

**TOWN OF LYNDON
SHEBOYGAN COUNTY, WISCONSIN**

ORDINANCE NO. _____ OF 2001

AN ORDINANCE ENACTING SECTION 22.10 OF THE ZONING ORDINANCE FOR THE
TOWN OF LYNDON

THE BOARD OF SUPERVISORS OF THE TOWN OF LYNDON, SHEBOYGAN COUNTY,
WISCONSIN, HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The document entitled "Personal Wireless Service Facilities," attached hereto and incorporated herein by reference, is hereby adopted as part of the Zoning Ordinance of the Town of Lyndon, Sheboygan County, Wisconsin, pursuant to the enabling provisions of Wis. Stats. Ch. 60, subch. VIII; and §§ 61.35 and 62.23, and shall be published or posted pursuant to Wis. Stat. § 60.80.

SECTION 2. This ordinance shall take effect and be in full force after its passage and publication or posting in accordance with Section 2 hereof.

Passed and adopted this 2d day of May 2001.

Dominic Garofalo, Town Chairman

Countersigned:

Julian F. Brachmann, Town Clerk

Approved:



Stephen L. Castner, Town Attorney

1 **.22.10. PERSONAL WIRELESS SERVICE FACILITIES.**

2 **10.1. Title.** This Ordinance shall be known and cited as the " Personal Wireless
3 Service Facilities Siting Ordinance" of the Town of Lyndon, Sheboygan County,
4 Wisconsin, (hereinafter referred to as the "Siting Ordinance").

5 **10.2. Authority.** This ordinance is adopted pursuant to the enabling provisions
6 of Wis. Stats. Ch. 60, subch. VIII; and §§ 61.35 and 62.23.

7 **10.3. Premises.**

8 **10.3.1.** Section 704 of the Telecommunications Act of 1996, 47 U.S.C. §
9 332(c)(7) (the "Act") governs federal, state and local government oversight
10 of siting of Personal Wireless Service Facilities (as hereinafter defined);

11 **10.3.2.** The Act provides that:

12 **10.3.2.1.** The Town shall not unreasonably discriminate among providers of
13 functionally equivalent services; and shall not prohibit or have the effect
14 of prohibiting the provision of personal wireless services.

15 **10.3.2.2.** The Town shall act on any request for authorization to place,
16 construct, or modify Personal Wireless Service Facilities within a
17 reasonable period of time after the request is duly filed with such
18 government or instrumentality, taking into account the nature and scope
19 of such request.

20 **10.3.2.3.** Any decision by the Town to deny a request to place, construct, or
21 modify Personal Wireless Service Facilities shall be in writing and
22 supported by substantial evidence contained in a written record.

23 **10.3.2.4.** The Town shall not regulate the placement, construction, and
24 modification of Personal Wireless Service Facilities on the basis of the
25 environmental effects of radio frequency emissions to the extent that
26 such Facilities comply with the regulations of the Federal
27 Communications Commission ("FCC") concerning such emissions.

28 **10.3.3.** The Zoning Ordinance for the Town of Lyndon was adopted before
29 enactment of the Act, and therefore the Ordinance does not include siting
30 standards in conformity with the Act;

31 **10.3.4.** Unregulated siting of Personal Wireless Service Facilities in the Town
32 may adversely affect and cause irreparable harm to the public health,
33 welfare, safety and property values.

- 34 **10.4. Definitions.**
- 35 **10.4.1.** "Antenna" means an implement or device designed and constructed
36 primarily to receive and transmit radio signals necessary to Personal
37 Wireless Services.
- 38 **10.4.2.** "Antenna Array" means a grouping of one or more antennae.
- 39 **10.4.3.** "Co-location" means the use of a Personal Wireless Service Facility by
40 more than one wireless telecommunications provider.
- 41 **10.4.4.** "Designated Scenic Resource" means that specific location, view, or
42 corridor, as identified as a scenic resource in the Town's comprehensive
43 plan or by a State or federal agency, that consists of:
- 44 **10.4.4.1.** a three dimensional area extending out from a particular viewpoint
45 on a public way or within a public recreational area, focusing on a single
46 object, such as a mountain, resulting in a narrow corridor, or a group of
47 objects, such a downtown skyline or mountain range, resulting in a
48 panoramic view corridor; or
- 49 **10.4.4.2.** lateral terrain features such as valley sides or woodland as
50 observed to either side of the observer, constraining the view into a
51 narrow or particular field, as seen from a viewpoint on a public way or
52 within a public recreational area.
- 53 **10.4.5.** "Expansion" means the addition of antennas, towers, other devices or
54 height to an existing structure.
- 55 **10.4.6.** "FAA" means the Federal Aviation Administration, or its lawful
56 successor.
- 57 **10.4.7.** "FCC" means the Federal Communications Commission, or its lawful
58 successor.
- 59 **10.4.8.** "Height" means the vertical measurement from a point on the ground
60 at the mean finish grade adjoining the foundation as calculated by averaging
61 the highest and lowest finished grade around the building or structure, to the
62 highest point of the building or structure. The highest point shall exclude
63 farm building components, flagpoles, chimneys, ventilators, skylights,
64 domes, water towers, bell towers, church spires, processing towers, tanks,
65 bulkheads, or other building accessory features usually erected at a height
66 greater than the main roofs of buildings.
- 67 **10.4.9.** "Historic or Archaeological Resources" means resources that are:
- 68 **10.4.9.1.** Listed individually in the National Register of Historic Places or
69 eligible for listing on the National Register;

- 70 **10.4.9.2.** Certified or preliminarily determined by the Secretary of the Interior
71 as contributing to the historical significance of a registered historic
72 district or a district preliminarily determined by the Secretary of the
73 Interior to qualify as a registered historic district;
- 74 **10.4.9.3.** Individually listed on the Wisconsin Register of Historic Places as
75 defined in Wis. Stat. 44.36, as amended;
- 76 **10.4.9.4.** Individually listed on a list of locally designated historic places as
77 defined in Wis. Stat. 44.45, as amended; or
- 78 **10.4.9.5.** Areas identified by a governmental agency such as the Wisconsin
79 Historical Society as having significant value as an historic or
80 archaeological resource and any areas identified in the Town's
81 comprehensive plan, which have been listed or are eligible to be listed
82 on the National or Wisconsin Register of Historic Places or list of locally
83 designated historic places.
- 84 **10.4.10.** "Historic District" means a geographically definable area possessing a
85 significant concentration, linkage or continuity of sites, buildings, structures
86 or objects united by past events or aesthetically by plan or physical
87 development and identified in the Town's comprehensive plan, which is
88 listed or is eligible to be listed on the National Register of Historic Places.
89 Such historic districts may also comprise individual elements separated
90 geographically, but linked by association or history.
- 91 **10.4.11.** "Historic Landmark" means any improvement, building or structure of
92 particular historic or architectural significance to the Town relating to its
93 heritage, cultural, social, economic or political history, or which exemplifies
94 historic personages or important events in local, state or national history
95 identified in the Town's comprehensive plan, which have been listed or are
96 eligible to be listed on the National or Wisconsin Register of Historic Places
97 or list of locally designated historic places.
- 98 **10.4.12.** "Line of sight" means the direct view of the object from the designated
99 scenic resource.
- 100 **10.4.13.** "Parabolic Antenna" (also known as a satellite dish antenna) means an
101 antenna, which is bowl-shaped, designed for the reception and or
102 transmission of radio frequency communication signals in a specific
103 directional pattern.
- 104 **10.4.14.** "Permitee" means the person to whom the Town issues a Siting
105 Conditional Use Permit, and that person's permitted successors and
106 assigns. To the extent the Permitee does not own all or part of a Personal
107 Wireless Service Facility, the term "Permitee" shall apply to such other
108 owner or owners.

- 109 **10.4.15.** “Personal Wireless Services” means commercial mobile services,
110 unlicensed wireless services, and common carrier wireless exchange
111 access services.
- 112 **10.4.16.** “Personal Wireless Service Facilities” or “Facilities” means facilities for
113 the provision of personal wireless services.
- 114 **10.4.17.** "Principal Use" means the use other than one that is wholly incidental
115 or accessory to another use on the same premises.
- 116 **10.4.18.** "Public Recreational Facility" means a navigable stream, natural
117 navigable lake, publicly owned or administered park, playground, trail,
118 county or state forest or scientific area, as defined and identified either by
119 Wisconsin statute or regulation or in the Town's adopted comprehensive
120 plan, designed to serve the recreational needs of the public.
- 121 **10.4.19.** “Qualified Engineer” means a professional engineer registered in
122 Wisconsin or any state or territory of the United States and holding a
123 baccalaureate or higher degree in electrical engineering from a college or
124 university accredited by the Engineering Accreditation Commission of the
125 (USA) Accreditation Board for Engineering and Technology (EAC/ABET)
126 and appearing on the reference list of Educational Programs of the Institute
127 of Electrical and Electronics Engineers, Inc. (“IEEE”).
- 128 **10.4.20.** “Siting Conditional Use Permit” means a conditional use permit issued
129 pursuant to the procedures, terms and conditions of this Siting Ordinance.
- 130 **10.4.21.** “Support Structure” means a structure designed and constructed
131 specifically to support an Antenna Array, and may include a monopole, self-
132 supporting (lattice) tower, guy-wire support tower and other similar
133 structures.
- 134 **10.4.22.** "Targeted Market Coverage Area" means the area that is targeted to
135 be served by this proposed Personal Wireless Service Facility.
- 136 **10.4.23.** “Unlicensed Wireless Service” means the offering of Personal Wireless
137 Services using duly authorized devices that do not require individual
138 licenses, but does not mean the provision of direct-to-home satellite
139 services.
- 140 **10.4.24.** "Unreasonable Adverse Impact" means that the proposed project
141 would produce an end result which is:
- 142 **10.4.24.1.** excessively out-of-character with the Public Recreational
143 Facility or Viewpoint affected, including existing buildings structures and
144 features within a Public Recreational Facility or Viewpoint, and

145 **10.4.24.2.** would significantly diminish the scenic value of the Public
146 Recreational Facility or Viewpoint.

147 **10.4.25.** "Viewpoint" means a location identified either in the Town's adopted
148 comprehensive plan or by a federal or Wisconsin agency, and which serves
149 as the basis for the location and determination of a particular scenic
150 resource.

151 **10.5. Applicability.** This local land use ordinance applies to all construction and
152 expansion of Facilities, except as provided in § 10.6.

153 **10.6. Exemptions.**

154 **10.6.1.** The following are exempt from the provisions of this ordinance:

155 **10.6.2. Emergency Facilities.** Temporary wireless communication facilities
156 for emergency communications by public officials.

157 **10.6.3. Amateur (Ham) Radio Stations.** Amateur (ham) radio stations
158 licensed by the Federal Communications Commission (FCC).

159 **10.6.4. Satellite Antenna.** Satellite antennas less than two (2) feet in
160 diameter, as provided in Wis. Stat. § 60.61 (3c), as amended.

161 **10.6.5. Antennas as Accessory Uses.** An antenna that is an accessory use
162 to a residential dwelling unit.

163 **10.7. Review and Approval Authority.**

164 **10.7.1.** No person shall construct or expand a Facility without first obtaining a
165 Siting Conditional Use Permit.

166 **10.7.2.** The Planning Commission shall review all applications and the site,
167 including without limitation, storm water drainage, soils, vegetation, surface
168 waters, topography, nearby land and water uses that may be affected by the
169 proposed Facility; traffic conditions on public highways serving the site, and
170 any other factors consistent with the requirements of this Ordinance and
171 bearing on the public health, welfare, safety or property values. Based upon
172 said review, the Planning Commission shall make a recommendation to the
173 Town Board.

174 **10.7.3.** The Town Board, in its discretion, may authorize the Town Clerk to
175 issue a Siting Permit after review of the Planning Commission
176 recommendation and public hearing, consistent with the requirements of this
177 Ordinance in the interests of the public health, welfare, safety and property
178 values.

179 **10.7.4. Applications.** Applications for a Siting Conditional Use Permit shall
180 be filed with the Town Clerk and shall include the following materials and
181 information:

182 **10.7.4.1.** Documentation of the applicant's right, title, or interest in the
183 property where the Facility is to be sited, including name and address of
184 the property owner and the applicant.

185 **10.7.4.2.** A copy of the FCC license for the Facility or certification by the
186 applicant attesting that the Facility complies with current FCC
187 regulations.

188 **10.7.4.3.** A USGS 7.5 minute topographic map showing the location of all
189 structures greater than 50 feet in height and Facilities within the greater
190 of the proposed signal propagation area or a five (5) mile radius of the
191 proposed Facility, unless this information has been previously made
192 available to the Town. This requirement may be met by submitting
193 current information (within thirty days of the date the application is filed)
194 from the FCC Tower Registration Database.

195 **10.7.4.4.** A site plan prepared and certified by a Qualified Engineer indicating
196 the location, type, and height of the proposed Facility, primary and co-
197 location antenna capacity, on-site and abutting off-site land uses,
198 means of access, setbacks from property lines, and all applicable
199 American National Standards Institute (ANSI) technical and structural
200 codes.

201 **10.7.4.5.** Certification by a Qualified Engineer that the proposed Facility
202 complies with all FCC standards for radio emissions.

203 **10.7.4.6.** A boundary survey for the lot on which the Facility is proposed to
204 be located, performed by a professional engineer or land surveyor
205 licensed by the State of Wisconsin.

206 **10.7.4.7.** The following, bearing on the feasibility of co-location of the
207 proposed Facility:

208 **10.7.4.7.1.** A propagation map of the area proposed to be covered
209 under the application, certified by a Qualified Engineer;

210 **10.7.4.7.2.** A co-location feasibility analysis pertaining to the area shown
211 on said propagation map, under the design configuration most
212 accommodating to co-location, including a survey of all existing
213 structures that may be feasible sites for co-locating a Facility;

214 **10.7.4.7.3.** Written requests to, and refusal by, owners of all such
215 existing structures for their use as co-location sites.

- 216 **10.7.4.8.** A scenic assessment, consisting of the following:
- 217 **10.7.4.8.1.** Elevation drawings of the proposed Facility, and any other
218 proposed structures, showing height above ground level;
- 219 **10.7.4.8.2.** A landscaping plan indicating the proposed placement of the
220 Facility on the site; location of existing structures, trees, and other
221 significant site features; the type and location of plants proposed to
222 screen the Facility; the method of fencing, the color of the
223 structure, and the proposed lighting method;
- 224 **10.7.4.8.3.** Photo simulations of the proposed Facility taken from
225 perspectives determined by the Town Board, or their designee,
226 during the pre-application conference. Each photo must be labeled
227 with the line of sight, elevation, and with the date taken imprinted
228 on the photograph. The photos must show the color of the Facility
229 and method of screening, and
- 230 **10.7.4.8.4.** A narrative discussing:
- 231 **10.7.4.8.4.1.** the extent to which the proposed Facility would be
232 visible from or within a Public Recreational Facility or
233 Viewpoint;
- 234 **10.7.4.8.4.2.** the tree line elevation of vegetation within 100 feet of
235 the Facility, and
- 236 **10.7.4.8.4.3.** the distance to the proposed Facility from the Public
237 Recreational Facility or Viewpoint.
- 238 **10.7.4.8.5.** A written description of how the proposed Facility fits into the
239 applicant's telecommunications network. This submission
240 requirement does not require disclosure of confidential business
241 information.
- 242 **10.7.4.8.6.** Evidence demonstrating that no existing building, site, or
243 structure can accommodate the applicant's proposed Facility, the
244 evidence for which may consist of any one or more of the
245 following:
- 246 **10.7.4.8.6.1.** Evidence that no existing Facilities are located within
247 the targeted market coverage area as required to meet the
248 applicant's engineering requirements;
- 249 **10.7.4.8.6.2.** Evidence that existing Facilities do not have sufficient
250 height or cannot be increased in height at a reasonable cost
251 to meet the applicant's engineering requirements;

252 **10.7.4.8.6.3.** Evidence that existing Facilities do not have sufficient
253 structural strength to support applicant's proposed antenna
254 and related equipment. Specifically:

255 **10.7.4.8.6.3.1.** Planned, necessary equipment would exceed the
256 structural capacity of the existing Facility, considering the
257 existing and planned use of those Facilities, and these
258 existing Facilities cannot be reinforced to accommodate
259 the new equipment;

260 **10.7.4.8.6.3.2.** The applicant's proposed antenna or equipment
261 would cause electromagnetic interference with the
262 antenna on the existing towers or structures, or the
263 antenna or equipment on the existing Facility would
264 cause interference with the applicant's proposed
265 antenna, and

266 **10.7.4.8.6.3.3.** Existing or approved Facilities do not have space
267 on which planned equipment can be placed so it can
268 function effectively.

269 **10.7.4.8.6.4.** For Facilities existing prior to the effective date of this
270 ordinance, the fees, costs, or contractual provisions required
271 by the owner in order to share or adapt an existing Facility are
272 unreasonable. Costs exceeding the pro rata share of a new
273 Facility development are presumed to be unreasonable. This
274 evidence shall also be satisfactory for a tower built after the
275 passage of this ordinance, and

276 **10.7.4.8.6.5.** Evidence that the applicant has made diligent good
277 faith efforts to negotiate co-location on an existing Facility,
278 building, or structure, and has been denied access.

279 **10.7.4.9.** Identification of districts, sites, buildings, structures or objects,
280 significant in American history, architecture, archaeology, engineering
281 or culture, that are listed, or eligible for listing, in the National Register
282 of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800), the
283 Wisconsin Register of Historic Places (see Wis. Stat. 44.36) or list of
284 locally designated historic places (see Wis. Stat. 44.45).

285 **10.7.4.10.** Location map and elevation drawings of the proposed Facility and
286 any other proposed structures, showing color, and identifying structural
287 materials.

288 **10.7.4.11.** For proposed expansion of a Facility, a signed statement that
289 commits the Permittee, and his or her successors in interest, to:

290 **10.7.4.11.1.** Respond in a timely, comprehensive manner to a request for
291 information from a potential co-location applicant, in exchange for
292 a reasonable fee not in excess of the actual cost of preparing a
293 response;

294 **10.7.4.11.2.** Negotiate in good faith for shared use by third parties;

295 **10.7.4.11.3.** Allow shared use if an applicant agrees in writing to pay
296 reasonable charges for co-location;

297 **10.7.4.11.4.** Require no more than a reasonable charge for shared use,
298 based on community rates and generally accepted accounting
299 principles. This charge may include but is not limited to a pro rata
300 share of the cost of site selection, planning project administration,
301 land costs, site design, construction and maintenance, financing,
302 return on equity, depreciation, and all of the costs of adopting the
303 tower or equipment to accommodate a shared user without
304 causing electromagnetic interference.

305 **10.7.4.12.A** signed statement stating that the Permittee and his or her
306 permitted successors and assigns agree to:

307 **10.7.4.12.1.** Respond in a timely, comprehensive manner to a request for
308 information from a potential co-location applicant, in exchange for
309 a reasonable fee not in excess of the actual cost of preparing a
310 response;

311 **10.7.4.12.2.** Negotiate in good faith for shared use of the Facility by third
312 parties;

313 **10.7.4.12.3.** Allow shared use of the Facility if an applicant agrees in
314 writing to pay reasonable charges for collocation, and

315 **10.7.4.12.4.** Require no more than a reasonable charge for shared use,
316 based on community rates and generally accepted accounting
317 principles. This charge may include but is not limited to a pro rata
318 share of the cost of site selection, planning project administration,
319 land costs, site design, construction, financing, return on equity,
320 depreciation, and all of the costs of adapting the tower or
321 equipment to accommodate a shared user without causing
322 electromagnetic interference. The amortization of the above costs
323 by the Facility owner shall be accomplished at a reasonable rate,
324 over the useful life span of the Facility.

325 **10.7.4.13.A** form of surety approved by the Town Board to pay for the costs
326 of removing the Facility if it is ceased to be used as a Personal Wireless
327 Service Facility.

328 **10.7.4.14.**Evidence that a notice of the application has been published in a
329 local newspaper of general circulation in the community.

330 **10.7.4.15.**The National Environmental Policy Act (NEPA) applies to all
331 applications for personal wireless service facilities. NEPA is
332 administered by the FCC via procedures adopted as Subpart 1, Section
333 1.1301 et seq. (47 CFR Ch. I). The FCC requires that an environmental
334 assessment (EA) be filed with the FCC prior to beginning operations for
335 any personal wireless service facility proposed in or involving any of the
336 following:

- 337 • Wilderness areas.
- 338 • Wildlife preserves.
- 339 • Endangered species habitat.
- 340 • Historical site.
- 341 • Indian religious site.
- 342 • Flood plain.
- 343 • Wetlands.
- 344 • High intensity white lights in residential neighborhoods.
- 345 • Excessive radio frequency radiation exposure.

346 **10.7.4.15.1.** At the time of application filing, an EA that meets FCC
347 requirements shall be submitted to the Town for each personal
348 wireless service facility site that requires such an EA to be
349 submitted to the FCC.

350 **10.7.5. Waiver.** The Town Board may waive any of the submission
351 requirements based upon a written request of the applicant submitted at the
352 time of application. A waiver of any submission requirement may be granted
353 only if the Planning Commission finds in writing that due to special
354 circumstances of the application, the information is not required to determine
355 compliance with the standards of this Ordinance.

356 **10.7.6. Fees.**

357 **10.7.6.1. Administrative Application Fee.** An application shall include
358 payment of an administrative application fee of \$2,500.00_. The
359 application shall not be considered complete until this fee is paid. The
360 Town shall refund the fee if the applicant withdraws it application in
361 writing, delivered to the Town Clerk on or before ten (10) calendar days

362 of date of filing, less all expenses incurred by the Town of Lyndon. That
363 portion of the review fee not used shall be returned to the applicant
364 within twenty (20) calendar days following receipt by the Town of written
365 notice of withdrawal.

366 **10.7.6.2. Professional Review Fee.** An applicant shall pay all reasonable
367 and customary professional fees, including without limitation, engineer
368 and attorney fees, estimated by the Town as necessary to review the
369 application and advise the Planning Commission and Town Board. The
370 review fee shall be paid in full prior to the start of construction. That
371 portion of the review fee not used shall be returned to the applicant
372 within twenty (20) days of the Town Board's decision.

373 **10.7.7. Notice of Complete Application.**

374 **10.7.7.1.** Upon receipt of an application, the Town Clerk shall provide the
375 applicant with a dated receipt. Within five (5) working days of receipt of
376 an application the Town Clerk shall review the application and
377 determine if the application meets the submission requirements. The
378 Town Board, at its next regular meeting, shall review any requests for a
379 waiver from the submission requirements and shall act on these
380 requests prior to determining the completeness of the application.

381 **10.7.7.2.** If the Town Clerk determines the application is complete, the Town
382 Clerk shall notify the applicant in writing of this determination and
383 require the applicant to provide a sufficient number of copies of the
384 application to the Planning Commission.

385 **10.7.7.3.** If the Town Clerk determines the application is incomplete, the
386 Town Clerk shall notify the applicant in writing, specifying the additional
387 materials or information required to complete the application.

388 **10.7.7.4.** If the Town Clerk determines the application is complete, the Town
389 Clerk shall notify all abutters to the site as shown on the Assessor's
390 records, by first-class mail, on or before seven (7) days before the first
391 Planning Commission meeting under § 10.7.8, that an application has
392 been accepted. This notice shall contain a brief description of the
393 proposed activity and the name of the applicant, give the location of a
394 copy of the application available for inspection, and provide the date,
395 time, and place of the Planning Commission meeting at which the
396 application will be considered. Failure on the part of any abutter to
397 receive such notice shall not be grounds for delay of any consideration
398 of the application nor denial of the project.

399 **10.7.8. Planning Commission Review and Recommendation.** The
400 Planning Commission, at its next regular meeting not fewer than seven (7)
401 days after the Town Clerk mails notice to abutters, allowing customary time

402 for public notice of said meeting and distribution of the application to the
403 plan commissioners, shall review the application and make a
404 recommendation to the Town Board.

405 **10.7.9. Public Hearing.** On or before thirty (30) days of the review and
406 recommendation by the Planning Commission, a public hearing shall be
407 held before the Town Board.

408 **10.7.9.1.** Each person wishing to speak or otherwise present evidence at
409 said hearing shall:

410 **10.7.9.1.1.** Identify himself or herself by name, residence address, any
411 principal he or she represents, and whether he or she will be
412 compensated by or on behalf of the principal,

413 **10.7.9.1.2.** Provide a copy of all documents and things upon which he or
414 she relies to the keeper of the record.

415 **10.7.9.2.** A record shall be kept by a court reporter, including a transcript of
416 proceedings and a copy of all documents or things presented. The
417 court reporter shall file a complete original and two complete copies
418 with the Town Clerk on or before fourteen (14) days after said hearing,
419 or at such earlier time as the Town Board may determine.

420 **10.7.9.3.** The chair, at his or her sole discretion, may cause persons wishing
421 to speak to be sworn on their oaths or may cause the hearing to be
422 conducted as nearly as possible as a contested case hearing of
423 appropriate class pursuant to Wis. Stat. §§ 227.44 through 227.50, as
424 amended.

425 **10.7.10. Town Board Action.** At its next regular meeting following said public
426 hearing, the Town Board shall approve, approve with conditions, or deny the
427 application in writing, together with the findings on which that decision is
428 based. However, if the Town Board has a waiting list of applications that
429 would prevent the Town Board from making a decision within the required
430 time period, then a decision on the application shall be issued within sixty
431 (60) days of the public hearing. This time period may be extended upon
432 agreement between the applicant and the Town Board.

433 **10.8. Standards of Town Board Review.** To obtain approval from the Town
434 Board, an application must comply with the standards in this section.

435 **10.8.1. Priority of Locations.** New Facilities must be located according to the
436 priorities below. The applicant shall demonstrate that a Facility of a higher
437 priority cannot reasonably accommodate the applicant's proposed Facility.

438 **10.8.1.1.** Co-location on an existing Facility or other existing structure in the
439 A-1 Agricultural Land District or the A-2 Agricultural Land District, as

440 identified in the Town of Lyndon Zoning Ordinance, within 1,320 feet on
441 either side of the right-of-way of STH 57;

442 **10.8.1.2.** A new Facility on public or private property in the A-1 Agricultural
443 Land District or the A-2 Agricultural Land District, as identified in the
444 Town of Lyndon Zoning Ordinance, within 1,320 feet on either side of
445 the right-of-way of STH 57;

446 **10.8.1.3.** Co-location on an existing Facility or other existing structure in the
447 B-1 Light Industrial Business District, the B-2 Heavy Industrial Business
448 District or the B-3 Highway Commercial Business District, as identified
449 in the Town of Lyndon Zoning Ordinance, within 1,320 feet on either
450 side of the right-of-way of STH 57;

451 **10.8.1.4.** A new Facility or other existing structure in the B-1 Light Industrial
452 Business District, the B-2 Heavy Industrial Business District or the B-3
453 Highway Commercial Business District, as identified in the Town of
454 Lyndon Zoning Ordinance, within 1,320 feet on either side of the right-
455 of-way of STH 57;

456 **10.8.1.5.** Co-location on an existing Facility or other existing structure in the
457 A-1 Agricultural Land District or the A-2 Agricultural Land District, as
458 identified in the Town of Lyndon Zoning Ordinance;

459 **10.8.1.6.** A new Facility on public or private property in the A-1 Agricultural
460 Land District or the A-2 Agricultural Land District, as identified in the
461 Town of Lyndon Zoning Ordinance;

462 **10.8.1.7.** Co-location on an existing Facility or other existing structure in the
463 B-1 Light Industrial Business District, the B-2 Heavy Industrial Business
464 District or the B-3 Highway Commercial Business District, as identified
465 in the Town of Lyndon Zoning Ordinance;

466 **10.8.1.8.** A new Facility or other existing structure in the B-1 Light Industrial
467 Business District, the B-2 Heavy Industrial Business District or the B-3
468 Highway Commercial Business District, as identified in the Town of
469 Lyndon Zoning Ordinance;

470 **10.8.1.9.** New Facilities or expansion of any antenna, antenna array or
471 support structure in any residential district or the A-5 Agricultural Living
472 District or A-6 Agricultural Estate Land District, as identified in the Town
473 of Lyndon Zoning Ordinance, shall be prohibited.

474 **10.8.2. Design for Co-location.**

475 **10.8.2.1.** A Facility or expansion of any antenna, antenna array or support
476 structure shall share an existing Facility where feasible and appropriate,
477 thereby reducing the number of stand-alone Facilities.

478 **10.8.2.2.** A new Facility and related equipment must be designed and
479 constructed to accommodate expansion for future co-location of at least
480 three additional Facilities or providers. However, the Town Board may
481 waive or modify this standard where the district height limitation
482 effectively prevents future co-location.

483 **10.8.3. Height.** A new Facility must meet the following height standards, in the
484 following districts:

485 **10.8.3.1.** In A-1 Agricultural Land District, the A-2 Agricultural Land District,
486 B-1 Light Industrial Business District, the B-2 Heavy Industrial Business
487 District or the B-3 Highway Commercial Business District, within 1,320
488 feet on either side of the right-of-way of STH 57, the maximum height
489 shall be 300 feet;

490 **10.8.3.2.** In any permitted district more than 1,320 feet on either side of the
491 right-of-way of STH 57, the maximum height shall be 200 feet.

492 **10.8.4. Setbacks.** A new or expanded Facility must comply with the set back
493 requirements for the zoning district in which it is located, or be set back one
494 hundred five percent (105%) of its height from all property lines and all
495 buildings, parking lots, parking spaces and driveways not serving the Facility
496 itself, whichever is greater. The setback may be satisfied by including the
497 areas outside the property boundaries if secured by an easement. The
498 following exemptions apply:

499 **10.8.4.1.** In the A-1 Agricultural Land District and the A-2 Agricultural Land
500 District, the setback may be reduced by the Town Board upon a
501 showing by the applicant that the Facility is designed to collapse in a
502 manner that will not harm other property;

503 **10.8.4.2.** An antenna is exempt from the setback requirement if it extends no
504 more than five (5) feet horizontally from the edge of the structure to
505 which it is attached, and it does not encroach upon an abutting
506 property.

507 **10.8.5. Landscaping.** A new Facility and related equipment must be screened
508 with plants from view by abutting properties, to the maximum extent
509 practicable. Existing plants and natural land forms on the site shall also be
510 preserved to the maximum extent practicable.

511 **10.8.6. Signs.** A new Facility shall contain no signs except those necessary in
512 quantity and size to warn trespassers, identify the Permittee in the event of
513 emergency, or as required by regulations of the FCC.

514 **10.8.7. Security.** A new Facility must include a fence of not less than six (6)
515 feet to discourage trespass on the Facility and to discourage climbing on
516 any structure by trespassers. The Facility must be free of devices or

517 structural elements within twenty (20) feet from the ground that would permit
518 climbing.

519 **10.8.8. Lighting.** A new Facility must be illuminated only as necessary to
520 comply with FAA or other applicable state and federal requirements.
521 However, security lighting may be used as long as it is shielded to be down-
522 directional to retain light within the boundaries of the site, to the maximum
523 extent practicable.

524 **10.8.9. Color and Materials.** A new Facility must be constructed with
525 materials and colors that match or blend with the surrounding natural or built
526 environment, to the maximum extent practicable. Unless otherwise required,
527 muted colors, earth tones, and subdued hues shall be used.

528 **10.8.10. Structural Standards.** A new Facility must comply with the current
529 Electronic Industries Association/ Telecommunications Industries
530 Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards
531 for Steel Antenna Towers and Antenna Supporting Structures."

532 **10.8.11. Visual Impact.** The proposed Facility will have no unreasonable
533 adverse impact upon Public Recreational Facility or Viewpoint within the
534 Town, as identified either in the Town's adopted comprehensive plan, or by
535 a State of Wisconsin or federal agency.

536 **10.8.11.1.** In determining the potential unreasonable adverse impact of the
537 proposed Facility upon the designated scenic resources, the Town
538 Board shall consider the following factors:

539 **10.8.11.1.1.** The extent to which the proposed Facility is visible above
540 tree line, from the viewpoint(s) of the impacted Public Recreational
541 Facility or Viewpoint;

542 **10.8.11.1.2.** The type, number, height, and proximity of existing
543 structures and features, and background features within the same
544 line of sight as the proposed Facility;

545 **10.8.11.1.3.** The extent to which the proposed Facility would be visible
546 from the Public Recreational Facility or Viewpoint;

547 **10.8.11.1.4.** The amount and type of vegetative screening;

548 **10.8.11.1.5.** The distance of the proposed Facility from the Public
549 Recreational Facility or Viewpoint and the Facility's location within
550 the Public Recreational Facility or Viewpoint; and

551 **10.8.11.1.6.** The presence of reasonable alternatives that allow the
552 Facility to function consistently with its purpose.

553 **10.8.12. Historic & Archaeological Properties.** The proposed Facility, to the
554 greatest degree practicable, will have no unreasonable adverse impact upon
555 a historic district, site or structure which is currently listed on or eligible for
556 listing on the National Register of Historic Places, the Wisconsin Register of
557 Historic Places or the list of locally designated historic places.

558 **10.9. Standard Conditions of Approval.** The following standard conditions of
559 approval shall be a part of any approval or conditional approval issued by the
560 Town Board. Where necessary to ensure that an approved project meets the
561 criteria of this ordinance, the Town Board can impose additional conditions of
562 approval. Reference to the conditions of approval shall be clearly noted on the
563 final approved site plan, and shall include:

564 **10.9.1.** The Permittee and its successors and assigns agree to:

565 **10.9.1.1.** Respond in a timely, comprehensive manner to a request for
566 information from a potential co-location applicant, in exchange for a
567 reasonable fee not in excess of the actual cost of preparing a response;

568 **10.9.1.2.** Negotiate in good faith for shared use of the Facility by third parties;

569 **10.9.1.3.** Allow shared use of the Facility if an applicant agrees in writing to
570 pay reasonable charges for co-location;

571 **10.9.1.4.** Require no more than a reasonable charge for shared use of the
572 Facility, based on community rates and generally accepted accounting
573 principles. This charge may include, but is not limited to, a pro rata
574 share of the cost of site selection, planning project administration, land
575 costs, site design, construction and maintenance, financing, return on
576 equity, depreciation, and all of the costs of adapting the tower or
577 equipment to accommodate a shared user without causing
578 electromagnetic interference. The amortization of the above costs by
579 the Facility owner shall be accomplished at a reasonable rate, over the
580 life span of the useful life of the Facility.

581 **10.9.2.** Certification by a Qualified Engineer that the Facility, as designed, will
582 comply with all applicable FCC radio frequency emissions regulations.

583 **10.9.3.** Permittee shall indemnify, hold harmless and defend the Town against
584 any and all demands; claims; suits, alternative dispute resolution
585 proceedings under Wis. Stat. § 802.12, as amended from time to time;
586 arbitration awards; or orders or judgments of a court for compensation for
587 injury to person or damage to property of others arising from the negligent or
588 intentional acts of Permittee, its employees, agents, independent contractors
589 or materials suppliers committed during construction or operation of the
590 Facilities or the violation of any applicable statute or ordinance

591 **10.9.4.** Prior to commencement of construction of the Facilities, the Permittee
592 shall obtain comprehensive general liability and property damage insurance,
593 as follows, and file certificates thereof with the Town Clerk:

594 **10.9.4.1.** Coverage shall protect the Permittee and any contractor during the
595 performance of work covered by this Permit from claims for damages
596 for personal injury, including accidental death as well as claims for
597 property damages, which may arise from operation under this Permit,
598 whether such operations be by the Permittee or by any contractor or by
599 anyone directly or indirectly employed by either of them in such manner
600 as to impose liability on the Town and the amounts of such insurance
601 shall be subject to the following minimums:

Worker's Compensation	Statutory
Employer's Liability	
Accident	\$100,000 Each Accident
Disease	\$100,000 Each Employee
Disease	\$500,000 Policy Limit
Bodily Injury	\$1,000,000 Per Person
	\$1,000,000 Per Occurrence
	\$1,000,000 Aggregate
	\$10,000 Medical Per Person
Property Damage	\$500,000 Per Occurrence
	\$500,000 Aggregate
Excess Liability (Umbrella)	
General Aggregate	\$4,000,000
Each Occurrence	\$4,000,000

602 **10.9.4.2.** The certificate of insurance shall contain a ten (10) day notice of
603 cancellation shall name the Town as an additional insured.

604 **10.9.4.3.** The Permittee shall be required to maintain such coverage in full
605 force and effect until such time as all above ground portions of the
606 Facility (not including any part of the foundation) have been removed

607 and all other conditions of the Conditional Use Siting Permit have been
608 satisfied.

609 **10.9.5.** Prior to commencement of construction of the Facilities, Permittee,
610 shall file with the Town Clerk a \$25,000.00 cash bond, as adjusted from time
611 to time by resolution of the Town Board, to secure costs of removing all
612 above ground portions of the Facility (not including any part of the
613 foundation) in the event the applicant shall fail to do so within sixty (60) days
614 of failing to show that the Facility is in active operation under § 10.11.2. The
615 applicant shall be required to continue such bond or other security until such
616 time as the Facility has been removed and all other conditions of the Permit
617 have been satisfied.

618 **10.10. Amendment to an Approved Application.** The Town Board must
619 approve any changes to an approved application, in accordance with § 10.7
620 above.

621 **10.11. Abandonment.**

622 **10.11.1.** A Facility that is not operated for a continuous period of twelve (12)
623 months shall be considered abandoned. The Town Clerk shall notify the
624 Permittee of an abandoned Facility in writing and order the removal of the
625 Facility within ninety (90) days of receipt of the written notice. The Permittee
626 shall have fourteen (14) calendar days from the receipt of the notice to
627 demonstrate to the Town Clerk that the Facility has not been abandoned.

628 **10.11.2.** If the Permittee fails to so demonstrate, the Town Clerk shall so notify
629 the Permittee, and the order of removal shall stand. If the Facility is not
630 removed within the ninety (90) day time period, the Town may remove the
631 Facility at the expense of the Permittee. The Permittee shall pay all site
632 reclamation costs deemed necessary and reasonable to return the site to its
633 pre-construction condition, including the removal of roads, and
634 reestablishment of vegetation.

635 **10.11.3.** If a surety has been given to the Town for removal of the Facility, the
636 Permittee may apply to the Town Board for release of the surety when the
637 Facility and related equipment are removed to the satisfaction of the Town
638 Board.

639 **10.12. Assignment.** Permittee shall have the right to assign or transfer all of any
640 portion of its interests, rights or obligations under this Conditional Use Siting
641 Permit or in the Personal Wireless Service Facility to third parties acquiring an
642 interest or estate in the Facilities or any portion thereof, only upon a consent
643 resolution of the Town Board and the express written assumption of any of
644 Permittee's obligations under this Conditional Use Siting Permit by its assignee
645 or transferee. An application for consent to assignment shall demonstrate
646 Permittee's compliance with all conditions of the Permit and the ability of the

647 assignee or transferee to comply in the future. The Town Board may conduct
648 any hearings or inquiry it deems necessary, and may deny such application at
649 will. This section shall create no expectation in the Permittee or its assignee or
650 transferee that the Town Board will consent to such assignment or transfer.

651 **10.13. Compliance Review.**

652 **10.13.1.** Upon prior written notice to the Permittee, the Planning Commission
653 may Review compliance with a Conditional Use Siting Permit upon a
654 determination of any of the following:

655 **10.13.1.1.**The use has not continued in conformity with the Permit or any
656 amendments thereto;

657 **10.13.1.2.**Violations of other statutes, ordinances or laws, or

658 **10.13.1.3.**Changes in the use of other property, such that the Facility would
659 no longer satisfy the standards of review set forth in § 10.8.

660 **10.13.2.** Upon completion of said compliance review, the Planning Commission
661 may recommend to the Town Board that no action be taken, revision be
662 made to the Permit, or that the Town Board conduct a public hearing for
663 possible termination of the Permit. Any such hearing shall conform to the
664 standards of § 10.7.9.

665 **10.13.3.** The Town may employ professional services and charge a review fee
666 as set forth in § 10.7.6.2. The Permittee shall pay the fee prior to review by
667 the Plan Commission, as a condition of continuation of said Permit.

668 **10.14. Term.** Conditional Use Siting Permits shall terminate at the earlier of:

669 **10.14.1.** A date determined by the Town Board, and identified on the Permit, to
670 represent the end of the useful life of the Facility, taking into account the
671 term of the FCC license and probable obsolesce and physical depreciation;

672 **10.14.2.** Changes in the use of other property, such that the Facility would no
673 longer satisfy the standards of review set forth in § 10.8, or

674 **10.14.3.** Ten (10) years from the date of issuance.

675 **10.15. Inspection and Fee.** The Town shall have the right, at its sole option, to
676 inspect the Facility as necessary and on prior written notice to the Permittee.
677 The Town may employ professional services and charge a review fee as
678 provided in § 10.7.6.2; provided, however, the Permittee shall pay the fee prior to
679 said inspection, as a condition of continuation of said Permit.

680 **10.16. Appeals.** Any person aggrieved by a decision of the Town Clerk or the
681 Town Board under this ordinance may appeal the decision to the Board of

682 Adjustment, as provided by Wis. Stat. § 60.65 (5) and 59.694, as amended, and
683 § 30 of the Zoning Ordinance. Written notice of an appeal shall be filed with the
684 Board of Adjustment within thirty (30) days of the decision. The notice of appeal
685 shall clearly state the reasons for the appeal.

686 **10.17. Penalties.** Sections .19 and .20 of the Zoning Ordinance shall apply to
687 any person who owns or controls any building or property that violates this
688 ordinance.

689 **10.18. Conflict and Severability.**

690 **10.18.1. Conflicts with other Ordinances.** Whenever a provision of this
691 ordinance conflicts with or is inconsistent with another provision of this
692 ordinance or of any other ordinance, regulation, or statute, the more
693 restrictive provision shall apply.

694 **10.18.2. Severability.** The invalidity of any part of this ordinance shall not
695 invalidate any other part of this ordinance.