

# Wireless Communications Facilities Ordinance for the Town of Starks, Maine

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Amended: March 8, 2025

ENACTED (AMENDED): 3/8/2025 Date

EFFECTIVE: 3/8/2025 Date

CERTIFIED BY: [Signature] Name

Clerk Title

Affix Seal



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## **Section 1 Title**

This Ordinance shall be known and cited as the "Town of Starks Wireless Communications Facilities Ordinance" (hereinafter the "Ordinance").

## **Section 2 Authority**

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.A. Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4312 et seq.

Persons or entities wishing to establish a wireless communications facility (WCF) or make modifications to an existing WCF within the Town of Starks shall first obtain an application for a permit from the Starks Planning Board (hereinafter "Planning Board") or the Starks Code Enforcement Officer (hereinafter "CEO"), and shall be subject to the provisions of this Ordinance.

## **Section 3 Purpose**

The purpose of this Ordinance is to provide a process and a set of standards for the construction, expansion, major modification, and operation of WCFs in order to:

- A. Implement a policy concerning the provision of wireless communications services, and the siting of WCFs;
- B. Locate WCFs in a manner that promotes the general health, safety, welfare and quality of life of the citizens of Starks;
- C. Preserve the character, appearance and important cultural and natural resources of Starks while allowing WCFs to be developed;
- D. Provide standards and requirements for the regulation, placement, design, appearance, construction, monitoring, modification, and removal of WCFs;
- E. Require, where possible, the collocation of communications facilities, towers, and sites thereby minimizing adverse visual impacts on the community;
- F. Support the provision of advanced communications services to the largest number of businesses, institutions and residents of Starks; and
- G. Ensure that all WCF carriers providing facilities or services comply with the Ordinances of Starks.

## **Section 4 Applicability**

This Ordinance applies to all construction, expansion, modification, and operation of WCFs, except as provided in Section 4.1 *Exemptions*. However, no WCF as listed in Section 4.1 shall be considered exempt from Section 7.2(D) *Height*. Further, no WCF shall be considered exempt from this Ordinance by virtue of collocation with an exempt facility as listed in Section 4.1.

### **4.1 Exemptions**

Notwithstanding the exception above regarding compliance with Section 7.2(D) *Height*, the following are exempt from the provisions of this Ordinance:

- A. WCF for communication by public officials, including specifically emergency communications.
- B. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- C. Parabolic Antennas less than 7 feet in diameter.
- D. Maintenance, repair or reconstruction of a WCF and related equipment, provided that there is no change in the height, other dimension, or other external characteristic of the facility.
- E. A temporary WCF, in operation for a maximum period of 180 consecutive days and as close as practical to the site of an approved permanent facility, while an approved permanent facility is under construction (This applies to so-called cellular-on-wheels facilities (COW's.)
- F. An antenna that is an accessory use to a residential dwelling unit.
- G. Citizens' Band Radio.
- H. Radio dispatch services for local businesses.

## **Section 5 Review and Approval Authority**

### **5.1 Approvals Required**

No person shall construct or expand a WCF without approval of either the CEO or the Planning Board as follows:

- A. **Expansion of an Existing WCF and/or Colocation.** CEO approval is required for any expansion of an existing WCF that increases the height of the facility by no more than 20 feet; accessory use of an existing WCF; or colocation that may include an increase in height up to the originally permitted height on an existing WCF. Expansion includes the addition of antennas, towers, or other devices to an existing structure.
- B. **New Construction and Expansions in Height by More than 20 Feet.** Planning Board approval is required for construction of a new WCF; and a not previously permitted expansion of an existing WCF that increases the height of the facility by more than 20 feet to include, but not be limited to, colocation, antennas, towers, or other devices.
- C. **New Construction.** Planning Board approval under the Site Plan Review Ordinance for the Town of Starks, Maine is also required for construction of a new WCF.

### **5.2 Approval Authority**

In accordance with Section 5.1 above, the CEO or Planning Board (hereinafter may be referred to as "permitting authority") shall review applications for WCFs and make written findings and conclusions on whether the proposed facility complies with this Ordinance.

## **Section 6 Approval Process**

### **6.1 Pre-Application Conference**

Applicants must attend a pre-application conference with the permitting authority prior to filing an application. At this meeting, the permitting authority shall explain to the applicant the Ordinance provisions, as well as application forms and submissions to be required.

## 6.2 *Application for Expansion of an Existing WCF and/or Colocation*

All persons seeking approval as required under Section 5.1(A) shall submit an application to the CEO and at a minimum must include the following:

- A. Contact Information for the applicant and current owner of the WCF (legal name, address or principal place of business, phone, email), including any additional necessary information (Sec. 6.3.A.1 below).
- B. Documentation of the applicant's right, title, or interest in the property where the facility is sited, including name and address of the property owner and the applicant.
- C. Property tax map and lot number, street address and GPS coordinates for the WCF facility.
- D. For colocation permits, a copy of the lease/contract with the owner of the existing structure.
- E. Date the WCF was initially constructed and date when the proposed expansion and/or colocation is proposed to be completed.
- F. A copy of the FCC license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
- G. A description and construction detail of the existing and proposed WCF, including: plot plan identifying location of the tower on the property; dimensions of the tower; structural supports, if any; lighting; color; and equipment located on the structure, if any. This description shall identify all antennas and repeaters and their exact locations, and any accessory structures that are essential to operation of the facility.
- H. For a proposed expansion of a WCF, a signed statement **by an authorized party** that commits the owner of the facility, and the owner's successors in interest, to do the following:
  1. Respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response.
  2. Negotiate in good faith for shared use by third parties.
  3. Allow shared use if an applicant agrees in writing to pay reasonable charges for colocation.
  4. Require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adopting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- I. A form of surety or other performance guarantee in an amount to pay for the costs of removing the applicant's facility if it is abandoned, which may include the following performance guarantees:
  1. A certified check payable to the Town of Starks.
  2. A savings account passbook issued in the name of the Town of Starks.

3. An irrevocable letter of credit from a FDIC insured financial institution the beneficiary of which is the Town of Starks.
4. A performance bond running to the Town of Starks and issued by a surety company or insurance company licensed to do business in the State of Maine.

### **6.3 Application for New Construction and Expansions in Height by More than 20 Feet**

All persons seeking approval as required under Section 5.19(B) shall submit an application to the Planning Board and at a minimum must include the following:

- A. Contacts: The exact legal name, address or principal place of business and phone number of the following:
  1. Applicant. Documentation of the applicant's right, title, or interest in the property on which the facility is to be sited; if applicant is not a person, it shall also give the type of business entity and the state in which it is registered.
  2. Person to whom correspondence or communications in regard to the application are to be sent. Notices, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant.
  3. Person to be contacted in the event of an emergency involving the facility. This person shall be available on a 24-hour basis and authorized by the applicant to act on behalf of the applicant regarding an emergency situation.
  4. Owner of the property on which the proposed tower shall be located and of the owners(s) of the tower or structure on which the proposed facility shall be located. Written permission of the owner(s) to apply for a permit shall also be submitted along with written permission from the owner(s) of the proposed property(s) or facilities site(s) for the Planning Board, CEO, and the Town's independent consultant(s) to conduct any necessary site visit(s).
- B. Date the WCF was initially constructed and/or is proposed to be constructed.
- C. The tax map and lot number of the parcel or parcels on which the project is located.
- D. Names and addresses of abutting landowners and landowners within 1,500 feet of the site property boundaries.
- E. Permit Submittals. The applicant shall submit copies of all pertinent submittals and showings pertaining to the following:
  1. FCC permitting/licensing, including Environmental Assessments and Environmental Impact Statements as required by the national Environmental Protection Act of 1969, Section 47, and documentation from Maine Historical Preservation Commission.
  2. FAA Notice of Construction or alternative aeronautical studies.
  3. All pertinent data, assumptions and calculations relating to service coverage.
  4. Evidence that all required federal and state permit approvals have been obtained, or will be obtained prior to construction.
- F. Maps

1. Location Map. A USGS 7.5 minute topographic map showing the location of all structures and WFCs above 150 feet in height above ground level, except antennas located on roof tops, within a 5 mile radius of the proposed WCF. This requirement may be met by submitting current information (within 30 days of the date the application is filed) from the FCC Tower Registration Database.
  2. Vicinity Map at a scale of not less than 1" = 100' (or other appropriate scale as determined by the Planning Board) with topography drawn with a minimum of 10 feet contour intervals showing the entire vicinity within a 2,500 foot radius of the WCF site to include: topography; public and private roads and driveways; public water supplies and water source protection areas; buildings and structures; utilities; bodies of water; wetlands; landscape features; historic sites; habitats for endangered and threatened species, and species of special concern; property lines of the proposed facility site parcel and all abutters to the facility site parcel; any access easement or right-of-way needed for access from a public way to the facility site, and the names of all abutters or property owners along the access easement or who have deeded rights to the easement.
  3. Existing Conditions Map consisting of a recent survey of the area within 500 feet of the WCF site at a scale of not less than 1" = 50' with topography drawn with a minimum of 5 feet contour intervals, showing existing utilities, property lines, existing buildings or structures, stone walls or fence lines, wooded areas, existing wells and springs, the boundaries of any wetlands or floodplains or watercourses, and of any bodies of water included in a Shoreland Zoning District or flood areas regulated through the Floodplain Ordinance within 500 feet of the WCF site. The survey plan must have been completed, on the ground, by a land surveyor registered in the State of Maine within 2 years prior to the application date.
- G. Site Plans and Descriptions for the Proposed Facility to include site layout, grading and utilities at the same scale or larger than the Existing Conditions Map. In addition to the requirements of the Town of Starks Site Plan Review Ordinance, the site plan shall require:
1. A boundary survey for the project performed by a land surveyor licensed by the State of Maine to include GPS coordinates for WCF and the corners of the WCF site.
  2. The map shall identify: accurate dimensions of the property; existing vegetation, particularly noting height, diameter, density, quality, and type (deciduous or evergreen) of existing trees; wetlands, floodplains, streams and open bodies of water; ledge outcrops; soils data, medium intensity soil survey; all existing structures on the property; and any rights-of-way, easements, or similar encumbrances on the property; and other significant features.
  3. Description of traffic access and parking to include the location, dimensions, and materials to be used in the construction of proposed driveways, parking and loading areas, and any changes in traffic flow onto or off-site. Plans for stormwater drainage and erosion control shall be included.
  4. Plan and description prepared and certified by a professional engineer registered in Maine indicating: the location, type, dimensions, and height of the proposed facility; structural supports, if any; antenna capacity; the exact locations of any antennas and repeaters, and any other equipment located on the structure; lighting; color; on-site and abutting off-site land uses; accessory structures essential to the operation of the WCF; means of access,

setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes.

5. Certification by the applicant that the proposed WCF complies with all FCC standards for radio emissions.

#### H. Visual/Aesthetic Information

1. Elevation drawings of the proposed WCF, and any other proposed structures, showing height above ground level.
2. The tree line elevation of vegetation within the fall zone of a structure at 199 feet in height of the facility.
3. A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.
4. A narrative discussing how the WCF has been located so as to minimize visual impacts from public properties and public roads, and how vegetative screening will be maintained in the future.

#### I. Technical Documentation

1. A written description of how the proposed WCF fits into the applicant's communications network. This submission requirement does not require disclosure of confidential business information.
2. A proposed equipment plan, to include enough detail for evaluation of the proposed facility. If the Board chooses to hire an independent expert, that person may request more detail if not enough is provided to adequately evaluate the application.

#### J. Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed WCF; the evidence for which may consist of any one or more of the following:

1. No existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements.
2. Existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements.
3. Existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment; specifically:
  - a. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
  - b. The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.

- c. Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
- 4. For facilities existing prior to the effective date of this Ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this Ordinance.
- 5. The applicant has made diligent, good faith efforts to negotiate colocation on an existing WCF, building, or structure, and has been denied access.
- K. Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800)
- L. A signed irrevocable statement valid for the duration of the existence of the WCF stating that the owner of the WCF and his or her successors and assigns agree to all of the following:
  - 1. Respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response.
  - 2. Negotiate in good faith for shared use by third parties.
  - 3. Allow shared use if an applicant agrees in writing to pay reasonable charges for colocation.
  - 4. Require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adopting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- M. Evidence of financial ability to cover the costs of WCF construction, maintenance, and insurance coverage. A performance guarantee may be required as specified in the Site Plan Review and Subdivision Ordinance for the Town of Starks, Maine.
- N. A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned. In addition, prior to the issuance of a permit, the applicant shall provide a form of surety or other performance guarantee approved by the Planning Board in an amount sufficient to pay for the costs of removing the facility if it is abandoned, which may take any of the following forms:
  - 1. A certified check payable to the Town of Starks.
  - 2. A savings account passbook issued in the name of the Town of Starks.
  - 3. An irrevocable letter of credit from a FDIC insured financial institution the beneficiary of which is the Town of Starks.
  - 4. A performance bond running to the Town of Starks and issued by a surety company or insurance company licensed to do business in the State of Maine.

- O. A written five-year plan for utilization of the proposed WCF to include justification for capacity in excess of immediate needs, as well as plans for further development within the Town.
- P. The applicants must be a telecommunication provider or must provide a copy of a lease/contract with an existing telecommunication provider. A permit shall not be granted for a WCF to be built on speculation.
- Q. Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.
- R. Community Benefits.

#### **6.4 Submission Waiver**

The permitting authority may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the permitting authority finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

#### **6.5 Fees**

- A. Application Fees shall cover the Town's administrative costs in processing applications, including, but not limited to, notifications, advertising, mailings and similar costs. Fees shall be paid to the "Town of Starks" and must be provided for an application to be considered complete for review purposes. All application fees are not refundable.
- B. The Planning Board may require a Technical Review Fee to defray the Town's legal and technical costs in the review of the application and in project compliance with the Planning Board's decision and ordinance requirements. If required, the technical review must be paid to the "Town of Starks" for an application to be considered complete for review purposes. The technical review fee shall consist of a retainer of at least \$1,000 to accompany the application. This retainer shall be deposited in an account where it can be tracked. If any required contract with an independent consultant is estimated to cost more than the retainer submitted with the application, the total estimated cost for the consultant must be provided in the retainer by the applicant before the application is considered complete and review started. That portion of the review fee not used shall be returned to the applicant within 60 days of the Planning Board's decision to approve or deny the application.
- C. Application and Technical Review Fees shall be as established and maintained by the Board of Selectmen in the Town of Starks Fee Schedule.

#### **6.6 Notice of Complete Application**

- A. Upon receipt of an application, the permitting authority shall provide the applicant with a dated receipt. Within 30 days of receipt of an application the permitting authority shall review the application and determine if the application meets the submission requirements. The permitting authority shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.
- B. If the application is complete, the permitting authority shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies for the

review. If the application is incomplete, the permitting authority shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

- C. Once the application is deemed to be complete, public notice shall be given as follows:
  - 1. The permitting authority shall post a notice of the application for public review at the Town Office, and shall notify the Board of Selectmen, CEO, and Planning Board.
  - 2. The Planning Board shall notify, or shall require that the applicant notify, all abutting landowners and landowners within 1,500 feet of the site property boundaries as shown on the Assessor's records, by first-class mail, that an application has been accepted. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location of a copy of the application available for inspection, and provide the date, time, and place of the Planning Board meeting at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.
- D. Site Visit. The permitting authority may hold an on-site inspection of the site to review existing conditions, field verify the information submitted and investigate the development proposal. The Planning Board may schedule this visit either before or after the public hearing. The Planning Board will not hold an on-site inspection when the site is snow covered. If an application is pending during a period when there is snow cover, the Board will request that the applicant agree to extend the review period to allow an on-site inspection. The inability of the Planning Board to hold a site inspection due to snow cover shall be sufficient grounds for denial of an application. Written notice shall be provided to all parties entitled to notice above.

### **6.7 Public Hearing**

For applications for approval under Section 5.1(B), the Planning Board shall hold a public hearing within 30 days of the notice of the complete application. The Planning Board shall cause written notice of the date, time and place of the hearing to be given to the applicant, and shall notify, or shall require that the applicant notify, all parties receiving the notice in Section 6.6(C.2) and, in addition, shall cause a notice to be published in a newspaper of general circulation in Starks be at least 7 days prior to the hearing.

### **6.8 Approval**

- A. CEO Approval of Expansions as defined in Section 5.1(A). Within 30 days of receiving a complete application for approval under Section 5.1(A), the CEO shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The CEO shall approve the application if the CEO finds that the application complies with the provisions in Section 7.1 of this Ordinance. The CEO shall notify all abutters of the decision to issue a permit under this section. The time period may be extended upon agreement between the applicant and the CEO.
- B. Planning Board Approval of New construction as defined in Section 5.1(B). Within 90 days of receiving a complete application for approval, the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. However, if the Planning Board has a waiting list of applications that would prevent

the Planning Board from making a decision within the required 90 day time period. This time period may be extended upon agreement between the applicant and the Planning Board.

## **Section 7 Standards of Review<sup>1</sup>**

### **7.1. Approval Standards for Expansion of Existing Facility as defined in Section 5.1(A)**

An application for approval by the CEO under Section 5.1(A) must meet the following standards:

- A. The proposed WCF is an expansion, accessory use, or colocation to a structure existing at the time the application is submitted.
- B. The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- C. The proposed facility increases the height of the existing structure by no more than 20 feet.
- D. The proposed facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable.
- E. The proposed facility, to the greatest degree practicable, shall have no unreasonable adverse impact upon districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).
- F. The WCF must comply with all applicable standards of the American National Standards Institute, including ANSI EIA/TIA Standard 222 entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures," current revisions or versions as of the time of the application for the WCF.
- G. The configuration of the facility, with the exception of the height as specified in Item C. above, will not be substantially different from the configuration approved in the approval for the existing WCF.

### **7.2. Approval Standards for New Construction and Expansions as defined in Section 5.1(B)**

An application for approval by the Planning Board under Section 5.1(B) must meet the following standards:

- A. **Locational Preference.** To the extent practical, as determined by the Planning Board, new WCFs shall be located or configured with preference for colocation or location of an antenna in an existing structure. The applicant shall demonstrate that the preferences below cannot reasonably accommodate the applicant's proposed facility before a new WCF can be approved:
  1. Colocation of such a facility in connection with or as part of an existing WCF.
  2. An antenna located in an existing structure such as (for purposes of illustration) a church steeple, silo or multi-story building, with minimal indication or display of equipment outside that existing structure.
- B. **Coverage Area.** The Town of Starks must be included in the primary coverage area.

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<sup>1</sup> Applicants are encouraged to submit draft findings of fact and conclusions for CEO and Planning Board consideration.

- C. Design for Colocation. A new WCF and related equipment must be designed and constructed to accommodate expansion for future colocation of at least 3 additional WCFs or providers. However, the Planning Board may waive or modify this standard where the height limitation effectively prevents future colocation.
- D. Height. New WCFs shall not exceed the minimum height necessary to provide adequate coverage for the communications facilities proposed for use on the tower. The applicant may submit a request for additional height to accommodate future sharing and shall provide design information and data to justify such additional height. In no case shall a WCF exceed 199 feet in height.
- E. Lot Dimensional Requirements.
  - 1. Minimum Lot Size. The minimum lot size shall be the fall zone for a 199 foot WCF. The fall zone is the area on the ground within a radius from the base of a WCF equal to the total height of the WCF. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.
  - 2. Setbacks.
    - a. A new or expanded WCF must be set back at least 105% of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. The following exemptions apply:
      - i. The setback may be reduced by the Planning Board upon a showing by the applicant that: the facility is designed to collapse in a manner that will not harm other property, ice build-up and discharge will not present a public safety hazard, and any hazard guy wires or tower structure will not adversely affect public safety.
      - ii.
    - b. Existing WCFs that undergo major modifications must meet setback requirements. All WCFs shall be located a minimum of 65 feet from any residential structure located on any abutting property at the time the structure is initially constructed, unless the affected abutting property owner waives this requirement, and Monopole WCFs shall be located 500 feet from any residence located on any abutting property at the time the structure is initially constructed, unless the affected abutting property owner waives this requirement. This requirement shall not be waived with respect to the fall zone of any Monopole WCF. Any waiver shall be specifically noted on the plan and permit, and shall be recorded in the Somerset County Registry of Deeds and indexed under the name(s) of the owners of the affected abutting property.
- F. Utilization of the Site. The development must reflect the natural capabilities of the site to support the development. Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. Natural drainage areas must also be preserved to the maximum extent. The development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

- G. Landscaping. A new WCF shall be landscaped with a buffer of plant materials that screens the view of the WCF from adjacent properties. The standard buffer shall consist of a landscaped strip at least 6 feet wide outside the perimeter of the facility. The plantings shall consist of alternately spaced evergreens having a height of not less than 6 feet above the height of the ground elevation at the time of installation. The Planning Board may waive these landscaping requirements where the Board determines that the amount and type of existing on-site vegetation is adequate to fully screen the facility. Existing mature trees and natural land forms on the site shall be preserved to the maximum extent possible.
- H. Fencing. A new WCF must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers. A sign no greater than 2 square feet indicating the name of the facility owner(s) and a 24-hour emergency telephone number shall be posted adjacent to the entry gate. No Trespassing or other warning signs, and the federal tower registration plate, where applicable, may be posted on the fence or as required to meet federal requirements.
- I. Lighting. A new WCF must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting (preferably motion-sensitive lighting) may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site, to the maximum extent practicable.
- J. Color and Materials. A new WCF must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.
- K. Structural Standards. A new WCF must comply with all applicable standards of the American National Standards Institute, including ANSI EIA/TIA Standard 222 entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures," current revisions or versions as of the time of the application for the WCF.
- L. Visual Impact. A new WCF shall not have an unreasonable adverse visual impact that would be excessively out-of-character with existing buildings, structures, and land features; or that would significantly diminish the scenic value in a Historic District or Historic Building.
- M. Noise. During construction, repair, or replacement, operation of a back-up power generator at any time during a power failure, and testing of a back-up generator between 8 a.m. and 9 p.m. is exempt from municipal noise standards.
- N. Water Resources, including Public Water Supplies and Private Wells. All construction related to the facility will be limited to the minimum excavation needed to meet the requirements of the project and use techniques to avoid erosion and degradation of water resources during and after construction. The proposed facility must not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems. If the proposed WCF is within 1,500 feet of a public or private water supply, and blasting is required, the applicant shall:
  - 1. Notify the CEO, and the well-owners of the specific time when blasting will occur.
  - 2. Submit evidence of liability insurance to cover any damages to wells from the blasting.

3. Reimburse the well owner (public water supplier – Water District, Community Center, etc.) for the cost of water testing for turbidity and contaminants both prior to and following blasting activity, of required by the Planning Board.
- O. Historic and Archaeological Properties. The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places.
- P. Access Roads.
1. Vehicular access to the site must be on roads that have adequate capacity to accommodate the development.
  2. If the proposed facility does not have frontage on a public way, the access road meeting the following criteria must be constructed within a deeded right-of-way, a minimum of 50 feet in width except where access is from an existing right-of-way or private way. The access road shall be constructed to a minimum width of 15 feet. The access road shall contain a minimum depth of 15 inches of bank-run gravel and have drainage, ditches and culverts at all appropriate points.
  3. Vehicular access to and from the development must be safe and convenient.
    - a. For entrances onto public roads, the minimum sight distance in both directions shall be 10 feet per mile per hour of the speed limit.
    - b. Parking areas must be arranged so that it is not necessary for vehicles to back into the street.
  4. All access roadways shall be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation. The design shall take all practical steps possible to prevent a visible scar up or across a ridgeline visible from public streets, roads, or water bodies. The Planning Board may require the preparation and implementation of an erosion and sedimentation control plan.

### **7.3 Standard Conditions of Approval**

The following standard conditions of approval shall be a part of any approval issued by the permitting authority. Where necessary to ensure that an approved project meets the criteria of this Ordinance, the permitting authority can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include a statement that:

- A. The owner of the WCF and his or her successors and assigns agree to the following:
1. Respond in a timely, comprehensive manner to a request for information from a potential collocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response.
  2. Negotiate in good faith for shared use of the WCF by third parties.
  3. Allow shared use of the WCF if an applicant agrees in writing to pay reasonable charges for collocation.

4. Require no more than a reasonable charge for shared use of the WCF, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.
  5. Shall not install advertising on any part of the facility.
- B. Upon request by the Starks Board of Selectmen, Planning Board or CEO, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations and prove structural integrity and safety of the facility.
  - C. Construction of a WCF shall commence within one year from the date of the Town's approval, with the opportunity for a six-month extension at the discretion of the permitting authority. If construction is not begun within one year, or within the six-month extension when granted by the permitting authority, the permit shall become null and void.
  - D. After approval by the CEO or Planning Board and prior to receiving a building permit, the applicant shall provide the following to the Town of Starks:
    1. A form of surety or other performance guarantee in the amount of 125 percent of the cost of removing the WCF to be held in escrow by the Town of Starks. [See Section 6.2 (I) and Section 6.3 (N)]
    2. If required by the Planning Board, a performance guarantee in a form acceptable to the Planning Board to ensure installation of the WCF and its associated improvements in accordance with the permit approval. Prior to the release of the performance guarantee, the Board or its designee (CEO) shall determine to their satisfaction that the WCF and its associated improvements meet or exceed the design and construction requirements of the approved application. If, upon inspection, it is found that the WCF and its associated improvements have not been constructed in accordance with the approved application, the Board of Selectmen shall take any and all steps necessary to preserve the Town's rights.

## **Section 9 Amendment to an Approved Application**

Any changes to an approved application must be approved by the permitting authority, in accordance with Section 5.

## **Section 10 Damage**

In the event that a WCF is substantially damaged by a storm or other Force Majeur, the owner shall restore the facility to its most recently approved configuration, or remove it, within 180 days.

## **Section 11 Abandonment**

- A. A WCF that is not operated for a continuous period of 12 months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within 90 days of receipt of the written notice. The owner of the facility

shall have 30 days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned. If the owner of the facility cannot be notified after good faith attempts, a notice shall be placed in a newspaper of general circulation, and the timeframes in this section shall be followed.

- B. If the owner fails to show that the facility is in active operation, the owner shall have 60 days to remove the facility. If the facility is not removed within this time period, the Town of Starks (hereinafter referred to as "Town") may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.
- C. If a surety has been given to the Town to ensure removal of the facility, the owner of the facility may apply to the Town of Starks Board of Selectmen for release of the surety when the facility and related equipment are removed to the satisfaction of the CEO, and all costs have been paid. Any balance of funds remaining after the land has been returned to the pre-construction condition shall be returned to the owner.
- D. If a surety has been given to the Town and the cost of removal exceeds the surety, the owner of the facility shall be responsible for payment of the additional costs to the Town, such payment to be made within 14 days of the request by the Town for payment.

## **Section 12 Appeals**

Any person aggrieved by a decision of the CEO or the Planning Board under this Ordinance may appeal the decision to the Starks Board of Appeals, as an administrative appeal under the Town of Starks Appeals Ordinance. Written notice of the appeal shall be filed within 30 days of the date of a written decision by the CEO or the Planning Board. The notice of appeal shall clearly state the reasons for the appeal. The review by the Board of Appeals of a Planning Board or CEO decision shall be based exclusively on the written record of the decision, and the Board of Appeals shall reverse the decision only if it makes a positive finding that the decision was clearly contrary to the requirements or standards of this Ordinance. If the Board of Appeals finds that the written record is insufficient to support adjudication of the appeal, it shall remand the decision to the decision-making body (CEO or Planning Board) for clarification.

## **Section 13 Administration, Enforcement, and Penalties**

- A. The CEO shall enforce this Ordinance. If the CEO finds that any provision of this Ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The CEO shall order correction of the violation and may take any other legal action to ensure compliance with this Ordinance.
- B. The Starks Board of Selectmen is authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action. Such agreements shall not allow a violation of this Ordinance to continue unless: there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to

its detriment and there is no evidence that the owner acted in bad faith; the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

- C. Any person who owns or controls any building or property that violates this Ordinance shall be fined in accordance with Title 30-A M.R.S.A. § 4452. Each day such violation continues after notification by the CEO shall constitute a separate offense.

## **Section 14 Conflict, Severability and Consistency with State and Federal Laws**

- A. Conflicts with other Ordinances. Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.
- B. Severability. The invalidity of any part of this Ordinance shall not invalidate any other part of this Ordinance
- C. Consistency with Federal Law. These regulations are intended to be consistent with state and federal law, particularly the Telecommunications Act of 1996 in that: (1) they do not prohibit or have the effect of prohibiting the provision of personal wireless services; (2) they are not intended to be used to unreasonably discriminate among providers of functionally equivalent services; and (3) they do not regulate personal wireless services on the basis of environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

## **Section 15 Definitions**

The terms used in this Ordinance shall have the following meanings:

**Antenna:** Any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

**Colocation:** The use of a support structure or an alternative support structure by more than one wireless communication provider.

**Expansion:** The addition of antennas, towers, or other devices to an existing structure.

**FAA:** The Federal Aviation Administration, or its lawful successor.

**FCC:** The Federal Communications Commission, or its lawful successor.

**Fall Zone:** The area on the ground within a radius from the base of a WCF equal to the total height of the WCF. The Fall Zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

**Height:** The vertical distance measured from the base of the support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the height.

**Historic or Archaeological Resources:** Buildings or sites that are listed in the National Register of Historic Places or eligible for listing on the National Register, or are otherwise officially identified as significant by state or federal agencies or the Town of Starks.

**Repeater:** A small receiver/relay transmitter of not more than twenty (20) watts output designed to provide service to areas that are not able to receive adequate coverage from the primary sending and receiving site in a wireless communications network.

**Parabolic Antenna (also known as a satellite dish antenna):** An antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

**Principal Use:** The use other than one which is wholly incidental or accessory to another use on the same premises.

**Support Structure:** Any built structure, including guy wires and anchors if used, to which antennas and associated hardware are mounted. Support structures include but are not limited to:

1. Lattice tower - A support structure that consists of a network of crossed metal braces, forming a tower, which is usually triangular or square in cross section, not normally requiring guy wires and anchors.
2. Guy tower - A support structure such as a pole or narrow metal framework that is held erect by use of guy wires and anchors.
3. Monopole - A support structure that consists of a single pole sunk into the ground and/or attached to a concrete pad or other foundation.
4. Mast - A type of mount that is thinner and shorter than a monopole.
5. Existing nonresidential structure - An existing structure, having an original principal use other than a WCF, to which wireless facility components may be attached under certain conditions.

**Targeted Market Coverage Area:** The area which is targeted to be served by the proposed WCF.

**Unreasonable Adverse Visual Impact:** End results of a proposed project that would be excessively out-of-character with existing buildings, structures, and features; or would significantly diminish the scenic value in a Historic District or Historic Building.

**Wireless Communications Facility (or Facility) (WCF):** Any structure, antenna, tower, or other device which provides voice, data, radio, or television transmission, personal wireless service, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio and enhanced special mobile radio communications, common carrier wireless exchange access services, common carrier wireless exchange phone services and personal communications service or pager services. The definition of WCF includes personal wireless service facilities as that term may be defined in Title 47, United States Code, Section 332 (c)(7)(C), as it may be amended now or in the future.

## Section 16 Effective Date

This Ordinance becomes effective on the date the Ordinance is adopted by Town Meeting or a referendum vote.