



**Personal Wireless Service  
Facilities Ordinance  
for the Town of  
Tamworth, New Hampshire**

Effective Date March 12, 2002; re-written and amended effective May 11, 2021

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## 1. TITLE

This Ordinance shall be known as, and may be cited as, the "Town of Tamworth Personal Wireless Service Facilities Ordinance." It is hereafter referred to as "this Ordinance."

## 2. PURPOSE, AUTHORITY AND APPLICABILITY

### 2.1 Purpose

It is the express purpose of this Ordinance to protect public health, safety and welfare of the community with land use regulations that permit carriers to locate new personal wireless service facilities (hereafter PWSF or PWSFs) within the Town of Tamworth only when all other reasonable options, including but not limited to collocation on existing towers or structures, have been exhausted.

It is further the purpose of this Ordinance to provide a process and a set of standards for the construction of PWSFs in order to:

- a. Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;
- b. Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;
- c. Allow competition in telecommunications service;
- d. Ensure that all telecommunications carriers providing facilities or services within the Town comply with the Ordinances of the Town;
- e. Ensure that the Town can continue to fairly and responsibly protect the public health, safety and welfare;
- f. Encourage the collocation of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;
- g. Enable the Town to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development;
- h. Further the goals and policies of the Tamworth Master Plan, while promoting orderly development of the Town with minimal impacts on existing uses; and
- i. Protect the scenic and visual character of the community.

This Ordinance enables the review of collocation applications, modification applications, and expansion applications, as well as the siting of PWSFs, by the Town of Tamworth Planning Board.

## 2.2 Authority

This Ordinance is adopted pursuant to the authority of RSA 674:16, RSA 674:21 and RSA 12-K. If any provision of this Ordinance differs or conflicts with any other Ordinance or regulation of the Town of Tamworth, the provision imposing the greater restriction or stringent standard shall be controlling.

## 2.3 Applicability

The terms of this Ordinance shall apply to all construction and expansion of PWSFs and to collocations on PWSFs, except as exempted by section 2.3.1.

### 2.3.1 Exemptions

The following are exempt from the provisions of this Ordinance:

- 2.3.1.1 Emergency Wireless Telecommunications Facilities. Temporary wireless communication facilities for emergency communications by public officials.
- 2.3.1.2 Amateur (ham) radio stations. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- 2.3.1.3 Parabolic antennas. Parabolic Antennas less than seven (7') feet in diameter, that are an accessory use of the property.
- 2.3.1.4 Maintenance or repair. Maintenance, repair or reconstruction of an existing wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
- 2.3.1.5 Temporary wireless telecommunications facility. Temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) days.

## **3. DEFINITIONS**

For the purpose of this Ordinance, the following terms shall have the meaning given herein. Any term not defined below shall be defined as stated in RSA chapter 12-K.

### 3.1 Antenna

Any system of poles, panels, rods, reflecting discs, or similar devices that are used for the transmission or reception of radio or electromagnetic frequency signals.

### 3.2 Antenna Array

A collection of antennas attached to a mount to transmit or receive radio or electromagnetic frequency signals.

### 3.3 Antenna Height

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.

#### 3.4 Average Tree Canopy Height

An average height found by inventorying the height at above ground level (AGL) of all trees over thirty (30') feet in height within a one hundred fifty (150') foot radius of the proposed facility site.

#### 3.5 Board

The Planning Board of Tamworth, unless otherwise specified.

#### 3.6 Camouflaged

A PWSF that is disguised, hidden, or placed within an existing or proposed structure.

#### 3.7 Carrier

A Company that provides personal wireless services (also sometimes referred to as a Provider).

#### 3.8 Co/location

The placement or installation of a new PWSF attachment on existing towers or mounts, including electrical transmission towers and water towers, as well as existing buildings and other structures capable of structurally supporting the attachment of PWSFs in compliance with applicable codes, or modification of a structure for the purpose of installation of a new PWSF attachment on that structure. "Collocation" does not include a "substantial modification."

#### 3.9 Dense Tree Growth

A well-distributed stand of trees that extends continuously for a minimum distance of fifty (50') feet from the tower, security barrier, or designated clear area for access to equipment, whichever is greatest, which effectively screens views of the facility, to the greatest extent possible, in all directions possible.

#### 3.10 Environmental Assessment (EA)

An EA is a document required by the Federal Communications Commission and the National Environmental Policy Act when a PWSF is placed in certain designated areas as required by the FCC and/or the NEPA.

#### 3.11 Equipment Shelter

An enclosed structure, cabinet, shed, vault, or box near the base of the tower within which is housed equipment for PWSFs, such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

#### 3.12 Expansion/Expand

The addition of antenna(s), tower(s), or other devices, or the addition of height or girth, to an existing structure.

### 3.13 Facility

See *Personal Wireless Service Facility*. (Section 3.25)

### 3.14 Fall Zone

The area on the ground from the base of a ground-mounted PWSF that forms a circle with a radius equal to the height of the facility, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

### 3.15 Guyed Tower

Any tower that is secured to the ground or other surface by diagonal cables for lateral support.

### 3.16 Height

The vertical measurement from a point on the ground at the mean finished grade at the site of the structure as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure.

### 3.17 Historic or Archaeological Resources

Resources that are:

- 3.17.1 Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
- 3.17.2 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; or
- 3.17.3 Areas identified by a governmental agency such as the New Hampshire Division of Historical Resources as having significant value as an historic or archaeological resource, and any areas identified in the Town's Master Plan which have been listed or are eligible to be listed on the National Register of Historic Places.

### 3.18 Historic Structure

An historic structure is any structure and/or building having historic significance. Examples include: Cook Memorial Library, Tamworth Congregational Church, and the Tamworth Town House.

### 3.19 Lattice Tower

A type of tower with multiple legs and structural cross bracing between the legs that are self-supporting and freestanding or may be guyed.

### 3.20 Mast

A thin pole that resembles a streetlight standard or a telephone pole. A dual polarized antenna is typically deployed on a mast.



### 3.21 Mean Finished Grade

The vertical measurement calculated by averaging the highest and lowest finished grade around a building or structure.

### 3.22 Modification

The replacement or alteration of an existing PWSF within a previously approved equipment compound or upon a previously approved mount. Routine maintenance of an approved PWSF shall not be considered a modification.

### 3.23 Monopole

A thicker type of tower than a mast that is self-supporting with a single shaft of wood, steel, or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

### 3.24 Mount

The structure or surface upon which antennas are mounted, including the following types of mounts:

- a. Roof-mounted. Mounted on the roof of a building.
- b. Side-mounted. Mounted on the side of a building.
- c. Ground-mounted. Mounted on the ground.
- d. Structure-mounted. Mounted on a structure other than a building.

### 3.25 Personal Wireless Service Facility {PWSF or PWSFs}

Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. PWSFs include a mount, antenna, equipment shelter, and other related equipment.

### 3.26 Personal Wireless Services

The types of services regulated by this Ordinance: Commercial radio services, unlicensed wireless services, cellular phone services, personal communications services, common carrier wireless exchange phone services, and common carrier wireless exchange access services, as described in the Telecommunications Act of 1996, as amended.

### 3.27 Security Barrier

A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

### 3.28 Small Wireless Facilities

Facilities that meet each of the following conditions:

- 3.28.1 The facilities (i) are mounted on structures fifty (50') feet or less in height including their antennas; or (ii) are mounted on structures no more than ten (10%) percent taller than other adjacent structures; or (iii) do not extend existing structures on which they are located to a height of more than fifty (50')

feet or by more than ten (10%) percent, whichever is greater;

- 3.28.2 Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;
- 3.28.3 All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight (28) cubic feet in volume;
- 3.28.4 The facilities do not require FAA antenna structure registration; the facilities are not located on Tribal lands; and the facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR § 1.1307(b).

### 3.29 Substantial Modification

The mounting of a proposed PWSF on a tower or mount which, as a result of single or successive modification applications:

- 3.29.1 Increases or results in the increase of the permitted vertical height of a tower, or the existing vertical height of a mount, by either more than ten (10%) percent or the height of one additional antenna array with separation from the nearest existing antenna, not to exceed twenty (20') feet, whichever is greater; or
- 3.29.2 Involves adding an appurtenance to the body of a tower or mount that protrudes horizontally from the edge of the tower or mount more than twenty (20') feet, or more than the width of the tower or mount at the level of the appurtenance, whichever is greater, except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower or mount via cable; or
- 3.29.3 Increases or results in the increase of the permitted square footage of the existing equipment compound by more than two thousand five hundred (2,500) square feet; or
- 3.29.4 Adds to or modifies a camouflaged PWSF in a way that would defeat the effect of the camouflage.

### 3.30 Tower

Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas. The term "structure" shall include but is not limited to a self-supporting lattice tower, guyed tower, monopole tower, radio and/or television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and the like.

### 3.31 Wetlands and Wetland Soils

As defined in RSA 482-A:2, X, as amended, or lands defined as wetlands by the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, whichever defines the largest wetland area.

## **4. PERMIT REQUIREMENTS AND APPROVAL PROCESS**

### 4.1 Requirements

#### 4.1.1 Collocation/Modification

Collocation on, or modifications to, a PWSF shall require submission and approval of a Collocation/Modification Application to the Board.

#### 4.1.2 Special Use Permit

Construction, installation or "substantial modification" of a PWSF shall require a Special Use Permit from the Board.

### 4.2 Approval Process

#### 4.2.1 Approval Process for Collocations and Modifications

4.2.1.1 Application, Submission and Review Procedures use the Tamworth Planning Board Rules of Administrative Procedure, Section III A

4.2.1.2 Upon submission of a completed application for collocation or modification of wireless facilities on existing structures, the Board shall request in writing any additional information within fifteen (15) days from the receipt of that application. Within forty-five (45) days of receipt of the application, or as otherwise extended in writing by the applicant, the Board shall: review the collocation application or modification application in light of its conformity with RSA chapter 12-K under the terms and parameters set forth in RSA 12- K 10 and in conformity with 47 CFR § 1.6100 (as to modifications); make its final decision to approve or disapprove by majority vote the application; and advise the applicant in writing of its final decision.

If the Board fails to act on a collocation application or modification application within the forty-five (45) day review period, the collocation application or modification application shall be deemed approved.

A party aggrieved by the final action of the Board, be it an affirmative denial of a collocation or modification application, or the Board's failure to act within the time allotted by law, may bring an action for review in Carroll County Superior Court.

#### 4.2.2 Approval Process for Special Use Permit

4.2.2.1 Application, Submission and Review Procedures use the Tamworth Planning Board Rules of Administrative Procedure, Section III A

4.2.2.2 Upon submission of a completed PWSF Special Use Permit application, the Board shall request in writing any additional information within

thirty (30) days from the receipt of the application. The Board shall act to accept or deny by a majority vote the completed application for a substantial modification of an existing PWSF, or construction of a new small wireless facility, within ninety (90) days of receipt of the application. The Board shall act to accept or deny by a majority vote the completed application for construction of any other PWSF within one hundred fifty (150) days. An extension of these deadlines may be offered by the applicant in writing.

4.2.2.3 Notice of the Special Use Permit Application and the Public Hearing shall be given to the Abutters, the Applicant, and holders of conservation, preservation, or agricultural preservation restrictions by certified mail, mailed at least ten (10) days prior to the Public Hearing and by posting at the Town Hall and the Post Office and by publication in a newspaper of general circulation within Carroll County. For proposals within five hundred (500') feet of the top of the bank of any lake, pond, river, or stream, the Board shall also notify the Department of Environmental Services by first class mail.

The notice shall state the date, time, and place of the Public Hearing at which the application or other item(s) will be formally submitted to the Board, shall include a general description of the proposal which is to be considered, and shall identify the applicant and the proposed location.

4.2.2.4 Once submitted, an application cannot be substantively amended without the changes being reviewed and accepted by the Board after additional notice to all abutters.

4.2.2.5 Whenever the Board deems it necessary for the consideration of an application to visit the site, the Board shall request permission from the applicant.

a. Such a site inspection shall be posted as a public meeting of the Board pursuant to the Right-to-Know provisions of RSA 91-A. If there is a quorum present at the site inspection, Minutes shall be kept.

b. All applications are conditioned upon the owner allowing access to the property, to the extent reasonable and necessary to properly review the application. Denial of access cannot automatically terminate any further consideration of the proposal, but instead should be a basis for the Board to then take a vote at a properly noticed Public Hearing to decide whether to terminate further consideration of the application.

4.2.2.6 A Public Hearing shall be held. At the Public Hearing, the applicant, any abutter, or any person with a direct interest in the matter may testify in person or submit testimony or evidence in writing. Other persons may testify subject to Board approval.

4.2.2.7 The Board may grant Conditional Approval of an application, but the approval shall not be deemed final until all of the conditions have been met. If the applicant has not complied with the conditions of approval within one (1) year, the approval is void and the applicant must submit a new application. A further Public Hearing is not required when compliance with such conditions:

1. is administrative in nature;
2. involves no discretionary judgment on the part of the Board; or
3. requires the applicant's possession of permits and approvals granted by other boards or agencies.

All other conditions, once met, shall require a Public Hearing. Additional notice shall not be required of a continued Public Hearing if the date, time, and place of the continued hearing were made known at the prior hearing.

4.2.2.8 If the Board denies the Special Use application, the Board shall issue its denial in writing and such denial shall be based upon substantial evidence in the written record.

#### 4.3 Waivers for Special Use Permits

The Board may approve waivers to these regulations. The purpose of granting waivers under provisions of this Ordinance shall be to ensure that an applicant is not unduly burdened, as opposed to merely inconvenienced, by the requirements of this Ordinance. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

##### 4.3.1 Requirements for Waivers:

- 4.3.1.1 The granting of the waiver will not be detrimental to the public safety, health, or welfare, or injurious to other property, and will promote the public interest;
- 4.3.1.2 The waiver will not, in any manner, vary the provisions of the Town of Tamworth Ordinances, Regulations, Master Plan, or Official Maps;
- 4.3.1.3 Such waiver(s) will substantially secure the objectives, standards, and requirements of this Ordinance; and
- 4.3.1.4 A particular and identifiable hardship exists, or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
  - a. Topography and other site features;
  - b. Availability of alternative site locations;

- c. Geographic location of property;
- d. Size/magnitude of project being evaluated and availability of collocation;  
and
- e. Whether the applicant has demonstrated that compliance with all the requirements of this Ordinance would effectively prohibit the provider from providing personal wireless services in an area with a significant gap in service.

#### 4.3.2 Conditions

In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of this Ordinance.

#### 4.3.3 Procedures

A petition for any such waiver shall be submitted in writing by the applicant with the application for Board review, or submitted during the Board review process, as may be allowed by the Board. The petition shall state fully the grounds for the waiver sought, and all of the facts relied upon by the applicant in support of the waiver. Failure to submit a petition in writing shall require an automatic denial.

## **5. APPEALS**

An appeal of a denial of an application by the Board shall be to the Carroll County Superior Court, per RSA 676:5, III.

## **6. SUBMISSION REQUIREMENTS FOR APPLICATIONS**

### 6.1 Completed Application

- 6.1.1 A completed application form.
- 6.1.2 Submission of items listed under the pre-checked boxes on the application.
- 6.1.3 Check all other applicable boxes and submit required items on those boxes.

### 6.2 Signatures

- 6.2.1 All applicants must sign the application form.
- 6.2.2 If the property is not owned by the applicant, one copy of the legal document authorizing the applicant to proceed must be submitted from all of the landowners.
- 6.2.3 By filing an application, the applicant consents to visual on-site inspections of the

property by the Board or its agents at any stage of the proposal. The applicant will be notified prior to such site visits and may choose to be present.

### 6.3 Additional Requirements for Special Use Permits

#### 6.3.1 Abutters & Notification List

6.3.1.1 It is the applicant's responsibility to provide a complete list of: abutters, parties holding an interest in the property (Right of Way, Easement, Covenant, Mortgage, Lien), any agent of the applicant (e.g., attorney), and any professional who has placed his or her seal on a plan that is being submitted. The list of names and addresses of all abutters shall be taken from current electronic Town records as maintained by the Assessing Clerk, not more than five (5) days before the day of filing.

6.3.1.2 Three sets of mailing labels for the notification of the above persons/entities.

#### 6.3.2 Application and Consultation Fees

6.3.2.1 All applications shall be accompanied by a check to reimburse the Board for notification, advertising costs, and application fees according to the fee schedule.

6.3.2.2 The Board may retain the services of an attorney, a consultant qualified in wireless telecommunications services, and/or a consultant qualified in tower structures to review the application and all associated information. The applicant will be required to deposit an escrow amount, as determined by the Board, for any reasonable expenses incurred by the Board and/or their designated officials to evaluate the application and to review the facility after final construction, including but not limited to expenses incurred such as: to hire qualified engineers; for special investigative studies; environmental assessments; legal review of documents; administrative expenses; and other matters which may be required to make an informed decision on a particular application. Failure to pay such costs shall constitute valid grounds for the Board to terminate further consideration of the application and to disapprove the plan without a Public Hearing.

#### 6.3.3 Agent Designation

The applicant may authorize an agent to represent its interests by identifying an agent on the application form.

## **7. SPECIAL USE PERMIT REQUIREMENTS**

### 7.1 Plan

Each PWSF application, other than a collocation or modification application, shall include a plan with the following:

- 7. 1.1A scaled elevation view; this shall be a three-dimensional perspective color rendered drawing of the proposed site and abutters' properties and buildings up to a radius of five hundred (500') feet;
- 7.1.2 Topographical Information;
- 7.1.3 Radio frequency coverage;
- 7.1.4 Tower height requirements;
- 7.1.5 Setbacks to adjacent uses (up to two hundred twenty-five (225') feet away); location of all buildings and structures within five hundred (500') feet of proposed tower;
- 7.1.6 Driveways and parking;
- 7.1.7 Fencing;
- 7.1.8 Landscaping;
- 7.1.9 Lighting (if required by FAA), electric power requirements, location and configuration of power access;
- 7.1.10 Signage (limited to basic identification and safety information);
- 7. 1. 11 Anticipated tree cutting at site;
- 7.1.12 Permit(s) from, or submitted applications to, or a written description of the applications that will be required and the timing of such submissions to, the State of New Hampshire allowing crossing of wetlands, if required.

7.2 Other Information Required

In order to assess compliance with this Ordinance, the applicant shall submit to the Board the following prior to any approval by the Board:

- 7.2.1 The applicant shall submit written proof that the proposed use/facility complies with the FCC regulation on radio frequency radiation (RFR) exposure guidelines.
- 7.2.2 The applicant shall submit written proof that an evaluation has taken place, as well as the results of evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal thirty (30) day comment period, and prior to the Board's first Public Hearing on the application shall become part of the application requirements. Applicants shall identify all environmental impacts and mitigation plans and schedules.



7.2.3 Each applicant for an antenna or tower shall provide to the Board an inventory of its existing towers that are within the jurisdiction of the Town and those within two (2) miles of the border thereof, including specific information about the location, height, and design of each tower, as well as economic and technological feasibility for collocation on the inventoried towers.

The Board may share such information with other applicants applying for approvals or special use permits under this Ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however, that the Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

7.2.4 If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna(s). This evidence may consist of:

7.2.4.1 Substantial evidence that no suitable existing towers or structures are located within the geographic area required to meet the applicant's engineering/coverage requirements.

7.2.4.2 Substantial evidence that existing towers are not of sufficient height to meet the applicant's engineering/coverage requirements, and why.

7.2.4.3 Substantial evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

7.2.4.4 Substantial evidence that applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

7.2.4.5 Substantial evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable.

7.2.4.6 Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.

7.2.4.7 Information on how many wireless facility sites each provider will require, other sites outside of Tamworth being considered, type of use, and impact of future technology on tower height.

7.2.4.8 Information on what sites outside the Town of Tamworth are being considered.

7.2.4.9 Information on how future technology may reduce or eliminate the need for tall antenna sites.

7.2.4.10 Information on how the siting of a wireless facility affects the ability to allow a competitor's antenna on the same property.

7.2.4.11 Information on whether it is feasible for carriers to locate base station equipment underground.

7.2.5 Balloon Test

7.2.6 Coverage Maps

7.2.7 "Dense Tree Growth" Documentation

## **8. LOCATION REGULATIONS**

PWSFs shall be permitted throughout Tamworth, in compliance with the requirements of this Ordinance.

## **9. DIMENSIONAL REQUIREMENTS**

PWSFs shall comply with the following requirements:

### 9.1 Height When Using Ground-Mounted Facilities

Ground-mounted PWSFs shall not project higher than ten (10') feet above the average tree canopy height within a one hundred fifty (150') foot perimeter of the tower, security barrier, or designated clear area for access to equipment, whichever is greatest.

### 9.2 Height When Using Other Existing Structures

The height of a PWSF shall not increase the height of a structure by more than fifteen (15') feet, unless the facility is completely camouflaged. (Examples: a facility completely within a flagpole, steeple, or chimney.) The increase in the height of the structure shall be in scale and proportion to the structure as originally configured.

### 9.3 Setbacks

9.3.1 All PWSFs and their equipment shelters shall be at least fifty (50') feet from property boundaries. Fences wholly or partially surrounding personal wireless facilities that are five (5') feet or more in height shall be located at least forty (40') feet from property boundaries.

9.3.2 Guys, anchor structures, and accessory facilities must be set back a minimum of thirty (30') feet to all property line boundaries.

9.3.3 Towers must be set back a minimum of one hundred twenty (120%) percent of tower height from any building used for residential, business or commercial purposes (except buildings which are part of the PWSF).

9.3.4 Towers must be set back a minimum of one hundred (100') feet from wetland soils, wetlands and surface waters as defined by RSA 485-A:2, XIV, as amended.

#### 9.4 Fall Zone

In order to ensure public safety, the minimum distance from the base of any ground-mount of a PWSF to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Ordinance. See Section 3.14. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the Board review. If securing a fall zone easement is impossible, the applicant may request a waiver for the Board to consider as provided under this Ordinance, together with a written record of the applicant's efforts to obtain the required easement(s).

## **10. PERFORMANCE AND DESIGN STANDARDS**

### 10.1 Camouflage

PWSFs shall be camouflaged to the greatest extent possible, including but not limited to, use of compatible building materials and colors, screening, landscaping, and placement in the midst of trees.

### 10.2 Visibility

In order to limit or mitigate the visual impact on view corridors, vistas, and view-sheds, all PWSFs shall comply with the following requirements:

#### **10.2.1 Camouflage for Facilities on Existing Buildings or Structures - Roof Mounts:**

When a PWSF extends above the roof height of a building on which it is mounted, every reasonable effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways.

#### **10.2.2 Camouflage for Facilities on Existing Buildings or Structures - Side Mounts:**

PWSFs that are side mounted shall blend with the existing building's architecture and if individual antenna panels are over five (5') square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.

#### **10.2.3 Camouflage for Ground Mounted Facilities:**

All ground-mounted PWSFs shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of fifty (50') feet from the tower, security barrier, or designated clear area for access to equipment, whichever is greatest, and screens views to the greatest extent possible of the facility in all directions. These trees must be existing on the subject property, planted on site, or be within a landscape easement on an adjoining site. The Board shall have the authority to decrease, relocate, or alter the required buffer based upon on-site conditions. The fifty (50')

foot vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying and present a hazard to persons or property. If securing a landscape easement is impossible, the applicant may request a waiver for the Board to consider as provided under this Ordinance, together with a written record of the applicant's efforts to obtain the required easement(s). If a waiver for the easement required under this section 10.2.3 is obtained, the tree buffer shall still extend as far as the property line of the subject site, if otherwise required under this Ordinance.

#### 10.2.4 Small Wireless Facilities

- 10.2.4.1 With the exception of the antenna, all components of a small wireless facility, including wires and conduit, must be located inside the building, structure, or pole to which it is attached and inside the mounting bracket used to attach the antenna to the building, structure or pole to which it is attached. Wires and conduit must be placed underground when applicable and available. Components of the antenna shall be screened from off-site views when located on the roof of a building.
- 10.2.4.2 All small wireless facilities and their support structures must use the same color and/or finish as the pole to which they are mounted.
- 10.2.4.3 The antennas must be mounted within two (2") inches of the support pole.
- 10.2.4.4 Back-up battery facilities that generate noise are prohibited.
- 10.2.4.5 Small wireless facilities shall not obstruct street and wayfinding signage.
- 10.2.4.6 No stickers, signs, or decals are allowed to be visible. The exception to this rule are safety alerts required by law.
- 10.2.4.7 All small wireless facilities must be mounted so that there is a vertical clearance of at least twelve (12') feet between the facility and the grade at the base of the structure.
- 10.2.4.8 No small wireless facility may extend more than ten (10') feet above its wireless support structure.

#### 10.3 Color

To the extent that any PWSF extends above the height of the vegetation immediately surrounding it, it shall be of a color that blends with the background or surroundings.

#### 10.4 Equipment Shelters

Equipment shelters for PWSFs located on or within buildings shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.

#### 10.5 Historic Buildings

Any PWSF located on or within an historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building. Any alteration made to an historic structure to accommodate a PWSF shall be fully reversible. PWSFs authorized by this subsection shall be concealed within or behind existing architectural features and shall be located so that they are not visible from public roads and viewing areas.

#### 10.6 Lighting, Signage, and Security

10.6.1 Lighting: PWSFs shall be lighted only if required by the Federal Aviation Administration (FAA). Any lighting of equipment, structures, and any other facilities on-site shall be shielded from abutting properties and shall be dark sky friendly to the greatest extent possible.

10.6.2 Signage: Signs shall be limited to those needed to identify the property and the owner and warn of any danger, and shall be no larger than two (2') feet x three (3') feet.

10.6.3 Security Barrier: The Board shall determine whether in the interest of public safety the PWSFs should be surrounded by a security barrier.

#### 10.7 Scenic Landscapes and Vistas

Ground-mounted facilities shall not be located within open areas that are clearly visible from public roads, recreational areas, or abutting properties unless the PWSF is hidden, disguised or camouflaged in such a way as to blend in with the surroundings. All ground-mounted PWSFs shall be surrounded by a buffer of dense tree growth as per Section 10.2.3.

#### 10.8 Driveways

If available, existing entrances and driveways shall be utilized to serve a PWSF, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic, and environmental impact. New driveways to serve a PWSF shall not exceed twelve (12') feet in width.

#### 10.9 Antenna Types

Any antenna array placed upon an existing or proposed ground mount, utility pole, or transmission line mount shall have a diameter of no more than four (4') feet, exclusive of the diameter of the mount. A larger diameter antenna array may be permitted after a finding by the Board that the visual impacts of a larger antenna array are negligible.

#### 10.10 Ground and Roof Mounts

All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof-

mounted monopoles are expressly prohibited, unless constructed as part of a modification permitted under Section 4.2.1.

#### 10.11 Hazardous Waste

No hazardous waste shall be discharged or stored on the site of any PWSF. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred ten (110%) percent of the volume of the hazardous materials stored or used on the site.

#### 10.12 Radio Frequency Radiation (RFR) Standards

All equipment proposed for a PWSF shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation (FCC Guidelines), under Report and Order FCC 96-326, published on August 1, 1996, and all subsequent amendments.

### **11. MONITORING AND MAINTENANCE**

#### 11.1 Maintenance

The owner of the facility shall maintain the PWSF in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the tower, mount and security barrier, and maintenance of the buffer areas and landscaping. The owner of a facility shall ensure that it is properly maintained and in compliance with standards contained in applicable local codes and any state and federal standards or guidelines.

#### 11.2 Monitoring

As part of the issuance of the special use permit approval, the property owner shall agree in writing that the persons designated by the Town of Tamworth may enter the subject property annually to obtain RFR measurements and noise measurements at the expense of the carrier. The Town shall provide reasonable written notice to the facility owner and landowner and provide them the opportunity to accompany the Town representatives when the measurements are conducted.

#### 11.3 Facility Inspection

Inspection of the facility shall be carried out every three (3) years by an independent professional structural engineer to verify adequate tower system structural integrity. Inspection to verify structural integrity shall also be accomplished after any storm having local wind velocities in excess of sixty-five (65) mph as measured by a tower mounted anemometer with continuous recording. The cost of these inspections shall be borne by the facility owner. An inspection report shall be submitted to the Board for each required inspection.

If any inspection reveals that a tower constitutes a danger to persons or property, then upon notice being provided to the owner of the facility, the owner shall have sixty (60) days to bring such facility into compliance with such inspection recommendations and code standards. If the owner fails to bring such facility into compliance within sixty (60) days, such action shall constitute abandonment and grounds for the removal of the facility or

antenna, as abandoned, at the owner's expense through the execution of the posted security.

#### 11.4 Security for Removal & Insurance

Recognizing the hazardous situation presented by abandoned and unmonitored telecommunications facilities, the Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned PWSFs in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility. The amount of the security shall be based upon the estimated removal cost plus fifteen (15%) percent. The security shall be certified by a professional civil engineer licensed in New Hampshire and shall be submitted to the Town and approved by Town counsel prior to work or construction on a PWSF.

The applicant shall submit, as a condition of approval, a Certificate of Insurance showing public liability insurance coverage of not less than \$1 million Combined Single Limit. The owner of the tower shall submit an updated Certificate of Insurance annually to the Town.

Every five (5) years from the date of the Board's approval of the special use permit, the owner of the facility shall provide the Board with a structural evaluation and a revised removal cost estimate prepared by a professional civil engineer licensed in New Hampshire. If the estimated removal cost has increased by more than fifteen (15%) percent, then the owner of the facility shall provide additional security in the amount of the increase.

## **12. ABANDONMENT OR DISCONTINUATION OF USE**

### 12.1 Notification

At such time that a carrier plans to abandon or discontinue operation of a PWSF, such carrier will notify the Town by certified U.S. Mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations. In the event that a carrier fails to give such notice, the PWSF shall be considered abandoned if it is not operated for a continuous period of twelve (12) months; in such case, the Town shall, following a Public Hearing with notice to the abutters and the last known owner/operator of the facility, issue a "Declaration of Abandonment" to the last known owner/operator of the facility.

### 12.2 Removal

Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the PWSF within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

- a. Removal of antennas, tower, mount, equipment shelters and security barriers from the subject property.
- b. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

- c. Restoring the location of the PWSF to its natural condition insofar as is reasonably possible.

#### 12.3 Completion of Removal

Only when removal of the PWSF is completed to the satisfaction of the Board will the security be returned to the carrier.

#### 12.4 Failure to Remove

If the owner fails to remove the facility within ninety (90) days of notice to the Town of intent to abandon or discontinue, or within ninety (90) days of the issuance of Declaration of Abandonment, the Town may execute the security and have the facility removed. If there are two or more users of a single facility, this provision shall not become effective until all users abandon the facility (as described in Section 12.1)

### **13. ENFORCEMENT AND PENALTIES**

#### 13.1 Enforcement

It shall be the duty of the Board of Selectmen, or its appointed representative, to enforce the provisions of this Ordinance. The Selectmen may appoint a Tower Inspector to carry out all or any such specific duties as the Selectmen might determine. The Selectmen are authorized to institute in the name of the Town any legal action by way of injunctive relief or otherwise to enforce this Ordinance or to restrain, prevent or abate any violations thereof, as authorized by RSA 676:15, and shall further be entitled to all of the reimbursement and restitution relief and penalties granted to municipalities by RSA 676:17, and by any other provision of the law.

#### 13.2 Penalties

Penalties for violation of this Ordinance shall be as set forth in RSA 676: 17.

#### 13.3 Rule-Making Authority

The Board is hereby authorized and empowered to promulgate such rules as are necessary for the efficient administration and enforcement of this Ordinance.

### **14. COMPLIANCE WITH RSA 12-K:7**

Upon receipt of an application to construct a new facility or to complete a substantial modification to an existing facility or mount which will be visible from any other New Hampshire municipality within a twenty (20) mile radius, the Town shall:

- a. Provide written notification of such application to the other municipality, per RSA 12-K:7, I (b); and
- b. Publish a notice in a newspaper customarily used for legal notices by the Town, as required by RSA 12-K: 7, I (b). Such notice shall be published not less than seven (7) days nor more than twenty-one (21) days prior to the date of any public hearing which may be required.



## **15. MISCELLANEOUS PROVISIONS**

### 15.1 Severability

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or illegal, such invalidity shall not affect the remaining valid portions of this Ordinance.

### 15.2 Amendments

This Ordinance may be amended in accordance with the procedures set out in RSA Chapter 675.

### 15.3 Effective Date

This Ordinance shall take effect immediately upon its adoption by a Town Meeting.