ARTICLE 7

WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES

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7.00 Purpose

A. It is the purpose of this Section of the Auburn Township Zoning Resolution to regulate wireless telecommunications antennas, towers, and facilities in order to promote public health, safety, and general welfare in accordance with a comprehensive plan. Accordingly, the regulations and conditions set forth herein are warranted and necessary to:

1. Protect residential districts and land uses from potential adverse impacts of wireless telecommunications towers, antennas and facilities.

2. To accommodate the wireless telecommunications towers and facilities as authorized by the Federal Telecommunications Act of 1996 (Public Law 104-104) in order to enhance telecommunications services and competition particularly wireless telecommunications service.

3. To promote colocation as an alternative to siting new wireless telecommunications towers and appurtenances; and to maximize the use of existing and approved towers and buildings to colocate new wireless telecommunications antennas.

4. To consider the public health and safety issues surrounding wireless telecommunications towers and appurtenances.

5. To protect adjacent properties from potential damage from wireless telecommunications tower failure through proper engineering and careful siting of such structures.

6. To encourage monopole wireless tower construction where feasible.

B. This resolution shall not unreasonably discriminate among providers of functionally equivalent services nor shall it prohibit or have the effect of prohibiting the provision of personal wireless services. Any requests for authorization to place, construct, or modify personal wireless service facilities

shall be acted upon within a reasonable period of time after the request has been duly filed. Any decision to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record. This resolution shall not regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission's (FCC) regulations concerning such emissions.

7.01 Permitted Uses

A wireless telecommunications tower and appurtenant facilities may be located, erected, constructed, reconstructed, changed, altered, removed, or enlarged in the following areas as a permitted use subject to the requirements of this article and upon application for a zoning certificate and issuance of said certificate by the zoning inspector.

A. A wireless telecommunication antenna may be permitted on a lawfully existing telecommunications tower, with the necessary equipment shelter, as a colocation on said existing tower.

B. A wireless telecommunications tower and appurtenant facilities may be permitted within a recorded electric high tension power line easement. A tower located within said easement shall not be subject to the regulations set forth in Section 7.02 (M), (T), and (V)(5).

7.02 Conditional Uses

A wireless telecommunications tower and appurtenant facilities may be located, erected, constructed, reconstructed, changed, altered, removed or enlarged in the B-1, B-3, B-4, and I-1 district(s) or on a lot in any residential district used for lawfully existing nonresidential purposes limited to public safety departments; schools; churches; parks; or federal, state, county, or township buildings, or uses; or in the US 422 right-of-way, as a conditional use subject to the approval of the board of zoning appeals pursuant to the procedure set forth in Section 6.05 of this resolution and the following conditions as well as the regulations specified in this article.

A. No wireless telecommunications tower, equipment building, or appurtenant facility shall be located within a designated 100 year flood plain as depicted on the maps published by the Federal Emergency Management Agency for Geauga County.

B. No wireless telecommunications tower, equipment building, or appurtenant facility shall be located within a jurisdictional wetland as depicted on the maps published by the U.S. Fish and Wildlife Service, Department of the Interior, for Geauga County.

C. A security fence not less than eight (8) feet in height shall fully enclose the base of the wireless telecommunications tower, the equipment building, and appurtenant facilities. Gates shall be locked at all times.

D. Evergreen trees or shrubbery not less than eight (8) feet in height shall be planted along the exterior perimeter of the security fence so as to screen it from view. Existing vegetation on the site shall be preserved to the maximum possible extent. Landscaping on the site shall be continuously maintained and promptly restored as necessary.

E. A report shall be prepared and submitted by a licensed professional engineer and shall provide proof of compliance with all applicable federal, state, and county regulations. The report shall include a detailed site plan as required by Section 7.06 of this resolution; a detailed description of the wireless telecommunications tower, equipment shelter, and appurtenances as well as the tower's capacity including the number and types of antennas it can accommodate; shall demonstrate compliance with the ANSI/EIA 222-F manual verifying the design and construction specifications for the tower; shall demonstrate that the tower is the minimum height necessary for its operation; and shall verify that radio frequency (electromagnetic) emissions are within compliance with the regulations of the Federal Communications Commission (FCC). A copy of the FCC license issued to the wireless telecommunications provider shall be submitted.

F. A wireless telecommunications tower, equipment building, and appurtenances shall not be mounted on a building or structure listed on the National Register of Historic Places.

G. A wireless telecommunications tower should be painted a neutral color to minimize its visibility unless otherwise required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).

H. No advertising sign(s) shall be permitted anywhere on a telecommunications tower, equipment shelter, and appurtenances or on the site.

I. No more than one (1) warning sign, the maximum size of which shall be six (6) square feet, shall be posted on the site as well as an emergency telephone number. The applicant shall also provide the fire department, the township police (or county sheriff's) department, and the county emergency management agency with information on who to contact, an address, and a telephone number in the event of an emergency. No other signs shall be posted on the site.

J. A wireless telecommunications tower, equipment shelter, and appurtenances shall not be artificially lighted except to assure safety as may be required by the Federal Aviation Administration (FAA). If lighting is required, white strobe lights shall not be permitted unless no other alternative is allowed by the FAA. Proof of compliance with all FAA criteria shall be required and a copy of the review by the FAA shall be submitted.

K. The applicant shall submit a plan documenting how the wireless telecommunications tower, equipment shelter, and appurtenances will be maintained on the site.

L. The driveway to the site shall be a minimum of ten (10) feet in width and shall be setback a minimum of ten (10) feet from the nearest side or rear lot line. There shall be a minimum of one (1) off-street parking space on the site

M. The colocation of antennas on lawfully existing towers or structures shall be preferred over the construction of new wireless telecommunications tower sites. If there is no technically suitable space for the applicant's antenna(s) and related facilities reasonably available on a lawfully existing tower or structure within the geographic area to be served, including the areas set forth in Section 7.01, then with the zoning certificate application, the applicant shall list the location of every tower or structure and all the areas set forth in Section 7.01 that could support the proposed antenna(s) so as to allow it to serve its intended function. The applicant must demonstrate that a technically suitable location is not reasonably available on a lawfully existing tower or structure or a technically suitable location is not available in any area set forth in Section 7.01. If another tower or structure or area set forth in Section 7.01 is technically suitable, the applicant must show that it has requested to colocate on the existing tower and the colocation was rejected by the owner of the tower or structure or that it has requested all property owners with technically suitable locations within a two (2)-mile radius to permit it to locate a tower facility in all technically suitable area(s) set forth in Section 7.01 under reasonable terms and that each request was rejected. In all circumstances, owners of existing towers shall promptly respond to request for colocation within 30 days from the receipt of a written request sent by certified mail (return receipt requested) for colocation. If another telecommunications tower is technically suitable the applicant must further show that is has offered to allow the owner of that other tower to colocate an antenna(s) on another tower within the township, if such a tower exists and space is available on the tower for colocation, which is owned or controlled by the applicant on reasonable reciprocal terms and the offer was not accepted.

The applicant shall further demonstrate that colocation is not feasible for the following reasons.

1. The planned equipment would exceed the structural capacity of existing or approved towers or structures as documented by a licensed professional engineer; and the existing or approved tower or structure cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.

2. The proposed equipment would cause radio frequency interference with other existing or planned equipment which cannot be prevented at a reasonable cost as documented by a licensed professional engineer.

3. The existing or approved towers or structures do not have space on them to accommodate the proposed equipment so it can function effectively and reasonably as documented by a licensed professional engineer.

4. Colocation would violate federal, state, or county regulations.

5. The location of existing towers or buildings is not technically suitable due to topography or other impediments to transmission as documented by a licensed professional engineer.

6. Existing or approved towers or structures cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a licensed professional engineer.

N. The owner/operator of a free-standing monopole wireless telecommunications tower shall be required to allow colocation for a minimum of two (2) additional antenna platforms of equal loading capacity for two (2) additional unrelated owners/operators. Agreement to this provision must be included in the applicant's lease with the landowner, if different from the owner/operator of the tower. Written documentation must be presented to the zoning inspector evidencing that the landowner of the property on which the tower is to be located has agreed to the terms of this regulation as well as all other applicable requirements, regulations and standards set forth herein.

O. The owner of any wireless telecommunications tower erected under this section shall be required to accept colocation of any other antenna(s) except upon a showing of technological nonfeasibility as set forth herein.

P. A wireless telecommunications tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for additional users as set forth herein. Towers shall be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

Q. There shall be no storage outside of the security fence of equipment or other items on the site except during the construction period, for ordinary maintenance, or in times of a power outage.

R. The minimum distance between wireless telecommunications towers including their appurtenant facilities shall be 1,250 feet.

S. If at any time the use of a wireless telecommunications tower, equipment shelter, and appurtenances is discontinued for two (2) years or more, said facilities shall be deemed abandoned. The zoning inspector shall notify the applicant in writing by certified mail (return receipt requested) and advise that the facility must be reactivated within 30 days or it must be dismantled and removed from the site at the cost of the owner or lessee. If reactivation or dismantling does not occur, the conditional zoning certificate for the site shall be revoked following a hearing thereon by the board of zoning appeals. During any period of discontinuance of said telecommunications facility, the owner/operator shall be responsible for the exterior maintenance of all equipment, appurtenances and landscaping. The subject lot shall at all times be kept in good repair.

T. A wireless telecommunications tower shall not be located between the principal building or structure on a lot and a public road right-of-way.

U. Wireless telecommunications towers, antennas, and appurtenances mounted to a building or structure.

1. A wireless telecommunications tower, antenna, and appurtenances may be mounted to a lawfully existing building or structure (other than a dwelling) or to a proposed building or structure (other than a dwelling) when such tower, antenna, and appurtenances meets the provisions of this section.

2. The maximum height of the tower, antenna, or appurtenances shall not exceed ten (10) feet above the highest point of the roofline and the transmission and receiving equipment, where feasible, shall be stored inside the existing building or structure or on the roof in an enclosure. If the wireless telecommunications tower or antenna is located on the roof of a building, it shall be located as far as possible away from the edge of the building. All wireless telecommunications towers, antennae, or appurtenances shall be painted or otherwise treated so as to match the exterior of the building. The foregoing does not preclude the use of small base stations and repeaters on the sides of buildings, utility poles or in ground mounted pedestals.

3. There shall be no more than two (2) wireless telecommunications tower(s) or antenna(s) mounted on a legally existing building or structure.

4. A wireless telecommunications tower, antenna, and appurtenances shall comply with all of the regulations for the zoning district in which it is located, including minimum yards (setbacks), except as may otherwise be specified in this section of the zoning resolution.

5. A written report prepared by a licensed structural engineer shall be submitted indicating that the building or structure upon which a wireless telecommunications tower, antenna, and appurtenances may be mounted will support same.

V. Free-standing wireless telecommunications towers, antennas, and appurtenances

1. The maximum height of a freestanding monopole wireless telecommunications tower, including antenna(s) and appurtenances shall not exceed 200 feet.

2. The minimum setback from the nearest lot line to the base of a wireless telecommunications tower, antenna, and appurtenances shall be 50% of the height of the tower within any zoning district.

3. The maximum size of an equipment shelter accessory to a freestanding monopole wireless telecommunications tower shall be 400 square feet. The maximum height of an equipment shelter shall be 12 feet. There shall be no more than one (1) equipment shelter located on a lot in conjunction with a wireless telecommunications tower or antenna. An equipment shelter shall be constructed in accordance with all OBBC, BOCA, and county building codes. The equipment shelter shall be subdivided so as to allow the installation of equipment for other providers who have colocated on the same wireless tower.

4. A free-standing monopole wireless telecommunications tower shall be designed to support the colocation of at least three (3) antenna platforms of equal loading capacity.

5. A wireless telecommunications tower, antenna, equipment building, and appurtenances shall comply with all of the regulations for the zoning district in which it is located, except as may otherwise be specified in this section of the zoning resolution.

7.03 Prohibited Areas

Except as noted in Sections 7.01 and 7.02, wireless telecommunications towers and facilities are prohibited in residential districts and no zoning certificate shall be issued therefor.

7.04 Fees

In addition to general application fees for a zoning certificate, the applicant for a wireless telecommunications tower and appurtenant facilities shall be responsible for all expenses incurred by the township or any technical and or engineering services deemed necessary by the zoning inspector, the board of zoning appeals, or the board of township trustees to perform the reviews and/or inspections set forth in this section of the zoning resolution.

7.05 Public Utility Exemption

A. Subject to R.C. 519.211(B)(4)(a), the provisions of this resolution shall apply with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a wireless telecommunications tower and appurtenant facilities.

B. In the event a wireless telecommunications tower and appurtenant facility is to be owned or principally used by a public utility engaged in the provision of telecommunication services, the regulations set forth herein do not apply when the proposed location of the tower facility is in a nonresidentially zoned area of the township. The proponent of such a tower facility must file a written application with the zoning inspector supported in writing by substantial evidence that the tower will be owned or principally used by a public utility engaged in the provision of telecommunication services. The applicant must also demonstrate by substantial evidence that it possesses a sufficient degree of the following attributes associated with being a public utility to be considered a "public utility" for the purpose of this exemption:

1. Whether the applicant devotes an essential good or service to the general public which has a legal right to demand or receive this good or service;

2. Whether the applicant provides its good or service to the public indiscriminately and reasonably;

3. Whether the applicant has an obligation to provide the good or service which cannot be arbitrarily or unreasonably withdrawn;

4. Whether the applicant conducts its operation in such a manner as to be a matter of public concern;

5. Whether the good or service is vital;

6. Whether there is a lack of competition in the local marketplace for the good or service;

7. Whether there is regulation by a government authority and the extent of that regulation;

8. Whether the applicant possesses the power of eminent domain.

No single factor set forth above is controlling as to whether the applicant is a "public utility engaged in the provision of telecommunications services." Each factor should be considered and weighed according to the factual circumstances presented and, in specific circumstances, some factors may be given more weight than others.

C. If the zoning inspector determines to deny the applicant such "public utility" status, the inspector shall do so in writing and state the reasons therefor. Such decision of denial by the zoning inspector may not be a final decision by the township on the issue. Any determination by the zoning inspector that the applicant is not a public utility engaged in the provision of telecommunications services shall be appealable to the board of zoning appeals pursuant to the procedures set forth in this zoning resolution. The decision of the board of zoning appeals shall be the final decision of the township on this issue.

D. In the event a wireless telecommunications tower and appurtenant facility is proposed to be located in an unincorporated area of the township, in an area zoned for residential use, and is to be owned or principally used by a public utility engaged in the provision of telecommunications services, the public utility shall be exempt from the requirements of this zoning resolution if it meets all of the criteria in 1, 2, and 3 above as follows:

1. All requirements of Section 7.05 A through C are met;

2. The public utility provides both of the following by certified mail:

   a. Written notice to each owner of property, as shown on the county auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property on which the tower is proposed to be constructed, stating all of the following in clear and concise language: A description of the property sufficient to identify the proposed location; and

      1) The public utility provides both of the following by certified mail:

      2) A description of the property sufficient to identify the proposed location; and

      3) That no later than fifteen (15) days after the date of mailing of the notice, any such property owner may give written notice to the board of township trustees requesting that the provisions of this zoning resolution apply to the proposed location of the tower. If

the notice to a property owner is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery of the notice does not invalidate the notice.

b. Written notice to the board of township trustees of the information specified in subsection D.2.a of this section; and

3. If the board of township trustees receives notice from a property owner under subsection D.2.a.(3) of this section within the time specified in that subsection, or if a trustee makes an objection to the proposed location of the telecommunications tower within fifteen (15) days after the date of mailing of the notice sent under subsection D.2.b. of this section, the board shall request that the clerk of the township send the person proposing to construct the tower written notice that the tower is subject to the regulations of this zoning resolution. The notice shall be sent no later than five (5) days after the earlier of the date the board of trustees first receives such a notice from a property owner or the date upon which a trustee makes an objection. Upon the date of mailing of the notice to the person, the provisions of this zoning resolution shall apply to the tower without exception. If the board of township trustees, however, receives no notice under subsection D.2.a. of this section within the time prescribed by that subsection or no trustee has an objection as provided under this subsection D.3. within the time prescribed by this subsection, the applicant will be exempt from the regulations of this zoning resolution.

E. In accordance with O.R.C. Section 519.211(E), any person who plans to construct a telecommunications tower within one hundred (100) feet of a residential dwelling shall provide a written notice to the owner of the residential dwelling and to the person occupying the residence, if that person is not the owner of the residence, stating in clear and concise language the person's intent to construct the tower and a description of the property sufficient to identify the proposed location. The notice shall be sent by certified mail. If the notice is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery does not invalidate the notice. As used in this section "residential dwelling" means a building used or intended to be used as a personal residence by the owner, part-time owner, or lessee of the building, or any person authorized by such person to use the building as a personal residence.

7.06 Site Plan

In addition to the information required by this resolution for an application for a zoning certificate, the site plan for a wireless telecommunications tower and appurtenant facilities shall include the following items.

A. The site plan shall be prepared by, signed, dated, and bear the stamp and registration number of a licensed professional engineer.

B. The site plan shall be based upon a survey, drawn to scale, have a north arrow, and show the location and dimensions of the wireless telecommunications tower and appurtenant facilities from all lot lines, buildings, structures, and public road right-of-ways. A copy of the structural design prints from the manufacturer shall be provided for a wireless telecommunications tower, antenna(s), and equipment shelter.

C. The height of the telecommunications tower and all appurtenant facilities above grade shall be provided and all potential mounting positions and locations of antennas shall be shown in order to evaluate colocation opportunities.

D. The dimensions of all buildings, structures, driveways, parking area, and all appurtenant facilities shall be provided.

E. Existing easements of record and proposed easements with dimensions shall be shown.

F. A copy of a title examination for the subject premises shall be submitted.

G. The shipping weight of the wireless telecommunications tower, antenna(s), equipment shelter(s), and all appurtenances shall be provided. The delivery route shall be given and subject to review as to road weight limits.

H. Proof of compliance with the Water Management and Sediment Control regulations in the Auburn Township's Zoning Resolution with respect to water management and sediment control shall be submitted. (Effective 11/17/04)

I. The riparian setback regulations contained in this Resolution shall apply and the appropriate setback shall be shown on the site plan.