

## SECTION 6.0 - SPECIAL REGULATIONS

**6.1 COMMON DRIVEWAYS.** A common driveway is any road to be used for vehicular access to two or more dwellings or places of business. All persons constructing common driveways in any and all districts of the Town of Upton shall meet the following standards:

- 1) Common driveways shall be of sufficient design so as to provide safe travel for vehicles and pedestrians and to obtain maximum amenities for future residents.
- 2) All common driveways shall be identified by a sign posted at the intersection with public way, and the sign shall state: "NOT A PUBLIC WAY."
- 3) The driveway shall be graded and prepared according to all requirements of Subdivision Control Laws, Sections V (Required Improvements for an Approved Subdivision), subsection B. 2, 3, and 4.
- 4) Common driveways shall have an easement width of not less than twenty-four feet (24') and shall have a paved width of not less than eighteen feet (18').
- 5) A three-foot shoulder shall be constructed along at least one side of the paved driveway.
- 6) The maximum centerline grade shall not exceed 8%. No grade shall exceed 3% within seventy-five feet (75') of street right of way lines.
- 7) Property lines at street intersections shall be rounded or cut back to provide for a curb radius of not less than thirty-degrees.
- 8) Common driveways shall not exceed five hundred feet (500') in length.
- 9) In the circular turning area at the end of the cul-de-sac the minimum easement shall be of a diameter of not less than one hundred twenty feet (120') and the paved area shall be not less than one hundred feet (100') in diameter.

### 6.2 WIRELES DATA TRANSFER FACILITIES

6.2.1 Purpose and Intent. The purpose of this section is to regulate wireless data transfer facilities such that these services may be provided with the minimum harm to the public health safety and general welfare by:

- 1) Protecting the general public from hazards associated with wireless data transfer facilities.
- 2) Minimizing visual impact from wireless data transfer facilities.
- 3) Preventing adverse impact on local property values.

- 4) Improving the ability of the carriers to maximize coverage while minimizing adverse impact on the community.

6.2.2 Special Permit Granting Authority. A wireless data transfer facility shall only be allowed by a special permit. The Planning Board shall act as the Special Permit Granting Authority (SPGA) for wireless data transfer facilities in the Town of Upton. The Planning Board is authorized to hear and decide upon applications for special permits for wireless data transfer facilities in accordance with the provisions of this Zoning By-Law.

6.2.3 Application in Zoning Districts. A wireless data transfer facility shall be allowed by special permit in all zoning districts in accordance with the requirements and regulations of the Town of Upton Zoning By-Laws.

6.2.4 Applicability and Exemptions. This section applies to any wireless data transfer facility. The following specific uses are exempt:

- 1) Satellite dishes or antennas used exclusively for residential use;
- 2) Police, fire, ambulance and other public emergency dispatch;
- 3) Citizen band radio.
- 4) Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC provided that the tower is not used or licensed for any commercial purpose and the tower is removed upon loss or termination of said FCC license.

A non-exempt wireless data transfer facility or repeater facility that shares a tower or other structure with any exemptions listed above shall not be considered exempt from this bylaw for any reason.

Existing towers may be reconstructed, expanded and/or altered in all zoning districts subject to a special permit granted by the Planning Board, provided that they conform to all of the requirements set forth in this Zoning By-Law.

Wireless data transfer devices and wireless data transfer accessory buildings may be located totally within existing buildings and existing structures in all zoning districts, subject to a special permit granted by the Planning Board

6.2.5 Consistency With Federal Law. These regulations are intended to be consistent with the Telecommunications Act of 1996 in that:

- 1) They do not prohibit or have the effect of prohibiting the provision of personal wireless services.
- 2) They are not intended to be used to discriminate unreasonably among providers of functionally equivalent services.

- 3) They do not regulate personal wireless services on the basis of environmental effect of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning emissions.

6.2.6 Design Requirements and Performance Standards: All wireless data transfer facilities erected, installed and/or used shall comply with the following design requirements and performance standards:

- 1) Shared Use: Shared use of towers by commercial wireless data transfer carriers is required unless such shared use is shown by substantial evidence to not be feasible.
- 2) Height: The maximum allowed height of a tower shall be 150 feet.

Data transfer devices located on a structure shall not exceed ten feet in height above the roof-line of the structure, unless the Planning Board finds that a greater height is essential to the proper functioning of the wireless communication services to be provided by the applicant at such location. For structures where it is difficult to determine the roof line, such as water tanks, the height of the data transfer devices shall not exceed ten feet above the highest point of the structure.

- 3) Co-Location: In the event that the Planning Board finds that co-location is preferable in order to conform to the intent and purpose of this Bylaw, then towers shall be designed to accommodate the maximum number of presently interested users that is technologically practical. In addition, if the number of proposed users is less than four, the applicant shall provide a plan showing how the proposed tower can be expanded to accommodate up to four users. In the event that the Planning Board finds that co-location is preferable, the applicant must agree to allow co-location pursuant to commercially reasonable terms to additional users.
- 4) Proximity to Existing Residence: towers shall be located a minimum of seven-hundred fifty feet from an existing residential dwelling or proposed dwelling in a permitted submission.
- 5) Setback: A tower shall be set back from the property lines of the lot on which it is located by a distance equal to one and a half times the overall vertical height of the tower and any attachments.
- 6) Screening Requirements. All exterior wireless data transfer facilities equipment and fixtures shall be painted or otherwise screened or colored to minimize their visibility to abutters, adjacent streets and residential neighborhoods. Wireless data transfer facilities, equipment and fixtures visible against a building structure shall be colored to blend with such

building or structure. Wireless data transfer facilities, equipment and fixtures visible against the sky or other background shall be colored or screened to minimize visibility against such background. A different coloring scheme shall be used to blend the structure with the landscape below and above the tree or building line. Existing on-site vegetation shall be preserved to the maximum extent feasible.

Data transfer devices shall be situated on or attached to a structure in such a manner that they are screened, preferably not being visible from abutting streets and residences. Free-standing dishes or data transfer devices shall be located on the landscape in such a manner so as to minimize visibility from abutting streets and residences, and to limit the need to remove existing vegetation. All equipment shall be screened, colored, molded and/or installed to blend into the structure and/or the landscape.

- 7) Fencing: Fencing shall be provided to control access to wireless data transfer facilities and shall be compatible with the scenic character of the Town and shall not be of razor wire and shall be subject to the approval of the Planning Board. Any entry to the proposed access road shall be gated (and locked) at the intersection of the public way, and a key to the lock provided to emergency response personnel.
- 8) Lighting: Night lighting of towers shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the Federal Aviation Administration.
- 9) Parking: There shall be a minimum of one parking space for each facility, to be used in connection with the maintenance of the site, and not be used for the permanent storage of vehicles or other equipment.
- 10) Access: For proposed tower sites, the width, grade, and construction of the access road shall be designed so that emergency response vehicles can get to the tower and wireless data transfer facility accessory buildings, and shall be designed to provide proper storm drainage.

#### 6.2.7 General Requirements:

- 1) No wireless data transfer facility may be erected except upon the issuance of a special permit by the Planning Board and approval under Site Plan Approval as set forth in Section 9.4 of the Zoning Bylaw and subject to all of the provisions of this Section. It is recommended to the applicant to undertake both the special permit and Site Plan Approval procedures concurrently in order to expedite the permitting process. Multiple applicants for the same site/facility are also encouraged provided there is one lead applicant responsible for all submissions and further provided that no

no application shall be considered complete and filed until all the applicants have complied with all of the submission requirements.

- 2) All owners and operators of land used in whole or in part for a wireless data transfer facility and all owners and operators of such wireless data transfer facility shall, as a continuing condition of installing, constructing, erecting and using a wireless data transfer facility, permit other FCC-licenses commercial entities seeking to operate wireless data transfer facility, to install, erect, mount and use compatible wireless data transfer equipment and fixtures on the equipment mounting structure on reasonable commercial terms provided that such co-location does not materially interfere with the transmission and/or reception of communication signals to or from the existing wireless data transfer facility, and provided that there are no structural or other physical limitations that make it impractical to accommodate the proposed additional wireless data transfer equipment or fixtures.
- 3) Each proposed construction of a new wireless data transfer facility, tower, wireless data transfer device or wireless data transfer accessory building shall require an initial special permit. Any extension in the height of, addition of wireless data transfer accessory buildings, wireless data transfer devices to, or replacement of any wireless data transfer facility shall require an amendment to the special permit previously issued for that facility; or in the case where there is no special permit, an initial special permit.
- 4) New facilities shall be considered by the Planning Board only upon a finding by the Planning Board that:
  - a. The applicant has used reasonable efforts to co-locate its proposed wireless data transfer facilities on existing or approved facilities; and
  - b. That the applicant either was unable to negotiate commercially reasonable lease terms with the owner of any existing or approved facility that could accommodate the proposed facilities from both structural engineering (i.e. the height, structural integrity, weight bearing and wind-resistant capacity of the existing or approved facility), and radio frequent engineering (i.e. height, coverage area etc.) perspectives; or there neither exists nor is there currently proposed any facility that could accommodate the proposed facilities from structural and radio frequent engineering perspectives. A report discussing this information entitled "New Wireless Data Transfer Feasibility Study" is to be submitted to the Planning Board as part of any special permit submission.
- 5) The Planning Board may require the applicant to pay reasonable fees for professional review of the applicant's proposal by a professional or radio frequency engineer, attorney and/or other qualified professional.

- 6) A wireless data transfer facility may be located on the same lot by special permit with any other structures or uses lawfully in existence and/or lawfully undertaken pursuant to this Bylaw.

6.2.8 Criteria for Granting Special Permit: Applications for special permits may be denied if the Planning Board finds that the petitioner does not meet or address the requirements of Section 6.2 herein, Section 9.4 of this zoning bylaw and MGL c.40A, s9.

When considering an application for a Wireless Data Transfer facility, the Planning Board shall take into consideration the proximity of the facility to residential dwellings and its impact on these residences. New towers shall only be considered after a finding that existing (or previously approved) towers suitable for and available to the applicant on commercially reasonable terms cannot accommodate the proposed use(s), taking into consideration radio frequency engineering issues and technological constraints.

When considering an application for a proposed data transfer device to be placed on a structure, the Planning Board shall take into consideration the visual impact of the unit from the abutting residences and streets.

6.2.9 Conditions: The Planning Board shall impose, in addition to any reasonable conditions supporting the objectives of the Zoning Bylaw, such applicable conditions as it finds appropriate to safeguard the neighborhood or otherwise serve the purpose of Section 6.2 herein, including, but not limited to screening, buffering, lighting, fencing, modification of the external appearance of the structures, limitation upon the size, method of access or traffic features, parking, removal or cessation of use, or other requirements. Such conditions shall be imposed in writing with the granting of a special permit. As a minimum, the following conditions shall apply to all grants of special permit pursuant to this Section:

- 1) Annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission, Federal Aviation and required maintenance shall be filed with the Inspector of Buildings by the special permit hold, with a copy received by the Planning Board no later than January 31 of each year.
- 2) Removal of Abandoned towers and Facilities. Any wireless data transfer facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such tower and facility shall remove same within ninety (90) days of receipt of notice from the Planning Board notifying the owner of such abandonment. If such tower or facility is not removed within said ninety (90) days, the Planning Board may cause such tower or facility to be removed at the owner's expense. If there

are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

- 3) For all towers, the applicant shall provide a performance bond or other security from a surety authorized to do business in Massachusetts and satisfactory to the Planning Board, in an amount equal to the cost of removal of any and all wireless data transfer facility from the premises and for the repair of such premises and restoration to the condition that the premises were in at the onset of the lease, said amount to be determined at the discretion of the Planning Board by either the applicant's engineer or professional hired by the Planning Board at the applicant's expense. The amount of the bond shall be the total estimate of restoration costs and anticipated fees (in today's dollars) by the applicant's engineer, plus an annual increase of three percent for the term of the lease. The term of the bond shall be for the full term of any lease plus twelve months. The Town must be notified of any cancellation or change in the terms or conditions in the bond.
- 4) For all towers, an Agreement must be executed whereby the user will allow the installation of municipal data transfer devices at no cost to the Town of Upton, and which will allow other carriers to lease space on the tower so long as such use does not interfere with the user's use of the tower, or with any Town controlled data transfer devices.
- 5) For all towers located on non-municipal property, a clause must be inserted in any lease that unconditionally permits the Town or contractors hired by the Town to enter the premises, at any time, where upon towers are located, if any Town-wide or Town-controlled telecommunications are located thereon.
- 6) For all towers located on municipal property, a Certificate of Insurance for liability coverage in amounts determined by the Board of Selectmen must be provided naming the Town as an additional insured.
- 7) For all towers located on municipal property, an agreement must be executed whereby the user indemnifies and holds the Town harmless against all claims for injury or damage resulting from or arising out of the use or occupancy of the Town owned property by the user.
- 8) All permittees shall be required to file annually on or before February 1st with the Upton Planning Board a complete list of all wireless data transfer facility locations in the Town then used by the permittee, including data transfer devices mounted on the interior of a building or structure.
- 9) The special permit shall lapse in two years unless substantial use or construction has commenced by such date, unless for good cause shown a written request for an extension of time is made to the Planning Board before

before the two years has expired. Such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time. This two-year period does not include such time as required to pursue or await the determination of an appeal from the granting of this special permit.

- 10) Any future extension or addition of a wireless data transfer facility or construction of new or replacement towers shall be subject to an amendment of the special permit, following the same procedure as for an original grant of a special permit.
- 11) Prior to construction, the permittee shall provide a recorded copy of a restrictive covenant prohibiting construction on all areas contained in the setback/fall areas.

6.2.10 Severability: If any section of this bylaw is ruled invalid by any authority or a court of competent jurisdiction, such ruling will not affect the validity of the remainder of the bylaw.

**6.3 MEDICAL WASTE TREATMENT.** To the extent permitted by law, no new building or facility or part thereof shall be constructed or used, and no premises shall be used, and no building or facility or part thereof shall be altered, enlarged, reconstructed or used for any purpose to include: processing, storing or staging of solid waste, hazardous waste, infectious waste as defined by the Department of Environmental Protection or the Commonwealth of Massachusetts or as defined herein.

## **6.4 PLANNED VILLAGE DEVELOPMENT**

6.4.1 Intent. The intent of this Planned Village Development By-Law is to permit greater flexibility and more creative and imaginative design for the development of municipal, commercial, retail, general business, and residential mixed-use areas than is generally possible under conventional zoning provisions. It is further intended to promote a vibrant, compact, pedestrian friendly development with the virtues of a traditional New England village, but with modern amenities and services, enabling residents of diverse income levels and ages to live, work, or retire in a well planned built and natural environment. In addition, the Town may use this By-Law to promote unmet housing needs, including affordable housing and handicap barrier free housing

6.4.2 Special Permit Granting Authority. The Planning Board shall act as the Special Permit Granting Authority (SPGA) for a Planned Village Development in the Town of Upton. The Planning Board is authorized to hear and decide upon applications for special permits for Planned Village Developments in accordance with the provisions of this zoning By-Law.