

Chapter 168

TELECOMMUNICATIONS FACILITIES

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[HISTORY: Adopted by the Town Board of the Town of Nichols 12-8-1998 by L.L. No. 2-1998. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 194.

§ 168-1. Statutory authority.

Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York and the Municipal Home Rule Law of the State of New York, the Town Board of the Town of Nichols, County of Tioga and State of New York, has ordained and does hereby enact this chapter regulating and restricting the location, size and use of telecommunications facilities and their accessory structures in the Town of Nichols.

§ 168-2. Legislative intent.

The Town of Nichols recognizes the increased demand for wireless communications transmitting facilities and the need for the services they provide. Often these facilities require the construction of a communications tower and/or similar facilities. The intent of this chapter is to regulate the location, construction and modification of the telecommunications facilities in accordance with the guidelines of the Telecommunications Act of 1996 and other applicable laws by:

- A. Accommodating the need for telecommunications towers/antennas while regulating their location and number in the community.
- B. Minimizing the adverse visual impacts of these towers/antennas through proper siting, design and screening.
- C. Preserving and enhancing the positive aesthetic qualities of the natural environment and current development in the Town of Nichols.
- D. Providing for the health, safety and welfare of the community by avoiding potential damage or other negative impact to adjacent properties from power failure, falling ice, etc., through proper siting and engineering.

- E. Requiring the joint use of towers when available and encouraging the placement of antennas on existing structures to minimize the number of such structures in the future.

§ 168-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY STRUCTURE — A nonhabitable accessory facility or structure serving or being used in conjunction with a communications tower and/or similar facility and usually located on the same lot as the communications tower. Examples of such structures include utility or transmission equipment storage sheds or cabinets. All other uses ancillary to the antenna and associated equipment (including a business office, maintenance depot, vehicle storage, etc.) are prohibited from the site unless otherwise permitted in the zoning district in which the facility is located.

ANTENNA — A system of electrical conductors that transmit or receive frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, digital and/or data communications, personal wireless communication services (PWS) and microwave communications.

TELECOMMUNICATIONS FACILITIES — Towers and/or antennas and accessory structures together used in connection with the provision of cellular telephone service, personal communications services, digital and/or data communications services, paging services, radio and television broadcast services and similar broadcast services; also referred to as "facilities" or "equipment."

TOWER — A structure designed to support antennas. It includes, without limit, freestanding towers, guyed towers, monopoles and similar structures which do or which do not employ camouflage technology.

§ 168-4. Permitted locations, approvals and bulk requirements.

No telecommunications facility shall be sited, located, constructed, erected or modified without the issuance of a building permit and such other permits or approvals as are prescribed in this chapter.

- A. Approvals and bulk requirements for co-located/existing structure antennas; fee.
- (1) A "co-located/existing structure antenna" is any antenna that will be mounted to an existing communications tower, smoke stack, water tower or other existing structure, and extends no more than 15 feet above the height of the existing structure.
 - (2) A co-located or existing structure antenna, as defined in Subsection A(1) above, is permitted in all zoning districts without a tower special use permit, upon issuance of a building permit. The building permit application shall include the following:
 - (a) A structural analysis/report, certified by a New York State licensed professional engineer or architect, verifying the ability of the structure to handle the antenna.

- (b) Certification by a qualified radio frequency engineer (signed and sealed by a professional engineer or architect licensed in the State of New York) that the cumulative emissions from all antennas proposed to be located at the proposed site meet federal guidelines.
 - (3) The height of the new antenna shall extend no more than 15 feet above the height of the existing structure.
 - (4) The antenna and any mounting structure and related equipment shall be integrated into said structure in such a manner as to minimize its visual impact to the greatest extent practicable.
 - (5) The fee for the co-location permit application is hereby established at \$1,000.
- B. Approvals and bulk requirements for all other telecommunications facilities.
- (1) For all other telecommunications facilities, a tower special use permit shall be required. The tower must also be set back a minimum of 1 1/2 times the height of the tower and antenna from all power lines and any existing buildings. The Town of Nichols Planning Board may require an additional setback area in the case of guyed wires, taking into consideration the length of guyed wires and the location of ground anchors.
 - (2) In all zoning districts, new or relocated towers and antennas must be set back a minimum of 500 feet from all residential dwellings, schools and historic structures.
 - (3) All special use permit applications for telecommunications facilities in all zoning districts shall be treated as a Type I action under the State Environmental Quality Review Act (SEQRA).

§ 168-5. Tower special use permits; fee.

The Town of Nichols Planning Board shall be the issuing agency for all tower special use permits and shall also be the lead agency for SEQRA.

- A. Contents of application. All applicants for a tower special use permit shall make a written application for special use permit to the Town of Nichols Planning Board. Said application shall include:
- (1) A completed tower special use permit application form. In addition to the requirements set forth herein, all applications shall be processed in accordance with the requirements of the Code of the Town of Nichols generally applicable to special use permits. The application shall be accompanied by the payment of the tower special use permit application fee, as established by the Town Board, which tower special use permit fee is hereby established at \$4,000.
 - (2) A special use permit application form, including a long-form EAF. The application shall not be deemed complete unless accompanied by the propagation studies and search ring analysis described in Subsection A(4) and (5) of this section.

- (3) A site plan, in the form and content acceptable to the Town of Nichols Planning Board, prepared to scale and in sufficient detail and accuracy. At a minimum, such site plan shall include:
- (a) The exact location of the proposed tower, together with guy wires and ground anchors, if applicable, and any accessory structures.
 - (b) The maximum height of the proposed tower and antennas.
 - (c) A detail of the tower type (monopole, guyed, freestanding, or other).
 - (d) The color or colors of the towers.
 - (e) The location, type and intensity of any lighting on the tower and antennas.
 - (f) A survey showing the boundary of the property and a topographical map of the property with contour lines not exceeding five-foot intervals.
 - (g) Proof of ownership of the land by the applicant or the landowner's consent if the applicant will not own the property. A copy of the final lease agreement, plus any amendments thereto, must also be provided if the applicant will not own the property.
 - (h) The location of all current and proposed structures on the property and all structures on any adjacent property within 50 feet of the property lines, together with the distance of these structures to the tower and antennas and location of any adjacent residential dwellings, schools and historic structures within 500 feet.
 - (i) Identification of adjacent landowners.
 - (j) The location, nature and extent of any proposed fencing and landscaping or screening. Existing on-site vegetation shall be preserved to the maximum extent possible.
 - (k) The location and nature of proposed utility easements and access road, if applicable. The applicant must demonstrate that all private access roads will be maintained in order to ensure access by emergency vehicles on a year-round basis.
 - (l) Building elevations of accessory structures or immediately adjacent buildings within 50 feet.
- (4) "Before" and "after" propagation studies prepared by a qualified radio frequency engineer (signed and sealed by a professional engineer licensed in the State of New York) demonstrating existing signal coverage resulting from the proposed telecommunications facility.
- (5) A "search ring" analysis prepared by a qualified radio frequency engineer (signed and sealed by a professional engineer licensed in the State of New York) and overlaid on an appropriate background map demonstrating the area within which the telecommunications facility needs to be located in order to provide proper

signal strength and coverage to the target cell. The applicant must be prepared to explain to the Town of Nichols Planning Board how and why it selected the proposed site, discuss the availability (or lack of availability) of a suitable structure within the search ring which would have allowed for a co-located antenna(s) and to what extent the applicant explored locating the proposed tower and antennas in a more desirable use district. Proof of correspondence with other telecommunications companies concerning co-location shall be part of this requirement.

- (6) The Town of Nichols Planning Board, upon reviewing the application, may request reasonable additional visual and aesthetic and site information, as it deems appropriate on a case-by-case basis. Such additional information may include, among other things, visual impact statements, enhanced landscaping plans, line-of-sight drawings, and/or visual simulations from viewpoints selected by the Town staff.
 - (7) For sites in close proximity to significant historical sites or important preservation/conservation areas, the Town of Nichols Planning Board may request additional site plans and tower special use permit requirements. These requirements may include specially designed towers, additional screening, greater setbacks, and improved landscaping. Siting in these areas should be avoided to the maximum extent possible.
 - (8) The applicant must submit a copy of its policy regarding co-location of other facilities on the proposed tower. Such policy shall allow co-location under the following conditions:
 - (a) The new antenna(s) and equipment do not exceed structural loading requirements, interfere with tower space used or to be used by the applicant nor pose any technical or radio frequency interference with existing equipment;
 - (b) The party desiring to co-locate pays the applicant an appropriate and reasonable sum to co-locate; and
 - (c) The party desiring to co-locate has a similar policy of co-location as the applicant.
 - (9) During the application process and after construction of the tower, the applicant shall provide a certification from a qualified New York State licensed professional engineer certifying that the tower and antennas meet applicable New York State and ANSI structural safety standards.
- B. Building permit requirements. Upon issuance of a tower special use permit by the Town of Nichols Planning Board, the applicant must obtain a building permit, pursuant to § 168-4A, before the facility may be placed in service.

§ 168-6. Permit standards.

The following criteria will be considered by the Town of Nichols Planning Board prior to the approval/denial of a request for a tower special use permit. The criteria listed may be used as a basis to impose reasonable conditions on the applicant. Tower special use permits run with the land and may not be transferred to a different parcel of land.

A. Siting preferences.

- (1) The Town of Nichols Planning Board may express a preference for an alternative site(s) and/or that the proposed telecommunications facility be located in a higher intensity use district or on higher intensity use property, provided there is a technologically feasible and available location. A guideline for the Town's preference, from most desirable to least desirable zoning district/property, is as follows:
 - (a) Property with an existing structure suitable for co-location.
 - (b) Municipal or government-owned property.
 - (c) Industrial (I or I2), Zoning Districts.
 - (d) Business (B) Zoning Districts.
 - (e) Residential (R) Zoning Districts.
 - (f) Sites which are in close proximity to significant historic sites and/or important preservation/conservation areas.
- (2) Any request by the Town of Nichols Planning Board for information or technical analysis on a preferred alternate site shall be provided by the applicant at its sole cost.

B. Aesthetics. Telecommunications facilities shall be located and buffered to the maximum extent that is practical and technologically feasible to help ensure compatibility with surrounding land uses. In order to minimize any adverse aesthetic effect on neighboring residences to the extent possible, the Town of Nichols Planning Board may impose reasonable conditions on the applicant, including, but not limited to, the following:

- (1) Tower height, including antennas, and design are matters of primary public concern. The Board may require a monopole or guyed tower (if sufficient land is available to the applicant) instead of a freestanding tower. Monopoles are a preferred design. The Board may impose reasonable restrictions and/or conditions on height. For example, the Board may reasonably determine that adverse impact upon the community will be best mitigated by requiring the applicant to construct multiple towers of lower height at several different locations to meet the applicant's demonstrated service coverage requirement(s).
- (2) The Board may require reasonable landscaping consisting of trees or shrubs to screen the base of the tower and antennas and/or to screen the tower and any accessory structure or buildings to the extent possible from adjacent residential

property. Existing on-site trees and vegetation shall be preserved to the maximum extent possible.

- (3) The Town of Nichols Planning Board shall require the applicant to show that it has made good faith efforts to co-locate on existing towers or other available and appropriate structures and/or to construct new towers near existing towers in an effort to consolidate visual disturbances.
- (4) The type of finish, color and lighting shall be subject to Town and/or FAA approval. The Town of Nichols Planning Board may require lights to be shielded to minimize ground visual impact.
- (5) No tower shall contain any signs or advertising devices. Notwithstanding the foregoing, the Board may require appropriate signage indicating ownership of the facility and phone numbers to call in case of emergency.

C. Radio frequency.

- (1) The Town of Nichols Planning Board shall impose a condition on the applicant that the communications antenna will be operated only at Federal Communications Commission (FCC) designated frequencies and power levels and/or Environmental Protection Agency (EPA) technical exposure limits, and may periodically require that the applicant provide competent documentation to support that maximum allowable frequencies, power levels and exposure limits for radiation will not be exceeded.
- (2) Unless otherwise preempted by federal or state law, the applicant shall submit to the Building Inspector an inspection of the telecommunications facility for radio emissions every two years. A New York State licensed professional engineer specializing in electrical engineering with expertise in radio communications facilities shall perform radio emission inspections. The radio emission inspection shall describe the power density levels of the electromagnetic energy generated from the facility, including the cumulative effects of co-located antennas. In the event that the radio emission inspection indicates that the electromagnetic energy generated from the facility is above the allowable limits stated with applicable FCC or ANSI standards or other applicable federal or state guidelines in effect at the time of the inspection, the applicant shall cease all use of the facility until such times as it proves, to the satisfaction of the Building Inspector, or pertinent Town consultant, that the power density levels of the electromagnetic energy to be generated at the facility are below the applicable standards.

D. Traffic, access and safety.

- (1) A road turnaround and one parking space shall be provided to assure adequate year-round emergency and service access. Maximum use of existing roads, public or private, shall be made for access. Tower or antenna(s) accessory structures shall not be sited in public roadways or road rights-of-way.

- (2) All towers and ground anchors, if applicable, shall be enclosed by a fence not less than eight feet in height and otherwise sufficiently protected from trespassing or vandalism.
- (3) The applicant must comply with all applicable state and federal regulations, including, but not limited to, FAA and FCC regulations, and from time to time may be required to provide certification of such compliance.
- (4) All towers and antennas shall include anti-climbing devices for a minimum of 25 feet extending above ground level.

E. Removal of tower.

- (1) The applicant shall agree in writing to remove the tower and antenna if the telecommunications facility ceases to be used for its intended purpose for 12 consecutive months. The Town of Nichols Planning Board shall require the applicant to provide an appropriate and adequate demolition bond for the purpose of removing the telecommunications facility and restoration of the land in case the applicant fails to do so as required above.
- (2) At least every five years, the applicant shall submit an analysis to confirm the sufficiency of the demolition bond and a report of the cost of removal and property restoration, which are to be performed by a New York State licensed professional engineer, at the applicant's expense. If the analysis and report determine that the amount of the bond in force is insufficient to cover the removal, disposal and restoration costs, within 10 days of applicant's receipt of such report the bond shall be increased to the amount necessary to cover such costs.

F. Structural safety inspections.

- (1) During the application process and after construction of the tower, applicant shall provide a certification from a qualified New York State licensed professional engineer, certifying that the tower and antennas meet applicable New York State and ANSI structural safety standards.
- (2) Unless otherwise preempted by federal or state law, the telecommunications facility shall be inspected every two years, at the applicant's expense, for structural integrity, and a copy of the report shall be promptly delivered to the Building Inspector. A New York State licensed professional engineer specializing in structural deficiencies shall perform the structural inspection. The structural inspection report shall describe the structural integrity of the facility, maintenance issues and repairs needed or made, if any. In the event that the structural inspection indicates structural deficiencies, then the deficiencies must be remedied within the time reasonably set by the Building Inspector. Upon the applicant's failure to do so, the permit may be revoked.

G. Maintenance of telecommunications facility. All telecommunications facilities shall be maintained in good order and repair. The Town of Nichols Planning Board may require reasonable records of such maintenance to be kept and available for Town review upon request.

§ 168-7. Exemptions.

- A. Towers and antenna(s) may be repaired and maintained without restriction.
- B. Exemptions are as follows:
 - (1) Antennas and satellite antennas used solely for residential household television and radio reception.
 - (2) Satellite antennas measuring two meters or less in diameter and located in commercial districts and satellite antennas one meter or less in diameter regardless of location.

§ 168-8. Conflict with other provisions.

In the event of any conflicts or inconsistencies between this chapter and any other local law, including Chapter 194, Zoning, this chapter shall control telecommunications towers and similar facilities in the Town unless otherwise specifically referenced in this chapter.

§ 168-9. Penalties for offenses.

- A. This chapter is adopted pursuant to the zoning and planning powers granted to the Town under applicable law. In the event of any violation of this chapter or any permit(s) issued hereunder, the Town may seek enforcement under available authority, including, but not limited to, Town Law § 268.
- B. Any violation of this chapter is an offense punishable by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment. Each week's continued violation shall constitute a separate additional violation. A first violation shall be deemed to have occurred from the date of written notification of violation issued by the enforcement officer or from such date as may be designated in such written notice.
- C. Any entity operating under a tower special use permit or site plan approval that fails to comply with the requirements and/or conditions of that permit or approval, or violates the same, shall cease and desist use of the facility upon notice by the Town of Nichols enforcement officer and shall not resume use until brought into compliance. Once the deadline has passed for rectifying the violation, the Town may direct the removal of the tower, antennas, and other facilities within 90 days of notification by the Town directing such removal, or the Town may remove said facilities and use the demolition bonds posted to pay for such removal.
- D. Failure to comply with direction to cease and desist or to remove shall constitute a separate violation.