

WIRELESS COMMUNICATION TOWER
ORDINANCE
WILKES COUNTY, NORTH CAROLINA

This Ordinance is re-recorded this 24th day of October, 2000, in order to attach Appendix "C" thereto, the same having been inadvertently omitted upon initial

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WIRELESS COMMUNICATION TOWER ORDINANCE
WILKES COUNTY, NORTH CAROLINA

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WIRELESS COMMUNICATION TOWER ORDINANCE

WILKES COUNTY, NORTH CAROLINA

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF WILKES IN REGULAR SESSION ASSEMBLED:

SECTION 1.1 TITLE

This Ordinance shall be known and may be cited as the Wilkes County Wireless Communication Tower Ordinance.

SECTION 1.2 AUTHORITY AND ENACTMENT

This Ordinance is enacted pursuant to the general police powers granted to Wilkes County under G.S. §153A-121, the zoning authority granted to Wilkes County under G.S. §§153A-340, et seq., the authority granted by Section 704 of the Federal Telecommunications Act of 1996, and Title 47 of the United States Code.

SECTION 1.3 JURISDICTION

From and after the date of adoption of this Ordinance the provisions of the same shall apply to all areas of Wilkes County outside the jurisdictions (including extraterritorial jurisdictions properly adopted pursuant to G.S. § 160A-360) of any municipalities in Wilkes County

SECTION 1.4 EFFECTIVE DATE

The effective date of this Ordinance shall be its date of adoption by the Wilkes County Board of Commissioners.

SECTION 1.5 EFFECT ON MORATORIUM

As of the effective date of this Ordinance, any moratorium then in effect on the construction of wireless communication towers within the jurisdiction of said Ordinance shall be deemed repealed and of no further force or effect.

SECTION 1.6 PURPOSES

Wilkes County desires to encourage the orderly development of wireless communication technologies for the benefit of the County and its citizens. The County also recognizes the need to protect the character and appearance of its communities.

As a matter of public policy the County desires to encourage the delivery of new wireless technologies throughout the County while controlling the proliferation of communication towers. Such development activities will promote and protect the health, safety, prosperity and general welfare of persons living in Wilkes County.

Specifically, the Wireless Communication Facility Development Standards set forth hereinbelow are designed to achieve the following:

- (a) Provide a range of locations for Wireless Communication Facilities throughout the County; and
- (b) Encourage the location of Wireless Communication Facilities onto existing structures to reduce the number of new communication towers needed within Wilkes County; and
- (c) Encourage co-location and site sharing of new and existing Wireless Communication Facilities; and
- (d) Control the type of tower facility constructed when towers are permitted; and
- (e) Establish adequate development and design criteria to enhance the ability of providers of telecommunications services to provide service to the community quickly, effectively, and efficiently; and
- (f) Protect residential areas, historic preservation areas, and scenic corridors from the uncontrolled development of Wireless Communication Facilities by requiring reasonable siting conditions; and
- (g) Promote the use of suitable lands for the location of wireless antennae, towers, and/or Wireless Communication Facilities; and
- (h) Insure the harmonious, orderly, and efficient growth and development of Wireless Communication Facilities within the County; and
- (i) Enhance the economy of the County through the continued use of the County's public resources; and
- (j) Provide development standards for the development of Wireless Communication Facilities which are consistent with the requirements of the Federal Telecommunications Act of 1996 and in the best interest of the future of Wilkes County; and
- (k) Provide clear performance standards addressing the siting of Wireless Communication Facilities; and
- (l) Streamline and expedite the permitting procedures to effect compliance with the Federal Telecommunications Act of 1996.

SECTION 1.7 INTRODUCTORY PROVISIONS AND DEFINITIONS

THE INTRODUCTORY PARAGRAPH OF ARTICLE IV OF THE WILKES COUNTY ZONING ORDINANCE IS HEREBY AMENDED TO READ AS FOLLOWS:

For the purpose of interpreting this Ordinance, the Amended Wilkes County Watershed Protection Ordinance (Article XV hereof), and the Wilkes County Wireless Communication Tower Ordinance (Article XVI hereof), certain words or terms are herein defined. The following words shall, for the

purpose of this Ordinance, the Amended Wilkes County Watershed Protection Ordinance, and the Wilkes County Wireless Communication Tower Ordinance, have the meaning herein indicated.

ARTICLE IV, SECTION 40.3 OF THE WILKES COUNTY ZONING ORDINANCE IS HEREBY AMENDED TO READ AS FOLLOWS:

40.3 The word "person" includes an individual, corporation, trust, estate, partnership (whether general or limited), joint venture, association, limited liability company, or any other legal entity.

ARTICLE IV, SECTION 41 OF THE WILKES COUNTY ZONING ORDINANCE IS HEREBY AMENDED BY ADDING THE FOLLOWING DEFINITIONS:

Antenna Array. One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel), and parabolic antenna (disc). The Antenna Array does not include the Support Structure.

Attached Wireless Communication Facility. An Antenna Array that is attached to an existing building or structure (Attachment Structure), which structures shall include but not be limited to utility poles, signs, water towers, rooftops, or towers, with any accompanying pole or device (Attachment Device) which attaches the Antenna Array to the existing building or structure and associated connection cables, and an Equipment Facility which may be located either inside or outside of the Attachment Structure.

Board of Adjustment. The Wilkes County Board of Adjustment as established under this Ordinance.

Board of Commissioners. The Wilkes County Board of Commissioners.

Co-location/Site Sharing. The use of a common Wireless Communication Facility or common site by more than one wireless communication permit holder or by one wireless communication permit holder for more than one type of communications technology and/or placement of an Antenna Array on a structure owned or operated by a utility or other public entity.

Equipment Facility. Any structure used to contain ancillary equipment for a Wireless Communication Facility which includes cabinets, shelters, a build-out of an existing structure, pedestals, and other similar structures.

Existing Vegetative Canopy. The existing vegetative plants, trees, and shrubs located within a proposed Support Structure's fall area that will provide natural camouflage and concealment of said Support Structure after construction.

FAA. The Federal Aviation Administration.

FCC. The Federal Communications Commission.

FTA. The Federal Telecommunications Act of 1996.

Height. With reference to a Wireless Communication Facility, the vertical distance measured from the base of the tower or other Support Structure (at ground level) to the

highest point on the Wireless Communication Facility, including the Antenna Array and other attachments.

Planning Board. The Wilkes County Joint Planning Board.

Planning Department. The Wilkes County Planning Department.

Protected Mountain Ridge. A ridge the crest of which is 3,000 feet or more above sea level.

Setback. For purposes of Article XVI of the Wilkes County Zoning Ordinance, the required distance from the property line of the parcel on which 'the Wireless Communication Facility is located to the base of the Support Structure and equipment shelter or cabinet where applicable, or, in the case of guy-wire supports, the guy anchors.

Support Structure. A structure designed and constructed specifically to support an Antenna Array, such as a monopole, self supporting (lattice) tower, guy-wire-support tower, or other similar structure. Any device (Attachment Device) which is used to attach an Attached Wireless Communication Facility to an existing building or structure (Attachment Structure) shall be excluded from the definition of and regulations applicable to Support Structures.

Temporary Wireless Communication Facility. A Wireless Communication Facility to be placed in use for ninety (90) or fewer days.

Tower and Antenna Use Application (TAA). A form provided to the applicant by the County for the applicant to specify the location, construction, use, and compliance with the development standards of a proposed Wireless Communication Facility, together with such other information as is required under Article XVI of the Wilkes County Zoning Ordinance.

Wireless Communications. Any personal wireless services as defined in the FTA, which includes FCC licensed commercial wireless telecommunications services such as cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services.

Wireless Communication Facility. Any unstaffed facility for the transmission and/or reception of wireless telecommunications services, usually consisting of an Antenna Array, connection cables, an Equipment Facility, and a Support Structure to achieve the necessary elevation.

SECTION 1.8 WIRELESS COMMUNICATION FACILITY DEVELOPMENT STANDARDS

THE WILKES COUNTY ZONING ORDINANCE IS HEREBY AMENDED BY ADDING A NEW ARTICLE XVI THERETO, TO READ AS FOLLOWS:

ARTICLE XVI I

WIRELESS COMMUNICATION FACILITY DEVELOPMENT STANDARDS

Section 160. Wireless Communication Facility Development Standards

The provisions set forth in this Article XVI shall apply to the installation, construction, attachment, alteration, and removal of facilities to accommodate wireless communication facilities, provide the criteria for evaluating such proposed activities, and provide a procedure for applying for and issuing permits for the same.

Section 161. General Provisions

- 161.1. TAA and Permit Required. No person shall install or construct any Wireless Communication Facility unless and until a TAA has been filed pursuant to the requirements of this Ordinance and a Wireless Communication Facility Special Use Permit has been duly issued.
- 161.2. Pre-existing Wireless Communication Facility. Wireless Communication Facilities which were installed prior to the effective date of this Ordinance shall be considered a non-conforming use and shall be subject to the requirements of Section 165.2 hereunder.
- 161.3. Amateur Radio Exclusion. This Ordinance shall not govern the installation of any amateur radio facility that is owned and operated by a federally licensed amateur radio station operator.
- 161.4. Relationship to Other Ordinances. To the extent the development standards contained herein conflict with other Ordinances for Wilkes County, the development standards contained herein shall control.
- 161.5. Airport Restrictions. Notwithstanding Section 161.4 above, any Wireless Communication Facility located or proposed to be located in areas subject to FAA or other federal, state, or local aviation laws, rules, regulations, or ordinances shall comply with the same, including but not limited to the Wilkes County Height Restriction Zoning Ordinance.
- 161.6. Building Code. Construction, alteration, repair, and removal of all Wireless Communication Facilities shall comply with the requirements of the North Carolina State Building Code and local modifications, to the same, including all processes for the issuance of building permits. No building permit shall be issued by the Wilkes County Inspections Department for construction or alteration of a Wireless Communication Facility unless a Wireless Communication Facility Special Use Permit for the same has been issued hereunder.

Section 162. Preferred Locations For Wireless Communication Facilities And Applicability

Wireless Communication Facilities may be allowed within Wilkes County as follows:

- 162.1. Antenna Attachments. Antenna attachments onto an existing Support Structure or onto an Attached Wireless Communication Facility shall be permitted by administrative approval under Section 164.4, subject to the development standards of Section 163.
- 162.2. Property Identified in Appendix "C". Antenna attachments or Wireless Communication Facilities with support structures on property identified in Appendix "C" shall be permitted by administrative approval under Section 164.4, subject to the development standards of Section 163.

162.3 Other Property. Wireless Communication Facilities with support structures on property not identified in Appendix "C" shall be permitted by means of approval under Section 164.5, subject to the development standards of Section 163.

Section 163. Development Standards

Development standards for Wireless *Communication* Facilities shall be as follows:

163.1 Height Standards. The following height standards shall apply to all Wireless Communication Facility installations:

- a. Attached Wireless Communication Facilities shall not add more than twenty (20) feet to the height of the existing building or structure to which they are attached (Attachment Structure). However, antenna attachments to existing communication towers shall not increase the height of the tower above the maximum original permitted height of that tower.
- b. Wireless Communication Facilities with Support Structures on property identified in Appendix "C" shall have a maximum height as set forth therein.
- c. Wireless Communication Facilities with Support Structures on property not identified in Appendix "C" shall have a maximum height of 199 feet.

163.2 Setback Standards. The following standards for setbacks (as defined in Section 4 of the Wilkes County Zoning Ordinance) shall apply to all Wireless Communication Facility installations:

- a. For Wireless Communication Facilities with Support Structures, the setback shall be equal to one hundred percent (100%) of the height (as defined in Section 41 of the Wilkes County Zoning Ordinance) of the Wireless Communication Facility; provided, however, that this requirement may be modified or waived by the Planning Department or the Planning Board, as the case may be, upon submission of a written instrument signed by all adjoining property owners and duly notarized, agreeing to such modification or waiver.
- b. For Attached Wireless Communications Facilities, no setback shall be required; provided, however, that an Attached Wireless Communication Facility Antenna Array shall extend no more than thirty (30) inches horizontally beyond the edge of the Attachment Structure or past the boundary line of an adjoining parcel of land, whichever shall be less.
- c. In the event a Wireless Communication Facility of any type is located in a zoning district under the Wilkes County Zoning Ordinance, then, as between the setback requirement for said district and the setback requirement under this Section 163.2, the more restrictive requirement shall apply.

163.3 Landscaping. The following landscaping requirements shall be maintained by the applicant and shall apply to all Wireless Communication Facility installations:

- a. New Construction. New Wireless Communication Facilities with Support Structures and Attached Wireless Communication Facilities with new building construction shall be landscaped with a minimum landscaped area of ten (10) feet around the perimeter of the security fence meeting the following standards:
 - (i) One row of evergreen trees with a minimum caliper of 1.75 inches shall be installed with a maximum spacing of 25 feet.

- (ii) Evergreen shrubs capable of creating a continuous hedge and obtaining a height of at least five (5) feet shall be planted with a maximum spacing of five (5) feet. Plants shall be at least three (3) gallon container plants or 24 inches tall at the time of planting.
 - (iii) All plants and trees shall be indigenous to western North Carolina and shall be drought resistant.
- b. Land Form Preservation. Existing mature tree growth and natural land form on the site shall be preserved to the extent feasible; provided, however, that vegetation which causes interference with the antennas or inhibits access to the Equipment Facility may be trimmed or removed.
- c. Existing Vegetation. Existing vegetation on a Wireless Communication Facility site may be used in lieu of required landscaping where approved by the Zoning Enforcement Officer.
- d. Minimum Site Disturbance. Grading for a new Wireless Communication Facility shall be minimized and limited to the area necessary for the new facility.

163.4 Aesthetics, Placement, Materials and Colors. The following standards shall apply to all new Antenna Arrays and new Wireless Communications Facilities:

- a. Attached Wireless Communication Facilities shall be designed so as to be compatible with the Attachment Structure including but not limited to matching the proposed Facility with existing structural design, facade colors, and camouflage technology.
- b. New Wireless Communication Facilities shall be designed so as to be compatible with existing structures and surroundings to the extent feasible, shall have neutral facade colors (such as gray or green), and shall utilize camouflage technology where possible.

163.5 Lighting. Wireless Communication Facilities shall not be artificially illuminated, directly or indirectly, except as follows:

- a. Security and safety lighting of Equipment Facilities is permitted if such lighting is appropriately down shielded to keep light within the boundaries of the site.
- b. Lighting of Wireless Communication Facilities is permitted if required by the FAA or other applicable authority. If so required, such lighting shall utilize a lens or shading device so as to minimize visibility from the ground.

163.6 Signage. Wireless Communication Facilities shall not display any signage, logos, decals, symbols, or any messages of a commercial or noncommercial nature, except for a small message containing provider identification and emergency telephone numbers and such other information as may be required by local State or Federal regulations governing Wireless Communication Facilities.

163.7 Fencing. Wireless Communication Facilities with Support Structures shall be enclosed by a fence not less than 8 feet in height. Nothing herein shall prevent fencing that is necessary to meet requirements of State or Federal agencies.

- 163.8 Sound. No unusual sound emissions such as alarms, bells, buzzers, or the like are permitted.
- 163.9 Structural Integrity. Wireless Communications Facilities with Support Structures shall be constructed to the Electronics Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Support Structures" (or equivalent), as the same may be updated or amended from time to time. Each Support Structure shall be capable of supporting multiple antenna arrays.
- 163.10 Co-location Support Structure Design. All Wireless Communication Facilities with a Support Structure having a height of less than 150 feet shall be engineered and constructed so as to accommodate at least three (3) Antenna Array. All Wireless Communication Facilities with a Support Structure having a height of 150 feet or greater shall be engineered and constructed so as to accommodate at least four (4) Antenna Array.
- 163.11 Co-location Agreement. All applicants for Wireless Communication Facility Special Use Permits are required to submit a statement with the TAA agreeing to allow and reasonably market co-location opportunities to other Wireless Communication Facility users. The statement shall include the applicant's policy regarding co-location of other providers. This statement shall be set forth in the TAA and shall be titled "Co-location Agreement," and it shall be a condition of issuance of a Wireless Communication Facility Special Use Permit, which Permit shall not be issued unless the applicant complies with the co-location policy set forth in Section 165 of this Ordinance.
- 163.12 Construction Standards. All improvements constructed as part of a Wireless Communication Facility shall comply with the requirements of the North Carolina Building Code (including the North Carolina Fire Code), National Electrical Code, Uniform Plumbing Code, and Uniform Mechanical Code, and with the structural standards of the Electronic Industries Association/Telecommunications Industries Association, where applicable. In addition, where a monopole tower is authorized or required, all cables shall be housed inside the monopole.
- 163.13 General Location Standards. The following location standards shall apply with respect to the location of all Wireless Communication Facilities with Support Structures:
- a. No Wireless Communication Facility with a Support Structure shall be located closer than 2,640 feet from an existing Wireless Communication Facility with a Support Structure, as measured from the base of the Support Structure, equipment shelter or cabinet, or the guy anchors for guy-wire supports, whichever shall provide for the greatest distance between the Wireless Communication Facilities in question; provided, however, that this requirement may be waived by the Planning Board upon a finding that the applicant has presented sufficient information to establish that co-location on an existing Support Structure within 2,640 feet is not possible under Section 165 of this Ordinance.
 - b. No Wireless Communication Facility with a Support Structure located on a protected mountain ridge shall exceed the existing vegetative canopy's height by more than one hundred (100) feet.

- c. No Wireless Communication Facility with a Support Structure shall be located within a view area for the Blue Ridge Parkway, as determined by the National Park Service, without first consulting with and obtaining the written permission of the Parkway Superintendent. Written communication by the applicant requesting such permission shall be addressed and sent by registered or certified mail as follows:

Superintendent
Blue Ridge Parkway
199 Hemphill Knob Road
Asheville, NC 28803
Attn: Community Planner

A copy of said written communication by the applicant requesting permission from the Parkway Superintendent shall be furnished to the Planning Department as a part of the application required under Section 164.2 below. Written permission of the Parkway Superintendent shall be presented by the applicant to the Planning Department as soon as the applicant receives the same. No Permit shall be issued under this Ordinance until said written permission has been presented to the Planning Department; provided, however, that in the event the applicant has complied with those provisions for requesting written permission of the Parkway Superintendent as required above, the failure of the Parkway Superintendent to furnish a timely written response to the applicant shall, for purposes of this Ordinance, be deemed to constitute an approval of the applicant's request by the Parkway Superintendent. For purposes of the foregoing sentence, a "timely written response" is a written response to the applicant's request for permission which is furnished by the Parkway Superintendent no later than the forty-five (45) day deadline for Planning Department action under Section 164.4c. below or the forty-five (45) day deadline for Planning Board action under Section 164.5c. below, as the case may be.

163.14 Maintenance. Wireless Communication Facilities shall be maintained in a state of good repair and so as to comply with the requirements of this Ordinance at all times.

Section 164. Applications And Permits

- 164.1 Application and Permit Required. It shall be unlawful for any person to place, locate, construct, install, or modify any Wireless Communication Facility within the jurisdiction governed by this Ordinance without first having filed a Tower and Antenna Use Application ("TAA") and having been duly issued a Wireless Communication Special use Permit ("Permit") as required hereunder.
- 164.2 Applications. TAA's shall be filed with the Planning Department and shall comply with the following requirements:
 - a. Application Contents. TAA's shall be on forms prescribed by the Planning Department and shall, at a minimum, contain the following:

- (i) The name, form of entity (individual, corporation, partnership, etc.), address, telephone number, and facsimile machine number of the applicant.
- (ii) If different from (i), the owner of the property on which the Wireless Communication Facility is to be placed located, constructed, installed, or modified, and the owner's address, telephone number, and facsimile machine number.
- (iii) The Wilkes County PIN number for the property, together with a deed reference (by book and page number from the Wilkes County Register of Deeds Office), if available, for the same.
- (iv) If (i) and (ii) are different, the nature of the written instrument (lease, sublease, memorandum of the same, etc.) by which the applicant has secured the owner's or current lessee's permission to use the property for a Wireless Communication Facility.
- (v) The watershed and zoning designation (including under the Wilkes County Airport Height Restriction Zoning Ordinance), if any, for the property.
- (vi) A statement indicating whether the requested Permit is for:
 - (1) An Attached Wireless Communication Facility (with or without new building construction), or
 - (2) A Wireless Communication Facility with a Support Structure which is to be located on property identified in Appendix "C," or
 - (3) A Wireless Communication Facility with a Support Structure which is to be located on property not identified in Appendix "C," or
 - (4) A modification to a Wireless Communication Facility for which a Permit has been previously issued under this Ordinance, or other (describe) by the applicant.
- (vii) If the requested Permit is for a use under subdivisions (vi)(2) or (vi)(3) above, a detailed description by the applicant of the reason(s) why co-location is not possible as required by Section 165 of this Ordinance.
- (viii) If the requested Permit is for a use under subdivision (vi)(3) above, a detailed description by the applicant of the reason(s) why location on property identified in Appendix "C" cannot be made suitable for the proposed Wireless Communication Facility.
- (ix) Certifications that:

- (1) The Wireless Communication Facility for which the Permit is being requested will at all times comply with the applicable development standards under Section 163 of this Ordinance.
 - (2) The Applicant has not constructed, maintained, operated or modified any Wireless Communication Facility within Wilkes County's zoning jurisdiction without the approval of Wilkes County.
 - (3) If the Applicant has constructed, maintained, operated or modified any Wireless Communication Facility within Wilkes County's zoning jurisdiction without the approval of Wilkes County, it has ceased operating and has removed all above-ground portions of such facilities (not including any part of the foundation).
 - (4) No Permit issued to the applicant under this Ordinance, or under any successor Ordinance hereto, has ever been revoked.
 - (5) The proposed Wireless Communication Facility complies with, and at all times will be maintained and operated in accordance with, all applicable FCC rules and regulations with respect to electromagnetic and/or radio frequency emissions.
 - (6) Any telecommunication tower to be constructed as part of the proposed Wireless Communications Facility is not required to be lighted or painted by rules and regulations of the Federal Aviation Administration.
 - (7) All improvements constructed as part of the Wireless Communication Facility shall comply with the Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, Uniform Fire Code, and structural standards of the Electronic Industries Association/Telecommunications Industry Association, where applicable.
- (x) The Co-location Agreement required by Section 163.11 above.
 - (xi) If applicable, a copy of the applicant's written communication to the Superintendent of the Blue Ridge Parkway as required under Section 163.13c. above.
 - (xii) The date the TAA is submitted to and received by the Planning Department.
- b. Additional Documents and Information. Each applicant filing a TAA under this Ordinance shall submit together therewith a sealed complete set of drawings prepared by a licensed surveyor and architect/engineer that will include a plat, site plan,

elevation view, and other supporting drawings, calculations, and other documentation showing the location and dimensions of the Wireless Communication Facility and all improvements associated with the same, including information concerning specifications, antenna locations, equipment facility and shelters, landscaping, parking, access, fencing, location on protected mountain ridges or within a viewshed of the Blue Ridge Parkway (if applicable), and, if relevant as determined by staff, topography, adjacent uses, and existing vegetation. Where the applicant and the owner of the property are different, the applicant shall also submit a copy of the lease, memorandum of lease, or other written instrument by which the applicant has secured the owner's permission to use the property for a Wireless Communication Facility.

- c. FCC License Required. The applicant for a Wireless Communication Facility Special Use Permit must currently be licensed by the FCC to provide fixed or mobile wireless communication services or, if the applicant is not such an FCC licensee, must demonstrate that it has binding commitments from one or more FCC licensees to utilize the proposed Wireless Communication Facility. An application for a Permit shall not be deemed complete unless it is accompanied by a copy of each applicant's or tenant's FCC license and, if the applicant is not an FCC licensee, the Zoning Administrator shall verify that the applicant holds executed leases from each FCC licensee proposing to locate Wireless Communication Facilities at the site. If a copy of an FCC license has previously been supplied to the Zoning Administrator in conjunction with an application for a Wireless Communication Facility, the applicant may certify that such license remains valid in lieu of submitting an additional copy of such license. A copy of FCC form 854, Application for Antenna Structure Registration, or the same information in a similar format if the tower is not subject to FCC registration, shall be submitted together with the application. Any information on form 854 may be referenced on other documents.
- d. Liability Insurance. Prior to the issuance of a Wireless Communication Facility Special Use Permit, the applicant shall be required to provide a certificate of insurance demonstrating it has a minimum of \$1,000,000 in general liability insurance covering any liability arising out of its construction or operation of the Wireless Communication Facility and naming the owner of the property as an additional insured there under. The applicant shall be required to maintain such coverage in full force and effect until such time as all above ground portions of the Facility (not including any part of the foundation) have been removed and all other conditions of its Maintenance/Removal Agreement have been satisfied.
- e. Application Fee. An application fee shall accompany each application, in such amount as shall have been approved by the Board of Commissioners, and shall be made payable to the County of Wilkes.
- f. Additional Technical Assistance and Fees. In the course of its consideration of an application, the County may deem it necessary to employ an engineer(s) or other consultant(s) qualified in the design and installation of Wireless Communication Facilities to assist the County in the technical aspects of the application. In such case any additional reasonable costs incurred by the County for the technical review and recommendation shall be reimbursed by the applicant directly to the County (and submitted to the Planning Department) prior to the issuance of a Permit, or, at the Planning Department's election, paid to the County by the applicant prior to the County's incurring said costs (based on such estimate of said costs as shall have been obtained by the Planning Department).

- g. Copies. The applicant shall, when submitting any documents or other written information (including TAA's) required under this Section 164.2, furnish to the Planning Department the following number of copies of the same:
 - (i) For TAA's subject to administrative review under Section 164.3a., two (2) copies.
 - (ii) For TAA's subject to Board review under Section 164.3b., ten (10) copies.

164.3 Review Process. The review process for issuance of Wireless Communication Facility Special Use Permits shall be as follows:

- a. Administrative Review. The following shall be subject to the administrative review process under Section 164.4:
 - (i) TAA's requesting a Permit for an Attached Wireless Communication Facility (with or without new building construction)
 - (ii) TAA's requesting a Permit for a Wireless Communication Facility with a Support Structure which is to be located on property identified in Exhibit "C".
 - (iii) TAA's requesting a Permit for a modification to a Wireless Communication Facility for which a Permit has been previously issued under this Ordinance.
- b. Planning Board Review. The following shall be subject to the Planning Board review process under Section 164.5:
 - (i) TAA's requesting a Permit for a Wireless Communication Facility with a Support Structure which is to be located on property not identified in Exhibit "C."
 - (ii) TAA's requesting a Permit for all other uses not set forth in subdivision a. above.

164.4 Permits - Administrative Review. The issuance of Wireless Communication Facility Special Use Permits subject to administrative review shall be governed by the following provisions:

- a. Review Authority. The TAA and all additional documents and information shall be submitted to the Planning Department which shall review the same for compliance with all requirements of this Ordinance. The Planning Department may, in its discretion, obtain additional technical assistance to review and assess the technical aspects of the TAA, in accordance with Section 164.2f. above.
- b. Review Criteria. The Planning Department shall, in accordance with subsection c. below, review the TAA and all additional documents and information in order to determine whether the TAA and the proposed Wireless Communication Facility meet the requirements of this Ordinance.
- c. Planning Department Action. The Planning Department shall, within forty-five (45) days of receipt of the TAA, complete its review and notify the applicant in writing as to what action has been taken with respect to the same. Action by the Planning Department shall consist of one of the following:

- (i) If the Planning Department determines that the requested Permit does not fall within the administrative review provisions of Section 164.3a., the TAA and all additional documents and information shall be forwarded for Planning Board review as required by Section 164.3b.
- (ii) If the Planning Department determines that the requested Permit falls within the administrative review provisions of Section 164.3a. but that the TAA or the proposed Wireless Communication Facility, or both, fails to meet one or more of the requirements of this Ordinance, the application for a Permit shall be denied. Written notification of the denial from the Planning Department to the applicant shall note the reason(s) for the denial and shall refer to the specific section(s) of this Ordinance with which the TAA or proposed Wireless Communication Facility does not comply. The applicant shall have sixty (60) days from receipt of said written notification to bring the TAA and proposed Wireless Communication Facility into compliance, in which event the provisions of subdivision (iii) shall apply. If the applicant fails to do so within said period of sixty (60) days, the applicant shall be required to file a new TAA, or, in the alternative, the applicant may file an appeal under subsection d. below. The Planning Department shall provide written notification to the applicant as to the Planning Department's decision with regard to any attempts by the applicant to bring the TAA or proposed Wireless Communication Facility into compliance.
- (iii) If the Planning Department determines that the required Permit falls within the administrative review provisions of Section 163.3a. and that the TAA and proposed Wireless Communication Facility meet all of the requirements of this Ordinance, the Planning Department shall issue a Permit to the applicant.
- (iv) If the Planning Department fails within the above stated period of forty-five (45) days to notify the applicant as to what action has been taken, the TAA shall be deemed approved and a Permit shall be issued to the applicant. For purposes of this Section 164.4, the date of notification shall be the date on which the same is mailed, faxed, or otherwise sent or delivered to the applicant.

All Permits hereunder are issued on the condition that they are and shall remain subject to the holder's continued compliance with those certifications contained in the TAA and with the requirements of this Ordinance. No Permit may be assigned or transferred by the holder to any other person.

- d. Appeal. An applicant whose request for a Permit has been denied at any point under subsection c.(ii) above may appeal the denial by applying for Planning Board review under Section 164.5.

164.5 Permits - Planning Board Review. The issuance of Wireless Communication Facility Special Use Permits subject to Planning Board review shall be governed by the following provisions:

- a. Review Authority. The TAA and all additional documents and information shall be submitted to the Planning Department, which shall forward the same for initial review by the Planning Board at the Planning Board's next regularly scheduled meeting occurring more than ten (10) days after submission of the TAA. The Planning Department shall provide such assistance as shall be required by the Planning Board in the Planning Board's review of the TAA. The Planning Board may, in its discretion, also obtain additional technical assistance to review and assess the technical aspects of the TAA in accordance with Section 164.2f. above.
- b. Review Criteria. The Planning Board shall, in accordance with subsection c. below, review the TAA and all additional documents and information in order to determine whether the TAA and the proposed Wireless Communication Facility meet the requirements of this Ordinance.
- c. Planning Board Action. The Planning Board shall, no later than forty-five (45) days following its initial review under Section 164.5a. above, complete its review and cause the Planning Department to notify the applicant in writing as to what action has been taken with respect to the same. Action by the Planning Board shall consist of one of the following:
 - (i) If the Planning Board determines that the TAA or the proposed Wireless Communication Facility, or both, fails to meet one or more of the requirements of this Ordinance, the application for a Permit shall be denied. Written notification of the denial from the Planning Board to the applicant shall note the reason(s) for the denial and shall refer to the specific section(s) of this Ordinance with which the TAA or proposed Wireless Communication Facility does not comply. The applicant shall have sixty (60) days from receipt of said written notification to bring the TAA and proposed Wireless Communication Facility into compliance, in which event the provisions of subdivision (ii) shall apply. If the applicant fails to do so within said period of sixty (60) days, the applicant shall be required to file a new TAA. The Planning Board shall provide written notification to the applicant as to the Planning Board's decision with regard to any attempts by the applicant to bring the TAA or proposed Wireless Communication Facility into compliance.
 - (ii) If the Planning Board determines that the required Permit falls within the administrative review provisions of Section 163.3a. and that the TAA and proposed Wireless Communication Facility meet all of the requirements of this Ordinance, the Planning Board shall issue a Permit to the applicant.
 - (iii) If the Planning Board fails within the above stated period of forty-five (45) days to notify the applicant as to what action has been taken, the TAA shall be deemed approved and a Permit shall be issued to the applicant. For purposes of this Section 164.4, the date of notification shall be the date on which the same is mailed, faxed, or otherwise sent or delivered to the applicant.

All Permits hereunder are issued on the condition that they are and shall remain subject to the holder's continued compliance with those certifications contained in the TAA and with the requirements of this Ordinance. No Permit may be assigned or transferred by the holder to any other person.

- d. Appeal From Decision of Planning Board. The decision of the Planning Board approving or disapproving a TAA and issuance of a Permit may be appealed to Wilkes County Superior Court by any person aggrieved by the same and shall be subject to review by proceedings in the nature of certiorari. Appeal shall be in writing and shall be tiled with the Superior Court within thirty (30) days after the decision of the Planning Board is made.

164.6 Revocation of Permits.

- a. Revocation Procedure. A Permit issued pursuant to this Ordinance may be revoked after a hearing as provided hereinafter. If the Planning Director or designee finds that any Permit holder has violated any provision of this Ordinance or condition of the Permit, the Planning Director or designee shall notify the Permit holder in writing that the Permit is revocable due to the Permit holder's violation, which notification shall describe the violation with reference to the specific section(s) of this Ordinance which is/are applicable. The Planning Director or designee may require the Permit holder to correct the violation within a reasonable amount of time (not to exceed 60 days) or may recommend to the Planning Board that the Permit be revoked. Should the Permit holder fail to correct all violations in the time required, or should the Planning Director or designee recommend revocation of the Permit, the Planning Board shall convene a public hearing to consider revocation of the Permit. The hearing shall be conducted pursuant to notice by publication in a newspaper with general circulation in the County not less than 10 days prior to the hearing and by 10 days' written notice to the Permit holder. At any such hearing, the Permit holder may be represented by an attorney and may cross-examine opposing witnesses. Other interested persons may comment. The Planning Board may impose reasonable restrictions with respect to time and procedure. The proceedings shall be recorded; provided, however, that stenographic services, if desired, shall be provided by the requesting party at that party's expense. If the Planning Board finds that the Permit holder has violated any provision of this Ordinance or condition of the Permit, the Planning Board shall either revoke the Permit, or, if the Planning Director or designee has not already done so, require the Permit holder to correct the violation(s) within a reasonable amount of time (not to exceed 60 days). Failure of the holder to so correct the violation(s) within the required time as ordered by the Planning Director or designee or by the Planning Board shall be grounds for revocation of the Permit. If the order to correct violations was issued by the Planning Board, a second public hearing shall be held upon the same notice and procedure as set forth above. If the Planning Board finds that the Permit holder has failed to correct all violations as required, it may revoke the Permit or take such other action as it deems appropriate. All findings and actions by the Planning Board under this Section 164.6 shall be noted in the Board's minutes, and, where applicable, reference shall be made to the specific section(s) of this Ordinance or condition(s) of the Permit which the holder has violated.
- b. Appeal From Decision of Planning Board. Appeal from a decision of the Planning Board revoking a Permit shall be as in Section 164.5e.

Section 165. Co-location, Non-conforming Uses, and Removal.

165.1 Co-location. A proposal for a new or additional telecommunication tower shall not be approved unless the Planning Department or the Planning Board, as the case may be, finds that the equipment planned for the proposed tower cannot be accommodated on existing or approved towers, buildings, or alternative structures within a radius of 2,640 feet of the proposed telecommunication tower site due to one or more of the following reasons:

- a. The planned equipment would exceed the structural capacity of the existing or approved tower, building or structures, as documented by a qualified and licensed North Carolina professional engineer, and the existing or approved tower, building or structure cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
- b. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower, building, or other structure as documented by a qualified and licensed North Carolina engineer and the interference cannot be prevented at a reasonable cost.
- c. Existing or approved towers, buildings, or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed North Carolina professional engineer.
- d. Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower, building or other structure.

165.2 Non-conforming Uses. Wireless Communication Facilities in existence on the date of the adoption of this Ordinance which do not comply with the requirements of the same (non-conforming Wireless Communication Facilities) are subject to the following provisions:

- a. Expansion. Non-conforming Wireless Communication Facilities may continue in use for the purpose now used, but may not be expanded without complying with this Ordinance except as further provided in this Section.
- b. Additions. Non-conforming Wireless Communication Facilities may add additional antennas (belonging to the same provider or other providers) subject to Administrative Review under this Ordinance.
- c. Repairs or Reconstruction. Non-conforming Wireless Communication Facilities which become damaged due to any reason or cause may be repaired and restored to their former use, location, and physical dimensions subject to the provisions of this Ordinance. Provided, however, that if the damage to the Wireless Communication Facility exceeds 50% of replacement cost, said Wireless Communication Facility may only be reconstructed or repaired in compliance with this Ordinance.
- d. Abandonment. Any non-conforming Wireless Communication Facility not in use for six (6) continuous months shall be deemed abandoned for purposes of this Section 165.2, and all rights as a non-conforming use shall cease.

165.3 Removal of Abandoned Support Structures. Any Support Structure that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the County, at its election, may require the Support Structure owner to remove the same within one hundred eighty (180) days after written notice from the County. If there are two or more users of a single Support Structure, this provision shall not become effective until all providers cease to use the Support Structure. If the owner of an abandoned Support Structure as set forth above cannot be located or is no longer in business, the requirements of this Section shall be the responsibility of the landowner on whose property the Support Structure is located.

Section 166. Annual Review

The Planning Board shall review this Ordinance on an annual basis and may recommend such amendments thereto, in conformity with the procedure set forth in Section 168 below, as it shall deem appropriate.

Section 167. Violations, Penalties, and Enforcement

- 167.1 The violation of any provision of this Ordinance shall be a Class 3 misdemeanor, and any person convicted of such violation shall be fined not more than \$500.00, in addition to any other penalty which may be lawfully imposed for such misdemeanor.
- 167.2 Each day's continuing violation of this Ordinance, where applicable, shall constitute a separate and distinct offense.
- 167.3 This Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction, or by an order of abatement, as provided under G.S. §153A123(d) and (e).
- 167.4 The remedies and penalties for violation of this Ordinance shall be cumulative, and the election of a remedy or enforcement of a penalty hereunder shall not preclude the election of any other remedy or enforcement of any other penalty which may be provided under this Ordinance or by law.

Section 168. Amendment Procedure

This Ordinance may be amended from time to time by the Board of Commissioners as herein specified.

- 168.1 Planning Board Review. No amendment shall become effective unless it shall have been either proposed by the Planning Board or submitted to the Planning Board by the Board of Commissioners for review and recommendation. The Planning Board shall have forty-five (45) days from the date an amendment is first submitted to it for review to make a recommendation to the Board of Commissioners. Said recommendation, or a proposal for an amendment by the Planning Board, as the case may be, shall be made by action of the Planning Board undertaken at a duly called meeting and recorded in the minutes of the meeting. The failure of the Planning Board to so act on the amendment within said forty-five (45) day period shall constitute a recommendation of approval; provided, however, that said forty-five (45) day period shall not apply where an amendment is proposed by the Planning Board.

168.2 Public Hearing. No amendment shall be adopted until the Board of Commissioners has held a public hearing on the same. Notice of the hearing shall be published in a newspaper of general circulation in the Wilkes County area at least once a week for two (2) successive calendar weeks prior to the hearing. The initial notice shall appear not more than twenty-five (25) nor less than ten (10) days prior to the hearing date. In computing the ten (10) and twenty-five (25) day periods, the date of publication is not to be counted, but the date of the hearing is. Nothing herein shall be construed to prohibit the Planning Board from calling for and holding its own public hearing on the amendment prior to making a recommendation or proposal to the Board of Commissioners, which public hearing, if called for by the Planning Board, shall be held upon the same notice requirements as set forth above, except that publication of the notice shall be required only once.

Section 169. Variances

Requests for variances shall be made and heard pursuant to Section 112.3 of the Wilkes County Zoning Ordinance. For purposes of this Section 169, references in Section 112.3 to "structures" and "buildings" shall be deemed to mean Wireless Communication Facilities, and references therein to "the same district" shall mean Wilkes County.


Section 170. Validity

Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the Ordinance as a whole or any other part thereof other than the part so declared to be unconstitutional or invalid.

ON MOTION OF JOE WOODIE, SECONDED BY JERRY SIDDEN, AND UNANIMOUSLY APPROVED, THE FOREGOING WIRELESS COMMUNICATION TOWER ORDINANCE WAS READ, APPROVED, AND ADOPTED BY THE BOARD OF COMMISSIONERS OF WILKES COUNTY, IN REGULAR SESSION ASSEMBLED, ON THE 17th DAY OF OCTOBER, 2000.

WILKES COUNTY BOARD OF COMMISSIONERS

ATTEST:


Alene Faw, County Clerk


Robert Handy, Chairman Wilkes County Board of Commissioners

APPENDIX "C"

Field Site Name	Address	Acreage	Recommendation
McGee Natural Resources	Fairplains Road	13.5	199' Monopole (Subject to N.
Airport Properties	Wood Wallace Drive	83	Height subject to Flight Path Height Ordinance
Landfill	Hwy. 268 East	140	199' Monopole
Vacant Land	Boston Ave.	29	199' Monopole (Subject to N. Wilkesboro Zoning)
Convenience Center	Mt. Carmel Road	2.9	Omit
Vacant Land	Kelly Street	2.5	199' Monopole
New River Health Center	Peace Street & Old Hwy 421	7.5	199' Monopole
New Courthouse	Courthouse Drive	123	199' Monopole
Wilkes County Offices	110 North Wood Street		199' Monopole & Roof top Attachments