

COUNTY OF YATES

TOWN OF MIDDLESEX

LOCAL LAW #2 OF 1999

**A LOCAL LAW TO REGULATE TELECOMMUNICATION TOWERS
WITH THE TOWN OF MIDDLESEX**

Be it enacted by the Town Board of the Town of Middlesex as follows:

**TOWN OF MIDDLESEX
TELECOMMUNICATION TOWERS LAW**

PREAMBLE:

I. In keeping with the Yates County Looking Ahead Master Plan, no commercial towers are allowed on South and Bare Hills, or on any state and federal lands in the Town of Middlesex. The reason is that Bare Hill (Genundewah) and South Hill (Nundawao) are areas of rich cultural and historical significance. Their history has been detailed in many books and the Seneca Nation has oral and written accounts of their importance in the Seneca cultural, history and heritage.

II. Dr. Arthur C. Parker, Director Emeritus of the Rochester Museum and Science Center, made many archaeological excavations on Bare Hill and South Hill. Evidence shows the Seneca Nation consider these hills to be the ancestral Birthplace of the Seneca Nation. There are several stone mounds on South Hill (especially Clark's Gully) that are considered by some to be Hopewell Mounds. A yearly ceremony (Seneca Heritage Days) is still held on Bare Hill to commemorate ancient Seneca harvest rituals.

Section One: Definitions

- (1) Board: Zoning Board of Appeals of Town of Middlesex
- (2) Telecommunication Tower: Any structure greater than thirty-five (35) feet in height, which is capable of receiving or transmitting wireless signals for the purpose of communicating information, and not to exceed 125 feet with antenna.
- (3) Zoning Law: Town of Middlesex Zoning Law, as amended and restated and dated February 11, 1999.

Section Two: Regulation of Telecommunication Towers

- (1) Purpose: The purpose of this law is to promote the health, safety, and general welfare of the residents of the Town of Middlesex; to provide standards for the safe provision 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, visual impact assessment and appropriate landscaping.
- (2) Except as provided in the Preamble above, Telecommunication Towers are permitted as a special Use in all districts in the Town of Middlesex in accordance with these regulations and the Zoning Law.
- (3) Application of Special Use Permit Regulations
 - (a) No person shall construct or operate a telecommunication tower except those approved prior to the effective date of this law, until he has obtained a special use permit as provided in this Article and Section 502 of the Zoning Law.
 - (b) Applicants proposing to collocate on a previously approved telecommunication tower **do not require a special use permit, but are required to obtain a building permit.** The Town of Middlesex Code Enforcement Officer (CEO) may require the applicant to submit any of the items under (4)(a) below as part of the building permit process.

(4) Use of Existing Tall Structures may require a Special Use Permit. At all times, shared use of existing tall structures (for example municipal water towers, multi-story buildings, church steeples, farm silos, etc.) and existing or approved towers (see subsection 2b above), shall be preferred to the construction of new towers.

a) An applicant proposing to share use of an existing tall structure shall be required to submit:

- (i) a completed application for a building permit.
- (ii) documentation of intent from the owner of the existing facility to allow shared use.
- (iii) a site plan. The site plan shall show all existing and proposed structures and improvements including antennae, roads, buildings, guy wires and anchors, parking, fencing and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.
- (iv) an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing tall structure, and explaining what modifications, if any, will be required in order to certify to the above.
- (v) a completed short Environmental Assessment Form (EAF) and completed Visual EAF Addendum.

(b) If an applicant proposing to share use of an existing tall structure submits complete and satisfactory documentation in accordance with subsection (3) (a) above, and if modifications indicated according to subsection (3) (a) are deemed insignificant by the Board, and after the Zoning Board conducts a public hearing and complies with all State Environmental Quality Review Act (SEQRA) provisions, the Zoning Board shall grant a Special Use Permit without further review under this section. If the Board determines that any modifications indicated according to subsection (3) (a) are significant, it may require further review according to subsections (8) through (18) below.

(5) New Telecommunication Tower. The Board may consider a new telecommunication tower when the applicant demonstrates that shared use of existing tall structures and existing or approved towers is impractical. An applicant shall be required to present an adequate report inventorying all existing tall structures and existing or approved tower within a reasonable distance of the proposed site. This distance shall be determined by the Board in consultation with the applicant. The report shall outline opportunities for shared

use of these existing facilities as an alternative to a proposed new tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each existing tall structure and existing or approved tower as well as documentation of the physical, technical and/or financial reasons why shared usage is not practical in each case. Written requests and responses for shared use shall be provided.

(6) Shared Usage of an Existing Tower Site for Placement of a New Tower. Where shared use of existing tall structures and existing or approved towers is found to be impractical, the applicant shall investigate share usage of an existing tower site for all its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with subsection (4) above. Any proposals for a new telecommunications tower or an existing tower site shall also be subject to the requirements of subsections (7) through (18) below.

(7) New Tower at a New Location. The Board may consider a new telecommunications tower on a site not previously developed with an existing tower when the applicant demonstrates that shared use of existing tall structures and existing or approved towers is impractical and submits a report as described in subsection (4) above; and when the Board determines that shared use of an existing tower site for a new owner is undesirable based upon the applicant's investigation in accordance with subsection (5). Any proposal for a new telecommunication tower shall also be subject to the requirements of subsections (7) through (18) below.

(8) New Towers: Future Shared Use. The applicant shall design a proposed new telecommunications tower to provide for collocation of at least three (3) carriers or designed so that it can be retrofitted to accommodate a minimum of three (3) carriers. The applicant shall submit to the board a letter of intent committing the owner of the proposed new tower and his/her successors in interest to negotiate in good faith for shared use of the proposed tower by other telecommunications providers in the future. This letter shall be filed with the CEO prior to issuance of a building permit and shall state that the applicant will:

- a) Respond within 90 days to a request for information from a potential shared-use applicant.
- b) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers.
- c) Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charge may include, but is not limited to, a pro-rated share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity and depreciation, and all of the costs adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

(9) Plan Requirements:

- a) An applicant shall be required to submit a site plan in accordance with *the zoning law* Section 700. The site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wires and anchors, antennae, parking and landscaping, fencing and shall include grading plans for new facilities and roads.
- b) Supporting Documentation - The applicant shall submit a complete short EAF, a complete Visual Environmental Assessment Form (visual EAF addendum), and documentation on the proposed intent and capacity of use as well as a justification for any clearing required. The applicant shall also submit a copy of its Federal Communications Commission (FCC) license.

(10) Lot Size and Setbacks. All proposed telecommunication towers and accessory structures shall be located on a single parcel and shall be setback from abutting parcels and street lines a distance sufficient to substantially contain on-site all ice-fall or debris from tower or towers failure, and to preserve and protect the privacy of any adjoining residential properties, with setback equal to or greater than the total height of said tower and antennae combined total.

- a) Lot size of parcels containing a tower shall be determined by the amount of land required to meet the setback requirements. If the land is to be leased the entire area required shall be leased from a single parcel unless the Board determines that this provision may be waived.
- b) Telecommunication Towers shall comply with all existing setback requirements of the underlying zoning district, and shall be located with a minimum setback from any property line equal to the height of the tower. Accessory structures shall comply with the minimum setback requirements in the underlying zoning district.

(11) Visual Impact Assessment. The Board may require the applicant to undertake a visual impact assessment which may include:

- a) A "Zone of Visibility Map" shall be provided in order to determine locations where the tower may be seen.
- b) Pictorial representations of "before and after" views from key viewpoints both inside and outside of the town including but not limited to; state highways and other major roads, state and local parks, other public lands, preserves any historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travellers. The Board shall determine the appropriate key sites at a pre-submission conference with the applicant.

- c) Assessment of alternative tower designs and color schemes, as described in subsection (12) below.
- d) Assessment of the visual impact of the tower base, guy wires, fencing around tower, accessory buildings and overhead utility lines from abutting properties and streets.

(12) New Tower Design. Alternative designs shall be considered for new towers, including lattice, single pole structures and possible fake pine tree types, etc., could be considered, ~~for reduced tax assessment~~. The design of a proposed new tower shall comply with the following:

- a) Any new tower shall be designed to accommodate future shared use by other telecommunications providers.
- b) Unless specifically required by other regulations, a tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.
- c) The maximum height of any new tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and/or federal law and/or regulation.
- d) The Board may request a review of the application by a qualified engineer in order to evaluate the need for, and the design of, any new tower at the applicant's expense.
- e) Accessory structures shall maximize the use of building materials, color and textures designed to blend with the natural surroundings.
- f) No portion of any tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to: company name, phone numbers, banners and streamers.

(13) Existing Vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding four (4) inches in diameter (measured at a height of four (4) feet off of the ground) shall take place prior to the approval of the special permit.

(14) Screening. Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where a site abuts a residential property or public property including streets, screening shall be required.

(15) Access. Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall

closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

(16) Parking. Parking shall be provided to assure adequate emergency and service access. The Board shall determine the number of required spaces upon a recommendation from the applicant. No parking spaces shall be located in any required yard.

(17) Fencing. The tower and any necessary structures shall be adequately enclosed by a fence - design of which shall be approved by the Board.

(18) Removal. The applicant shall submit to the board, a letter of intent committing the tower owner and his/her successors in interest, to notify the CEO within thirty (30) days of the discontinuance of use of the tower. Owner will bear cost of removal of tower within ninety (90) days. This letter shall be filed with the CEO prior to issuance of a building permit (assuming the telecommunication tower is approved according to this section.) Obsolete or unused towers and accessory structures shall be removed from any site four (4) months after such notification. Failure to notify and/or to remove the obsolete or unused tower in accordance with these regulations shall be a violation of this chapter and shall be punishable according to Section 20c (Penalties for Offenses.)
of the zoning law.

(19) Letter of Credit/Security. The applicant and the owner of record of the premises shall be required to execute and file with the Town Clerk of the Town of Middlesex a letter of credit or other form of security acceptable to the Town Attorney as to form and manner of execution in an amount sufficient for the faithful performance of the terms and conditions of this section; the conditions of the permit or approval issued hereunder for the observation of all town local laws or ordinances to cover the maintenance of the tower during its lifetime and provide for its removal. The amount required shall be at the applicant's expense as determined by the Town Engineer. In the event of default upon the performance of any such conditions, the letter of credit or security shall be forfeited to the Town of Middlesex, which shall be entitled to maintain an action thereon. The letter of credit or security shall remain in full force and effect until the removal of the tower, satellite dish, antenna, pole, accessory facility/structure and site restoration.

(20) Intermunicipal Notification for New Towers. In order to keep neighboring municipalities informed and to facilitate the possibility of directing that an existing tall structure or existing telecommunications tower in a neighboring municipality be considered for shared use and to assist in the continued development of county 911 Services, the Board shall require that:

- a) An applicant who proposes a new telecommunication tower shall notify in writing the legislative body of each municipality that borders Middlesex, the Yates County Planning Board and the Director of Yates County Emergency Services. Notification shall include the exact location of the proposed tower, and a general description of the project including, but not limited to, the height of the tower and its capacity for future shared use.

- b) Documentation of this notification shall be submitted to the Board at the time of the application.

Section Three: This Local Law shall take effect immediately upon its being filed with the Secretary of State.

Date: February 11, 1999