

WOOD COUNTY, WEST VIRGINIA
WIRELESS TELECOMMUNICATIONS
FACILITIES ORDINANCE

TABLE OF CONTENTS

	<u>page</u>
SECTION 1 Title.....	1
SECTION 2 Authority	1
Section 2.1 Grant of Power	1
Section 2.2 Territorial Limits	1
SECTION 3 Purpose.....	1
SECTION 4 Applicability.....	2
Section 4.1 Exemptions	2
SECTION 5 Review and Approval Authority.....	2
Section 5.1 Approval Required	2
Section 5.2 Approval Authority	3
SECTION 6 Approval Process	3
Section 6.1 Pre-Application Conference	3
Section 6.2 Application	3
Section 6.3 Submission Waiver	6
Section 6.4 Application Fees	7
Section 6.5 Notice of Complete Application	7
Section 6.6 Public Hearing	7
Section 6.7 Approval	7
SECTION 7 Standards of Review	8
Section 7.1 Planning Director Approval Standards	8
Section 7.2 Planning Commission Approval Standards ..	8
SECTION 8 Amendment to an Approved Application.....	10
SECTION 9 Abandonment	10
SECTION 10 Appeals	10
SECTION 11 Administration and Enforcement	10
SECTION 12 Fees	11
SECTION 13 Penalties	11
Section 14 Conflict and Severability	11
Section 14.1 Conflicts with other Ordinances	11
Section 14.2 Severability	11
Section 15 Definitions	11
Section 16 Effective Date	14

Section 1. Title

These regulations shall be known and cited as the “Wireless Telecommunications Facilities Ordinance” of Wood County, West Virginia (hereinafter referred to as the “ordinance.”)

Section 2. Authority

The authority of this ordinance is provided for under West Virginia State Code Chapter 8A, Article 2.

2.1 Grant of Power

After adoption by the Wood County Commission and a certified copy of the ordinance has been filed with the County Clerk, the Wood County Commission and its assigned agency, the Wood County Planning Commission, shall have control over wireless telecommunications facilities.

2.2 Territorial Limits

The ordinance contained herein shall apply within the unincorporated parts of Wood County under the jurisdiction of Wood County, West Virginia.

Section 3. Purpose

The purpose of these regulations is to provide a process and a set of standards for the construction of wireless telecommunication facilities in order to:

Implement a county policy concerning the provision of wireless telecommunication services, and the siting of their facilities;

Establish clear guidelines, standards and time frames for the exercise of county authority to regulate wireless telecommunications facilities;

Allow competition in telecommunications service;

Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Wood County;

Permit reasonable access to the public rights of way for telecommunications purposes on a competitively neutral basis;

Ensure that all telecommunications carriers providing facilities or services within Wood County comply with the regulations of Wood County;

Ensure that Wood County can continue to fairly and reasonably protect the public health, safety and welfare;

Encourage the co-location of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;

Further the goals and objectives of any current comprehensive plan, while promoting orderly development with minimal impacts on existing uses; and

Protect the scenic and visual character of the community.

Section 4. Applicability

This regulation applies to all construction and expansion of wireless telecommunications facilities, except as provided in Section 4.1.

4.1 Exemptions

- A. **Emergency Wireless Telecommunications Facility.** Wireless telecommunication facilities for emergency communications by public officials.
- B. **Amateur (ham) Radio Stations.** Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- C. **Parabolic Antenna.** Parabolic antennas ten feet (10') or less in diameter, that are an accessory use of the property.
- D. **Maintenance or repair.** Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
- E. **Antennas as accessory uses.** An antenna that is an accessory use to the residential dwelling unit.

Section 5. Review and Approval Authority

5.1 Approval Required

No person shall construct or expand a wireless telecommunication facility without approval of the Planning Director and/or the Planning Committee as follows:

- A. **Expansion of an Existing Facility.** Approval by the Planning Director is required for any expansion of an existing wireless telecommunications facility or co-location on an existing wireless telecommunications facility that increases the height of the structure by no more than forty feet (40').
- B. **New Construction.** Approval of the Planning Commission is required for new construction of a new wireless telecommunications facility; and any

expansion of an existing wireless telecommunications facility that increases the height of the facility by more than forty feet (40’).

5.2 Approval Authority

In accordance with Section 5.1 above, the Planning Director, the Planning Commission, or their designee shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with the regulations.

Section 6. Approval Process

6.1 Pre-Application Conference

All persons seeking approval of the Planning Director or the Planning Commission under these regulations should meet with the Planning Director no less than thirty (30) days before the filing deadline. At this meeting, the Planning Director shall explain to the applicant the regulations, as well as application forms and submissions that will be required under these regulations.

6.2 Application

All persons seeking approval of the Planning Director or the Planning Commission under these regulations shall submit an application as provided below. When an application requires approval by the Planning Commission, the Planning Director shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

A. Application for Planning Director Approval

Applications for permit approval by the Planning Director must include the following materials and information:

1. Documentation of the applicant’s right, title, or interest in the property where the facility is to be sited, including name and address of the property owner and the applicant.
2. The owner of the facility’s name shall be placed on the structure.
3. Copies of any easements necessary to access the property.
4. List of all property owners within 110% of the height of the facility as shown on the Assessors’ records.
5. If a facility will have co-location capability, all lessees’ names shall be placed on the structure or equipment.
6. All facility locations shall have posted street signs at the cross street intersection. Sign shall have a minimum of 3.5” reflective letters.

7. A copy of the FCC license for the facility or a signed notarized statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
8. The applicant will comply with all applicable State and Federal Historic Preservation laws and regulations.
9. Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, identifying structural materials, and a description of the access to the property.
10. A storm and erosion control plan for the access road to the site, unless there will be no changes implemented with regards to any existing roads.
11. A copy of any lease agreements relating to the site. This submission requirement does not require disclosure of confidential business information.
12. Show compliance with all FAA regulations.

B. Application for Planning Commission Approval

An application for approval by the Planning Commission must be submitted to the Planning Director. The application must include the following information:

1. Documentation of the applicant's right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.
2. The owner of the facility's name shall be placed on the structure.
3. If a facility will have co-location capability all lessees' names shall be placed on the structure.
4. Evidence of any easements necessary to access the property as shown on the site plan.
5. All facility locations shall have posted street signs at the cross street intersection. Signs shall have a minimum of 3.5" reflective letters.
6. A copy of the FCC license for the facility, or a signed notarized statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
7. A USGS topographical map showing the location of all wireless telecommunications facilities above one hundred fifty feet (150') in height above ground level, except antennas located on roof tops, within a two (2) mile radius of the proposed facility, unless this information has been previously made available to the county. This requirement may be met by submitting current information (within thirty days of the date of the application if filed) from the FCC Tower Registration Database.
8. A site plan:
 - (a) prepared and certified by a professional engineer indicating the location, type, and height of the proposed facility,

- antenna capacity, on-site and abutting off-site land uses, means of access, and all applicable American National Standards Institute (ANSI) technical and structural codes;
 - (b) a storm and erosion control plan for the site and the access road to the site.
 - (c) Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and
 - (d) A boundary survey for the lease hold area and/or owned area for the project performed by a land surveyor licensed by the State of West Virginia, including the access road and vicinity map.
- 9. A scenic assessment for the project area consisting of the following:
 - (a) elevation drawings of the proposed facility, showing height above ground level;
 - (b) a landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features, the proposed lighting method;
 - (c) photo simulations of the proposed facility taken from perspectives determined by the Planning Director, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken.
 - (d) description of occupied properties located within 110% of the height of the facility.
 - (e) A narrative discussing:
 - i. the extent to which the proposed facility would be visible from a residential area,
 - ii. the tree line elevation of vegetation within one hundred feet (100') of the facility; and
 - iii. the distance to the proposed facility from the designated scenic resources' noted viewpoints.
- 10. A propagation map, before, and after, of how the proposed facility fits in the applicant's telecommunications network. The applicant must provide written evidence of a tenant for the proposed wireless telecommunications facility. Such evidence must include a lease or letter of intent from the tenant. This submission requirement does not require disclosure of confidential business information.
- 11. Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:
 - (a) evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,

- (b) evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,
- (c) evidence that existing facilities do not have sufficient structural strength to support the applicant's proposed antenna and related equipment. Specifically:
 - i. planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
 - ii. The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.
 - iii. Existing or approval facilities do not have space on which planned equipment can be placed so it can function effectively.
- (d) for facilities in existence prior to the effective date of this Ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;
- (e) evidence that the applicant has made diligent good faith efforts to negotiate co-location on an existing facility, building, or structure, and has been denied access.

12. The applicant will comply with all applicable State and Federal Historic Preservation laws and regulations.

13. Show compliance with all FAA regulations.

6.3 Submission Waiver

The Planning Director may waive any of the submission requirements based upon a written request of the applicant submitted at the time of the application. A waiver of any submission requirement may be granted only if the Planning Director finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

6.4 Application Fee

An application for approval shall include a payment of an application fee of five hundred dollars (\$500.00). The application shall not be considered complete until this fee is paid. If application is made and it is determined that the construction or expansion is exempt from this ordinance, the application fee will be returned. Any fees charged by contract engineers required to be utilized by the applicant through these regulations, shall be paid by the applicant.

6.5 Notice of Complete Application

Upon receipt of an application, the Planning Director shall provide the applicant with a dated receipt. Within ten (10) working days of receipt of an application the Planning Director shall review the application and determine if the application meets the submission requirements.

If the application is complete, the Planning Director shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the Planning and Development Office.

If the application is not complete, the Planning Director shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

If the application is deemed complete, and requires Planning Commission review, the Planning Director shall notify all property owners within three hundred feet (300') of the leased site as shown on the Assessor's records, by first-class mail, that a public hearing has been scheduled. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location, a copy of the application available for inspection, and provide the date, time, and place of the public hearing before the Planning Commission.

6.6 Public Hearing

For applications requiring Planning Commission approval under Section 5.1 (B), a public hearing shall be held within forty-five (45) days of the notice of the complete application.

6.7 Approval

A. Planning Director Approval. Within thirty (30) days upon receipt of a complete application for approval under Section 5.1 (A), the

Planning Director shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The Planning Director shall approve the application if the Planning Director finds that the application complies with the provisions in Section 6.2(A) of this ordinance.

- B. Planning Commission Approval.** Within ninety (90) days upon receipt of a complete application for approval under Section 5.1 (B), the Planning Commission shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based.

Section 7. Standards of Review

To obtain approval from the Planning Director or the Planning Commission, an application must comply with the standards in this section.

7.1 Planning Director Approval Standards

An application for approval by the Planning Director under Section 6.2(A) must meet the following standards:

- A. The proposed facility is an expansion, accessory use, or co-location to a structure existing at the time the application is submitted.
- B. The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- C. The proposed facility increases the height of the existing structure by no more than forty feet (40').
- D. The proposed facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practical.
- E. The applicant will comply with all applicable State and Federal Historic Preservation laws and regulations.

7.2 Planning Commission Approval Standards

An application for approval by the Planning Commission under Section 6.2 (B) must meet the following standards:

- A. The proposed facility increases the height of the existing structure if applicable.
- B. The applicant has sufficient right, title, and interest to locate the proposed facility on the existing structure.
- C. A new facility on public or private property.
- D. A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practical. Existing plants and natural landforms on the site shall also be preserved to the maximum extent practical.

- E. A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal standards. However, security lighting may be used as long as it is shielded to be down directional to retain light within the boundaries of the site, to the maximum extent practical.
- F. A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled “Structural Standards for Steel Antenna Tower and Antenna Supporting Structures.” Applicant must provide certification of compliance from a qualifying engineering.
- G. The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the County, as identified in the current comprehensive plan or by a State or Federal agency.
 - 1. In determining the potential unreasonable adverse impact of the proposed facility, the Planning Commission shall consider the following factors:
 - (a) The type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility.
 - (b) The extent to which the proposed facility would be visible from the viewpoint.
 - (c) The amount of vegetation screening.
 - (d) The distance of the proposed facility from the viewpoint and the facility’s location within the designated scenic resource.
 - (e) The presence of reasonable alternatives that allow the facility to function consistently with its purpose.
- H. A new or expanded wireless telecommunications facility must comply with the buffer zone of 110% of its height from the adjoining property lines and or occupied dwellings. The distance shall be measured from the center of the tower. The following exemptions may apply; (1) the buffer zone may be reduced by the Planning Commission upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property, private or public, or (2) upon a showing of the lessor or landowner’s agreement to waive any provisions of this requirement and the adjoining property owners that fall within the 110% buffer zone.
- I. The Planning Commission may impose additional conditions and/or improvements to be clearly noted on the final approved site plan.

Section 8. Amendment to an Approved Application

Any changes to an approved application must be approved by the Planning Director or the Planning Commission, in accordance with Section 6 and is subject to the application fee upon the discretion of the Planning Director.

Section 9. Abandonment

A wireless telecommunications facility that is not operated for a continuous period of eighteen (18) months shall be considered abandoned. The Planning Director shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the Planning Director that the facility has not been abandoned. However, if negotiations are pending with a service provider a letter of intent shall be provided to the Planning staff prior to the expiration of the eighteen (18) months.

If the owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this period, the County may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its preconstruction condition, including the removal of roads, and reestablishment of vegetation.

Section 10. Appeals

Any person aggrieved by a decision of the Planning Director or the Planning Commission under this ordinance may appeal the decision to the Wood County Commission. Written notice of an appeal must be filed with the Wood County Commission within thirty (30) days of the decision. The notice of appeal shall clearly state the reasons for the appeal.

Section 11. Administration and Enforcement

The Planning Director, as appointed by the Planning Commission, shall enforce this ordinance. If the Planning Director finds that any provision of this ordinance has been violated, the Planning Director shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The Planning Director shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance.

The Wood County Commission, or its authorized agent, is authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless: there is clear and convincing evidence that the violation occurred as a result of erroneous advice given by an authorized county official upon which the applicant reasonably relied to its detriment and there is no

evidence that the owner acted in bad faith; the removal of the violation will result in a threat to public health safety or substantial environmental damage.

Section 12. Fees

A building permit is required for wireless telecommunication facilities and may be acquired through the Wood County Compliance Office.

Section 13. Penalties

Any person who owns or controls any building or property that violates this ordinance shall be fined not less than three hundred dollars (\$300.00) per day. Each day such violation continues after notification by the Planning Director shall constitute a separate offense.

Section 14. Conflict and Severability

14.1 Conflicts with other Ordinances

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

14.2 Severability

The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

Section 15. Definitions

The term used in this ordinance shall have the following meanings:

“Antenna” means any system of poles, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

“Antenna Height” means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

“Co-location” means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

“Designated Scenic Resource” means that specific location, view or corridor as identified as a scenic resource in the county’s current comprehensive plan or by a State or federal agency that consists of:

1. a three dimensional area extending out from a particular viewpoint on a public right of way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range, resulting in a panoramic view corridor; or
2. lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public right of way or within a public recreational area.

“Expansion” means the addition of antennas, towers, or other devices to an existing structure.

“FAA” means the Federal Aviation Administration, or its lawful successor.

“FCC” means the Federal Communications Commission, or its lawful successor.

“Height” means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flag poles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

“Historic District” means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the county’s comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places.

“Historic Landmark” means any improvement, building or structure of particular historic or architectural significance to the community relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the county’s current comprehensive plan, which has been listed or is eligible to be listed on the National Register of Historic Places.

“Historic Resource” means resources that are:

1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;

“Lattice tower” means a support structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.

“Line of sight” means the direct view of the object from the designated scenic resource.

“Monopole” means a support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

“Parabolic Antenna” (also known as a satellite dish antenna) means an antenna which is bowl shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

“Principal Use” means the use other than one which is wholly incidental or accessory to another use on the same premises.

“Public Recreational Facility” means a regionally or locally significant facility, as defined and identified either by State statute or in the county’s adopted comprehensive plan, designed to serve the recreational needs of property owners.

“Structure” means anything constructed or erected which requires permanent location to the ground or attachment to something having a permanent location on the ground. The word “structure” shall include the word “building.”

“Targeted Market Coverage Area” means the area which is targeted to be served by this proposed telecommunications facility.

“Unreasonable Adverse Impact” means that the proposed project would produce a result that is:

1. Excessively out of character with the designated scenic resources affected, including existing buildings, structures and features within the designated scenic resource; and
2. would significantly diminish the scenic value of the designated scenic resource.

“Viewpoint” means that location which is identified either in the county current comprehensive plan or by a federal or state agency, and which serves as the basis for the location and determination of a particular designated scenic resource.

“Wireless Telecommunication Facility” or “Facility” means any structure, antenna, tower, or other device which provides or is suitable to provide radio/television transmission, commercial mobile wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, and personal communications service (PCS) or pager service.

Section 16. Effective Date

This ordinance becomes effective on March 18, 2002.

This ordinance was revised on October 30, 2008.