

**LOCAL LAW No. 2 of the Year 2001
of the TOWN OF DENNING, NEW YORK**

**A LOCAL LAW REGULATING THE SITING OF
WIRELESS TELECOMMUNICATION FACILITIES**

BE IT ENACTED by the Town Board of the Town of Denning as follows:

Section 1. Title.

This Local Law shall be known and cited as the Wireless Telecommunications Facilities Siting Law for the Town of Denning. This Local Law amends the "Zoning Law of the Town of Denning" and other local laws of the Town, regarding the approval, establishment, placement, construction, enlargement and erection of Personal Wireless Services and Facilities in the Town of Denning. This Local Law shall provide standards and requirements for the regulation and placement of Telecommunications Towers, Antennae and Personal Wireless Service Facilities in the Town of Denning.

Section 2. Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed the Town of Denning's authority concerning the placement, construction, and modification of Wireless Telecommunications Facilities. The Town Board of the Town of Denning finds that Wireless Telecommunications Facilities may pose a unique hazard to health, safety, public welfare, and environment of the Town of Denning and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. In order to insure that the placement, construction, or modification of Wireless Telecommunications Facilities is consistent with the Town's land-use policies, the Town is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Local Law is to minimize the negative impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated and comprehensive review of environmental impacts of such facilities, and protect the health, safety, historic character, property values and public welfare in the Town of Denning. The Town of Denning lies entirely within the Catskill Park in a visually sensitive area, with views of mountaintops and ridgelines that are important assets to the residents. These should be subject to further study as part of the process of revising the Town's Master Plan if deemed necessary, with recommendations made for the protection and preservation from any and all forms of degradation or adverse impact. As authorized by Section 22 of the New York State Municipal Home Rule Law and Section 205 of New York State Town Law, this Local Law shall hereby amend Local Law No. 1 of 1992 entitled "Zoning Law, Town of Denning".

Section 3. Consistency with Federal Law.

The provisions of this Local Law are intended to be consistent with the Federal Telecommunications Act of 1996 in that:

- A. They do not prohibit or have the effect of prohibiting the provision of Personal Wireless Services;
- B. They are not intended to be used to unreasonably discriminate among Wireless Services; and
- C. They do not regulate Personal Wireless Services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated Services and Facilities comply with the FCC's regulations concerning such emissions.

Section 4. Definitions.

Section 10.2 of the "Zoning Law of the Town of Denning," ("DEFINITIONS") is hereby amended to add the following terms and their meanings.

Act. The Federal Telecommunications Act of 1996.

Adequate Coverage. Coverage is considered to be "adequate" within that area surrounding a Base Station where the predicted or measured median field strength of the transmittal signal is greater than or equal to -95 dbm for at least 75% of the intended coverage area. It is acceptable for there to be holes within the area of Adequate Coverage where the signal is less than -95 dbm, as long as the signal regains its strength to greater than or equal to -95 dbm further away from the Base Station. For the limited purpose of determining whether the use of a Repeater is necessary or desirable, there shall be deemed not to be Adequate Coverage within said holes. The outer boundary of the area of Adequate Coverage, however, is that location past which the signal does not regain a strength of greater than or equal to -95 dbm.

Adequate Capacity. Capacity is considered to be "adequate" if the Grade of Service is p.05 or better for at least 50% of the days in a preceding month, prior to the date of Application, as measured using direct traffic measurement of the Personal Wireless Service Facility in question, where the call blocking is due to frequency contention at the Antenna(e).

Antenna. A system of devices that transmit or receive electromagnetic waves or radio frequency (RF) signals. Such uses shall include, but not be limited to radio, television, cellular, paging, personal (Tele)communications services (PCS), and microwave Telecommunications.

Applicant. Any Person submitting an Application to the Town of Denning for a Special Use Permit.

Application. The form approved by the Board, together with all necessary and appropriate documentation that an Applicant submits in order to receive a Special Use Permit.

Available Space. The space on a Tower or Structure to which Antennae of a Personal Wireless Service Provider are both Structurally Able and Electromagnetically Able to be attached and which is available for rental to the Applicant at fair market prices and terms, and on which space and location will provide necessary coverage.

Base Station. The primary sending and receiving site in a wireless telecommunications network. More than one Base Station and/or more than one variety of Personal Wire Service Provider can be located on a single Tower or Structure.

Board. The Town Board of the Town of Denning.

Channel. The segment of the radiation spectrum from an Antenna which carries one signal. An Antenna may radiate on many channels simultaneously.

Co-Location. The shared use by two or more persons or entities of a Structure or Non-Tower Structure as the site or location of a Personal Wireless Service Facility or Repeater.

Commercial Communications receiving and transmitting. Carriage of Television Broadcast Signal as defined in 47 CFR Part 3, Sub-part E and Part 76; or Radio Broadcast Signal as defined in 47 CFR Part 73, Sub-parts A and B.

Completed Application. An Application that contains all information and/or data necessary to enable the Board to evaluate the merits of the Application, and to make an informed decision with respect to the effect and impact on the Town in the context of the permitted land use for a particular location.

Commercial Microwave transmitting and receiving. Any Antenna or commercial entity operating at a frequency of 1 Gigahertz (GHZ) or greater. Also known as "Fixed Microwave Services" as defined in 47 CFR Part 101.

Communication Equipment Shelter. A Structure located at a Base Station designed principally to enclose equipment used in connection with Personal Wireless Service transmissions.

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

Direct-to-home satellite services or Direct Broadcast Service or DBS. Only programming transmitted or broadcast by satellite directly to subscribers' premises without the use of ground receiving equipment, except at the subscribers' premises or in the up-link process to the satellite.

EAF. The Full Environmental Assessment Form (long form) (Appendix A to 6NYCRR part 617.20) and includes a Visual EAF Addendum (Appendix B) approved by the New York State Department of Environmental Conservation to implement the provisions of the State Environmental Quality Review Act (SEQRA).

Electromagnetically Able. The determination that the new signal from and to the proposed new Antennae will not significantly interfere with the existing signals from and to other Facilities located on the same Tower or Structure as determined by a qualified telecommunications engineer. The use of available technologies to alleviate such interferences shall be considered when making this determination.

emf. Electromagnetic frequency radiation.

EPA. State and/or Federal Environmental Protection Agency, or it's duly assigned successor agency.

Facility Site. A property, or any part thereof, which is owned or leased by one or more Personal Wireless Service Providers and upon which one or more Personal Wireless Service Facility(ies) and required landscaping are located.

FAA. Federal Aviation Administration, or it's duly designated and authorized successor agency.

FCC. Federal Communications Commission: The government agency responsible for regulating telecommunications in the United States.

Free-standing Tower. A Tower that is not supported by guy wires or ground anchors or other means of attached or external support, except for it's base foundations.

GHz. Gigahertz: One billion Hertz. (See "Hertz.")

Grade of Service. A measure of the percentage of calls which are able to connect to the Base Station during the busiest hour of the day. Grade of Service is expressed as a number, such as p.05, which means that 95% of callers will connect on their first try. A lower number (e.g., p.04) indicates a better Grade of Service.

Height. When referring to a Tower or structure the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an antenna.

Hertz. One Hertz (Hz) is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

MHz. Megahertz: One million Hertz. (See "Hertz.")

Modification of an Existing Facility or Existing Tower. Any change in maximum power input or output and/or number of Antennae and/or change in operating frequency approved under an existing Special Use Permit or Site Plan. Any change, or proposed change, in power input or output, number of Antennae, change in Antenna(e) type or model, repositioning of Antenna(e), change in number of channels per Antenna above the maximum number approved under an existing Special Use Permit. Also, any increase, or proposed increase, in dimensions of an existing and permitted Tower or other Structure designed to support Personal Wireless Service transmission, receiving and/or Repeater and/or equipment.

Monitoring. The measurement, by the use of instruments in the field, of the electromagnetic radiation from a site as a whole, or from individual Personal Wireless Service Facilities, Towers, Antennae or Repeaters.

Monitoring protocol. An approved testing protocol as defined in the most current FCC regulations.

NIER. Non-Ionizing Electromagnetic Radiation.

Non-Tower Facility. An existing Building or Structure on which a Repeater or a Personal Wireless Service Facility is erected or proposed to be erected.

Person. Any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.

Personal Wireless Service. Commercial Mobile Services, unlicensed wireless services, and common carrier wireless exchange access services. These services include: cellular services, Personal Communications Services (PCS), Specialized Mobile Radio Services, and Paging Services.

Personal Wireless Service Facility. All equipment with which a Personal Wireless Service Provider broadcasts and receives the radio frequency waves which carry their services and all locations of said equipment or any part thereof. The Facility may be sited on one or more Towers or Structures owned and permitted by another owner or entity. The term does not include "Repeater."

Personal Wireless Service Provider. An entity licensed by the FCC to provide Personal Wireless Services.

Public Utility Station or Structure. Electric lines and poles, gas mains and lines, water and sewer mains and lines, telephone and telegraph lines and poles, and appurtenant structures, used to convey utility services to members of the public. The term does not include high voltage transmission lines and poles. The term does not include "Personal Wireless Services" or "Personal Wireless Service Facilities."

Radiation Propagation Studies or Radial Plots. Computer generated estimates of the radiation emanating from Antennae or Repeaters sited on a specific Tower or Structure. The height above ground and above mean sea level, power input and output, frequency output, type of Antenna(e), Antenna(e) gain energy dispersion characteristics, and topography of both the site and its surroundings are all taken into account to create these simulations. They are the primary tool for determining whether a site will provide Adequate Coverage for the Personal Wireless Telecommunications Service Facility proposed for that site.

Radio Frequency or RF. Non-ionizing electromagnetic radiation of any nature on any frequency.

Repeater. A micro or macro cell designed to extend Personal Wireless Service to areas which are not able to receive Adequate Coverage directly from a Base Station, using the same channels as the Base Station.

Special Permit. The official document or permit granted or issued by the Planning Board for a use specifically listed as requiring such permit.

State. The State of New York.

Telecommunications. The transmission and reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

Telecommunications Structure. A structure used in the provision of services described in the definition of "Wireless Telecommunication Facilities."

Temporary. In relation to all aspects and components of this law, something intended to, or that does, exist for fewer than ninety (90) days.

Town. The Town of Denning, New York.

Transmission Line. A method of conveying electromagnetic/radio frequency energy either to a transmit or from a receive antenna."

Wireless Telecommunications Facilities or Telecommunications Tower or

Telecommunications Site. A structure, facility, or location designed, or intended to be used as, or used to physically support antenna(e). It includes without limit, free standing towers, guyed towers, mono-poles, and similar structures that employ camouflage technology, including, but not limited to, structures such as a multi-story building, church steeple, silo, water tower, sign, or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, or microwave telecommunications, but excluding those used exclusively for the Town's fire, police, and other dispatch telecommunications, or exclusively for private radio and television reception, and private citizen's bands, amateur radio, and other similar telecommunications.

Section 5. Amendment to the Town of Denning Zoning Law Article 4.1 Schedule of District Use Regulations

The "Zoning Law of the Town of Denning" is hereby amended as follows:

Section 4.1, "Schedule of District Use Regulations, Transportation and Utilities," is deleted, and the following language is inserted in its place:

§ 4.1

TRANSPORTATION AND UTILITIES

Structure/Land Use	Hamlet	Rural
- Motor Freight Transportation and Warehousing	SP	SP
- Transportation Services	P	O
- Commercial TV and Radio Receiving and Transmitting Antenna	O	SP
- Residential Communications Receiving and Transmitting Antenna	P	P
- Fixed Microwave Services Transmitting or Receiving Dish	O	O
- Public Utility Station or Non-Tower Facility	SP	SP
- Public Utility or Transportation Use, including Garage and Maintenance Facility	SP	SP
- Personal Wireless Service Facility	O	SP
- Repeater	SP	SP

Section 6. Amendment to the Town of Denning Zoning Law Article 4.2 Supplementary Regulations on Use

A. Section 4.2.6 of the "Zoning Law of the Town of Denning," "Uses Requiring a Special Permit", is hereby amended to add a new subsection "4.2.6.14" to read as follows:

4.2.6.14 Personal Wireless Service Facilities subject to all provisions of section 4.2.8, and Repeaters subject to all provisions of section 4.2.9.

B. Section 4.2 of the "Zoning Law of the Town of Denning" is hereby amended to add a new subsection "4.2.8" to read as follows:

4.2.8. Personal Wireless Service Facilities.

4.2.8.1. A Special Use Permit (SP) is required for new Facility/Tower construction or Major Modification of an existing Facility. The Applicant must submit all information required in subsections 4.2.8.4 through 4.2.8.7 inclusive, below, in addition to all other applicable information and requirements found in this Section of this Local Law.

4.2.8.2. If the Applicant is applying for both a Facility/Tower SP and a Repeater SP (see section 4.2.9 below), they shall be submitted and examined concurrently.

4.2.8.3. No Personal Wireless Service Facility shall be considered exempt from this Section of this Local Law for any reason, whether or not said Facility is proposed to share a Tower or other Structure with exempt uses.

4.2.8.4. A Full Environmental Assessment Form (EAF) Addendum shall accompany all applications submitted.

4.2.8.5. Adequate Coverage, Adequate Capacity and Justification of Need for SP.

(1) The Applicant shall provide written documentation of any Facility Site(s) that are within five (5) miles of the proposed Site in which the Applicant has a legal or equitable interest, whether by ownership, leasehold or otherwise. For each such Facility Site, the Applicant shall demonstrate with written documentation that this Facility Site is not already providing, or does not have the potential by adjusting the Facility, to provide Adequate Coverage and/or Adequate Capacity to the Town of Denning.

The documentation for each Facility Site listed shall include:

- (a) exact Tower location in longitude and latitude to degrees, minutes and seconds;
- (b) ground elevation above mean sea level at the Tower location;
- (c) height of Tower or Structure;
- (d) height of Antenna(e) on Tower or Structure;
- (e) type, manufacturer and model number of Antenna(e);
- (f) Antenna(e) gain;
- (g) output frequency;
- (h) number of channels;
- (i) power input; and
- (j) maximum power output per channel.

Potential adjustments to these existing Facility Sites, including changes in Antenna(e) type, orientation, gain, height or power output, shall be specified. Radial Plots from each of these Facility Sites as they exist and with adjustments as above shall be provided as part of the Application.

- (2) The Applicant shall demonstrate with written documentation that it has examined all existing Facility Sites that are within five (5) miles of the proposed Site in which the Applicant has no legal or equitable interest, whether by ownership, leasehold or otherwise, to determine whether those existing Facility Sites can be used to provide Adequate Coverage and/or Adequate Capacity to the Town of Denning. This information shall be provided unless the Applicant can provide sufficient documentation that it cannot utilize any of the existing Facilities, including documentation showing a good faith effort to these ends. The following documentation for each existing Facility Site examined shall include:
- (a) exact Tower location in longitude and latitude to degrees, minutes and seconds;
 - (b) ground elevation above mean sea level at the Tower location;
 - (c) height of the Tower or Structure;
 - (d) height of proposed Antenna(e) on Tower or Structure;
 - (e) type, manufacturer and model number of proposed Antenna(e);
 - (f) proposed Antenna(e) gain;
 - (g) proposed output frequency;
 - (h) proposed number of channels;
 - (i) proposed power input; and
 - (j) proposed maximum power output per channel.
- Radial Plots from each of these existing Facility Sites, configured as documented above, shall be provided as part of the Application. In addition, the Applicant shall provide a list of all Sites within a one (1) mile radius of the proposed location that have been considered as Alternative Sites, and shall state, in detail, the reasons why those Alternative Sites have been rejected.
- (3) The Applicant shall demonstrate with written documentation that it has analyzed the feasibility of Repeaters or Non-Tower Structures to provide Adequate Coverage and/or Adequate Capacity to the Town of Denning. Radial Plots of all Repeaters considered for use shall also be provided as part of the Application.

4.2.8.6. Required Documentation.

- (1) Copies of all submittals and showings pertaining to: Applicant's FCC license; Environmental Impact Statements; FAA Notice of Construction or Alteration; Aeronautical Studies; and all data, assumptions and calculations generated by or for the Applicant relating to the proposed service area (as determined pursuant to 47 CFR Part 22 or 24, or by other means), and power levels regardless of whether categorical exemption from Routine Environmental Evaluation under FCC rules is claimed.
- (2) Required Plans and engineering plans prepared, stamped and signed by a Professional Engineer (P.E.) licensed to practice in the State of New York. Survey plans shall also be stamped and signed by a Professional Land Surveyor registered in the State of New York. Plans shall be on 24" x 36" sheets, on as many sheets as necessary, and at scales which are no smaller (i.e., no less precise) than listed below in subsection 4.2.8.6 (3)(a)-(h). Each plan sheet shall have a title block indicating the project title, sheet title, sheet number, date, revision date(s), scale(s), and original seal and signature of the P.E. and other professionals who prepared the plan.

- (3) The Applicant shall, as part of its application, provide the Planning Board with the following plans and maps:
- (a) Location map: Copy of a portion of the most recent U.S.G.S. Quadrangle Map, 7.5 Minute Series, at a scale of 1:24,000, and showing the area within at least two (2) miles from the proposed Tower Site. Indicate the Tower location and the exact latitude and longitude to degrees, minutes and seconds.
 - (b) Vicinity map at a scale of 1"=200' with contour intervals no greater than ten (10) feet showing the entire vicinity within a one thousand (1,000) foot radius of the property lines within which the Tower Site is located including topography, public and private roads, buildings, bodies of water, wetlands, historic sites and habitats for endangered species. Indicate any access easement(s) or right(s)-of-way needed for access from a public way to the Tower, and the names of all contiguous property owners along each access easement or who have deeded rights to the easement(s).
 - (c) Existing Conditions Plan: A recent survey of the Tower Site at a scale no smaller than 1"=40' with topography drawn with a minimum of five (5) foot contour intervals, showing existing utilities, property lines, existing buildings or structures, stone walls or fence lines, and wooded areas within a two hundred (200) foot radius from the base of the proposed Tower. Show the boundary of any wetlands, floodplains or watercourses within two hundred (200) feet from the Tower or any related Facilities, access ways or appurtenances. The survey plan must have been completed on the ground by a Licensed Land Surveyor within two (2) years prior to the application date.
 - (d) In addition to the requirements contained in Section 8.3 of the Zoning Law of the Town of Denning, "Site Plan Approval", the Application shall provide Proposed Site Plans, site layout, grading and utilities at the same scale or larger than the Existing Conditions Plan, including:
 - [1] Proposed Tower location and any appurtenances, including supports and guy wires if any, and any accessory building (Communication Equipment Shelter or other). Indicate property boundaries and setback distances to the base(s) of the Tower and to the nearest corners of each of the appurtenant Structures.
 - [2] Indicate proposed spot elevations at the base of the proposed Tower and at the base of any guy wires and the corners of all appurtenant Structures.
 - [3] Proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines, and whether such lines are underground or above ground.
 - [4] Limits of areas where vegetation is to be cleared or altered and justification for any such clearing or alterations.
 - [5] Full disclosure of any chemical agents applied for the purpose of clearing vegetation.
 - [6] Any direct or indirect wetlands alteration proposed.
 - [7] The road or driveway constructed to provide access to the Facilities Site shall be designed to avoid or to minimize disturbance or clearing and to use existing roads, driveways or utility easements whenever possible.

- (e) Proposed Tower and Appurtenances.
- [1] Plans, elevation and sections details at appropriate scales, but no smaller than 1"=10'.
 - [2] Two (2) cross sections through the proposed Tower drawn at right angles to each other, showing the ground profile to at least one hundred (100) feet beyond the limit of clearing and any guy wires or supports. Show the dimension of the proposed height of the Tower above average grade at the Tower base. Show all proposed Antennae, including their location on the Tower.
 - [3] Typical detail of Tower foundation, including cross sections and details. Show all ground attachments and specifications for anchor bolts and other anchoring hardware.
 - [4] Detail proposed exterior construction or finish of the Tower.
 - [5] Indicate the relative height of the Tower to the tops of surrounding trees that presently exist.
 - [6] Illustrate the modular structure of the proposed Tower, indicating the heights of sections which could be removed or added in the future to adapt to changing communications, technology, conditions or demands, and the maximum structurally allowable height of the proposed Tower.
 - [7] Certification by a Licensed Engineer that the Tower can be altered to:
 - [a] Support additional Antennae or other communication facilities at different heights with adequate separation.
 - [b] Withstand winds in accordance with the ANSI/EIA/TIA 222 Standards.
 - [c] May be shortened if future communication facilities no longer require additional height.
 - [8] A description of available space on the Tower, providing illustrations and examples of the type and number of Personal Wireless Service Facilities which could be mounted on the structure.
- (f) Proposed Communications Equipment Shelter.
- [1] Floor plans, elevations and cross sections at a scale of no smaller than 1/4"=1' of any proposed appurtenant structure.
 - [2] Representative elevation views indicating the roof, facades, doors and other exterior appearance and materials.
- (g) Proposed Equipment Plan.
- [1] Plans, elevations, sections and details at appropriate scales but no smaller than 1" = 10'.
 - [2] Number of Antennae and Repeaters (if any), as well as the exact locations of all Repeaters (if any) located on a map as well as by degrees, minutes and seconds of latitude and longitude.
 - [3] Mounting locations on Tower or Structure, including height above ground.
 - [4] Antenna(e) types, manufacturer(s) and model number(s).
 - [5] For each Antenna, the Antenna gain and the Antenna radiation pattern.
 - [6] Number of channels per Antenna, projected and maximum.
 - [7] Power input to the Antenna(e).
 - [8] Power output in normal use and at maximum output for each Antenna and all Antennae as an aggregate.
 - [9] Output frequency(ies) of the Transmitter(s).

- (h) Sight Lines.
 - [1] A minimum of eight (8) view lines in a zero (0) to five (5) mile radius from the Site, shown beginning at True North and continuing clockwise at forty-five (45) degree intervals.
 - [2] A plan map of a circle five (5) miles in radius of the Facility Site on which any visibility of the proposed Tower from a public way shall be indicated.
 - [3] Applicant shall utilize the U.S.G.S. Quadrangle Map, at a scale of 1:24,000 and submit profile drawings on a horizontal scale of 1"=400', with a vertical scale of 1"=40'. Trees shall be shown at existing heights and at projected heights in ten (10) years.

- (i) Balloon Test and Visual Analysis.
 - [1] Within thirty-five (35) days of submitting an Application, Applicant shall arrange to fly or raise upon a temporary mast, a three (3) foot diameter brightly colored balloon, or (during development phase) the top of any temporary supporting Structure, at the maximum height of the proposed Tower. The dates (including alternative dates in case of poor visibility on any of the initial dates), times and location of this Balloon Test shall be determined in consultation with the Planning Board and shall be advertised by the Applicant at seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the Town of Denning. The balloon shall be flown for at least four (4) consecutive hours sometime between 9:00 a.m. and 5:00 p.m. on the dates chosen.
 - [2] The Planning Board may specify other methods of Visual Analysis to assess the potential impacts on nearby views, ridgelines, scenic areas, historic sites and adjacent land uses, including, but not limited to, photographic simulation or photographic montage, with and without foliage.

- (j) The Applicant may be required to provide a written irrevocable commitment valid for the duration of the existence of the Tower or Facility, to the extent Structurally and Electromagnetically Able, to rent or lease available space for Co-Location on the Tower at fair-market prices and terms, without discrimination to other Personal Wireless Service Providers. The Planning Board may require the Applicant to document any claim that Co-Location is not feasible.

4.2.8.7. General Requirements.

- (1) A Special Use Permit shall not be granted for a Personal Wireless Service Facility to be built on speculation. If the Applicant is not simultaneously installing a Personal Wireless Service Facility, it shall provide a copy of its existing lease/contract with a Personal Wireless Service Provider. Said Provider shall provide all necessary data to comply with the terms of this Local Law as part of the Applicant's application for a Special Use Permit, or the SP shall not be granted.

- (2) Tower(s) shall minimize, to the maximum extent feasible, adverse visual impacts on the environment. The Planning Board may impose reasonable conditions to ensure this result, including, but not limited to, requiring the use of camouflage, painting, lighting standards and screening.
- (3) If the Facility or Tower Site is in a wooded area, a vegetated buffer strip of undisturbed trees of at least one hundred (100) feet in depth (or less if determined by the Planning Board to be sufficient) shall be retained as close to the Tower as possible but, in all cases, there shall be no clearing at a distance in excess of twenty-five (25) feet in radius from the base of the Tower, except where the access drive or guy wires are located.
- (4) Fencing. The area around the Tower and Communication Equipment Shelter(s) shall be completely fenced and gated for security within an area no greater than twenty-five (25) feet in radius from the base of the Tower. Where guy wires are used, the fence shall be located two (2) feet outside the guy wire anchor and to a height of six (6) feet. Use of razor wire is not permitted.
- (5) Signs shall be limited to two (2) square feet in area and indicate the name of the Personal Wireless Service Facility's owner(s) with a twenty-four (24) hour emergency telephone number. It shall be posted adjacent to the entry gate inside the fenced area. In addition, "No Trespassing" or other warning signs may be posted on the fence.
- (6) Communication Equipment Shelter(s) and Accessory Building(s) shall be designed to be architecturally similar and compatible with each other, and shall be no more than twelve (12) feet high. The Buildings shall be used only for the housing of equipment related to this particular site. Whenever possible, the Buildings should be joined or clustered so as to appear as one Building.
- (7) New Towers shall not exceed the minimum height necessary to provide Adequate Coverage for the Personal Wireless Service Facilities proposed for use on the Tower. The Applicant may submit a request for additional height to accommodate future Co-Location, and shall provide design information to justify such additional height. The Planning Board may require the Applicant to provide detailed technical justification for the requested Tower height.
- (8) Lattice Towers shall be located at least one and one-half times their maximum structural height within the outer boundary of the Site on which the Tower is to be located. Monopole Towers shall be of a "weak point" design.
- (9) To the extent feasible, all network interconnections to and from the Tele-communications Site and all power to the Site shall be installed under-ground. At the initial construction of the access road to the Site, sufficient conduit shall be laid to accommodate the maximum possible number of Personal Wireless Service Providers licensed to provide services to the Town of Denning and surrounding areas.
- (10) If greater than fifty percent (50%) of the proposed service area, as referenced in 47 CFR Parts 22 and 24, of the Personal Wireless Service Facility is outside the Town of Denning, then the Special Use Permit may be denied unless the Applicant demonstrates to the satisfaction of the Planning Board that the Applicant is unable to locate within the town which is primarily receiving service from the proposed Facility.

- (11) Unless required by the Federal Aviation Administration (FAA), no lighting of Towers or the Personal Wireless Service Facility is permitted, except for manually operated emergency lights for use only when operating personnel are on Site. The Planning Board may require the Applicant to reduce the height of the Tower or Personal Wireless Service Facility to a level below that at which the FAA requires lighting; and to provide detailed technical justification for the requested Tower height.
- (12) Commercial advertising shall not be allowed on any Antenna, Tower, Accessory Building or Communication Equipment Shelter.
- (13) The Planning Board shall request input from the Town Superintendent of Highways, Chiefs (or their designees) of Fire, Police and other emergency services regarding the adequacy for emergency access of the planned drive or roadway to the site.
- (14) Back-up or auxiliary power shall be non-polluting or use Liquefied Petroleum Gas and generators shall be installed with soundproofing.

4.2.8.8. Approval Criteria.

- (1) In addition to the findings required by Section 8.2 of the Zoning Law of the Town of Denning, "Special Permits," the Planning Board, before granting the Special Use Permit, shall make findings, as follows:
 - (a) That the Applicant is proposing to locate its Personal Wireless Service Facility or Tower within a permitted location; and
 - (b) That the Applicant is not already providing Adequate Coverage to the subject area; and
 - (c) That the proposed Personal Wireless Service Facility or Tower is the minimum height necessary to provide Adequate Coverage to the subject area; and
 - (d) That the proposed Facility will not have an undue adverse impact on historic resources, scenic views, residential property values and/or natural or man-made resources; and
 - (e) That the Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the Facilities; and
 - (f) That the proposal shall comply with the most current FCC regulations regarding emissions of electromagnetic radiation as currently found in FCC regulations, Title 47, Part 1, Section 1.1307 and all other relevant sections.
- (2) Any decision by the Planning Board to grant, grant with condition(s), or deny an Application for a Special Use Permit under this Local Law shall be in conformance with § 332 of the Act [47 U.S.C. 332(7)(B)(ii), (iii)], in that it shall be in writing and supported by substantial evidence contained in a written record.

4.2.8.9. Monitoring and Evaluation of Compliance.

- (1) Compliance Certification. Prior to the activation of a new or modified Facility or Repeater, the owner(s) of the Facility will certify to the Planning Board, the Town Specified Engineer and the Zoning Enforcement Officer that the Facility and/or Repeater is in compliance with the most current FCC regulations regarding emissions of electromagnetic radiation as currently found in FCC regulations, Title 47, Part 1, Section 1.1310 and all other relevant sections. Certification shall include site specific calculations showing highest power density levels at the closest publicly accessible point to the Facility, using the methodology described in FCC OET Bulletin #65, Edition 97-01, August 1997, "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Radiation," or other more current FCC Bulletins. At least once every twelve (12) months, starting from the date of activation, a follow-up report of the certifying compliance (as described above) shall be submitted to the Planning Board, the Zoning Enforcement Officer and the Town Specified Engineer.
- (2) Excessive Emissions. Should owner's calculations or independent monitoring of a Facility or Repeater Site by a qualified engineer reveal that the Site exceeds the most recent FCC regulations regarding emissions of electromagnetic radiation, currently found in FCC Regulations Title 47, Part 1, Section 1.1310 and all other relevant sections, then the owner(s) of all Facilities utilizing that Site shall be so notified. The owner(s) shall submit to the Planning Board, the Zoning Enforcement Officer and Town Specified Engineer, a plan for the reduction of emissions to a level that complies with the FCC standard within ten (10) business days of notification of non-compliance. That plan shall reduce emissions to the applicable FCC standard within fifteen (15) days of initial notification of non-compliance. Failure to accomplish this reduction of emission within fifteen (15) business days of initial notification of non-compliance shall be a violation of the Special Permit and shall subject the violator to penalties and fines penalties as determined by the Planning Board. Such fines shall be payable by the owner(s) of the Personal Wireless Service Facilities with Antennae on the Facility Site until compliance is achieved. All consultant costs incurred shall be borne by the owner(s) of the Personal Wireless Service Facilities with Antennae on the Facility Site, as part of the Special Permit.
- (3) Structural Inspection. It shall be a condition of the Special Use Permit that Tower owner(s) shall pay for an Independent Consultant (a licensed professional Structural Engineer) hired by the Town to conduct inspections of the Tower's structural integrity and safety. Towers shall be inspected every five (5) years. A report of the inspection shall be prepared by the Independent Consultant and submitted to the Planning Board, the Town Engineer, the Building Inspector, and the Town Clerk. Any Major Modification of Existing Facility which includes changes to Tower dimensions or Antenna numbers or type shall require new structural inspection. Failure to comply with this requirement shall be considered a violation of the Special Use Permit and may cause revocation of the SP.

(4) Unsafe Structure.

- (a) Should the inspection of any Tower reveal any structural defect(s) which, in the opinion of the Independent Consultant render(s) that Tower unsafe, the following actions must be taken:
 - [1] Within ten (10) business days of notification of unsafe Structure, the owner(s) of the Tower shall submit to the Building Inspector a plan to remediate the structural defect(s).
 - [2] This plan shall be initiated within ten (10) business days of the Building Inspector's approval of the remediation plan.
- (b) Failure to accomplish this remediation of structural defect(s) within ten (10) business days shall be a violation of the Special Permit and subject to fines and penalties as determined by the Planning Board. Such fines shall be payable by the owner(s) of the Tower until compliance is achieved.

4.2.8.10. Removal Requirements. Any Personal Wireless Service Facility or Repeater which ceases to operate for a period of one (1) year shall be removed. "Cease to operate" is defined as not performing the normal functions associated with the Personal Wireless Service Facility or Repeater and its equipment on a continuous and ongoing basis for a period of one (1) year. At the time of removal, the Facility or Repeater Site shall be remediated such that all Personal Wireless Service Facility or Repeater improvements which have ceased to operate are removed. If all Facilities on a Tower have ceased to operate, the Tower shall also be removed, and the Facility or Repeater Site, including any access road(s) which lead to that Facility or Repeater Site from the main access road, shall be re-vegetated. If all Facility or Repeater Sites have ceased to operate, the owner(s) of the last Personal Wireless Service Facility or Repeater to leave the Site may be required to re-vegetate all or a portion of the access road(s). Existing trees shall only be removed with the written permission of the Planning Board and only if the Planning Board determines such removal of trees to be necessary to complete the required removal of Personal Wireless Service Facility(ies) or Repeater(s).

4.2.8.11. Bonding. The Applicant shall, as a condition of the Special Permit:

- (1) Post an initial cash bond in a reasonable amount determined and approved by the Planning Board. This bond shall be in force to cover the costs of the remediation of any damage to the landscape which occurs during the clearing of the Site and to cover the cost of the removal of the Tower, Facility and/or Repeater from the Site and remediation of the landscape should the Facility or Repeater cease to operate.
- (2) Post a maintenance bond for the access road(s), Site(s) and Tower(s) in amounts approved by the Planning Board.

4.2.8.12. Fees and Insurance. Towers, Personal Wireless Service Facilities and Repeaters shall be insured by the owner(s) against damage to persons or property. The owner(s) shall provide a Certificate of Insurance to the Planning Board on an annual basis. For Towers, Facilities and Repeaters located on property owned by the Town of Denning, the Town of Denning shall be an additional named insured.

4.2.8.13. Permit Expiration and Renewal. The Planning Board shall specify a three (3) to five (5) year term for review of individual Special Use Permits to provide for the periodic examination of Communication Tower and Facilities. The periodic review shall address any changes in local, state and federal regulations or laws controlling the use or operation of Tower or Facility. The Planning Board may employ professional services to assist in any such review. This review shall be concurrent with the structural inspection. The cost of professional review shall be borne by the Applicant. If any alterations to the Special Use Permit are required, the renewal shall be conducted in accordance with this Local Law. If no alterations are required, the Planning Board shall grant a renewal of the SP. In this case a public hearing may not be required prior to approval.

C. Section 4.2 of the "Zoning Law of the Town of Denning" is hereby amended to add a new subsection "4.2.9" to read as follows:

4.2.9. Repeaters.

4.2.9.1. Repeaters may be installed at all locations within the Town of Denning.

4.2.9.2. A Repeater Special Permit (RSP) shall be required for any (all) Repeater(s) to be mounted on an existing or newly permitted Tower or Non-Tower Structure, or Major Modification of an Existing Structure.

4.2.9.3. An RSP may be applied for by an Applicant who is currently applying for a Special Permit under this Local Law, or by an Applicant who has previously received a SP under this Local Law, or by an entity which is providing Personal Wireless Services to the Town of Denning from a Base Station outside the Town. The Applicant must submit all information required in subsection "4.2.9.4," below, as well as all other required information.

4.2.9.4. Application Requirements.

- (1) The use of Repeaters to assure Adequate Coverage or to fill holes within areas of otherwise Adequate Coverage while minimizing the number of required Towers is permitted and encouraged. An Applicant who is currently applying for a Repeater Special Permit under this Local Law or who has received and is in compliance with a current SP under this Local Law or an entity which is providing Personal Wireless Services to the Town of Denning from a Base Station outside the Town may apply for a Special Permit.

- (2) Applicants shall provide the following information:
- (a) exact location in longitude and latitude, to degrees, minutes and seconds, as well as by street address or Pole number (if applicable);
 - (b) ground elevation;
 - (c) height of proposed Repeater above ground;
 - (d) type, manufacturer and model number of proposed Repeater;
 - (e) proposed output frequency;
 - (f) proposed number of channels;
 - (g) proposed power input;
 - (h) proposed maximum power output per channel;
 - (i) Radial Plots from any proposed Repeater(s) configured as documented above;
 - (j) name, address, phone number and written consent to apply for this RSP of the owner(s) of the property on which the proposed Repeater shall be located and of the owner(s) of the Tower or Structure on which the proposed Repeater shall be located;
 - (k) proposed Repeater Site layout, grading and utilities at a scale no smaller than 1"=40' (1:480 or metric equivalent 1:500) showing the entire vicinity within a three hundred (300) foot radius of the Repeater Site with topography drawn with a minimum of two (2) feet (0.6 meter) contour interval, including:
 - [1] proposed Repeater location and appurtenances, if any, and any accessory Building (Communication Equipment Shelter or other). Indicate property boundaries of abutters within three hundred (300) feet of the Repeater and dimensions of all proposed improvements;
 - [2] limits of areas where vegetation is to be cleared or altered and justification for any such clearing or alteration;
 - [3] plans of any proposed access driveway or roadway and parking area at the Repeater Site. Include grading, drainage, traveled width, and a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.

4.2.9.5. General Requirements.

- (1) No Repeater shall be located closer than fifty (50) feet to an existing dwelling unit or residential structure, nor less than twenty-five (25) feet above ground.
- (2) The Planning Board may require the use of screening, painting or camouflage to reduce the visual impact(s) of the Repeater(s).
- (3) Repeaters shall be located so as to have the least possible impact on the views of the residents of the Town of Denning.
- (4) The provisions of Section 5B, paragraphs 4.2.8.9 through 4.2.8.13 of this Local Law, as applicable, shall govern the Planning Board's actions with respect to Repeaters and Special Permits.

Section 7. Amendment to the Town of Denning Zoning Law Article 8.2 Special Permits.

Section 8.2 of the "Zoning Law of the Town of Denning," "Special Permits", is hereby amended to add a new subsection "8.2.5" to read as follows:

- 8.2.5 Reimbursable Costs. The applicant shall be required to reimburse the Town the lesser amount of either 1% (one percent) of the total project estimated cost, or the actual cost incurred by the Town for processing the application.

Section 8. Seperability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Local Law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which this Local Law or part thereof is held inapplicable had been specifically exempt therefrom.

Section 9. Supersession and Effective Date.

- A.** Pursuant to the Municipal Home Rule Law, Section 22, the provisions of this Local Law are intended to supersede any inconsistent provision of state or local law, and the provisions of the "Zoning Law of the Town of Denning" and any other local law which are inconsistent therewith.
- B.** This Local Law shall become effective immediately upon adoption and filing as provided by the Municipal Home Rule Law.

Section 10. Interpretation and Conflict with Other Laws.

In their interpretation and application, the provisions of this Local Law shall be held to be minimum requirements adopted for the promotion of public health, safety and general welfare. Wherever the requirements of this Local Law are inconsistent with the requirements of any other lawfully adopted rules, regulations, ordinance or local law, the more restrictive provisions, or those imposing the higher standards shall govern.