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December 27, 2002

TOWN OF DEERFIELD
6329 WALKER ROAD
DEERFIELD, NY 13502

RE: Town of Deerfield, Local Law 3, 2002, filed 12/12/2002

The above referenced material was received and filed by this office as indicated. Additional local law filing forms will be forwarded upon request.

Sincerely,

Linda Lasch
Principal Clerk
State Records & Law Bureau
(518) 474-2755

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~
~~City~~
Town
~~Village~~

of DEERFIELD

Local Law No. 3 of the year 2002

A local law TELECOMMUNICATION FACILITIES LOCAL LAW
(Insert Title)

Be it enacted by the TOWN BOARD of the
(Name of Legislative Body)

~~County~~
~~City~~
Town
~~Village~~

of DEERFIELD as follows:

Section 1. Authority

In accordance with the authority granted by Article XVI of the Town Law of the State of New York, local restrictions are hereby placed upon the site construction and the operation of telecommunication facilities.

Section 2. Intent

The intent of this law is to promote health, safety, and the general welfare of the residents of the Town of Deerfield; to provide standards for the safe provisions of telecommunications consistent with applicable federal and state regulations; to minimize the total number of telecommunication towers in the community by encouraging shared use of existing and future towers, and the use of existing tall buildings and other high structures; and to minimize adverse visual effects from telecommunication towers by requiring careful siting including visual impact assessment, and appropriate landscaping. Excluded from this local law are those facilities used for law enforcement, fire control, E911, and medical emergency, and antennas and satellite dishes used solely for residential household television and radio reception, and private citizens' bands, amateur radio and other similar private, residential communications."

(If additional space is needed, attach pages the same size as this sheet, and number each.)

COPY

Section 3. Definitions

Telecommunication Facility: Any equipment used in connection with the provision of wireless communication services, including cellular telephone services, personal communication services, and which are regulated by the Federal Communications Commission, both in accordance with the Telecommunications Act of 1996 and other federal laws. A Telecommunication Facility shall include monopole, guyed, or latticework tower(s) as well as antenna(s), switching stations, principal and accessory telecommunication equipment and supporting masts, wires, structures, and buildings.

Section 4. Site Plan Review

When required, a Site Plan shall include:

A. Site plan Drawing: An applicant shall be required to submit a drawing showing:

- 1) name and address of the applicant and the person responsible for the preparation of the drawing
- 2) date, north arrow, and scale no smaller than 1 inch = 40 feet
- 3) boundaries of the property plotted to scale
- 4) existing watercourses
- 5) grading and drainage plan, showing existing and proposed contours
- 6) location, materials and height of all existing and proposed structures and improvements including roads, buildings, tower(s), guy wires and anchors, antennae, parking, and landscaping
- 7) provision for water supply and sewage disposal
- 8) location and proposed development of all buffer areas including existing vegetative cover
- 9) location and design of outdoor lighting facilities
- 10) the Town, at the expense of the applicant, may employ its own consultant to review the findings and conclusions of safety analysis, visual analysis, or of inventory report of alternate site locations, provided by the applicant.

B. Supporting documentation: The applicant shall submit:

- 1) a complete short EAF
- 2) a complete Visual Environmental Assessment Form (visual EAF addendum)
- 3) documentation on the proposed intent and capacity of use
- 4) justification for the height of any tower
- 5) justification for any clearing method
- 6) a copy of its FCC license
- 7) other elements integral to the proposed facility as considered necessary by the Approving Agency, including identification of any State or County permits required for the project's execution.

Section 5. Facility Requirements

A. General Criteria

No Special Use Permit or renewal thereof or modification of a current Special Use Permit relating to a telecommunication facility shall be authorized until it is determined that such telecommunication facility:

- 1) is necessary to meet current or expected demands for service. Amateur radio operators are excluded from this requirement.
- 2) conforms with all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration, and other federal agencies

- COPY**
- 3) is considered a public utility in the State of New York. Amateur radio operators are excluded from this requirement.
 - 4) is designed and constructed in a manner which minimizes visual impact to the extent practical
 - 5) complies with all other requirements of this local law, unless expressly superseded herein
 - 6) is the most appropriate site among those available within the technically feasible area for the location of a telecommunication facility. Amateur radio operators are excluded from this requirement.
 - 7) is, in the case of tower construction, designed to accommodate future shared use by at least one (1) other telecommunication service provider. Amateur radio operators are excluded from this requirement.

B. Co-Location (Amateur radio operators are excluded from this requirement.)

1) The shared use of existing telecommunication facilities or other structures shall be preferred to the construction of new facilities. Any Special Use Permit application, renewal or modification thereof shall include proof that reasonable efforts have been made to co-locate (share) within an existing telecommunication facility or upon an existing structure. The application shall include an adequate inventory report specifying existing telecommunication facility sites and structures exceeding seventy-five (75%) of the height of the proposed tower within the search range of the cell grid. The inventory report shall contain an evaluation of opportunities for shared use as an alternative to the proposed location.

2) The applicant must submit a copy of its policy regarding co-location on the proposed telecommunication facility with other potential future applicants. Such policy should allow co-location under the following conditions:

- a) The new antenna(s) and equipment do not exceed the structural loading requirements nor pose any technical or radio frequency interference with existing equipment;
- b) The applicant desiring to co-locate pays the owner an appropriate and reasonable sum to co-locate;
- c) The applicant desiring to co-locate has as similar policy of co-location as the owner.

3) The applicant must demonstrate that the proposed telecommunication facility cannot be accommodated on existing telecommunication facility sites in the inventory due to one (1) or more of the following reasons: (Amateur radio operators are excluded from this requirement.)

- a) The planned equipment would exceed the structural capacity of existing and approved telecommunication facilities or other structures, considering existing and planned use for those facilities;
- b) The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably prevented;
- c) Existing or approved telecommunication facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably;
- d) Other technical reasons make it impractical to place the equipment proposed by the applicant on existing facilities or structures;
- e) The property owner or owner of the existing telecommunication facility or other structure refuses to allow such co-location.

C. Dimensional Standards

- 1) No tower constructed as part of a telecommunication facility shall be closer to the parcel boundary than $\frac{1}{2}$ (one half) the height of the tower and any antenna(s) attached upon its zenith and may not be located in any required front yard. The entire site may not include public roads and must be located on land either owned or leased by the applicant or for which the applicant has obtained an easement, and may not contain any structure other than those associated with the telecommunication facility. If the facility is attached to an existing structure, relief may be granted by specific permission of the Zoning Board of Appeals on a case-by-case basis
- 2) All telecommunication facilities shall be located on a single parcel
- 3) A lot leased or owned for the purpose of construction of a tower as part of the telecommunication facility regardless of its dimension will not result in the creation of a non-conforming lot.
- 4) The frontage requirement of the underlying district shall not apply, provided the telecommunication facility is not proposed on a parcel to be partitioned specifically for the facility and/or is designed for occupancy by staff. In the absence of required frontage, an access way for service vehicles – either through easement, lease or ownership – shall be in accord with paragraph F herein.

D. Lighting and Marking

- 1) Towers shall not be artificially lighted and marked beyond requirements of the Federal Aviation Administration (FAA)
- 2) An applicant may be compelled to add FAA-style lighting and marking, if in the judgment of the Approving Agency, such a requirement would be of direct benefit to public safety.

E. Appearance and Buffering

- 1) The use of any portion of a telecommunication facility for signs, promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons is prohibited.
- 2) The facility shall have the least practical visual effect on the environment, as determined by the Approving Agency. Any tower that is not subject to FAA marking, pursuant to paragraphs D.1 and D.2 herein shall otherwise:
 - a) have a galvanized finish, or shall be painted gray above the tree line and gray or green below the tree line, as deemed appropriate by the Approving Agency, or:
 - b) be disguised or camouflaged to blend in with the surroundings, to the extent that such alteration does not impair the ability of the facility to perform its designed function.
- 3) Accessory structures shall maximize the use of building materials, colors, and textures designed to blend in with the natural surroundings.
- 4) The Approving Agency may require a State Environmental Quality Review (SEQR) Full EAF (Environmental Assessment Form) for proposed facilities at key viewpoints in the community. A Visual Environmental Assessment Form (Visual EAF), may be required as an addendum to either the Full or Short EAF. The Approving Agency may require submittal of a more detailed visual analysis based on the results of the Visual EAF.

5) The Approving Agency shall require that the facility have appropriate vegetative buffering around the fences of the tower base area, accessory structures and the anchor points of guyed towers to buffer their view from neighboring residences, recreation areas, or public roads. Such screening shall include the maximum feasible retention of existing vegetation. The Approving Agency may similarly require screening adjacent to waterways, landmarks, refuges, community facilities, or conservation or historic areas within common view of the public.

6) Equipment or vehicles not used in direct support, renovations, additions or repair of any telecommunication facility shall not be stored or parked on the facility site.

F. Access and Parking

(Amateur radio operators are excluded from this requirement.)

1) Access ways shall make maximum use of existing public or private roads to the extent practicable. New access ways constructed solely for telecommunication facilities must be at least twenty (20), but no more than thirty (30) feet wide, and closely follow natural contours to assure minimum visual disturbance and to reduce soil erosion potential.

2) The road surface (driveway) shall be centered within access ways and shall not comprise more than 60% of the width of the access way.

3) Parking areas shall be sufficient to accommodate the greatest number of service vehicles expected on the premises at any one time. Amateur radio operators are excluded from this requirement.

4) Driveways or parking areas shall provide adequate interior turn-around, such that the vehicle will not have to back out onto a public thoroughfare.

G. Security

1) Towers, anchor points of guyed towers, and accessory structures shall each be surrounded by fencing at least eight (8) feet high, the top of which may, at the discretion of the Approving Agency in deference to the character of the neighborhood, be comprised of three-strands of barbed wire to discourage unauthorized access to the site.

2) Motion-activated or staff-activated security lighting around the base of a tower or accessory structure entrance may be provided if such lighting does not project off the site.

3) There shall be no permanent climbing pegs within fifteen (15) feet of the ground of any tower.

4) A locked gate at the junction of the access way and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into the public right-of-way.

H. Engineering and Maintenance

1) Site plans for all telecommunication facilities must bear the seal of a professional engineer licensed to practice in the State of New York. Every facility shall be built, operated and maintained to acceptable industry standards, including but not limited to the most recent, applicable standards of the Institute of Electrical and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI)

2) Every facility shall be inspected at least every second year for structural integrity by a New York State licensed engineer. A copy of the inspection report shall be submitted to the Building Inspector.

3) A safety analysis by a qualified professional must accompany any Special Use Permit or Site Plan application, renewal thereof or modification, for the purpose of certifying that the general public electromagnetic radiation exposure does not exceed standards set by Federal Regulations.

4) The Town, at the expense of the applicant, may employ its own consultant to review findings and conclusions of structural inspection provided by the applicant.

I. Removal

1) At the time of submittal of the application for a Special Use Permit for a telecommunication facility, the applicant shall submit an agreement to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower(s) dedicated solely for use within a telecommunication facility if such facility becomes technologically obsolete or ceases to perform its original intended function for more than twelve (12) consecutive months. Removal of such obsolete and/or unused telecommunication facility shall take place within six (6) months of cessation of use. Upon removal of said facility, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soils.

2) At the time of obtaining a building permit, the applicant must provide a financial security bond for maintenance during its lifetime and for removal of the telecommunication facility and property restoration, with the Town as assignee, in an amount approved by the Approving Agency, but not less than one hundred twenty percent (120%) of the estimate to remove the facility. Thereafter, at five (5) year intervals, the amount of security bond shall be renegotiated in an amount not less than one hundred twenty percent (120%) of the estimate to remove the facility based on then current removal cost estimate. If a fee is charged for this removal estimate, then the owner/applicant shall reimburse the Town for the cost incurred.

3) The owner/applicant shall certify to the Building Inspector on an annual basis by certified letter, that the financial security bond is in full force and effect and that the telecommunication facility is in continuous use for its intended purpose. The owner/applicant shall provide the Town with an address which the Town shall use for all notification required by certified mail under this article.

4) The owner/applicant within thirty (30) days of any change in ownership of the telecommunication facility shall notify the Approving Agency by certified mail.

5) At times of renewal or modification of the Special Use Permit, the Approving Agency may adjust the required amount of the financial security bond to adequately cover increases in the cost of removal of the telecommunication facility and property restoration.

December 9, 2002
January 2002

Section 6. Permit Procedure

All applications must meet the structural requirements of section H.3 and the removal requirements of section I, and may require an independent analysis in accordance with section 4.A.10.

- A. Application for co-location upon an existing telecommunication facility requires only a building permit
- B. Application for location of a new telecommunication facility which conforms in all aspects to this Local Law requires both a Site Plan and a building permit.
- C. Application for location of a new telecommunication facility which deviates in some aspect from this Local Law requires variance approval by the Town of Deerfield Zoning Board of Appeals after reviewing the site in accordance with Section 4 of this Local Law and before a building permit is issued.

Section 7. Violations and Penalties

Any permitted telecommunication facility that subsequently does not meet the requirements of that permit, shall have its permit revoked, and the telecommunication facility shall be removed within ninety (90) days of notification by the Town by certified letter to the owner/architect at the last known address.

Section 8. All Local Laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section 9. Severability

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any part of this Local Law which can be given effect within such part or parts.

Section 10. This Local Law shall take effect immediately upon filing in the Office of the Secretary of State.

5. (City local law concerning Charter revision proposed by petition)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 19____, became operative.

6. (County local law concerning adoption of Charter)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 19____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

COPY

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph ONE, above.

Mary S. Ruckel

Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: 12-10-02

(Certification to be executed by ~~County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.~~ Town Attorney)

STATE OF NEW YORK
COUNTY OF ONEIDA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature _____

TOWN ATTORNEY

Title _____

~~County~~
~~City~~ of DEERFIELD
Town
~~Village~~

Date: _____