



**AGENDA**  
**TOWN OF NORTH HAMPTON**  
**Planning Board Public Hearing**  
**Monday, January 12, 2015 at 6:30pm**  
**MARY HERBERT CONFERENCE ROOM**  
**233 ATLANTIC AVENUE**

The Planning Board will hold a Public Hearing on January 12, 2015 at the North Hampton Town Office, Mary Herbert Conference Room, 233 Atlantic Avenue, North Hampton, NH to consider the approval of the proposed amendments and/or additions to the following Zoning Ordinances for placement on the March 2015 Town Warrant:

1. The Second Public Hearing on proposed amendments to Article III, Section 302.39 – Definition of “Structure”, to include septic tanks, swimming pools, and tennis courts and leach fields that are constructed entirely below grade are not deemed to be structures.
2. The Second Public Hearing on proposed amendments to Article IV, Section 411 – Wetlands Minimum Lot Area. The intent of the proposed amendment is to add the requirement “there shall be at least one building envelope of ¼ acre or more for the site of a house”.
3. The Second Public Hearing on proposed amendment to Article IV, Section 409.2 – Definition of District. The intent is to add Section D. “All buffers and setbacks as described below (section 409.9) around all such wetlands as described in this section (Section 409.2)”.
4. The Second Public Hearing on proposed amendment to Article IV, Sections 409.9.A 1 & 2 to include a 25-foot vegetated buffer closest to the wetland boundary included in the 100-foot wetland setback requirement.
5. The Second Public Hearing on proposed addition to the Zoning Ordinance. Add Section 409.9.C. Naturally Vegetated Buffer under Article IV. The intent of the new Zoning Ordinance is to improve the protection of wetlands without increasing wetland setbacks.
6. The First Public Hearing on proposed amendment to Article IV, Section 409.12 – Condition Use Permits by the Planning Board. The intent of the proposed amendment is to add criteria regarding unnecessary hardship and diminution of property value in the neighborhood that will have to be satisfied to seek approval by the Planning Board under this Ordinance.
7. The First Public Hearing on proposed amendments to Article V, Section 514 – Floodplain Development Ordinance based on recommendations made by NH Office of Energy and Planning OEP. The intent of the proposed amendments is to come into full compliance with the National Flood Insurance Program (NFIP) regulations.
8. The First Public Hearing on proposed amendments to Article IV, Section 409.3 – Wetlands Map. The intent is to update and clarify the current process an aggrieved party would take in the event that a wetland area is alleged to be incorrectly designated.
9. The First Public Hearing on proposed amendments to Article IV, Section 415 – Wireless Telecommunications Facilities. The intent is to update the existing Ordinance to comply with RSA 12-K and federal law, which has changed significantly over the last few years.

Respectfully submitted,

Shep Kroner  
Chair

Posted: December 31, 2014 Portsmouth Herald Town Office Town Clerk's Office Library <a href="http://www.northhampton-nh.gov">www.northhampton-nh.gov</a>
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Copies of the Proposed Zoning Amendments are available at the North Hampton Town Office, 233 Atlantic Avenue, Monday – Thursday 7:00am to 4:00pm and Fridays 8:00am to 12:00pm for public review.

**Article III, Section 302.39**

**Mr. Wilson moved and Mr. Maggiore seconded the motion to take the following amended and emended proposed zoning ordinance to a Second Public Hearing, to be held on Wednesday, January 7, 2015: "Structures under this definition include, but are not limited to, buildings, billboards, carports, porches, swimming pools, tennis courts, building features, septic systems and leach fields that are, in whole, or in part, constructed above grade. For the purposes of this zoning ordinance, sidewalks, driveways, fences, patios and leach fields that are constructed entirely below grade are not deemed to be structures".**

**The vote was unanimous in favor of the motion (7-0).**

Structure: Anything constructed or erected, the use of which requires a fixed location on **or in** the ground or **requires** an attachment to something having a fixed location on the ground. **Structures under this definition include, but are not limited to, buildings, billboards, carports, porches, swimming pools, tennis courts, building features, septic systems and leach fields that are, in whole or in part, constructed above grade. For the purposes of this zoning ordinance, sidewalks, driveways, fences patios and leach fields that are constructed entirely below grade are not deemed to be structures.**

**Section 411 Wetlands - Minimum Lot Area**

Wetlands, but not a "Body of Water" or "Bodies of Water", may be used to satisfy minimum lot area and setback requirements provided that, that portion which is wetland does not exceed fifty (50) percent of the minimum required lot area and provided that the remaining lot area is sufficient in size and configuration to adequately accommodate all required utilities. \*3/13/79 \*5/8/2012 For construction of a dwelling unit on lots of two acres or more, there shall be one contiguous acre of non-wetland soils, and at least one building envelope of one quarter (1/4) acre or more for the site of a house. \*3/12/91 5/10/2015

Amended 12/16/2014

**409.2 Definition of District:** The Wetlands Conservation District comprises all of the following areas within the Town of North Hampton:

- A. Tidal lands as defined in section 302, paragraph 42 herein. \*3/08/2005
- B. Wetlands as defined in section 302, paragraph 43 herein. \*3/08/2005
- C. Isolated, non-bordering wetlands as defined in Section 302, paragraph 19 herein.

| | D. All Buffers and setbacks as described below (Section 409.9) around all such wetlands as described in this section (Section 409.2)

All - I am working on a clean definition of Vegetative Buffer - See below

**409.9 Buffer Zone Restrictions:** The buffer zone setback requirement from Tidal Lands and Wetlands is 100'. For the purposes of this section 409.9 "inland wetlands" shall not include a vegetated swale, roadside ditch, or other drainage way; a sedimentation/detention basin or an agricultural/irrigation pond. \*3/11/2003, 3/08/2005

**A. Undeveloped lots of record**

**1. Undeveloped lots of record existing as of March 2003 or any lot created subsequently:** No structure or impermeable surface shall be permitted within 100' of Tidal Lands or within 100' of Wetlands on any lot of record existing as of March 2003 or on any lot created subsequently. Within the wetlands buffer zone, the 25' closest to the wetland boundary shall be a Vegetative Buffer. \*3/08/2005

**2. Undeveloped lots of record existing prior to March 2003:** If the imposition of 100' tidal and/or freshwater wetland buffer setbacks causes the buildable upland acreage (this is, land that is not in the wetlands buffer zone) to be less than 16,000 square feet, the prior wetlands buffer zone setback requirements of 50' for Wetlands and 75' for Tidal Wetlands shall apply. Within the wetlands buffer zone, the 25' closest to the wetland boundary shall be a Vegetative Buffer. \*3/08/2005

**B. Developed lots of record:** No structure or impermeable surface shall be permitted within 100' of Tidal Wetlands or within 100' of Wetlands on any developed lot of record existing as of March 2003. \*3/08/2005

**1. Developed residential lots of record existing prior to March 2003:** If the imposition of 100' Tidal Lands and/or inland wetland buffer setbacks causes the buildable upland acreage (that is, land that is not in the buffer zone) to be less than 16,000 square feet, the prior buffer zone setback requirements of 50' for Wetlands and 75' for Tidal Lands shall apply. \*3/08/2005

**2. Notwithstanding other provisions of this section 409.9 of the Zoning Ordinance, the construction of additions to and/or extensions of existing buildings or structures shall be permitted within the 100' wetlands buffer zone provided that:**

**a.** The dwelling or structure to be expanded existed lawfully prior to the effective date of this section 409.9 of the Zoning Ordinance (March 2003) or was constructed subject to a validly issued building permit.

**i.** The proposed construction conforms to all other applicable ordinances and regulations of the Town of North Hampton.

**ii.** The footprint of any proposed new construction within the buffer does not exceed the greater of 1200 square feet or 25% of the area of the footprint of the existing heated structure within the buffer which existed prior to the effective date of this Ordinance.

**iii.** Any proposed new construction of an addition or extension shall not intrude further into the wetland buffer setback than the current principal heated structure of which it is a part.

**409.59.C. Naturally Vegetated Buffer**

A Naturally Vegetated Buffer strip shall be maintained from the boundary line of each wetland to 25ft upland from the wetland boundary line for all wetlands meeting the requirements of Section 409.2 of the Wetland Conservation Area (WCA). ~~Where existing buildings, structures or other developed areas preclude the maintenance of a vegetated buffer for the full width of the 25ft, a buffer of the maximum possible width shall be provided.~~

Within the buffer strip, naturally occurring vegetation shall be maintained and encouraged. The preservation of natural vegetation within the buffer is intended to stabilize banks to prevent erosion, maintain wildlife habitats, minimize pollution of the water and preserve the scenic quality of shoreline properties. No soil disturbance shall occur within the Naturally Vegetated Buffer. Existing lawns within the Naturally Vegetative Buffer may remain but are encouraged to be allowed to reestablish as naturally occurring vegetation. No new lawn, garden, or landscape areas shall be created within the buffer strip.

Within the buffer, the following standards shall apply:

1. Selective cutting of trees and other vegetation greater than 3 ft in height shall be permitted provided that a healthy, well distributed stand of trees and other vegetation is maintained. No trees over 6 inches in diameter (19 inches in circumference, measured 4.5 ft above ground) shall be cut within the natural vegetative buffer. Not more than 50 percent of the total number of saplings shall be removed in any 20 year period. A healthy, well distributed stand of trees, saplings, shrubs and ground covers and their living undamaged root systems shall be left in place.
2. Existing vegetation under 3 feet in height including ground cover shall not be removed except to provide for a single point of access to the shoreline and in case of disease as provided for in Section 5 below.
4. Stumps and their root systems which are located within Naturally Vegetated Buffer shall be left intact. The removal of stumps and roots in conjunction with beaches or docks may be permitted with the approval of the Conservation Commission based upon a determination that the removal in combination with mitigation activities will not increase the potential for erosion.
5. Dead, diseased, or damaged ~~vegetation – including, but not limiting to,~~ trees, saplings, or ground covers ~~–~~ may be removed with prior approval of the Conservation Commission, in consultation with the Tree Warden. The stumps and root systems of the removed trees shall not be disturbed and shall remain in place. If such removal results in the creation of cleared openings, these openings shall be replanted with native species unless existing new growth is present.
6. Invasive species may be removed but must be replaced with another species that will meet and perform the intended function of the vegetative buffer.
7. The application of fertilizers, pesticides, or herbicides within the buffer strip shall be prohibited except in conjunction with allowed agricultural activities or as permitted by the New Hampshire Department of Environmental Services.

## 409.12 Conditional Use Permits by the Planning Board

Upon application to the Planning Board, a Conditional Use Permit may be granted to permit the erection of a new structure on vacant lots of record or the expansion of an existing structure located within the Wetlands Conservation District, or any buffer zones, provided that all of the following conditions are found to exist.

- A. The lot upon which an exception is sought was an official lot of record, as recorded in the Rockingham County Registry of Deeds prior to March 8, 1988.
- A. The new structure or expansion is not otherwise prohibited under the zoning ordinance.
- B. The new structure or expansion will cause no diminution of property values in the neighborhood.
- C. The use for which the exception Conditional Use Permit is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District or the buffer zone.
- D. Due to the provisions of the Wetlands Conservation District, no reasonable and economically viable use of the lot can be made without the exception Conditional Use Permit.
- E. The design and construction of the proposed use will, to the extent practicable, be undertaken in such a manner as to be consistent with the purposes and spirit of this ordinance and shall not diminish the natural resource values of affected wetlands in any appreciable way. March 10, 2009
- F. Literal enforcement of the provisions of the wetlands ordinances would result in an unnecessary hardship, meaning special conditions of the property distinguish it from other properties in the area.

## **Sample Warrant Article Language**

Consistent with RSA 675:3, the planning board will need to hold a public hearing on the proposed changes to your ordinance, but it is recommended that all of the changes be combined into a single warrant article for action by the voters at the annual town meeting. The question presented to the voters can be simple and direct, and does not need to include the text of the amendments themselves. The following is a sample question that may be used:

**“Are you in favor of the adoption of Amendment No. \_\_\_ as proposed by the planning board for the town zoning ordinance as follows: amend as necessary to comply with requirements of the National Flood Insurance Program?”**

The format to use should be similar to this, but does not need to be identical. The purpose of the question is to inform the voters, but with the understanding that the public will have already had an opportunity to participate in the planning board’s public hearing, at which time the actual content of the changes would have been discussed.



## Section 514 Floodplain Development Ordinance

This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of North Hampton Floodplain Development Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of North Hampton Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study Rockingham County NH dated May 17, 2005, or as amended" together with the associated Flood Insurance Rate Maps dated May 17, 2005 which are declared to be a part of this ordinance and are hereby incorporated by reference.

514.1 Definition of Terms: The following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by, the provisions of any other ordinance of the Town of North Hampton.

**A. Area of Shallow Flooding** means a designated ~~AO 0, AH, or V0~~ zone on the Flood Insurance Rate Map (FIRM) with a one-percent or greater annual possibility of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet-flow.

**B. Area of Special Flood Hazard** is the land in the floodplain within the Town of North Hampton subject to a one-percent or greater possibility of flooding in any given year. The area is designated ~~as zone A on the FIRM and is designated~~ on the FIRM as zones ~~A, AO, A1-30 AE, or V1-30 VE.~~

**C. Base Flood** means the flood having a one-percent possibility of being equaled or exceeded in any given year.

**D. Base Flood Elevation** means the water surface elevation having a one-percent possibility of being equaled or exceeded in any given year.

**DE. Basement** means any area of a building having its floor subgrade on all sides.

**EF. Building** - see "structure".

**EG. Breakaway wall** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation.

**GH. Development** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operation, ~~or storage of equipment or materials.~~

**HI. FEMA** means the Federal Emergency Management Agency.

**IJ. Flood or Flooding** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) the overflow of inland or tidal waters.

(2) the unusual and rapid accumulation or runoff of surface waters from any source.

~~J. Flood Boundary and Floodway Map (Floodway Map) is an official map of the Town of North Hampton, on which FEMA has delineated the "Regulatory Floodway". This map should not be used to determine the correct flood hazard zone or base flood elevation, the Flood~~

~~Insurance Rate Map (FIRM) will be used to make determinations of flood hazard zones and base flood elevations.~~

**K. Flood Elevation-Insurance Study** means an examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood \_ related erosion hazards.

**L. Flood Insurance Rate Map (FIRM)** means an official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of North Hampton.

~~M. Flood Insurance Study -- see Flood elevation study.~~

**NM. Floodplain or Flood prone area** means any land area susceptible to being inundated by water from any source (see definition of "Flood-ing").

**ON. Flood proofing** means any combination of structural and non structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

**PO. Floodway \_** see Regulatory Floodway.

**QP. Functionally dependent use** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. ~~R-~~ The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long term storage or related manufacturing facilities.

**SR. Highest adjacent grade** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**TS. Historic Structure** means any structure that is:

- 1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- 2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- 3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- 4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a) By an approved state program as determined by the Secretary of the Interior, or
  - b) Directly by the Secretary of the Interior in states without approved programs.

**UT. Lowest Floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non\_elevation design requirements of this ordinance.

**VU. Manufactured Home** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar

vehicles placed on site for greater than 180 days. This includes manufactured homes located in a manufactured home park or subdivision.

V. Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured homes lots for rent or sale.

W. Mean sea level means the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum of 1988, or other datum, to which base flood elevations shown on a communities Flood Insurance Rate Map are referenced.

~~X. 100-year flood - see base flood~~

X. New Construction means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

Y. Recreational vehicle means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. \*3/8/94

Z. Regulatory floodway means the channel of a river or other water-course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. ~~These areas are designated as floodways on the Flood Boundary and Floodway Map.~~

~~AA. Special flood hazard area means an area having flood, mudslide, and/or flood-related erosion hazards, and shown on an FIRM or FIRM as zone A, AC, A1-30, or V1-30. see Area of Special Flood Hazard~~

BB. Structure means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

CC. Start of Construction includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

DD. Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

EE. Substantial Improvement means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal: (1) the appraised value prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring.

For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of

the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

FF. Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under this ordinance is presumed to be in violation until such time as that documentation is provided.

FPGG. Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood-plains.

514.2

All proposed development in any special flood hazard areas shall require a permit.

The building inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

- A. be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
- B. be constructed with materials resistant to flood damage,
- C. be constructed by methods and practices that minimize flood damages,
- D. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

514.3

Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

514.4

For all new or substantially improved structures located in Zones A, A1-30 AE, or A0, the applicant shall furnish the following information to the building inspector:

- A. the as-built elevation (in relation to NGVD mean sea level) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- B. if the structure has been floodproofed, the as-built elevation (in relation to NGVD mean sea level) to which the structure was flood-proofed.
- C. any certification of floodproofing.

For all new construction or substantially improved buildings located in Zones ~~VI-30 VE~~ the applicant shall furnish the building inspector records indicating the as-built elevation of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) in relation to ~~NGVD-mean sea level~~ and whether or not the structure contains a basement. The Building Inspector shall maintain the above information for public inspection, and shall furnish it upon request.

514.5

The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U. S. C. 1334.

514.6

- A. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands ~~Board-Bureau~~ of the New Hampshire ~~Department of~~ Environmental Services ~~Department~~ and submit copies of such notification to the Planning Board, in addition to the copies required by the RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Planning Board, including notice of all scheduled hearings before the Wetlands ~~Board-Bureau~~ and for hearings before the Planning Board regarding Section 409 - Wetlands Conservation District.
- B. The applicant shall submit to the Planning Board, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
- C. The Planning Board shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located Zone A meet the following floodway requirement:

"No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."

- D. Along watercourses that have not had a Regulatory Floodway designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within zones ~~A1-30-AE~~ on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- E. Along watercourses with a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.

514.7

- A. In special flood hazard areas the Building Inspector shall determine the ~~100-year~~base flood elevation in the following order of precedence according to the data available:
- In zones ~~A1-30 AE~~ and ~~VI-30 VE~~ refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.
  - In ~~unnumbered-A-zones~~ Zone A the Building Inspector shall obtain, review, and reasonably utilize any ~~100-year~~base flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).

3) In Zone A when a base flood elevation is not available, the base flood elevation shall be at least two feet above the highest adjacent grade.

43) In zone A0 the flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or if no depth number is specified on the FIRM at least 2 feet.

B. The Building Inspector's 100-yearbase flood elevation determination will be used as criteria for requiring in zones A, A1-30AE, and A0 that:

- 1) all new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100-yearbase flood elevation;
- 2) that all new construction or substantial improvements of non residential structures have the lowest floor (including basement) elevated to or above the 100-yearbase flood level; or together with attendant utility and sanitary facilities, shall:
  - a) be floodproofed so that below the 100-yearbase flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
  - b) have structural components capable of resisting hydro-static and hydrodynamic loads and the effects of buoyancy; and
  - c) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section;
- 3) all manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level/elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over the top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;
- 4) recreational vehicles placed on sites within Zones A1-30 A, AN, and AE shall either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet all standards of Section 60.3 (b) of the National Flood Insurance Program Regulations 514.2 of this ordinance and the elevation and anchoring requirements for manufactured homes in Paragraph (e) (c) of Section 60.3 Section 514.7 (B) (3). \*3/8/94
- 5) for all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements: (1) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.
- 6) proposed structures to be located on slopes in special flood hazard areas, zone A0 shall include adequate drainage paths to guide flood waters around and away from the proposed structures.

514.8

The following regulations shall apply to all new construction and substantial improvements including all manufactured homes to be placed or substantially improved in coastal high hazard areas, designated as V1-30 VE on the Flood Insurance Rate Map:

- A. All new construction or substantial improvements are to be elevated on pilings and columns so that:
- 1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level/elevation;
  - 2) the pile or column foundation and structure attached thereto is anchored to resist floatation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
- B. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this item.
- C. The space below the lowest floor must be free of obstructions or constructed with non supporting breakaway walls, open lattice work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Such enclosed space shall be usable solely for the parking of vehicles, building access, or storage.
- D. The use of fill for the structural support of buildings is prohibited.
- E. Man made alterations of sand dunes which would increase potential flood damage is prohibited.
- F. All new construction or substantial improvements within zone V1-30 VE on the FIRM shall be located landward of the reach of mean high tide.
- G. All recreational vehicles placed on sites within Zone VE shall either: be on the site for fewer than 180 days; be fully licensed and ready for highway use; or meet all standards of Section 514.2 of this ordinance and all of the above requirements of Section 514.8.

#### 514.9 Variances and Appeals

- A. Any order, requirement, decision or determination of the building inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:
- 1) that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
  - 2) that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
  - 3) that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. The Zoning Board of Adjustment shall notify the applicant in writing that: (i) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life

and property. Such notification shall be maintained with a record of all variance actions.

D. The community shall

1. maintain a record of all variance actions, including their justification for their issuance.

2. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.



**409.3 Wetlands Map:** The Wetlands map of North Hampton prepared by Normandeau Associates in 1986 as part of the New Hampshire Coastal Wetlands Mapping Program shall be used as a guide in the baseline and initial delineation preliminary identification of jurisdictional wetlands under this ordinance. The boundaries of the Wetlands Conservation District shall be identified by this North Hampton Wetlands Map and applicable buffer zones as revised from time to time.

**A.** In the event that a wetland area is alleged to be incorrectly designated on the Wetlands Map, the person aggrieved by such designation may request a field inspection by the building inspector and a wetland scientist approved by the Planning Board.~~the chairperson of the Conservation Commission (or their representative).~~ If a determination is made by a field inspection or by a Certified Wetlands Scientist that the three criteria for Wetland delineation may be incorrect, are not present and that the area in question is incorrectly designated a wetland, the Conservation Commission the wetland scientist shall report this in writing change to the Planning Board. The Planning Board will review the report and if appropriate, who will arrange to update the Wetlands map accordingly. All fees and expenses incurred by the field inspection shall be paid by the party requesting the field inspection.

**B.** If, after the field inspection, the Wetlands designation delineation is not changed determined to be correct, the person aggrieved by such designation may, by written petition, appeal the designation to the Planning Board for the Board's review.

**C.** Any resident of North Hampton may, by written petition, propose to the Planning Board that additional areas be included within the Wetlands Conservation District. After informing the owners of the property proposed for inclusion in the Wetlands Conservation District and the owners of abutting property, the Planning Board shall place the proposal on the agenda of its next regularly scheduled public hearing. Before additional areas can be included within the Wetlands Conservation District, the North Hampton resident proposing such inclusion shall provide evidence, satisfactory to the Planning Board, that the subject land meets the ~~three~~ mandatory technical criteria for Wetlands delineation identified in Section 302, paragraphs 19, 42 and 43 herein.

**E-D.** Any wetland delineations on Subdivision or Site Plans approved by the Planning Board, after March 2015, will constitute an update to the wetlands map.



MICHAEL J. DONAHUE  
 CHARLES F. TUCKER  
 ROBERT D. CIANDELLA  
 LIZABETH M. MACDONALD  
 JOHN J. RATIGAN  
 DENISE A. POULOS  
 ROBERT M. DEROSIER  
 CHRISTOPHER L. BOLDT  
 SHARON CUDDY SOMERS  
 DOUGLAS M. MANSFELD  
 KATHERINE B. MILLER  
 CHRISTOPHER T. HILSON  
 JUSTIN L. PASAY  
 ERIC A. MAHER  
 PATRICK O. COLLINS

**PLEASE RESPOND TO THE EXETER OFFICE**

*Attorney Client Privileged*

December 22, 2014

Via e-mail and U.S. Mail  
[papple@northhampton-nh.gov](mailto:papple@northhampton-nh.gov)

Paul Apple  
 Town Administrator  
 223 Atlantic Avenue, 2<sup>nd</sup> Floor  
 North Hampton, NH 03862

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OF COUNSEL  
 NICHOLAS R. AESCHLIMAN

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RETIRED  
 ROBERT B. DONOVAN

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ROBERT A. BATTLES  
 (1951-2010)

Re: Proposed Personal Wireless Services Facilities Ordinance

Dear Paul:

This letter forwards a draft of a proposed Personal Wireless Services Facilities Zoning Ordinance (the "Ordinance") for the Town of North Hampton (the "Town"). Per your request, the contents of the Town's current Personal Wireless Services Facilities ("PWSF") Ordinance (Section 415 of the Zoning Ordinance) were kept intact to the extent it was possible. As we discussed, our goal in drafting the proposed ordinance was to ensure the Town's compliance with RSA 12-K and federal law, which has change significantly over the last few years, and clearly outline the Town's siting preferences and the procedure for obtaining approvals to construct new PWSFs.

As a foundational matter, the recent changes to RSA 12-K prohibit the Town from imposing land use or zoning controls on applicants for collocation or modification of PWSFs. See RSA 12-K:10, I. Succinctly, under the changes in the law, these applications are subject only to building permit review from the Town's Building Department. Accordingly, the proposed Ordinance applies primarily to the siting of new PWSFs which do not constitute collocations or modifications under state and federal law. Upon your request, we can provide a comprehensive memorandum to the Town's Building Department analyzing their requirements and limitations under the new laws.

Additionally, our work has highlighted the need to determine the Town's position on a few key policy considerations which may impact the language contained in the draft provided herewith and necessitate additional revisions.

DONAHUE, TUCKER & CIANDELLA, PLLC

Exeter Office: 225 Water Street, P.O. Box 630, Exeter, NH 03833, 603-778-0686

Portsmouth Office: 111 Maplewood Avenue, Suite D, Portsmouth, NH 03801, 603-766-1686

Meredith Office: 56 NH Route 25, P.O. Box 214, Meredith, NH 03253, 603-279-4158

[www.dtclawyers.com](http://www.dtclawyers.com)

First, proposed section 415.2(E) and 415.4(A)(1) articulate the Town's potential siting preferences for new PWSFs. As drafted, the hierarchy contemplates Town preference for new PWSFs and collocations first, on Town owned property and structures and within the Wireless Telecommunications Facilities District, and by building permit only; second within the Industrial – Business/Residential District after site review approval and receipt of a Conditional Use Permit; and thirdly, within the Town's residentially zoned districts after site review approval and receipt of a Conditional Use Permit. The hierarchical approach articulated in these sections is typical of these types of zoning ordinances as it orients applicants towards siting PWSFs in areas the Town desires by streamlining the process for approval in those areas. However, pursuant to our phone conversation this afternoon, the Town may elect to not permit new towers, or substantial modifications thereto, mounts, and PWSFs in any zoning district other than the Wireless Telecommunications Facilities District. Further, the Town may wish to require all applicants, to the extent allowable under the law, to seek site plan approval and a Conditional Use Permit, even those proposed to be located within the Wireless Telecommunications Facilities District. **Amendments can be made to the draft Ordinance to accomplish these goals.**

Specifically, we can amend the draft Ordinance to prohibit development of this category of PWSFs in all zoning districts except the Wireless Telecommunications Facilities District. Under those circumstances, such development could not proceed unless the applicant received a variance from the Zoning Board of Adjustment. Important to note, however, if an applicant can show that there is no feasible alternative to the site chosen, even if it is in a residential zone, then the Town would need to allow it. Otherwise, the denial would amount to effective prohibition of service, in violation of federal law. The relevant questions in this context are:

- 1) Does the Town want to permit, by building permit only, the siting of new PWSFs within the Wireless Telecommunications Facilities District on property other than Town property or does it want all applicants to seek site review and Conditional Use Permit to the extent allowable under the law?
- 2) Does the Town want to prohibit the PWSF use in all districts except the Wireless Telecommunications Facilities District? If so, applicants may seek variances for locations in other districts and the Town may be required to permit grant them.

Additionally, the Town's current ordinance states a maximum height limitation for ground-mounted PWSFs of 180 feet. This figure is higher than what we have seen in other municipalities. Many other towns list a maximum height of 120 – 150 feet. As you know, reducing this number will require prospective applicants to seek variance relief from the Town's Zoning Board of Adjustment to the extent their proposals do not comply with the height limitation.

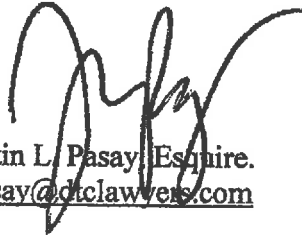
We recommend that you review the enclosed Ordinance and that we speak in the near term regarding your thoughts. Once you have provided us direction, we can make the necessary changes to the proposed Ordinance pursuant to your wishes.

Paul Apple, Town Administrator  
December 22, 2014  
Page 3

We look forward to hearing from you.

Yours truly,

**DONAHUE TUCKER & CIANDELLA, PLLC**

A handwritten signature in black ink, appearing to read 'Justin L. Pasay', is written over the typed name and email address.

Justin L. Pasay, Esquire.  
[jpasay@dtclawyers.com](mailto:jpasay@dtclawyers.com)

JLP

cc:  
Kate Miller, Esquire (email only)

**PROPOSED NORTH HAMPTON ORDINANCE**

**SECTION 415**

**PERSONAL WIRELESS SERVICES ORDINANCE**

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#### 415.1. Definitions

The following definitions shall apply to the zoning of Personal Wireless Service Facilities ("PWSFs") only:

- 1) "*Antenna*" - The equipment from which wireless radio signals are sent and received by a PWSF.
- 2) "*Antenna Array*" - A collection of Antennae attached to a structure or Mount to send and receive radio signals for a single Carrier.
- 3) "*Applicant*" - A Carrier or Tower Company or any other person applying for a permit under this Ordinance to construct a new Tower, or Substantial Modification to existing Tower, Mount, or PWSF, or a Carrier or Tower Company or any other person applying for Collocation or Modification of a PWSF.
- 4) "*Carrier*" - A person that provides personal wireless services, as defined in the Telecommunications Act of 1996, 47 U.S.C. §332(c)(7)(C)(ii).
- 5) "*Collocation*" - The placement or installation of new PWSF on existing towers or mounts, including electrical transmission towers and water towers, as well as existing buildings and other structures capable of structurally supporting the attachment of PWSF in compliance with applicable codes, pursuant to RSA 12-K:2, X. "Collocation" does not include a "Substantial Modification."
- 6) "*Collocation application*" - A request submitted by an Applicant to the Town's Building Department for collocation of a PWSF.
- 7) "*Environmental Assessment*" / "*EA*" - An EA is a document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a Personal Wireless Service Facility is placed in certain designated areas.
- 8) "*Equipment Shelter*" - An enclosed structure, cabinet, shed, vault, or box near the base of the Personal Wireless Service Facility within which are housed equipment for those facilities such as battery and electrical equipment.
- 9) "*FAA*" - An acronym for the Federal Aviation Administration.
- 10) "*Fall Zone*" - The area on the ground within a prescribed radius from the base of a Personal Wireless Service Facility. The Fall Zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.
- 11) "*FCC*" - An acronym for the Federal Communications Commission.
- 12) "*Guyed Tower*" - A Monopole or Lattice Tower that is secured to the ground or other surface by diagonal cables for lateral support.
- 13) "*Height*" - When referring to a Tower or other structure, the distance measured from ground level to the highest point on the Tower or other structure, even if said highest point is an Antenna.
- 14) "*Lattice Tower*" - A type of structure that is self-supporting with multiple legs and a cross bracing of structural steel.

- 15) "*Mast*" - A thin pole that resembles a street light standard or a telephone pole.
- 16) "*Modification*" - The replacement or alteration of an existing PWSF within a previously approved equipment compound or upon a previously approved mount. Routine maintenance of an approved PWSF shall not be considered a Modification.
- 17) "*Modification application*" - A request submitted by an Applicant to the Town's Building Department for modification of a PWSF.
- 18) "*Monopole*" - A thicker type of structure than a Mast that is self-supporting with a single shaft of wood, steel or concrete that is designed for the placement of Antennae and Antenna Arrays along the shaft.
- 19) "*Mount*" - The structure or surface upon which Antennae are mounted, including the following four types of Mount: a) roof mounted or mounted on the roof of a building; b) side mounted or mounted on the side of a building; c) ground mounted or mounted on the ground; d) structure mounted or mounted on a structure other than a building.
- 20) "*Personal Wireless Service Facility*" / "*PWSF*" - Any facility which provides commercial mobile wireless services, unlicensed wireless services and common Carrier wireless exchange access services, as described by Section 332 of the Telecommunications Act of 1996, 47 U.S.C. §332(c)(7)(C)(i).
- 21) "*Planning Board*" - The Town of North Hampton's Planning Board.
- 22) "*Preexisting Towers and Antennae*" - Any Tower or Antenna lawfully constructed or permitted prior to the adoption of this Ordinance. These terms shall also mean any Tower or Antenna lawfully constructed in accordance with this Ordinance.
- 23) "*Preferred Siting Locations*" - The locations for a PWSF in the Town of North Hampton, ranked in the order of preference, contained in Section 415.4(A)(1).
- 24) "*Radio Frequency (RF) Engineer*" - An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.
- 25) "*Substantial Modification*" - The mounting of a proposed PWSF on a Tower or Mount which, as a result of the single or successive modification applications:
- (a) Increases or results in the increase of the permitted vertical height of a Tower, or the existing vertical height of a Mount, by either more than 10 percent or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or
  - (b) Involves adding an appurtenance to the body of a Tower or Mount that protrudes horizontally from the edge of the Tower or Mount more than 20 feet, or more than the width of the Tower or Mount at the level of the appurtenance, whichever is greater, except where necessary to shelter the antenna from inclement weather or to connect the antenna to the Tower or Mount via cable; or
  - (c) Increases or results in the increase of the permitted square footage of the existing equipment compound by more than 2,500 square feet; or
  - (d) Adds to or modifies a camouflaged PWSF in a way that would defeat the effect of the camouflage.



26) "Stealth Tower" – Any Tower on which the Antennae are integrated as architectural features of the Tower to camouflage them, so that the purpose of the Tower for providing wireless services is not readily apparent.

27) "Stealth technology" – Stealth technology shall mean any antenna device that is either camouflaged, and/or concealed and placed upon or inside existing buildings and/or structures but does not include the antenna support structures of monopoles, lattice type towers, and satellite dishes over three (3) feet in diameter or Antennae and similar structures requiring three (3) or more legs and/or guy wires for support.

28) "Tower" – Any structure built for the sole purpose of supporting any authorized Antennae and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site..

29) "Tower Company" – A company in the business of building Towers and selling or leasing them, or selling or leasing space on them, to Carriers.

30) "Zoning Board of Adjustment" – The Town of North Hampton's Zoning Board of Adjustment.

#### **415.2. Purpose and Intent**

This Ordinance is enacted to permit the siting of PWSFs in the Town of North Hampton consistent with the power granted to municipalities under Federal and New Hampshire law (the federal Telecommunications Act of 1996, 47 U.S.C. §151 *et seq.*; RSA 12-K:1 *et seq.*; and RSA 674:16 *et seq.*). The Town of North Hampton, in siting wireless facilities, shall act consistent with the following:

- A. Avoid and mitigate adverse impacts PWSFs may create, including, but not limited to the following impacts: visual, environmental, historical, flight corridors, health, safety, welfare and prosperity.
- B. Facilitate the provision of broadband and other advanced personal wireless services within the Town of North Hampton for all residents, students, government agencies, and businesses and to promote the availability of educational opportunities, economic development, and public safety services.
- C. Facilitate the collocation of PWSFs on existing antenna Mounts or Towers in North Hampton and promote expeditious modification of existing PWSFs pursuant to RSA 12-K.
- D. Permit the siting of new PWSFs on new ground mounted structures only where all other reasonable siting opportunities have been exhausted, and encourage the siting of facilities, whether on new structures or existing, in a way that minimizes the adverse impacts of the facilities.
- E. Create a hierarchy of preferred locations to further the Town's planning goals by legislatively declaring siting preferences favoring siting of PWSFs by building permit only on Town-owned property and structures, including within the Wireless Telecommunications Facilities District, and on all other existing Towers or Mounts; second, siting new Towers or Mounts within the Industrial – Business/Residential district with site plan approval and a Conditional Use Permit pursuant to this Ordinance; and third, siting new Towers or Mounts within rural or residentially zoned sites last, with site plan approval and a Conditional Use Permit. Preference will be with

lower or Stealth Towers where possible, including sensitivity to historic locations and environmentally sensitive areas, aesthetic and planning concerns.

- F. Require that facilities be constructed and maintained safely.
- G. Provide for the removal of abandoned facilities, including a mechanism for the Town to remove these abandoned facilities at the facility owner's expense to protect the citizens from imminent harm and danger.
- H. This ordinance does not apply to any Tower, or the installation of any Antenna that is under 70 feet in height, that is owned and operated by a federally licensed amateur radio station operator or is used exclusively as a receive-only Antenna. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.

#### **415.3. Wireless Telecommunications Facilities District**

The "Wireless Telecommunications Facilities District" shall be an overlay district consisting of all land within 1000 feet of the center of the median on the west side of I-95; all unrestricted Town-owned land or land on which the Town owns the rights to develop such a facility, (excepting the Town Building Complex parcels on Atlantic Avenue).

In addition to the uses permitted in the underlying zoning districts under Section 405, PWSFs are a permitted use within the Wireless Telecommunications Facilities District after obtaining a building permit. All such uses must comply with other applicable ordinances and regulations of the Town of North Hampton.

#### **415.4. Siting Standards for New PWSFs**

##### **A. General**

##### **1. Preferred Siting Locations**

An Applicant seeking approval for a new Tower, or Substantial Modification to existing Tower, Mount, or PWSF shall comply with the following:

- a. Preference will be given to locating PWSFs on Town-owned land or structures in the Wireless Telecommunications Facilities District, or otherwise on property owned or controlled by the Town.
- b. To the extent that siting locations under Paragraph (a) are not available, preference will be given to siting a new PWSFs within the Industrial - Business/Residential district.
- c. To the extent that siting locations under Paragraphs (a) and (b) are not available, preference will be given to siting a PWSF within the residential districts in Town.

##### **2. Burden of Proof on Applicant**

- a. The burden of proof that there are no existing Towers or Mounts in or around the Town upon which an Applicant may locate its PWSF and/or transmit or receive radio signals,

pursuant to a collocation or modification application under Section 415.5 of this ordinance, shall include, at a minimum:

(1) The Applicant shall submit a list of all owner contacts, including the Town, made with regard to the availability of a site for a potential PWSF. If the Planning Board or Town staff finds additional existing buildings and structures that may be satisfactory, the Applicant shall contact the property owners.

(2) The Applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "return receipt requested" forms from the US Post Office shall be provided for each owner of existing structures that was contacted.

(3) If an Applicant claims that a structure is not structurally capable of supporting a PWSF, this claim must be certified by a registered professional structural engineer licensed in the State of New Hampshire. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the PWSF at a reasonable cost.

- b. The burden of proof that no locations in areas of the Town identified herein as Preferred Siting Locations to the location proposed by the Applicant are suitable for Applicant's needs shall include, at a minimum: maps certified by a radio frequency engineer licensed in the State of New Hampshire showing (1) coverage gaps of existing PWSFs in or near North Hampton and (2) coverage of PWSFs if built on the available Preferred Siting Locations.

## B. Use Regulations

### 1. General

PWSFs shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for new Towers, or the Substantial Modification of existing Towers, Mounts, and PWSFs shall require site plan review, pursuant to the Town's Site Plan Review Regulations and a Conditional Use Permit as outlined herein, unless otherwise noted in this Ordinance.

### 2. Principal or Secondary Uses

PWSFs may be considered either principal or secondary uses. Having an existing permitted use on site shall not preclude the addition of PWSFs as a secondary use as long as all other provisions of this ordinance are met. A different existing use or an existing structure on the same lot shall not preclude the installation of a PWSF on such lot. For purposes of determining whether the installation of a PWSF complies with the district development regulations, including but not limited to set back requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the Antennae or Towers may be located on leased parcels within such lots.

### 3. Siting on Town-Owned Land or Structures

A PWSF may locate, subject only to the issuance of a building permit that includes review of the application required by this Ordinance by the Building Inspector/Code Enforcement Officer, on

any Town-owned land or structure, so long as the facility complies with the requirements stated in this Ordinance, unless otherwise exempt; the facility does not exceed the height limitations in this Ordinance; and the PWSF includes a security barrier. In addition, Antennae Array may be located on existing Town-owned or controlled structures located throughout the Town, including but not limited to, municipal communications facilities, athletic field lights, traffic lights, and street lights. All other sitings not exempted from zoning by RSA 12-K or within the Wireless Telecommunications Facilities District, shall require site plan review and approval and a Conditional Use Permit from the Planning Board.

### C. General Application Requirements

Unless otherwise stated in this Ordinance, all Applicants for new PWSFs under this Ordinance shall apply to the Planning Board for Site Plan Review and a Conditional Use Permit, and comply with the requirements as provided herein.

All applications shall contain the following:

1. Appropriate application form signed by the Applicant, accompanied by the appropriate fee.
2. Copy of lease, deed or letter of authorization from property owner (if other than Applicant) evidencing Applicant's authority to pursue the application.
3. Copy of the Applicant's FCC license(s), establishing credibility to deploy a PWSF in the area being applied for, or a copy of a contract between an FCC licensed Carrier and the Applicant, along with a copy of that Carrier's license.
4. Detailed maps showing all the Applicant's current externally visible Tower and Monopole PWSF locations in New Hampshire within a twenty (20) mile radius of the proposed externally visible PWSF, both active and inactive.
5. Detailed maps certified by a radio frequency engineer licensed in the State of New Hampshire showing (1) coverage gaps of existing PWSFs in or near North Hampton and (2) coverage of PWSFs if built on the available Preferred Siting Locations.
6. Site descriptions for each of those locations including Antenna height and diameter and a depiction of all externally visible structures.
7. A description of why less visually intrusive alternatives, including collocations on existing Towers or Mounts, for the facility which the Applicant seeks approval for were not proposed.
8. Drawings detailing proposed improvements related to all the requirements specified in Paragraph (D) below.
9. Fees to cover the Town's costs for any regional notification required by RSA 12-K:7.
10. Written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
11. If required by federal law, written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an

Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the Federal comment period, and the Town process, shall become part of the application requirements.

D. General Requirements for PWSFs

The requirements and limitations in this Ordinance shall preempt all other requirements and limitations as required by the Town's Zoning Ordinance and shall apply only to new Towers, or substantial modifications of existing Towers, Mounts, and PWSFs.

1. Height

Ground Mounted PWSFs shall not exceed one hundred eighty (180) feet in height.

2. Setbacks

All PWSFs and Equipment Shelters shall comply with building setback provisions of the zoning district in which the facility is located.

3. Fall Zone

In order to ensure public safety, the minimum distance from the ground Mount of a PWSF to any property line, road, habitable dwelling, business or institutional use or public recreational area shall be 125% of the Height of the facility, including any Antennae or other appurtenances. This setback is considered the "Fall Zone." The Planning Board may reduce the Fall Zone upon a showing that the technical quality and nature of the facility does not require as large a Fall Zone as is otherwise required by this section.

4. Performance Standards

a. Visual Impact and Lighting

Visual impacts are measured on the basis of: change in community scale, as exhibited in relative Height, mass or proportion of the PWSF within its proposed surroundings; new visible elements proposed on a contrasting background; different colors and textures proposed against a contrasting background; and use of materials that are foreign to the existing built environment.

Preservation of the existing developed and natural environments within North Hampton are enhancements to the Town. Enhancements are measured on the basis of: conservation of opportunities to maintain community scale, amount and type of landscaping and/or natural vegetation; preservation of view corridors, vistas and view sheds; and continuation of existing colors, textures and materials.

Visibility focuses on eliminating or mitigating the visual impact, and maximizing enhancement of the existing environment.

The requirements in this paragraph (a) shall govern the location of all facilities, and the installation of all Antennae.

The requirements are as follows:

1. Towers shall be located on sites where the grade/slope and tree cover of the site and surrounding land can be used to decrease any adverse visual impacts.
2. Towers or ground Mounts shall either maintain a galvanized steel finish, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness.
3. The design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the Tower facilities with the natural setting and built environment. These buildings and facilities shall also be subject to all other Site Plan Review Regulation requirements.
4. If an Antenna is installed on a structure other than a Tower, the Antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the Antenna and related equipment as visually unobtrusive as possible.
5. Facilities shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
6. Facilities shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind.

**b. Federal Requirements**

All facilities must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate facilities and Antennae. If such standards and regulations are changed, then the owners of the facilities governed by this Ordinance shall bring such facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with Section 415.8(B) of the facilities at the owner's expense through the execution of the posted security required by Section 415.8(A).

**c. Building Codes-Safety Standards**

To ensure the structural integrity of facilities and Antennae, the owner of a facility shall certify that it is constructed and maintained in compliance with standards contained in applicable local building codes and the applicable standards for PWSFs that are published by the Electronic Industries Association, as amended from time to time. The owner of the facility shall initially provide proof of structural integrity by report of a structural engineer licensed in New Hampshire and thereafter shall provide certifying reports to the Town every five (5) years. All facilities shall be designed and operated in a manner that minimizes the risk of igniting a fire or intensifying one that otherwise occurs. If, upon

inspection, the Town concludes that a facility fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the facility, the owner shall have thirty (30) days to bring such facility into compliance with such standards. If the owner fails to bring such facility into compliance within thirty (30) days, such action shall constitute grounds for the removal, in accordance with Section 415.8(B), of the facility at the owner's expense through execution of the posted security required by Section 415.8(A).

d. **Additional Requirements**

These requirements shall supersede any and all other applicable standards found elsewhere in North Hampton Ordinances or Regulations that are less strict.

1. **Landscaping**

a. Towers or ground mounted facilities shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device.

b. Towers or ground mounted facilities shall be landscaped with a vegetative buffer of plant materials at least as tall as the security fence, 360 degree surrounding the facility, a minimum of twenty-five (25) feet deep starting at the fence, extending outward. Said vegetative buffer must effectively screen the view of the Equipment Shelter from adjacent residential property and public roads. In locations where the visual impact of the Tower would be minimal, the landscaping requirement may be reduced or waived entirely.

Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as Towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

d. The vegetation buffer shall be protected by a landscape easement or be within the area of the carrier's lease or ownership. The easement or lease shall specify that the trees within the buffer shall not be removed or topped unless the trees are dead or dying, present a hazard to persons or property, or as approved during site plan review.

**415.5. Collocation and Modification Applications**

A. **General**

Collocation and modification applications shall be reviewed for conformance with all applicable Town building permit requirements but will not be otherwise subject to the Town's zoning or land use requirements, including design or placement requirements, site or other public hearing review, or a Conditional Use Permit application process pursuant to RSA 12-K:10.

**B. Miscellaneous**

1. The North Hampton Building Department may not mandate, require or regulate the installation, location, or use of PWSFs on utility poles.
2. A party aggrieved by the final action of the Building Department, either by affirmative denial of a collocation or modification application or by the Building Department's inaction, may bring an administrative appeal to the Town's Zoning Board of Adjustment.

**415.6. Conditional Use Permits**

**A. General**

All Applicants under this Ordinance, except as otherwise noted herein, shall apply to the Planning Board for Site Plan Review, in accordance with the requirements as provided for in the Town's Site Plan Review Regulations and shall also submit the information required below in paragraph (C):

**B. Issuance of a Conditional Use Permit**

In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed siting on adjoining properties, and to preserve the intent of this Ordinance.

**1. Procedure on Application.**

The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Regulations.

**2. Decisions.**

Possible decisions rendered by the Planning Board include Approval, Approval with Conditions, or Denial. All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the written record.

**3. Factors to be considered in assessing Conditional Use Permit Applications:**

- a. The Height of the proposed Tower does not exceed that which is essential for its intended use and public safety and is necessary to provide personal wireless services;
- b. The effect of the proximity of the facility to residential development or zones;
- c. Nature of uses on adjacent and nearby properties;
- d. Surrounding topography;
- e. Surrounding tree coverage and foliage;
- f. Design of the facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- g. Proposed ingress and egress to the site;



- h. Availability of suitable existing sites and other structures for collocations as required herein in;
- i. Visual impacts on view sheds, ridge lines, and other impacts by means of cell site location, tree and foliage clearing and placement of incidental structures;
- j. Availability of collocations as required herein; and.
- k. The proposed facility is not constructed in such a manner as to result in needless height, mass, and guy wire supports

C. Information Required

Each Applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan, which shall comply with the Town's Site Plan Regulations and at a minimum include the following: a scaled elevation view, topography, radio frequency coverage, facility Height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses (up to 200' away), and any other information deemed necessary by the Planning Board to assess compliance with this Ordinance. Furthermore, the Applicant shall submit the following prior to any approval by the Planning Board:

1. The Applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
2. If required by federal law, the Applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the Federal comment period, and the Town process, shall become part of the application requirements.
3. Each Applicant for a PWSF shall provide to the Planning Board an inventory of its pre-existing facilities that are within the jurisdiction of the Town and those within two (2) miles of the border thereof, including specific information about the location, Height, design of each facility, as well as economic and technological feasibility for co-location on the inventoried facilities. The Planning Board may share such information with other Applicants applying for approvals or conditional use permits under this Ordinance or other organizations seeking to locate Antennae within the jurisdiction of the governing authority; provided, however that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

If the Applicant is proposing to build a new Tower or other ground mounted structure, the Applicant shall submit written evidence demonstrating that no existing structure can accommodate the Applicant's proposed facility. This evidence can consist of:

- a. Substantial evidence that no existing Towers or structures that are located within the geographic area meet the Applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
- b. Substantial evidence that existing structures, including Towers, are not of sufficient Height to meet the Applicant's engineering requirements, and why.

- c. Substantial evidence that the existing Towers or structures do not have sufficient structural strength to support Applicant's proposed Antenna and related equipment.
  - d. Substantial evidence that Applicant's proposed Antenna would cause electromagnetic interference with the Antenna on the existing Towers or structures, or the Antenna on the existing Towers or structures would cause interference with the Applicant's proposed Antenna.
  - e. Substantial evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing Tower or structure are unreasonable. Costs exceeding new Tower development are presumed to be unreasonable.
  - f. Substantial evidence that the Applicant can demonstrate other limiting factors that render existing Towers and structures unsuitable.
  - g. Information on how many PWSFs each provider will require.
  - h. Information on what site outside the Town of North Hampton are being considered for other sites.
  - i. Information on how future technology would reduce or eliminate the need for tall sites.
  - j. Information on how the siting of a PWSF affects the ability to allow a competitor's Antennae on the same property.
  - k. Information on whether it is feasible for the carrier(s) to locate base station equipment underground.
4. The Applicant proposing to build a Tower or ground mounted structure shall submit an agreement with the Town that allows for the maximum allowance of collocation upon the new structure to the extent such collocation can exist while minimizing adverse impacts noted herein. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the Applicant to supply available collocation for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the Applicant's unwillingness to cooperate with the orderly and well-planned development of North Hampton, and is grounds for a Denial.
5. The Applicant shall submit the engineering information detailing the size and coverage required for the PWSF location. The Planning Board may have any submitted information reviewed by a consultant for verification of any claims made by the Applicant regarding technological limitations and feasibility for alternative locations, or any other matter required by the application. Cost for this review shall be borne by the Applicant in accordance with RSA 12-K:4, RSA 673:16, II, RSA 676:4, I(g) and RSA 676:4-b.

**415.7. Waivers**

**A. General**

Where the Planning Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the terms of this Ordinance; the purposes of these regulations may be served to a greater extent by an alternative proposal; or where there is no

feasible alternative to the proposed PWSF such that the Town's regulations function to effectively prohibit the provision of personal wireless services by the applicant in the Town of North Hampton, it may approve waivers to these regulations, including waivers of the Height standard in Section 415.4(D)(1). The purpose of granting waivers under provisions of these regulations shall be to insure that an Applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that *all* of the following apply:

1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
2. The waiver will not, in any manner, vary the provisions of the North Hampton Zoning Ordinance, North Hampton Master Plan, or Official Maps.
3. Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.
4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
  - a. Topography and other Site features
  - b. Availability of sites to collocate PWSFs.
  - c. Geographic location of property
  - d. Size/magnitude of project being evaluated and availability of co-location.

**B. Conditions**

In approving waivers, the Planning Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

**C. Procedures**

A petition for any such waiver shall be submitted in writing by the Applicant with the application for Planning Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the Applicant. Failure to submit petition in writing shall require an automatic denial.

**415.8. Miscellaneous**

**A. Bonding, Security and Insurance**

Recognizing the extremely hazardous situation presented by inadequately maintained or abandoned and unmonitored facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned facilities in the event that the PWSF is abandoned or inadequately maintained and the PWSF owner is incapable and unwilling to remove or maintain it. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage.

**B. Removal of Abandoned Antennae and Facilities**

Any Antenna or PWSF that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety. The owner shall remove the abandoned PWSF within ninety (90) days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the facility. If the abandoned facility is not removed within ninety (90) days the Town may execute the security and have the facility removed. If there are two or more users of a single facility, this provision shall not become effective until all users cease using the facility.

**C. Enforcement**

Enforcement of this section shall be in accordance with Chapter 676 of the New Hampshire Revised Statutes Annotated and the North Hampton Zoning Ordinance.

**D. Saving Clause**

If any provision of this Ordinance is found to be unenforceable or unlawful by a court of competent jurisdiction, such provision of the Ordinance shall be considered severable and such a finding shall not be construed to invalidate the remainder of the Ordinance.

**415.9. Satellite Earth Station Antennae Ordinance**

**A. Purpose**

The purpose of this Ordinance is to conform North Hampton's Zoning Ordinance to Federal law requirements for the regulation of satellite earth station antennae and to permit regulation by the Town for legitimate public health, safety and/or historical reasons. This Ordinance is to be interpreted to be consistent with the regulations of the Federal Communications Commission on Earth Station Antennae, currently located in 47 C.F.R. §1.4000 and §25.104, as those regulations may be amended from time to time.

**B. Zones Allowing Satellite Earth Station Antennae**

1. Except as specifically allowed, Federal law and regulations require that the Town of Hampton not impair the installation, maintenance or use of antennae used: (a) to receive video programming services, television broadcast signals, multi-point distribution services, including multi-channel, multi-point distribution services, or direct broadcast satellite; or (b) to receive or transmit fixed wireless signals services, as defined in 47 C.F.R. §1400(a)(2).
2. Specifically, (a) all satellite dish antennae that are one meter or less in diameter are permitted in any zone in the Town of North Hampton, except as noted below in Paragraph 3; and (b) satellite dish antennae that are two meters or less in diameter are permitted in any commercial or industrial zone in the Town of North Hampton, except as noted in Paragraph 4.
3. Exceptions: Satellite Dish Antennae One Meter or Less in Diameter

Satellite dish antennae that are one meter or less in diameter are not permitted in residential zones when the Building Inspector determines that:

- a. The siting of such a facility constitutes a hazard to public safety, including but not limited to, fire or traffic; or
  - b. Not permitting the siting is necessary to preserve a pre-historic or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470; and
  - c. The Building Inspector shall apply the standard set forth in paragraphs (a) and (b) above in a non-discriminatory manner and impose no greater restrictions on antennae covered by this rule than are imposed on the installation, maintenance, or use of other modern appurtenances, devices, or fixtures that are comparable in size, weight, and appearance to these antennae. The application of this Ordinance shall be no more burdensome to affected antenna users than is necessary to achieve the objectives described in paragraphs (a) or (b) of this Paragraph 3.
4. Exceptions: Satellite Dish Antennae in Commercial or Industrial Zones
- a. Satellite dish antennae are not permitted in commercial or industrial zones when the Building Inspector determines that the siting of such a facility constitutes a hazard to public health or safety, including but not limited to, fire or traffic.
  - b. The application of this Ordinance shall be no more burdensome to satellite users than is necessary to achieve the health or safety objective.

415.10. Reserved