLATIVE INTENT

The Town of Poland has received several requests to locate wireless communications facilities within the Town. Prior to the adoption of this local law, no specific procedures existed to address recurrent issues relating to siting wireless communications facilities. The Town of Poland wishes to maximize services and benefits to the community by accommodating the need for these facilities while at the same time minimizing their adverse impacts by regulating their location and number; protecting residential areas and land uses from potential physical damage; minimizing aesthetic and visual impacts through careful siting, design, landscaping, screening and innovative camouflaging techniques; and encouraging shared use/co-location of existing and new communications facilities as a primary option rather than the construction of additional single-use towers.

SECTION 2. SEQR DETERMINATION

The Town Board of the Town of Poland determined, as lead agency pursuant to the State Environmental Quality Review Act (SEQR), that passage of this Local Law will not have a significant effect on the environment and thereby issued a negative declaration.

SECTION 3. APPLICATION

This Local Law shall apply to all zoning districts in the Town of Poland and so far as practical to all existing wireless communications facilities within the Town of Poland.

SECTION 4. SEVERABILITY

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part of this Local Law which can be given effect within such part or parts.

SECTION 5. PURPOSE

The purpose of this section is to regulate the location, design, and use of wireless communications facilities in order to:

1. Protect the health; safety, and general welfare of residents of the Town of Poland.
2. Establish predictable and balanced regulations for the siting and screening of wireless communications facilities in order to accommodate the growth of communications services within the Town.
3. Maximize the use of existing towers, tall buildings and other high structures to reduce the number of new towers needed to serve the community.
4. Avoid potential damage to adjacent properties from tower failure through structural standards and set back requirements.
5. Ensure harmony and compatibility with surrounding land use patterns.
6. protect the historic rural character, natural features and irreplaceable scenic qualities of the Town with special attention to open space, mountain ridges, recreation areas, scenic roads, view sheds and historic sites, through careful design, siting, landscaping, screening and innovative camouflaging techniques.

SECTION 6. DEFINITIONS

ABOVE GROUND LEVEL (AGL) -- A measurement of height from the natural grade of a site to the highest point of structure.

AVERAGE TREE CANOPY -- The average height of a stand of trees. For the purpose of determining the maximum height of a wireless communications facility to be installed on a wooded lot having at least 20 trees within 100 feet of the proposed site, the average height of the trees located within 200 feet of the proposed site shall be used to determine the average tree canopy.

CAMOUFLAGED -- A wireless communications facility that is disguised, hidden, part of an existing or proposed structure, placed within an existing or proposed structure, or completely hidden by surrounding vegetation is considered "camouflaged". When facilities include a new tower or other tall structure, camouflage will conceal both the tall structure and the accompanying antennas and other equipment through the use of technology which gives these facilities the appearance of structures which are compatible with the surrounding area.

CARRIER -- A company, licensed by the FCC, that provides wireless services to customers.

CO-LOCATION -- The use of a single wireless communications facility, either on the ground or on an existing building or structure, by more than one wireless communications carrier.

DBM -- Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to 1 milliwatt.

EQUIPMENT SHELTER -- An enclosed structure, cabinet, shed or box at the base of the mount within which are housed the electronic receiving and relay equipment for a wireless communications facility. Associated equipment may include air conditioning and emergency generators. This term does not include offices, long-term storage of vehicles or other equipment storage, or broadcast studios.

FALL ZONE -- The area on the ground within a prescribed radius from the base of a wireless communications facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

FUNCTIONALLY EQUIVALENT SERVICES -- Services include but are not limited to Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio, and Paging.

GUYED TOWER -- A monopole or lattice tower that is tied to the ground or to the surface by diagonal cables.

LATTICE TOWER -- A self-supporting mount constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.

LICENSED CARRIER -- A company authorized by the FCC to construct and operate a commercial mobile radio services system.

MONOPOLE -- A self-supporting mount constructed of a single shaft of wood, steel or concrete with below grade foundations and a platform (or racks) for panel antennas arrayed at the top.

MOUNT -- The structure or surface upon which antennas are mounted, including the following four types of mounts:

1. Roof-mounted. Mounted on the roof of a building.
2. Side mounted. Mounted on the side of a building.
3. Ground-mounted. Mounted on the ground.

PROFESSIONAL ENGINEER -- A certified or licensed Radio frequency Engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

RADIO FREQUENCY RADIATION -- Emissions from wireless communications facilities.

REPEATER -- A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive adequate coverage directly from a primary sending and receiving site in a wireless communications network.

SECURITY BARRIER -- A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

SEPARATION -- The distance between one carrier's array of antennas and another carrier's array.

WIRELESS COMMUNICATIONS ANTENNA -- An antenna designed to transmit or receive communications as authorized by the Federal Communications Commission, including but not limited to whip, panel and dish communications antenna.

WIRELESS COMMUNICATIONS FACILITY -- A facility for the provision of wireless communications services, as defined by The Telecommunications Act of 1996, and usually consisting of an equipment shelter, a mount, and/or antenna(s). Radio or television transmission towers and repeaters shall be included in the definition of wireless communications facilities.

WIRELESS COMMUNICATIONS SERVICES -- Three types of services are regulated by this law include commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access for Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, and Specialized Mobile Radio and Paging Services. Excluded from this definition are services used for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar private, residential communications.

SECTION 7. DISTRICT REGULATIONS

- (1) Use Regulations. These regulations govern the installation and/or use of all wireless communications facilities as defined herein. Any proposed user of wireless communications facilities shall be an FCC licensed provider of wireless communications facilities and must obtain site plan approval and/or a special use permit whether or not they will install or own the facilities. The construction of a wireless communications facility shall require a building permit in all cases.
 - (a) Permitted uses, Existing Structures. A wireless communications facility may be permitted to relocate on any existing radio or television transmission tower, guyed tower, lattice tower, monopole, fire tower, water tower, clock tower, bell tower, cross tower, flagpole, road sign, steeple, chimney, silo or other innovative use of appropriate existing structures (as determined by the Planning Board) provided that there is no increase in the height of the existing structure as a result of the installation of the facility. Such installations shall not require a Special Use Permit but will require Site Plan approval by the Planning Board.
 - (b) Permitted Uses, Existing Buildings. A wireless communications facility may be permitted to locate on any existing building, with the exception of a designated historic structure, provided that the installation of the new facility does not increase the height of the existing building by more than ten feet. Such

installations shall not require a Special Use Permit but will require Site Plan approval by the Planning Board.

(c) Permitted Uses, Existing Utility Structures. A wireless communications facility may be permitted to locate on any existing electric utility transmission and distribution tower, telephone pole and similar existing utility structure provided that the installation of the new facility does not increase the height of the existing structure by more than twenty feet (20'). These facilities may locate in all areas of the Town where they are permitted except within 500 feet of a designated historic structure or within 500 feet of the right-of-way of any scenic road or residence. Such facilities may locate within 500 feet of the right-of-way of any scenic road or residence provided the new facility does not increase the height of the existing structure. Such installations shall not require a Special Use Permit but will require Site Plan approval by the Planning Board.

(d) Special Use Permit. A wireless communications facility involving construction of one or more ground-mounts shall require a Special Use Permit. A special Use Permit may be granted provided that the proposed use complies with the height, setback, and other requirements of this Local Law. The Town of Poland defines the placement, construction, and modification of a wireless communications facility requiring a Special Use Permit as a Type I action under the New York State Environmental Quality Review Act (SEQR).

- [1] If applicant for a special use permit proposes a wireless communications facility which does not meet all dimensional requirements of the Town of Poland Zoning Law, including height, area and bulk regulations, the applicant may, at any point in the review process, apply for an area variance from the Zoning Board of Appeals.
- [2] New wireless communications facilities requiring a special use permit shall be prohibited from locating:
 - (i) Inside or within 250 feet of a Critical Environmental Area, as designated under the State Environmental Quality Review Act (SEQR).
- [3] It shall be the responsibility of the holder of the special use permit to inform the Zoning Board of Appeals of any change in or termination of contractual agreements which effect the special use permit within 30 days of such change. Any material change in the conditions under which a special use permit was granted shall result in the immediate termination of the special use permit unless agreement has been obtained from the Zoning Board of Appeals prior to the change. These material changes include but are not limited to:
 - (i) Changes in supporting structures (such as towers), accessory buildings or access roads.

- (ii) A change in ownership of the facility or the property on which the facility is installed shall require notification to the Zoning Enforcement Officer by the holder of the special use permit but will not terminate such permit.
- (iii) Cessation of use by the FCC licensed carrier which has a special use permit for use of the facility.
- (iv) A change in the FCC licensed user of the specially permitted facility. Nothing herein shall prohibit another FCC licensed carrier from using the facility so long as that carrier provides evidence of need to use that facility and acquires a special use permit under this Chapter.
- (v) Loss if the user's FCC license to provide commercial communications services within the Town of Poland.
- (vi) Violation of the Town of Poland Zoning Law, on or with regard to the facility by the holder(s) of the special use permit or the owner of the land on which the facility is installed.

SECTION 8. LOCATION

Wireless communications facilities shall only be located, upon the grant of site plan approval and, as applicable, a special use permit, on property which allows wireless communications facilities. The applicant must also submit documentation of the legal right to install and use the proposed facility at the time of application for Site Plan approval and/or Special Use Permit.

SECTION 9. CO-LOCATION

All wireless communications facilities shall comply with the requirements set forth within this section.

- (a) If feasible, new wireless communications facilities shall be located on existing structures, including but not limited to buildings, water towers, existing communications facilities, silos, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more wireless communications facilities. The applicant must demonstrate that the proposed wireless communications facility cannot be accommodated on any existing structure, building or utility structure. In the event that location on an existing structure, building or utility structure is not feasible, a written statement of the reasons for the unfeasibility shall be submitted to the Planning Board. The Planning Board may hire an independent technical expert in the field of radio frequency

engineering, to verify if location on an existing structure, building or utility structure is not feasible and to evaluate the need for the proposed facility. The cost for such a technical expert shall be at the expense of the applicant and shall be fair and in line with similar costs in other communities. The failure of an applicant to demonstrate a good faith effort to co-locate may be grounds for denial of the special use permit.

SECTION 10. DIMENSIONAL REQUIREMENTS

All Wireless Communications facilities shall comply with the dimensional requirements set forth in this section:

(a) Height. The total height of any mount or accessory elements attached to any structure shall be measured from the ground level to the top of the mount or the top of the uppermost accessory affixed to the mount, whichever is higher. Maximum height of a wireless communications facility is limited to eighty feet (80') above ground level (AGL) in cleared areas where there are less than 20 trees within 100 feet surrounding the proposed location. If there are at least 20 trees within 100 feet surrounding the proposed location, the total height of the proposed facility shall be limited to 25 feet above the average tree canopy, or 100 feet, whichever is lower.

(b) Height Variance. The Zoning Board of Appeals may allow wireless communications facilities up to one hundred fifty feet (150') if an independent radio frequency consultant determines that adequate coverage would not be provided by a tower of lesser height and if the applicant can demonstrate that, based upon topography of the site and surrounding area, siting of the antenna, antenna design, surrounding tree cover and structures and/or through the use of screening, that off-site views of the facility will be *de minimis*. The height limitation is waived when the antenna is mounted on an existing structure or building and is completely camouflaged, or is located on an existing utility structure. Applicants may be required to achieve coverage objectives by using multiple existing or new structures rather than taller structures, which shall not exceed the height limitations.

(c) Setbacks. All wireless communications facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. In addition, the following setbacks shall be observed:

[1] To ensure public safety, the minimum distance from the base of any ground-mounted wireless communications facilities to any property line, road, habitable dwelling, business or institutional use, accessory structure, or public recreation area shall be the height of the facility/mount, including any antennas or other appurtenances. This setback is considered the "fall zone". Additional setbacks may be required by the Planning Board to provide for public safety.

[2] In the event that an existing structure or building is proposed as a mount for a wireless communications facility, a fall zone shall not be required unless the Planning Board finds that a substantially better design will result from an increased setback. In making such a finding, the Planning Board shall consider both the visual and safety impacts of the proposed use.

SECTION 11. PERFORMANCE AND DESIGN STANDARDS

All wireless communications facilities shall comply with the following:

(1) Camouflage. Wireless communication facilities shall be camouflaged by vegetation and/or design as follows:

[a] Camouflage by Vegetation:

If wireless communications facilities are not camouflaged from public viewing by existing buildings or structures, they shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Ground-mounted wireless communications facilities shall provide a vegetation buffer or significant height and depth to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both. The Planning Board shall determine the types of trees and plant materials and depth of the needed buffer based on site conditions. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.

[b] Camouflage by Design:

To the extent that any wireless communications facility extends above the height of the vegetation immediately surrounding it, the facility shall be camouflaged by design to minimize the adverse visual and aesthetic impact unless otherwise waived by the Planning Board. Wireless communications facilities shall be camouflaged to resemble or mimic a native coniferous species of tree or by other means such as new construction of a silo, flagpole, clock tower, bell tower, cross tower, steeple or other innovative replication of a structure that would be consistent with the character of the community as determined by the Planning Board.

(2) Lighting. Wireless communications facilities shall not be artificially lighted or display strobe lights unless requires by the Federal Aviation Administration (FAA) or other applicable authority. Security lighting of equipment structures and other facilities on site shall be shielded from abutting properties.

(3) Signs.

[a] Signs shall be limited to those needed to identify the property and the owner and warn of any danger. No advertising is permitted anywhere on the facility, with the exception of the identification signage. All signs shall comply with the requirements of the Town's sign regulations.

[b] All ground mounted wireless communication facilities shall be surrounded by a security barrier which shall be posted with no trespassing signs. A 24 hour emergency telephone number shall be posted adjacent to the entry gate. If high voltage is necessary for the operation of equipment within the facility, signs shall be posted stating "Danger - High Voltage".

(4) Equipment Shelters. Equipment shelters for wireless communications facilities shall be designed consistent with one of the following standards:

[a] Equipment shelters shall be located in underground vaults, or

[b] Equipment shelters shall be designed to be architecturally compatible, both in style and materials, with principal structures on the site, as determined by the Planning Board, or

[c] Equipment shelters shall be camouflaged behind an effective year-round landscape buffer equal to the height of the proposed building. The Planning Board shall determine the types of plant materials and depth of the needed buffer based on site conditions. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.

(5) Accessory Structures. Accessory Structures for wireless communications facilities shall be permitted if the structures are construed for the sole and exclusive use and operation of the communications facility, are the minimum size necessary to meet the needs of the specific site, and meet the following requirements:

[a] Accessory structures may not include office, long-term vehicle storage, other outdoor storage or other uses that are not needed to send or receive wireless communications transmissions.

[b] Accessory structures must be less than 500 square feet and 15 feet in height.

[c] Accessory structures must be camouflaged behind an effective year-round landscape buffer equal in height of the proposed structure. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.

[d] In residential zones, the use of compatible building materials such as wood, brick or stucco is required for all accessory structures, which shall be designed to match architecturally the exterior of residential structures in the neighborhood, as determined by the Planning Board. In no case will metal siding be allowed for accessory structures.

(6) Scenic Landscapes and Vistas. Wireless communications facilities shall not be located within open areas that are visible from public roads, recreational areas or residential development. As required in this law, all ground-mounted wireless communications facilities shall be surrounded by a buffer of dense tree growth or shall be camouflaged by design to minimize adverse visual and aesthetic impacts.

(7) Utility service lines. All electric power supply and telephone service lines to new towers and accompanying facilities shall be installed underground from the existing power source.

(8) Access and parking.

[a] A road and parking plan shall be provided to ensure adequate emergency and service access and shall meet the requirements of the Planning Board. Any driveway shall meet the requirements of the Planning Board and the highway authority for the road on which the driveway fronts.

[b] Maximum use of existing public and private roads shall be made, consistent with safety and aesthetic considerations.

[c] Road construction shall minimize ground and vegetation disturbance. Road grades shall follow natural contours to reduce soil erosion potential and to ensure that roads are aesthetically compatible with the character of the surrounding area.

[d] The Planning Board may require an erosion and sedimentation control plan and may refer the site plan to the Chautauqua County Soil and Water Conservation District, Town Engineer, and/or Town Planner for review.

[e] Unpaved roads shall be considered unless conditions require paving, as determined by the Planning Board, in consultation with the appropriate authorities or consultants.

(9) Maintenance, testing and inspection.

[a] The original appearance of the exteriors of all towers, accessory buildings and any other structures must be retained through regular maintenance by the applicant.

[b] Before commercial transmission begins, the applicant shall acquire certification by a licensed professional engineer that the facility will not exceed the maximum permissible exposure limits for the level of electromagnetic radiation using standards in accordance with the FCC *Guidelines*.

(10) Removal of facilities.

[a] Towers and antennas shall be removed if the owner's or user's special use permit for these facilities has expired or been terminated or if the facilities are no longer being used by the FCC licensee. Towers and antennas shall be removed if there is not at least one operator with a valid special permit using the tower. Potential or planned future use of any facility for commercial communication service is not sufficient to avoid the requirement for removal.

[b] If the removal of towers and antennas is required, accessory buildings and other structures shall also be removed unless:

- (i) the landowner wishes to retain these structures and communicates this in writing to the Zoning Board of Appeals and
- (ii) the retention of these structures will comply with the Zoning Law and
- (iii) the Zoning Board of Appeals agrees that removal of these structures is not required.

[c] Each applicant seeking a special use permit for a wireless communications facility shall be fully responsible for removal, and indemnifying the Town for the costs of removal, of antennas, accessory buildings and supporting structures such as towers when removal is required by the Town of Poland Zoning Law.

[d] If a proposed wireless communications facility will be owned by an entity other than an FCC licensed carrier which will use that facility, the carrier shall provide to the Zoning Board of Appeals a copy of a contract between the facility owner and the FCC licensed carrier in which the owner agrees to remove the facility including any tower, antennas and accessory structures, and indemnify the Town for the costs of such removal, when these facilities are no longer being used by an FCC licensed operator with a valid Town of Poland Special Use Permit.

[e] A decision to require removal shall be the responsibility of the Zoning Board of Appeals after consulting with the Zoning Enforcement Officer

and the Planning Board. Removal shall occur within 90 days of the Planning Board's decision to require removal unless the Zoning Board of Appeals has agreed to an extension of that time. If not removed within the designated period, the Town shall have the right to compel removal, with all costs to be borne by the Special Permit holder who owns and/or previously used the facilities. Removal costs may also be recovered from the owner of the tax parcel on which the facilities are located.

[f] When towers are removed, site reclamation shall be completed to the satisfaction of the Zoning Board of Appeals within 180 days of the structure removal. Reclamation shall include landscaping, removal of structures, utility lines and accessory structures, and shall encompass the building site buffer area controlled by the facility owner.

(11) Bonding. Before obtaining or renewing a special use permit, the applicant shall provide financial surety in an amount acceptable to the Zoning Board of Appeals (in consultation with the Planning Board) to ensure full and complete performance of all conditions imposed by the Zoning Board of Appeals as a requirement of the special use permit. The Bond shall also be sufficient to cover all costs for site reclamation and removal of the tower and equipment.

(12) Environmental Standards.

(a) Wireless communications facilities shall not be located in wetlands or in regulated wetland buffer areas, in endangered or threatened species habitats, water bodies, historic or archaeological sites.

(b) No hazardous waste shall be discharged on the site of any wireless communications facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least 110% of the volume of hazardous materials stored or used on the site.

(c) If applicable, additional stormwater run-off generated by the use shall be contained on-site.

(d) Ground-mounted equipment for wireless communications facilities shall not generate noise in excess of 50 dB at the property line.

(13) Safety Standards.

(a) Radio Frequency Radiation (RFR) Standards

All equipment proposed for a wireless communications facility shall be authorized per the FCC *Guidelines* on a yearly basis to the Zoning Board of Appeals. If new, more restrictive standards are adopted by any appropriate

federal or state agency, the facility shall be made to comply or continued operations may be restricted by the Zoning Board of Appeals. The cost of verification of compliance shall be borne by the owner and operator of the facility.

(b) Security Barrier

All wireless communications facilities shall be provided with security measures such as fencing, anti-climbing devices, electronic monitoring, or other methods sufficient to prevent unauthorized entry and vandalism. Fencing shall include a locking security gate. Electrified fence, barbed or razor wire shall be prohibited.

(c) Structural Soundness and Fall Zone

Wireless communications facilities shall be designed by a licensed professional engineer to withstand overturning an failure. In the event of failure, facilities shall be designed so that they will fall within the setback area of the site and/or away from adjacent residential properties. The Zoning Board of Appeals shall require a foundation design and certificate of safety from the carrier to document structural soundness.

SECTION 12.

APPLICATION PROCEDURES

(1) The Planning Board is authorized to review and approve, approve with modifications, or disapprove Site Plans. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed antenna, mount, or equipment structure(s). Any decision by the Planning Board to deny or approve a request to place, construct or modify wireless communications facilities shall be in writing and supported by substantial evidence.

(2) Application Filing Requirements, Site Plan Approval. All applicants for a wireless communications facility shall be prepared by a registered architect, landscape architect, licensed land surveyor or professional engineer duly licensed by the State of New York, unless this requirement is waived by the Planning Board because of simplicity of the proposal. Site Plans shall be prepared at a scale of one inch (1") equals twenty feet (20') or less, on standard 24" x 36" sheets, with continuation on 8 1/2" x 11" sheets as necessary for written information. The following items shall be submitted with the Site Plan:

(a) A survey of all existing structures, buildings and utility structures within the Town outlining the opportunities for the use of these existing structures and buildings as an alternative to the proposed site. The applicant must demonstrate that the proposed wireless communications facility cannot be accommodated on an existing structure, building or utility structure. In the event that location on an existing structure, building or utility structure is not feasible, a written statement of the reasons for the unfeasibility shall be submitted to the Planning Board. The

Planning Board may hire an independent technical expert in the field of radio frequency engineering, to verify if location on an existing structure, building or utility structure is not feasible and to evaluate the need for the proposed facility. The cost for such a technical expert shall be at the expense of the applicant and shall be fair and in line with similar costs in other communities. The failure of an applicant to demonstrate a good faith effort to co-locate may be grounds for denial of the special use permit.

(b) A town-wide map showing the locations of all existing and future wireless communications facilities in the Town for this carrier. The applicant must demonstrate the need for the proposed facility showing the impracticality of upgrading or expanding an existing site. The Planning Board may hire an independent technical expert in the field of RF engineering, to evaluate the impracticality of upgrading an existing site. The cost for such a technical expert shall be at the expense of the applicant and shall be fair and in line with similar costs in other communities. The failure of an applicant to demonstrate a good faith effort to demonstrate the impracticality of upgrading or expanding an independent site may be grounds for denial of a special use permit.

(c) Proof that the applicant or co-applicant is an FCC licensed carrier and has a legal right to install and use the proposed site.

(d) A statement, certified by a professional engineer, that the installation of the proposed antenna, including reception and transmission functions, will not interfere with the radio or television service enjoyed by adjacent residential and nonresidential properties or with public safety communications.

(e) Title of Site Plan, boundaries, location maps showing site's location in the Town, date, north arrow and scale of the plan.

(f) Name and Address of the owner of record, developer, and seal of the engineer, architect, surveyor or landscape architect.

(g) Name and address of all owners of record of abutting parcels and those within five hundred (500) feet of the property line.

(h) All existing lot lines, easements and rights-of-way. Include areas in acres or square feet, abutting land uses, and the location and size of structures within five hundred (500) feet of the site.

(i) The applicant shall submit documentation on the intent and capacity of use as well as justification for any clearing required.

(j) Structural Engineering Report. A report prepared by a New York State licensed professional engineer indicating the ability of the existing structure to accept the antenna or other equipment, the proposed method of affixing the

antenna and equipment to the structure, and the precise point at which the antenna and equipment shall be mounted.

(k) Proposed location of antenna, mount and equipment shelter(s), with total elevation dimensions and AGL of the highest point.

(l) Proposed security barrier, indicating type and extent as well as point of controlled entry.

(m) Drawings, dimensioned and to scale, which show the ultimate appearance and operation of the wireless communications facility at full buildout, including representations of the proposed mount, antennas, equipment shelters, cable runs, driveways, parking areas and any other construction or development attendant to the wireless communications facility. If the security barrier will block views of the wireless communications facility, the barrier drawing shall be cut away to show the view behind the barrier.

(n) Materials of the proposed facility specified by the generic type and specific treatment. These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier.

(o) Colors of the proposed facility represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier.

(p) Landscape plans showing existing trees and shrubs, by dominant species and current height and those proposed to be added, identified by size of specimen at installation and species.

(q) The following material shall be provided to allow the Planning Board to determine the level of visual impact and the appropriateness of the facility:

[1] Existing (before condition) color photographs of views of the site from key viewpoints both inside and outside of the Town including but not limited to : state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, scenic roads and scenic viewsheds identified in the Town of Poland Comprehensive Plan and from any other location where the site is visible to a large number of residents or visitors. The Planning Board shall determine the appropriate key viewpoints from which the site shall be photographed.

[2] Proposed (after condition) simulations. Each of the existing condition photographs shall have the proposed wireless communications facility superimposed on to it to show what would be seen from the key viewpoints if the proposed facility is built.

(r) Within 21 days of filing an application for a Special Use Permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the Town at least 14 days, but not more than 21 days prior to the test.

(s) A photometric plan of all lighting on the site, including tower lighting if required.

(2.1) The Planning Board or Zoning Board of Appeals may waive one or more of the application filing requirements of this section if it finds that such information is not needed for a thorough review of a proposed wireless communications facility, based upon a specific request by the applicant.

(2.2) The Planning Board shall, within thirty (30) days of a site plan application being filed begin the review process. If the application is inadequate or lacking information the Planning Board may request further information from the applicant.

(2.3) Referrals to Other Agencies and Boards

a. Coordinated Review: The Planning Board may refer the site plan for review and comment to local, and county officials or their designated consultants, and to representatives of federal, state and county agencies, including but not limited to, the Soil Conservation Service, the New York State Department of Transportation, the State Department of Environmental Conservation, and the state or county Department of Health, whichever has jurisdiction.

b. Required Referral: Whenever any Site Plan involves real property in an area described in Section 239-m of the General Municipal Law, said Site Plan shall be referred to the Chautauqua County Planning Board for their review and approval pursuant to Section 239-m of the General Municipal Law.

(2.4) SEQR Compliance

After the site plan has been accepted as complete, the applicant shall demonstrate compliance for any actions subject to SEQR prior to site plan approval. The Planning Board shall classify the application according to the New York State Environmental Quality Review Act, and review Environmental Assessment Form decide:

a. If additional information is needed to render a determination of significance. The Planning Board will specify exactly what the applicant needs to supply *OR*

b. If the information is provided and the project is identified as having small to moderate impacts with little significance, then a negative declaration can be given *OR*

c. If an action has been identified as having a large and significant impact, then a positive declaration shall be determined and a full EIS will be provided.

(2.5) Public Hearing on Site Plan

The Planning Board may, at its discretion, hold a public hearing on the application if a Special Use Permit is not required. In the event a Special Use Permit is required, the Planning Board shall hold a public hearing on the Site Plan. The Planning Board shall mail notice of the public hearing to the applicant at least ten (10) days before the public hearing and shall give public notice of said hearing in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing.

(2.6) Planning Board Action on Site Plan

The Planning Board shall make a decision on the application within sixty (60) days after the public hearing. If no public hearing is held, a decision on the application shall be made by the Planning Board within 60 days of the receipt of a complete site plan application. The Board shall render its decision to either, approve, approve with modifications, or disapprove the site plan. The decision of the Board shall be filed in the office of the Town Clerk and a copy mailed to the applicant.

a. Approval: Upon approval of the site plan and payment by the applicant of all fees and reimbursable costs due to the Town, the Planning Board shall endorse its approval on a copy of the site plan and shall immediately file the site plan and a written statement of approval with the Town Clerk. A copy of the written statement of approval shall also be sent to the building inspector.

b. Approval with Modifications: The Planning Board may approve the site plan and require that specific modifications be made. A copy of the written statement of approval containing the modifications required by the Planning Board shall be mailed to the applicant. Upon approval, and after payment by the applicant of all fees and reimbursable costs due to the Town, the Planning Board shall endorse its approval on a copy of the site plan and shall immediately file the site plan and a written statement of approval with modifications with the Town Clerk. A copy of the written statement of approval with modifications shall also be sent to the building inspector.

c. Disapproval: Upon disapproval of the site plan, the decision of the Planning Board shall be filed with the Town Clerk and a copy thereof mailed to the applicant. A copy of the written statement of disapproval shall also be sent to the building inspector.

(3) Application Filing Requirements, Special Use Permit. Applicants for a special use Permit for a wireless communications facility shall fulfill the requirements of a Type 1 action under SEQRA and submit a copy of the site plan with the Planning Board's approval endorsed thereon. Applicants shall also comply with and be subject to all requirements for Special Use Permits under the Town of Poland Zoning Ordinance.

SECTION 13.

APPLICATION FEE

(1) Application fee. In addition to other relevant fees outlined in the Town of Poland Fee Schedule, the applicant shall pay an application fee of \$1500 for wireless communications facilities requiring Site Plan approval and \$2500 for wireless communications facilities requiring a Special Use Permit, or other amount for application fees as indicated in the Town of Poland Fee Schedule, due upon submission of the application to the Planning Board, to defray the costs of review of the application by the Town.

(2) Consultant Fees. The Planning Board and/or Zoning Board of Appeals may retain consultants to assist in reviewing the application, its renewal, or an application for a variance related to a pending application, with consultant fees to be paid by the applicant. These consultants may include the Town Engineer, Town Planner, the Town's Attorney, one or more commercial communication facility consultants, or other consultants, or other consultants as determined by the Planning Board and/or Zoning Board of Appeals. At the beginning of the review process the applicable board may require the applicant to fund a separate escrow account from which the Town may draw to ensure reimbursement of consultant fees. During review of the application, the applicable board may require the applicant to add funds to the escrow account, as the applicable board deems necessary. If the required funds are not added to the escrow account, review of the application by the applicable board shall be suspended until such time, if any, as payment of said funds is made. Any remaining funds in the escrow account after payment of all consultant fees will be returned to the applicant.

SECTION 14.

MODIFICATIONS

(1) Modifications. A modification of a wireless communications facility may be considered equivalent to an application for a new facility and will require a Special Use Permit when the following events apply:

- (a) The applicant intends to alter the terms of the Special Use Permit by changing the number of facilities permitted on site or by changing the technology used for the facility.
- (b) The applicant intends to add any equipment or additional height not specified in the original special use permit.

SECTION 15.

MONITORING AND MAINTENANCE

The applicant shall maintain the wireless communications facility in good condition, including, but not limited to: structural integrity of the mount and security barrier, painting, maintenance of stealth technology camouflaging, and maintenance of the buffer areas and landscaping. Communications facilities over one hundred feet (100') in height shall be inspected annually by a professional engineer approved by the Planning Board, at

the owners expense, and a copy of the inspection report submitted to the Town of Poland Building Inspector.

SECTION 16. ABANDONMENT OR DISCONTINUANCE OF USE

(1) Any wireless communications facility that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of the facility shall physically remove it within 90 days of a receipt of notice. "Physically remove" shall include, but not be limited to:

- (a) Removal of antennas, mount, equipment shelters and security barriers from the subject property.
- (b) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
- (c) Restoring the location of the facility to its natural condition, with the exception of landscaping and grading

(2) If the carrier fails to remove the facility in accordance with this section of the Zoning Law, the Town will have the authority to enter the property and remove the facility with the costs of removal assessed against the property owner. The property owner shall be notified by lessee that the failure to remove the tower in accordance with this section may result in the property owner having to pay the expense of removal.

SECTION 17. TERM OF SPECIAL USE PERMIT

A special use permit issued for any wireless communications facility shall be valid for 10 years. At the end of that period, the wireless communications facility shall be removed by the carrier or a new special use permit shall be required. In reviewing the new application for a special use permit, the Planning Board shall determine whether the technology in the provision of the facility has changed such that the necessity for the permit at the time of its approval has been eliminated or modified, and whether the permit should be modified or terminated as a result of any such change.

SECTION 18. INSURANCE

Facilities shall be insured by the owner(s) of the towers and/or the antennas thereon against damage to persons or property. The owner(s) of the towers and/or antennas thereon shall provide annually to the Town Clerk a Certificate of Insurance in the minimum amount of \$1,000,000 or a higher amount if required by the Planning Board in consultation with the Town Board, in which the Town of Poland shall be an additional named insured. This insurance shall insure against damage or loss arriving from all structures, towers or antennas on the property.

SECTION 19.

EFFECTIVE DATE

This local law shall take effect ten days after it is filed, as provided in section twenty-seven of the Municipal Home Rule Law.