

NEW SCANDIA TOWNSHIP
ORDINANCE NO. 61

AN ORDINANCE AMENDING SECTION 602 OF ORDINANCE NO. 18 BEING THE NEW SCANDIA TOWNSHIP ZONING ORDINANCE AND REGULATING THE SITING OF WIRELESS COMMUNICATION TOWERS AND ANTENNAS IN THE TOWNSHIP.

THE TOWN BOARD OF NEW SCANDIA TOWNSHIP DOES HEREBY ORDAIN AS FOLLOWS: SECTION 602.05 OF THE NEW SCANDIA ZONING ORDINANCE IS AMENDED BY DELETING THIS SECTION IN ITS ENTIRETY AND REPLACING IT WITH THE FOLLOWING:

Section 602.05. Wireless Communication Antennas and Towers.

(1) **Purpose.**

The purpose of this Section is to:

- (a) Accommodate the communication needs of residents and businesses while protecting public health and safety;
- (b) Minimize adverse visual effects of towers through careful design and siting standards;
- (c) Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements;
- (d) Maximize the use of existing and approved towers and buildings to accommodate multiple wireless telecommunication antennas to reduce the number of towers needed to serve the community.

(2) **Definitions.**

Antenna. That portion of any equipment used to radiate or receive radio frequency energy for transmitting or receiving radio or television waves. Antennas may consist of metal, carbon fiber or other electromagnetically conductive surfaces, rods elements or open mesh.

Antenna, Amateur Radio. That portion of any equipment used to radiate or receive radio frequency energy or electromagnetic signals for "Amateur Radio Service" communications as defined in 47 C.F.R. Part 97.3(4), and used in 47 C.F.R. Part 97.15(a).

Antenna, Household Radio, Television and Short - Wave Radio Receiving. A wire, set of wires or any device consisting of metal, carbon fiber or other electromagnetically conductive surfaces, rods, elements or open mesh, including television, receive only (TVROs) satellite dishes two meters or less in diameter, used in conjunction with the reception of household radio, television and short - wave radio receiving equipment.

Antenna, Satellite Dish. A device consisting of metal, carbon fiber or other electromagnetically conductive surfaces, rods, elements or open mesh and in the shape of a shallow dish, cone, horn or cornucopia. Such device is used to transmit and/or receive radio, television or electromagnetic waves between terrestrially and/or orbitally based uses. This definition shall include, but not be limited to, what are commonly referred to as satellite earth stations, television , receive only (TVROs) and satellite microwave antennas.

High voltage transmission line. A 69 kv or greater electric transmission line with transmission line support structures 75 feet in height or greater.

Structure. Something built or constructed.

Tower. Any pole, spire, structure or combination thereof, including supporting lines, cables, wires, braces and masts, intended primarily for the purpose of supporting an antenna or to serve as an antenna.

Tower Accessory structure. A structure located at the base of the tower housing receiving/transmitting equipment.

(3) **Conditional Use Permits.**

- a. The following may be allowed with the issuance of a conditional use permit, provided the conditions contained in this ordinance are met:
 - i. The construction of a new tower in excess of 35 feet.
 - ii. Satellite dish antenna(s) larger than two meters in diameter.
 - iii. The addition of a new antenna on an existing permitted tower.
 - iv. The construction of a new tower attached to an existing building and extending 15 feet above the highest point of that building.
 - v. The construction of a tower within the easement of a high voltage overhead transmission line, or within 50 feet of the transmission line easement on the same side of the road.

b. A conditional use permit is not required for the following:

- i. Household radio, television and short-wave radio receiving antenna(s), or tower attached to a residential structure, extending less than 15 feet above the highest point of that structure.
- ii. Amateur radio antennas and towers, provided that the conditions contained in Subsections 7(a); 9(h),(i) and (j); 10(c), (d), (g), (h), (i),(j) and (n); and 13 are met.
- iii. Adjustment, repair or replacement of the elements of an antenna.
- iv. The construction of a new tower attached to an existing building, extending less than 15 feet above the highest point of that building.

(4) **Nonconformity.**

Any existing tower which becomes non-conforming as a result of this ordinance may continue its use and additional antennas may be attached to the tower structure. If the tower needs to be replaced, it may be permitted with a certificate of compliance so long as it is of the same type (guyed, self-supporting or monopole), same height, same marking (lighting and painting) and it will be located within ten (10) feet of the tower to be replaced. The only permitted reasons for replacement of an existing, nonconforming tower will be to increase the number of antennas or to preserve the structural integrity of the structure. If a tower requires replacement for any other reason, such replacement tower shall meet all of the standards of this ordinance.

(5) **Modification.**

- (a) A modification to any requirement of this ordinance may be sought by the applicant and heard by the Town Board in accordance with the procedures, but not the standards, set forth in Section 503 of the New Scandia Zoning Ordinance.
- (b) The criteria for granting a modification under this section of the ordinance shall be: presentation of engineering data demonstrating that services cannot be provided by the applicant within its service area without the modification.

(6) **Term of Permit and Revocation.**

- (a) A conditional use permit for towers requiring a conditional use permit shall remain in effect so long as the conditions in the permit are met.

(b) The grounds for revocation of a conditional use permit shall be based on a finding that:

(i) The permittee has failed to comply with conditions of approval imposed; or

(ii) The facility has not been properly maintained; or

(iii) The facility is no longer in use and has not been in use for the previous 12 months.

(7) **Other Requirements.**

(a) All rules and regulations of the FCC and FAA must be met and complied with. All antennas used for the transmission of electromagnetic waves shall be subject to federal and state regulations pertaining to non-ionizing radiation and other health hazards related to such facilities. If new, more restrictive standards are adopted, the antenna installations must be brought into compliance with the new standards by the owner and operator. The cost of verification of compliance shall be borne by the owner and operator of the antenna.

(b) In the event of revocation of a permit, the tower and all accessory structures must be removed and the site restored to its original condition within 120 days. Failure to do so will result in the Township completing the removal and site restoration and the Township's cost shall be assessed against the property and collected as a real estate tax.

(8) **Districts.**

Antennas and towers are regulated differently depending on the zoning district in which the property is located. The following are the standards in each district.

(a) **R-1 Districts.**

The following are permitted with a conditional use permit:

The addition of a new antenna on an existing tower for which a conditional use permit is required.

A satellite dish antenna larger than two meters in diameter but not exceeding three meters in diameter.

A tower within the easement of a high voltage overhead transmission line or within 50 feet of the transmission line easement on the same side of the road to a maximum height of 150 feet.

A free standing tower exceeding 35 feet in height but not exceeding 150 feet in height.

A tower attached to an existing building extending more than 15 feet above the highest point of the building up to a maximum height of 150 feet.

(b) **Agricultural Districts.**

The following are permitted with a conditional use permit:

The addition of a new antenna on an existing tower for which a conditional use permit is required.

Satellite dish antenna(s) larger than two meters in diameter.

A tower within the easement of a high power overhead transmission line or within 50 feet of the transmission line on the same side of the road to a maximum height of 200 feet.

A free standing tower exceeding 35 feet in height not exceeding 300 feet in height.

A tower attached to an existing building, extending more than 15 feet above the highest point of the building up to a maximum height of 300 feet.

(c) **Commercial/Industrial Districts.**

The following are permitted with a conditional use permit:

The addition of a new antenna on an existing tower for which a conditional use permit is required.

Satellite dish antenna(s) larger than two meters in diameter.

A free standing tower exceeding 35 feet in height but not exceeding 300 feet in height.

A tower within the easement of a high voltage overhead transmission line or within 50 feet of the transmission line easement on the same side of the road to a maximum height of 200 feet.

A tower attached to an existing building, extending more than 15 feet above the highest point of the building up to a maximum height of 300 feet.

(9) **Prohibitions.**

(a) No tower shall be over 300 feet in height or within one mile of another tower for which a conditional use permit is required regardless of municipal boundaries.

(b) A proposal for a new tower shall not be approved unless it can be shown by the applicant that the telecommunication equipment planned for the proposed tower cannot be accommodated:

(i) on an existing tower; or

(ii) on a tower that has been permitted by Washington County or New Scandia Township (even though it may not yet be constructed); or

(iii) on a tower whose application for a certificate of compliance or conditional use permit is currently pending before Washington County or New Scandia Township.

(c) Towers up to 150 feet in height shall not be constructed within 300 feet of any residential dwelling other than the dwelling on the parcel on which the tower is to be located. Towers over 150 feet in height shall not be constructed within 500 feet of any residential dwelling other than the dwelling on the parcel on which the tower is to be located.

(d) No tower over 35 feet in height shall be located closer than one-quarter (1/4) mile to the outside boundary of an existing or proposed county park identified in the Washington County Park Master Plan or a boundary of a state or township park.

(e) No tower over 35 feet shall be erected within one-quarter (1/4) mile from the centerline of State Highways 95 and 97 and County Roads 4, 15 and 52, unless it can be demonstrated through visual impact

demonstration that the tower will be visually inconspicuous as viewed from the road on a year-round basis.

- (f) No tower over 35 feet shall be erected within one-quarter (1/4) mile of the St. Croix River or within one-quarter (1/4) mile of a DNR protected lake or river.
- (g) No temporary antenna/tower sites are permitted except in the case of equipment failure, equipment testing or in the case of an emergency situation as authorized by the Washington County Sheriff. Use of temporary antenna/tower sites for testing purposes shall be limited to twenty-four (24) hours. Use of temporary antenna/tower sites for equipment failure or in the case of an emergency situation shall be limited to a term of thirty (30) days. These limits can be extended by the Zoning Administrator.
- (h) Permanent platforms or structures, exclusive of antennas, other than those necessary for safety purposes or for tower maintenance are prohibited.
- (i) No antennas or tower shall have lights, reflectors, flashers, daytime strobes, steady night time red lights or other illuminating devices affixed or attached to it unless required by the FAA or FCC.
- (j) No advertising or identification signs shall be placed on towers or antennas.

(10) Performance Standards.

- (a) On a vacant parcel of land zoned for agricultural or residential purposes, the minimum lot size for construction of a tower over 35 feet in height shall be five acres. On a vacant parcel of land zoned for commercial/industrial purposes, the minimum lot size shall be two and one-half acres. On a parcel of land on which a principal use exists, a tower shall be considered an accessory use and a smaller parcel of land may be leased provided all standards contained in this ordinance can be met.
- (b) Towers located closer to a property line than a distance equal to the height of the tower shall be designed and engineered to collapse progressively within the distance between the tower and property line. The applicant for any tower shall submit written documentation explaining tower construction and possible failure and provide assurance that blowing or falling ice can be contained on the subject

property. At a minimum, the tower shall comply with the minimum setback requirements of the zone in which it is located.

- (c) A tower shall be located on a parcel of land so as to have the least impact on adjoining properties and any negative impact of the tower shall be confined as much as possible to the property on which the tower is located.
- (d) The tower location shall provide the maximum amount of screening for off-site views of the facility. The Town Board reserves the right to require creative design measures to camouflage facilities by integrating them with existing buildings and among other existing uses. Existing on-site vegetation shall be preserved to the maximum extent practicable.
- (e) The height of a tower shall allow for the co-location of additional antennas as follows:
 - Structures from 100 to 125 feet - a total of two tenants
 - Structures from 125 to 200 feet - a total of three tenants
 - Structures above 200 feet but less than 300 feet - minimum of four tenants.
- (f) Structural design, mounting and installation of the antenna and tower shall be in compliance with manufacturers specifications. The plans of which shall be approved and certified by a registered professional engineer.
- (g) In general, self-supporting towers (ie. those without the use of wires, cables, beams or other means of support) are preferred. The use of a guyed tower is permitted for new tower construction if there is an aesthetic and/or antenna support capability advantage. Anchors for the guyed wires must meet underlying setback requirements.
- (h) Associated receiving/transmitting or switching equipment must be located within a structure. The base of the tower and any tower accessory structures shall be landscaped where practical. Tower accessory structures shall be constructed of materials designed to minimize visibility to the neighborhood.
- (i) The tower shall be a color demonstrated to minimize visibility unless otherwise required by FAA regulations.

- (j) Metal towers shall be constructed of, or treated with, corrosive resistant material.
- (k) If space is available on a tower, the tower owners shall, in good faith, lease space to other users so long as there is no disruption in the existing service provided by the tower's existing users and no negative structural impact upon the tower. If a dispute arises, and as a condition to any permit, the Town Board, in its discretion, reserves the right to act as arbiter in determining if a tower owner is acting in good faith in leasing to other tenants.
- (l) All towers shall be reasonably protected against unauthorized climbing. The bottom of the tower from ground level to 12 feet above ground shall be designed in a manner to preclude unauthorized climbing or shall be enclosed by a six (6) feet high chain link fence with a locked gate.
- (m) Antenna and tower owners shall be required to conduct an annual inspection of their facilities to insure continuing compliance with this ordinance. A copy of the annual inspection report shall be provided to the Town Board.
- (n) All antennas and towers shall be adequately insured to cover injury and property damage caused by collapse or other catastrophic failure.

(11) **Application - New Tower.**

In addition to the submittal requirements required elsewhere in this ordinance, applications for conditional use permits for new towers and antennas shall be accompanied by the following information:

- (a) A report from a qualified and licensed professional engineer which:
 - (i) describes the tower height and design including a cross section and elevation;
 - (ii) certifies the tower's compliance with structural and electrical standards;
 - (iii) describes the tower's capacity, including the potential number and type of antennas that it can accommodate;
 - (iv) describes the lighting to be placed on the tower if such lighting is required by the FCC or FAA;

- (v) states that the applicant will avoid causing destructive interference to co-located, previously established public safety communications;
 - (vi) specifies the distance to any DNR protected lake or river, the St. Croix River, a scenic road designated in Section (9)(e) and any boundary of a township, state or county park.
- (b) Each application shall include a five (5) year facility plan. The Town Board will maintain an inventory of all existing and proposed site installations and all carriers shall provide the following information in each five (5) year plan. The plan must be updated with each submittal as necessary:
- (i) Written description of type of consumer services each company/carrier will provide to its customers over the next five years. (cellular, personal communication services, specialized mobile radio, paging, private radio or other anticipated communication technology).
 - (ii) Provide a list of all existing sites, existing sites to be upgraded or replaced and proposed sites within the Township for the services provided by the company.
 - (iii) Provide a presentation size map of the Township which shows the five year plan for sites, or if individual properties are not known, the geographic service areas of the site.

The information provided as part of the five (5) year facility plan that is a trade secret pursuant to Minnesota Statute Section 13.37 shall be classified as non-public data.

- (c) Written acknowledgment by the landowner/lessee that he/she/it will abide by all applicable conditional use permit conditions.
- (d) The Town Board may, in its discretion, require visual impact demonstrations including mock-ups and/or photo montages; screening and painting plans; network maps; alternative site analysis; lists of other nearby telecommunication facilities; or facility design alternatives for the proposed tower.
- (e) The Town Board is explicitly authorized to employ on behalf of the Township, an independent technical expert to review technical materials submitted by the applicant. The applicant shall pay the costs of said review and/or independent analysis. Any proprietary

information disclosed to the Township expert shall remain non-public and subject to the terms and conditions of a properly executed non-disclosure agreement.

(12) Application - Existing Tower/New Antenna.

In the event that an application is only to add a new antenna to an existing permitted tower or structure, the requirements as delineated under Subsection (11)(a)(vi) and (11)(b) shall not apply.

(13) Amateur Radio Antennas and Towers

This subsection is applicable only to federally licensed amateur radio operators.

(a) All amateur radio towers must be installed in accordance with the instructions furnished by the manufacturer for the tower model to be installed. Because of the experimental nature of the amateur radio service, antennas mounted on such a tower may be modified or changed at any time so long as the published allowable load on the tower is not exceeded and the structure of the tower remains in accordance with the manufacturer's specifications.

(b) No tower shall be located within public or private utility and drainage easements.

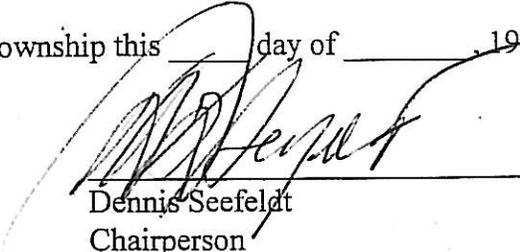
(c) All towers shall be reasonably protected against unauthorized climbing.

(d) Towers located closer to a property line than a distance equal to the height of the tower shall be setback as far as possible from the nearest property line. At a minimum, the tower shall comply with the minimum setback requirements of the zone in which it is located.

(e) No part of any antenna or tower, nor any lines, cable, equipment, wires or braces shall at any time be located on or extend across or over any part of any right-of-way, public street, road, highway, sidewalk, utility or drainage easement or property line.

(14) This ordinance shall be and is hereby directed to be in full force and effect from and after its passage on the _____ day of _____, 1998.

Passed by the Town Board of New Scandia Township this _____ day of _____, 1998.



Dennis Seefeldt
Chairperson

ATTEST:



Dolores Peterson
Clerk

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NEW SCANDIA TOWNSHIP
RESOLUTION NO. 6 - 2 -98-1

WHEREAS, the Board of Supervisors of the Town of New Scandia, Washington County, Minnesota has reviewed the Title and Summary of Ordinance No. 61 which is an Ordinance regulating the siting of wireless communication towers and antennas in the Township; and

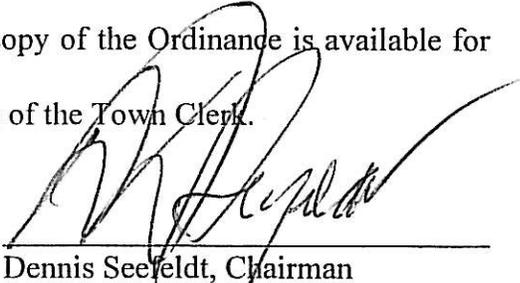
WHEREAS, the Town Board determines that publication of the Title and Summary will clearly inform the public of the intent and effect of the Ordinance; and

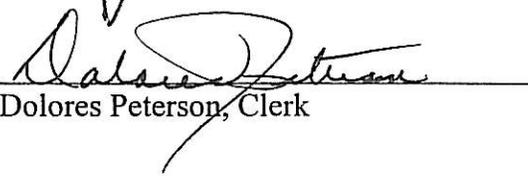
WHEREAS, the Town Board has directed that a printed copy of the Ordinance be available for inspection by any person during regular office hours of the Town Clerk; and

WHEREAS, the Town Board has reviewed and approved the text of the Summary and determined that it does clearly inform the public of the intent and effect of the Ordinance.

NOW, THEREFORE be it resolved that the Board of Supervisors of the Town of New Scandia does hereby unanimously direct that the Title and Summary of the Ordinance be published with notice that a printed copy of the Ordinance is available for inspection by any person during regular office hours of the Town Clerk.

Dated: June 2, 1998


Dennis Seefeldt, Chairman


Dolores Peterson, Clerk