

Motion on the AT&T proposed wireless facility, 366 West Street
(as passed by Brookfield Planning Commission, 7-24-14)

That the Planning Commission:

1. Determine that the project as described in the applicant's 45-day notice does not comply with the land conservation measures contained and incorporated in the Town Plan with respect to the design and height of the wireless tower and its effect on the rural and visual character of the Town and that the tower as proposed will have an undue adverse effect on aesthetics;
2. To reduce the tower's visual impact, recommend that the applicant use a monopole design. The monopole and all attached facilities should be a non-reflective shade of that does not stand out against the sky;
3. Recommend that the Department and the Board investigate requiring the applicant to reduce the proposed 100-foot height of the tower to be more compatible with the Town Plan and retain independent experts to assist them in this investigation. In this regard, the Town Plan requires a limit of 10 feet above average tree line, which in this case would result in a 70-foot tower;
4. Recommend that the Board should require the applicant to post a decommissioning bond adequate to cover dismantling and removal of the telecommunications facility and associated improvements and site restoration;
5. Recommend that the Board require the applicant to complete construction of the facility within two years of issuing a CPG;
6. Recommend that, as part of the project, the applicant accommodate the Town with space for Town communication equipment.

And that the Planning Commission reserves the right to alter these recommendations on review of the actual application to the Board;

And that the Chair should prepare comments to the Board consistent with and supporting these recommendations, to be submitted after filing of the application with the Board.

EXCERPT

TOWN OF BROOKFIELD, VERMONT

TOWN PLAN

Adopted by the Selectboard

January 24, 2011

SELECTBOARD MEMBERS

Mike McPhetres, Chair

John Benson

Justin Poulin

PLANNING COMMISSION

Aaron Adler, Chair

Steve Hill

Martha Judy

Dan Mason

Susan Shea

Terry Teitsch

- Provide an environment where people can conduct home-based businesses and small commercial enterprises.
- Encourage the creation of public recreational land.
- Encourage and improve appropriate recreational fields and facilities at the school for public use.

E. STATE REGULATORY PROCEEDINGS

This plan has a role in land use proceedings before state agencies.

For example, in proceedings under 10 V.S.A. chapter 151 (Act 250) and before the Public Service Board under 30 V.S.A. §§ 248 (siting of electric generation and transmission, natural gas facilities) and 248a (siting of telecommunications facilities), provisions of this plan may be treated as written community standards intended to preserve the aesthetics and scenic beauty of an area.

All of the goals and objectives of this plan that address the visual, aesthetic, scenic or rural qualities of Brookfield are meant to be written community standards intended to preserve the aesthetics and scenic beauty of Brookfield. The Brookfield telecommunications bylaw specifically constitutes and is incorporated into this plan as such a written community standard, including but not limited to those provisions that regulate the height of telecommunications facilities.

Also, in Act 250 proceedings, a district commission will determine whether a proposed development or subdivision conforms to the specific policies of this plan. The goals and objectives of this plan that guide the location, siting, and design of land development in Brookfield are intended to constitute specific policies for the purpose of such determinations. The telecommunications bylaw is incorporated into this plan as a specific policy.

Further, in the above-referenced Public Service Board proceedings, the Board will give due consideration to the land conservation measures contained in this plan and the recommendations of the Brookfield Selectboard and Planning Commission.

For the purpose of applying the term “land conservation measures” to this plan, the Planning Commission intends that all goals and objectives of this plan that address the conservation, preservation, or protection of land that possesses natural, agricultural, forestry, and scenic resources be treated as such measures.

Moreover, all goals and objectives of this plan that guide the location, siting, and design of land development in Brookfield constitute recommendations of the Selectboard and Planning Commission to which the Public Service Board should give due consideration. Additionally, the Selectboard or Planning Commission may make recommendations that are specific to a project at issue.

For the purposes of Public Service Board proceedings on telecommunications facilities, the height and other dimensional and decommissioning requirements of the telecommunications bylaw specifically are incorporated into this plan as measures to conserve the scenic qualities of land in Brookfield and as recommendations of the Selectboard and the Planning Commission.

EXCERPT

BROOKFIELD DEVELOPMENT BYLAW

As Amended Effective April 12, 2010

Prepared by the Brookfield Planning Commission with
Assistance from the Two Rivers-Ottawaquechee Regional Commission

- B. Application for conceptual approval may be made to the Planning Commission, accompanied by a sketch plan and description of the proposal, and is encouraged.
- C. Application for final tent and trailer camp site plan approval shall be made to the Planning Commission. The application shall be accompanied with a site plan and drawings prepared by a professional engineer, showing the property lines and area of the park, contour map, a layout of the roads, walkways, trailer lots, tent sites, parking areas, garbage collection stations, electrical distribution, water lines, sanitary sewer facilities, and storm sewer drainage facilities.

4.15 SIGNS

Signs shall be of a design consistent with the rural and residential character of Brookfield; shall not interfere with sightlines of moving traffic or neighboring residences and shall be constructed of natural materials, e.g., wood or metal. Illumination shall be limited to direct shielded lighting which does not shine on roadway or neighboring properties. Size shall be limited to 16 square feet overall area.

- A. Permitted types of permanent signs:
 - 1. Wall - attached directly to building.
 - 2. Projecting 90 degrees from structure.
 - 3. Free standing anchored directly in ground and set back ten feet minimum from roadway.
- B. Not permitted types of signs:
 - 1. Billboards, streamers, pennants, spinners or similar devices.
 - 2. Flashing signs, roof signs, reflective or internally illuminated signs, or strings of bulbs except as part of holiday celebrations.

4.16 TELECOMMUNICATIONS FACILITIES

A. Purpose

The purpose of this section is to protect the scenic qualities of Brookfield's natural environment and to guide development that may have adverse health, safety or visual impacts.

B. Applicability

Telecommunications facilities are conditional uses and shall be reviewed pursuant to the provisions of Section 3.8 of this Bylaw. In addition, telecommunications facilities shall meet the requirements of this section.

C. Exemption

An expansion of an existing telecommunications facility that does not increase the profile of the tower in any direction by more than five feet from the original permitted structure and appurtenances or does not increase the height of the tower shall not require conditional use or site plan approval, but shall only require a development permit.

D. Additional Required Submittals

In addition to the information required to be submitted pursuant to Section 3.15 of this Bylaw, an applicant for a telecommunications facility shall also submit the following:

1. The location of the proposed structure on a USGS topographical map with a minimum of ten foot contours.
2. Names and addresses of the owners and proposed lessees of the facility and whether the facility will be exclusive or will allow co-location by other service providers.
3. A map or maps delineating the service or coverage area for the proposed height and at heights 50, 100, 150 and 200 feet lower than the proposed height.
4. Feasible alternative locations and heights of the facility. If none, a clear explanation as to why the proposed site and/or height is the only location and/or height that is feasible and why other areas are not.
5. Other Federal and/or state conditions placed on the facility, such as lights.
6. A complete description of the facility including, but not limited to, height, base dimensions, other dimensions, construction materials, color and sheen of construction materials, gauge of supporting guy wires or other support structures, illumination and a description of antennas or other equipment to be mounted on the facility.
7. Description and location of utilities and other accessory structures.
8. Any proposed or existing landscaping, screening, fencing and access roads.
9. If the telecommunications facility is located on a parcel that is forested, the approximate average height and type of existing vegetation within 50 feet of the facility.
10. Information sufficient to determine whether the proposed facility is exempt under Subsection C. above.
11. Any other information determined to be necessary by the Board of Adjustment.

E. GENERAL STANDARDS

In addition to the general requirements of this Bylaw, the following requirements shall also apply to telecommunications facilities:

1. To the extent practical with respect to height, color and size, the facility shall be compatible with the existing natural and man-made characteristics of the site.
2. Existing on-site vegetation shall be preserved to the extent possible or improved, and disturbance of the existing topography outside the physical facility shall be minimized, unless the disturbance would result in a lesser visual impact to the facility on the surrounding area.
3. The physical facility shall be enclosed by a chain link or similar fence and the entire fence shall be located behind the required landscape screen and the required setback.

4. No lighting shall be allowed on a tower except as required by FAA regulations. Lighting on the tower, if required, shall be shielded so as not to be visible by a person on ground level anywhere within a 300 foot radius of the tower. Lighting on other equipment and buildings shall comply with the lighting requirements in this Bylaw.
5. Materials utilized for the exterior of any structures shall be of a kind and positioned on structures so as to minimize glare if necessary to avoid undue adverse visual impact.
6. The facility shall not be within 500 feet of any residential dwelling unit.
7. The height of the facility shall not exceed ten feet above the average height of the tree line on land immediately adjoining the proposed site. Notwithstanding the above, where the girth of the tower, antennae or related fixture does not exceed sixteen inches at any point ten feet above the tree line, additional height may be permitted subject to the approval of the Board of Adjustment and conformity with other criteria in this subsection.

F. ADDITIONAL CRITERIA FOR CONDITIONAL USE APPROVAL

In granting a conditional use approval for the construction of a new telecommunications facility or the expansion of an existing facility that is not exempt pursuant to subsection C. above, the Board of Adjustment must make an affirmative finding for each of the following criteria, in addition to other applicable criteria set forth in this section and elsewhere. It shall be the responsibility of the applicant to present evidence with respect to the criteria.

1. There are no existing sites or telecommunications facilities that are suitable to the applicant's needs despite a duly diligent search, and that, if such facilities do exist, they are either technically inadequate or the owner, after a process of good faith negotiation, will not allow co-location. It shall be the burden of the applicant to perform a minimal analysis of technical feasibility.
2. The applicant shall allow other wireless service providers to co-locate on the approved facility if it is technically feasible on reasonable terms and conditions; provided, however, that there shall be no affirmative obligation on the applicant to increase the height or width of the tower in order to accommodate the equipment of another user, nor shall the applicant be required to engineer the tower to accommodate another user.
3. All aspects of the proposed project, including access roads and utility lines, are located and designed to mitigate undue adverse visual impact on the aesthetic quality of the area or on the character of the area or natural resources.
4. No dangers to the public health and safety can reasonably be expected to result from the operation of the facility.

G. ABANDONED, UNUSED, DAMAGED OR DANGEROUS TOWERS

Abandoned or unused towers or portions of towers shall be removed as follows:

1. The owner of an approved telecommunications tower shall annually, on January 15, file a declaration with the Administrative Officer certifying continuing safe operation of the tower subject to this Bylaw. Failure to file a declaration shall mean that the tower is no longer in use and considered abandoned.
2. Abandoned or unused towers and associated facilities shall be removed within 180 days of cessation of operations at the site unless a time extension is approved by the Board of Adjustment. In the event that the tower is not removed within 180 days of the cessation of operations at a site, the town shall notify the owner and may remove the tower and associated facilities. Costs of removal shall be assessed against the property or tower owner.
3. Unused portions of towers shall be removed within 180 days of the time that such portion is no longer used for antennas.

An owner who has failed to file an annual declaration with the Administrative officer by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue to use the tower.

4.17 ENFORCEMENT

When advised by the Administrative Officer that a violation has occurred, the Board of Selectmen shall apply the penalties provided in 24 V.S.A. § 4451. When a violation occurs or is to occur, the administrative officer shall take appropriate action as provided under 24 V.S.A. § 4452.

4.18 COSTS OF TECHNICAL REVIEW

The Board of Adjustment or Planning Commission may require an applicant to pay for reasonable costs of an independent technical review of an application and, if so, shall require the applicant to pay the costs of such a review before issuing a decision. Failure to pay the costs of such a review shall constitute grounds for denial of an application. Prior to authorizing an independent technical review, the Board of Adjustment or Planning Commission shall notify the applicant of its intent to do so, and shall provide the applicant with an estimate of the projected costs and require the applicant to: (a) respond by a particular date concerning the reasonableness of that estimate, (b) pay the estimate prior to further consideration of the application, or (c) both. The provision of such an estimate shall not constitute a limit on the applicant's obligation to pay costs under this section. In the event that the Board of Adjustment or Planning Commission requires advance payment of an estimate under this section, any unused balance shall be refunded to the applicant.