

Resolution No. 156-03

Ordinance No. 156-03

The Town Board of Milltown does ordain as follows:

Telecommunication Towers, Antennas and Related Facilities

**Article I Purpose and Intent**

The purpose of the regulations and requirements of this Ordinance is to:

- A. Accommodate communication, radio, and television needs while protecting the public health, safety and general welfare;
- B. Minimize adverse visual impacts of wireless communication service and other transmission facilities through careful site and design standards;
- C. Avoid potential damage to adjacent properties from the construction, location and operation of wireless communication service and other transmission facilities through structural standards and setback requirements;
- D. Maximize the use of existing and approved towers, buildings or structures to accommodate new wireless communication service and other transmission antennas to minimize the number of towers needed to serve the county and adverse visual impacts; and
- E. Minimize hazards to birds.

**Article II Definitions**

The following definitions apply to the provisions of this ordinance:

**“Abandoned Facility”** Any Transmission Facility that is unused for the purpose for which the permit was granted for 18 consecutive months shall be considered abandoned.

**“Antenna”** Any device or equipment used for the transmission or reception of electromagnetic waves, which may include omni-directional Antenna (rod), directional Antenna (panel) or parabolic Antenna (disc).

**“Co-location”** The location of more than one Antenna or set of Antennas on the same Tower or structure.

**“Committee”** A subcommittee of the Polk County Board known as the Revolving Loan Fund, Planning, Zoning, and Land Records Committee, and is the permitting authority under this ordinance where required.

**“Conditional Use Permit” or “CUP”** A Land Use Permit issued by the Committee after a public hearing.

**“Department”** The Polk County Zoning Department, and is the permitting authority under this ordinance where required.

**“FAA”** Federal Aviation Administration.

**“FCC”** Federal Communications Commission.

**“Guyed Tower”** A telecommunication Tower that is supported in whole or in part by guy wires and ground anchors or other means of support besides the superstructure of

- the Tower itself.
- “Height”** The distance measured from ground level to the highest point on a Tower or structure, including any antenna.
- “High Power Transmission Line”** A 69 kV or greater electric transmission line with Towers at least 75 feet in height.
- “Lattice Tower”** A telecommunication Tower that consists of vertical and horizontal supports and crossed metal braces.
- “Monopole”** A telecommunication Tower of a single pole design.
- “Non-Conforming”** Any pre-existing telecommunication facility that was in existence prior to January 26, 1999, and that has not been issued a Conditional Use Permit or was issued a Conditional Use Permit prior to January 26, 1999. This definition shall only apply to this ordinance and shall not apply to the Milltown Township Comprehensive Land Use Ordinance.
- “Pre-existing Transmission Facility”** Any Transmission Facility constructed prior to January 26, 1999.
- “St. Croix River Buffer Zone”** The St. Croix River Buffer Zone is the area located outside the St. Croix Riverway District and within two miles of the St. Croix River, measured from the ordinary high water mark.
- “Stealth Facility”** A Wireless Communication Service Facility or other Transmission Facility which appropriately models or mimics in size, shape, scale and color something which exists in the immediate landscape, which could legally be placed there or already exists there at the time an application is submitted, (e.g., a silo in farm settings or a tree in forested lands), and which is unrecognizable to a casual observer as a Transmission Facility.
- “Tower”** Any structure that is designed and constructed primarily for the purpose of supporting one or more Antennas including Guy Towers, Monopole towers and Lattice Towers.
- “Tower Accessory Structure”** Any structure located at the base of a Tower for housing base receiving or transmitting equipment.
- “Transmission Facility”** Any Wireless Communication Service Facility, radio or television Tower, or any WCSF equipment or accessory structure other than an electric transmission line.
- “Wireless Communication”** Any wireless telecommunication service as defined in the Telecommunications Act of 1996, including FCC licensed commercial wireless telecommunications services such as cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or may be developed.
- “Wireless Communication Service Facility (WCSF)”** All equipment, buildings, structures and Towers with which a Wireless Communication service carrier or provider broadcasts and receives the radio frequency waves that carry its services, and all locations of said equipment, buildings and structures.

### **Article III Special Provisions: Pre-existing or Non-Conforming Transmission Facilities and Exceptions to this Ordinance**

- A. Any Pre-existing or Non-Conforming Transmission Facility shall not be required to meet the requirements of this Ordinance, except for the provisions of Article X - Biennial

Report.

- B. Any Pre-existing or Non-Conforming Transmission Facility shall comply with all FCC and FAA rules and regulations.
- C. Any addition or change to a Pre-existing or Non-Conforming Transmission Facility shall comply with all applicable requirements of this Ordinance, provided that such modifications that make the Transmission Facility less visible or add a Co-location Antenna without increasing the height of the Transmission Facility are exempt from requirements adopted after January 26, 1999.
- D. Exceptions from this Ordinance. The following are permitted without Committee approval (no permit required):
  - 1. Television Antennas, satellite dishes, receive-only Antennas and free standing Antennas 45 feet or less in height; provided however, that the primary use of such equipment is not part of a Transmission Facility and that such equipment is only ancillary to the primary use of the site where located.
  - 2. Antenna and associated Towers, poles and masts that are owned or operated by federally licensed amateur radio operators, or citizen band radio operators.
  - 3. Antennas mounted on utility poles where the Antenna is 30 feet or less in height above the highest part of the utility pole.
- E. Any owner of a Pre-existing Transmission Facility shall accept all additional Co-location Antennas on reasonable terms, so long as adverse visual impacts do not result.
- F. Transmission Facilities approved by the Department with a Land Use Permit may be modified if the modification is in compliance with the provisions of this Ordinance. The Department may approve the modification only after the applicant submits a modified Land Use Permit application and the appropriate fee under the current fee schedule as adopted by the Polk County Board.
- G. Transmission Facilities approved by the Committee under a CUP may be modified only after a public hearing by the Committee. The Committee may approve the application and the Department may issue a Land Use Permit only after the applicant submits a modified CUP application and the appropriate fee under the current fee schedule as adopted by the Polk County Board.

#### **Article IV    General Requirements**

- A. Any Transmission Facility shall comply with all FCC and FAA rules and regulations.
- B. Design and installation of any Transmission Facility shall comply with the manufacturer's specifications. Plans shall be approved and certified by a registered professional engineer.
- C. Installation of any Transmission Facility shall comply with all applicable state and local building and electrical codes.
- D. For leased sites, written authorization for siting a Transmission Facility must be obtained from the property owner and indicate the duration of the lease term.
- E. Any Transmission Facility must be adequately insured against personal injury, wrongful death, and property damage claims.
- F. Any Abandoned Facility must be removed and site restored within a reasonable time, but not more than three months after removal is requested by the County. Upon removal, the site shall be restored to its original or an improved condition. Any below grade anchoring elements used to secure the structure, shall be removed to a depth of at least 8 feet below

ground level. If removal or restoration is not completed, the County is authorized to complete the removal and site restoration and charge the cost to the performance bond.

- G. Proposals to erect a new Transmission Facility shall be accompanied by any required federal, state or local agency license or application for such license.
- H. Only one Tower is permitted on a parcel of land. Additional Towers may be permitted on a parcel of land with a CUP if the additional Tower is located within 200 feet of the existing Tower(s) and all other requirements of this Ordinance are met.
- I. The Monopole is the required Tower structure for non-Stealth Facilities. Guy or Lattice Towers are prohibited. Antennas must be contained within or mounted flush with the Monopole.
- J. Transmission Facility Height.
  - 1. All Transmission Facilities shall be built to the minimum Height required to meet the applicant's needs and are not to exceed a maximum Height of 200 feet.
  - 2. District Height Limitations. The requirements set forth in this Ordinance shall govern the design and siting of a Transmission Facility that exceeds the Height limitations specified for the zoning district in which the Transmission Facility is located.
- K. Applications for Structures on Publicly-owned Lands.
  - 1. The applicant must provide documentation to the permitting authority proof of acceptance (either by approved permit or other documentation) by the applicable governing authority that has jurisdiction over the publicly-owned land.
  - 2. For applications within the St Croix Riverway District, the permitting authority may allow location of a Stealth Facility on National Park Service-owned lands within the Riverway provided that the applicant is able to show by clear and convincing evidence that there is no viable location outside the Riverway Boundary for locating a Stealth Facility that can accommodate the applicant's requirements.
- L. Adequate parking for maintenance of Transmission Facilities must be available.

## **Article V Provisions for Non-Wireless Communication Service Facilities**

In the event that an applicant has received a license from the FCC, has applied or intends to apply to the FCC for a license to build a Transmission Facility that does not meet the standards and requirements of this Ordinance, the Committee shall consider the application under the following conditions:

- A. The application shall meet all the requirements under Article IX (with respect to the content of the application), shall include a copy of the license granted by the FCC, a copy of the application pending or a copy of the application that the applicant intends to make to the FCC and shall include any further information that the Committee may reasonably deem necessary for its consideration.
- B. The applicant must show by clear and convincing evidence that:
  - 1. the public would be uniquely and materially benefited by the service that the applicant proposes to provide and that it is not one of the services defined as Wireless Communication; or,
  - 2. the public health or safety will be substantially and materially benefited should the application be permitted and that it is not one of the services defined as Wireless

Communication.

- C. The applicant must show that there is no feasible alternative to the proposed non-Wireless Communication Service Facility that would meet all of the standards and requirements of this Ordinance.
- D. Any permit granted under the provisions of this Ordinance for a non-Wireless Communication Service Facility for which a license has not yet been issued by the FCC shall be conditioned upon the granting of such license on the same terms and conditions as are represented in the application made under this Ordinance within one year's time. A copy of the FCC license when granted shall be immediately delivered to the Committee for review and any substantial deviation from said terms and conditions shall invalidate the permit granted under this Ordinance.
- E. Permits for Non-Wireless Communication Service Facility shall not be granted without notice to the public in a legal newspaper of record and to owners of contiguous property by certified mail at least 60 days prior to the first public hearing on the application. The Committee shall hold no less than two public hearings on an application for a Non-Wireless Communication Service Facility permit.

#### **Article VI Prohibitions**

- A. No Transmission Facility may be installed on a parcel within a major subdivision (as defined in the Milltown Township Subdivision Ordinance) created for residential purposes.
- B. No advertising message or sign shall be affixed to any Transmission Facility.
- C. No Transmission Facility shall be artificially illuminated unless required by FCC or FAA regulations.
- D. No part of any Transmission Facility shall extend across or over any right-of-way, public street, highway, sidewalk, or property line.
- E. A temporary mobile Transmission Facility site is not permitted except in the case of equipment failure, equipment testing, equipment replacement, or emergency, and provided that prior authorization is obtained from the Department. Use of a temporary site for testing purposes shall be limited to 24 hours, and the use of a temporary site for equipment failure, equipment replacement, or emergency shall be limited to 30 days, unless extended for good cause in writing by the Department.

#### **Article VII District Requirements**

- A. A Township Permit may be issued by the Department. The Department shall not issue such a Permit prior to ten working days after mailing notice of the application to the town in which the Transmission Facility is proposed to be located. Any other Transmission Facility shall be regulated in accordance with the regulations applicable to the zoning district in which the facility is located. All requirements of the zoning district other than the standards provided in this Ordinance must be met. A Stealth Facility is permitted with a Permit within any zoning district and any area not zoned by any Township Zoning Ordinance. The following are the use standards for the various districts:

1. Agricultural, Exclusive Agricultural, Commercial, Restricted Commercial, Industrial, Restricted Industrial Districts, and any area not zoned by a Township Zoning Ordinance.
  - a. The following are permitted with a Township Permit from the Department issued under this Ordinance:
    - (1) Any Antenna attached to an existing Tower or structure and not extending more than 20 feet above the highest point of the Tower or structure and where the total height of the addition would not increase the maximum height to over 200 feet.
    - (2) Any Transmission Facility within the easement of a high power transmission line or within 50 feet of the transmission line easement on the same side of the road up to a maximum height of 200 feet.
    - (3) Any Stealth Facility.
  - b. The following may be permitted with a Conditional Use Permit issued by the Committee under the provisions of this Ordinance:
    - (1) Any Antennas attached to an existing Tower or structure extending more than 20 feet above the highest point of the tower or structure and where the height of the addition would not increase the total height to over 200 feet.
    - (2) Any Transmission Facility to a maximum height of 200 feet.
  
2. Residential District
  - a. The following are permitted with a Township Permit issued by the Department under the provisions of this Ordinance:
    - (1) Any Antenna attached to an existing Tower or structure and not extending more than 20 feet above the highest point of the Tower or structure and where the height of the addition would not increase the total height to over 200 feet.
    - (2) Any Transmission Facility within the easement of a high power transmission line or within 50 feet of the transmission line easement on the same side of the road up to a maximum height of 200 feet.
    - (3) Any Stealth Facility.
  
3. Shoreland, Floodplain, Forestry, Recreational, Conservancy. No Transmission Facility except a Stealth Facility is allowed in these districts except:
  - b. With a Conditional Use Permit issued by the Committee under the provisions of this Ordinance, an Antenna attached to an existing Tower or structure and not extending more than 20 feet above the highest point of the Tower or structure and where the height of the addition would not increase the total height to over 200 feet.

Chart of District Requirements

	Agricultural, Exclusive Agricultural, Commercial, Restricted Commercial, Industrial, Restricted Industrial, and any area not under County Zoning		Residential		Shoreland, Floodplain, Forestry, Recreational, Conservancy, St. Croix River Buffer Zone, St. Croix Riverway	
	Allow	Permit	Allowed	Permit	Allowed	Permit
Monopole, 200' max.	Yes	Land Use	Yes	Land Use	-----	-----

adjacent to trans-mission line						
Stealth	Yes	Land Use	Yes	Land Use	Yes	Land Use
Co-locate antenna >20'	Yes	CUP	-----	-----	-----	-----
Co-Locate, antenna = or < 20'	Yes	Land Use	Yes	Land Use.	Yes	CUP
Monopole, 200' max.	Yes	CUP	-----	-----	-----	-----

**Article VIII Performance Standards**

A. Except as provided in this Ordinance, any Transmission Facility must meet the dimensional standards applicable to the parcel within the zoning district in which it is located. Where the Transmission Facility is the principal use on a parcel, the parcel shall meet the minimum lot size requirements of the zoning district in which the parcel is located. On a parcel of land that already has a principal use, the Transmission Facility shall be considered an accessory use and a smaller area of land may be leased for it, provided that all requirements of this Ordinance are met.

B. Setbacks and Separation

1. Generally, any Tower shall be set back from the nearest property line a distance equal to 125% of the Height of the Tower. This setback may be reduced up to one-half the Height of the tower if the applicant submits an engineering report from a registered professional engineer that certifies that the Tower is designed and engineered to collapse upon failure within the distance from the Tower to the property line.
2. No Tower shall be located within 500 feet of any residence unless the owner of the residence agrees in writing.

C. Screening and Landscaping. The Transmission Facility shall be located on the site so as to have the least visual impact. The site shall be landscaped and maintained with a buffer of plant materials that effectively screens the view of all Tower accessory structures, equipment and improvements at ground level from adjacent properties year around. Existing mature vegetation and natural landforms on the site shall be preserved to the maximum extent possible.

D. Security Fencing and Lighting.

3. Any Transmission Facility shall be reasonably protected against unauthorized access. The bottom of the Tower from ground level to 12 feet above ground shall be designed to prevent unauthorized climbing and shall be enclosed with a minimum of a 6 feet high chain link fence with a locked gate.
4. Security lighting for on-ground structures and equipment is permitted, as long as it is down-shielded to keep light within the boundaries of the site.

E. Color and Materials. Any Transmission Facility shall use building materials, colors, textures, screening, and landscaping that blend the Transmission Facility with the surrounding natural features and built environment to the greatest extent possible.

## **Article IX Permit Requirements and Conditional Use Application**

The construction or installation of any Transmission Facility requires a Township Permit or Conditional Use Permit under this ordinance. The permit will specify the use or uses allowed. Within ninety (90) days from the date of submittal of the Conditional Use Permit application, the Committee shall consider and decide upon the question of issuance of the Conditional Use Permit. Action by the Committee may be postponed past the 90-day limit by written agreement between the Committee and the applicant, or upon determination by the Committee that additional information is required. On behalf of the Township, the Department or Committee will employ independent technical experts to review materials submitted by the applicant. The applicant shall pay the costs of such review and/or independent analysis. The Milltown Zoning Department may issue a Conditional Use Permit after review and a public hearing of the Committee, provided that the Committee has determined that such conditional use is in accordance with the purpose and intent of this Ordinance.

A. Application Submittal Information

1. A completed Milltown Township Permit or Conditional Use Permit application and appropriate fee under the current fee schedule as adopted by the Milltown Township Board.
2. Applications. In addition, new Transmission Facilities shall include the following information: (applications for land use permits for Stealth Facilities may omit the



requirements of section g., below)

- a. A report from a registered professional engineer and other professionals which:
  1. describes the Transmission Facility's height and design, including a cross section and elevation;
  2. certifies the Transmission Facility's compliance with structural and electrical standards;
  3. describes the Transmission Facility's capacity, including the potential number and type of antennas that it can accommodate;
  4. describes the lighting to be placed on the Transmission Facility if required by the FCC or FAA;
  5. certifies that the Transmission Facility will not cause destructive interference with previously established public safety communications systems; and
  6. describes how the requirements of Articles IV, VI, VII, and VIII of this Ordinance will be met by the proposed Transmission Facility.
- b. Each application shall include a facility plan containing the following information:
  1. Written description of the type of consumer services each applicant will provide to its customers (radio, television, cellular, PCS, SMR, ESMR, paging or other anticipated Wireless Communication services).
  2. A list of all of the applicant's existing sites, existing sites to be upgraded or replaced, and proposed sites within the County.
  3. Map of the County that shows the applicant's existing and proposed geographic service areas.
- d. Landowner Acknowledgement. Written acknowledgement by the landowner and lessee of a leased site that they will abide by all applicable terms and conditions of the Township Permit or Conditional Use Permit, including the restoration and reclamation requirements of Article IV F. of this Ordinance, and a copy of the lease.
- e. A performance bond in a form acceptable to the Department in an amount sufficient to provide for removal of the Transmission Facility and restoration of the site.
- f. Copies of letters informing adjacent Villages or Townships.
- g. Copies of letters informing contiguous landowners by certified mail and publication of notice in the County's newspaper of record as appointed by the County Board.
- h. Additional Information and Analysis: The Department or Committee may, at their discretion, require a visual analysis of the proposed Transmission Facility, including photo simulations of the view of the vicinity of the Transmission Facility before and after the proposed Transmission Facility is built. The photos shall be taken from approximately one mile north, south, east, and west from the proposed Transmission Facility. The simulation may include a photo montage, field mock-up, view-shed analysis, or other techniques, which identify the potential visual impacts of the proposed Transmission Facility. Consideration shall be given to views from public areas as well as from private residences. The analysis shall assess the cumulative impacts of the proposed Transmission Facility and other existing transmission facilities in the area. The analysis shall identify

and include all feasible mitigation measures consistent with the technological requirements of the proposed service.

3. Co-location/Sharing of Facilities. Prior to setting a public hearing, the applicant must review Co-location alternatives with the independent technical expert. No new Tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Committee and independent technical expert that no existing Tower or structure can accommodate the applicant's proposed Antenna. Examples of supporting evidence are:
  - a. No Tower or structure is located within the geographic area that meets the applicant's engineering requirements.
  - b. No existing Tower or structure is of sufficient Height to meet the applicant's engineering requirements.
  - c. No existing Tower or structure can be modified at reasonable cost to support applicant's proposed Antenna.
  - d. Electromagnetic interference would interfere with an existing or proposed system.
  - e. The fees, cost, or contractual provisions required by the applicant to share an existing Tower or structure or to adapt an existing Tower or structure for sharing are substantially more expensive than new construction considering factors such as, without limitation, depreciation, technical obsolescence, maintenance and land acquisition.
  - f. The applicant establishes other facts that render co-location unsuitable.

#### **Article X Biennial Report**

Owners, providers or permittees shall submit each even numbered year on or before January 31, a Transmission Facility information report. The report shall detail the use, maintenance and condition of the Transmission Facility since the previous report, availability of the Transmission Facility for added co-location and other information reasonably deemed necessary by the Department. The report shall be accompanied by a two-year renewal of the performance bond in a form acceptable to the Department in an amount sufficient to provide for removal of the Transmission Facility and restoration of the site. Failure to submit the report, or a delay longer than sixty days after the County sends the Transmission Facilities Information Report form to the owner/provider or permittee shall result in a late fee of \$200.00 per week until received. Failure to submit the report by July 1 of each even-numbered year, shall result in the County taking Revocation Enforcement action under Article XIII.

#### **Article XI Safety Inspection**

If the Township has reason to believe that a Transmission Facility is a safety risk, it may require the permit holder to perform an inspection by a registered engineer and provide a copy of the inspection results to the Department within sixty days. The Township shall provide the owner with information forming the basis for belief that the Transmission Facility is a safety risk before requiring inspection.

#### **Article XII Appeal Procedures**

Any person aggrieved by any decision of the Committee regarding its evaluation of the appeal

must, within 30 days after the filing of the decision of the Committee in the Office of the Department, commence an action in the circuit court seeking any remedy available by certiorari.

### **Article XIII Enforcement and Penalties**

- A. Revocation. Grounds for revocation of the Permit, shall be limited to one of the following findings as determined by the Department:
  - 1. The owner of such site, service provider and/or tower owner fails to comply with the requirements of this Ordinance as it existed at the time of the issuance of the permit.
  - 2. The permittee has failed to comply with the conditions of approval.
  - 3. The facility has not been properly maintained.
- B. Revocation Process.
  - 1. The owner of such site, service provider and/or tower owner shall be notified by certified mail of non-compliance by the Committee or Department.
  - 2. The owner may bring the site into compliance to the satisfaction of the Committee within thirty (30) days from the date the notice was mailed.
  - 3. If compliance is not obtained within thirty (30) days, the Department shall notify the Committee of non-compliance and request permission to proceed with the revocation process (this time period may be extended by staff to adjust for seasonal limitations).
  - 4. The Department shall petition the Committee for a public hearing before the Committee upon publication of a Class 2 notice in the legal newspaper of Polk County.
  - 5. A copy of hearing notice shall be mail by certified mail to the owner of record of the Transmission Facility site at least two weeks prior to the hearing date.
  - 6. A representative of the Department shall appear at the hearing before the Committee to present the evidence of non-compliance. All other interested parties may also give testimony to the Committee.
  - 7. A written decision of the Committee will be made within thirty (30) days of the hearing.

### **Article XIV Severability**

If any section, subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the remaining portions of this Ordinance. The Milltown Township Board of Supervisors declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more such provisions be declared unconstitutional or invalid.

### **Article XV Fee Schedules**

Upon recommendation of the Committee, the Milltown Township Board of Supervisors shall, from time to time, establish and review fees that are applicable to this Ordinance. No application shall be considered filed with the Township unless and until said application is accompanied by the appropriate application fee.