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MEMO

To: Board of Commissioners
Cc: Don Adams, County Manager
From: Michael Poston, Planning Director
Date: December 9, 2016

RE: Wireless Communication Ordinance

In December of 2015 the Board of Commissioners conducted their first quasi-judicial hearing under the recently amended Telecommunication Ordinance. Based on that experience, the Commissioners requested that the Planning Department Staff to work with the Planning Board to examine the ordinance in order to make the process more streamlined and less cumbersome. Staff began the review process in April of 2016 and presented proposed amendments to the Planning Board in September of 2016. The final document was created after three months of review and discussion from the Planning Board. The Planning Board made their recommendation to approve the final draft of the proposed amendments to the Board of Commissioners at their November 15, 2016 meeting. The amendment highlights are listed below and show the chronology of the amendment process. In addition, the Planning Board's Statement of Consistency is attached. I am requesting that the Board of Commissioners call for a public hearing regarding these amendments on January 23, 2016.

<u>November amendment highlights (Memo dated November 7, 2016)</u>

1. Section 30-20 - Page 2-Added a definition of broadband. Used the NC Broadband Definition.
2. Section 30-23(b)(2)(b)-Page 15- Changed to read Planning Department Recommendation.
3. Section 30-22(a)(2)- Page 6- Added an example for what type of documentation could be provided.
4. Section 30-23 (a)(3)-Page 7- Added back to the section "and its inhabitants".

<u>October amendment highlights (Memo dated October 6, 2016)</u>

1. Section 30-20- Page 3- The new definition is for Jackson County Board of Commissioners. The definition is being created to acknowledge that all of our municipalities have adopted the County's

Wireless Ordinance and when applications are received within municipal zoning jurisdictions the governing body of that municipality will sit as the quasi-judicial body.

2. Section 32-22 (a)(2)- Page 6- Replaced the word documented with documentation.
3. Section 30-23(b)(3)(a)- Page 16- Corrected phrase to read "hearing on application shall be scheduled".
4. Section 30-23-(b)(3)(b)(3)- Page 16- Corrected phrase to read "meets all requirements".
5. Section 30-23 (d)(2)(b)(2)-Page 19- Corrected phrase to read "written appeal to the Board of Adjustment".

<u>September amendment highlights (Memo dated September 2, 2016)</u>

1. Section 30-21 (d), Page 5- Allowing state and local emergency management towers to be exempt from all approval processes (d)(4).
2. Section 30-21 (d) and (e), Page 5 and 6- Moving the approval of facilities located on County owned property from exempt to administrative review (e)(9). New language to allow approvals of facilities located on State owned property as administrative approvals (e) (9). New language to allow facilities used exclusively for providing broadband services as administrative approval so long as the structure does not exceed 120 ft. in height and does not create a new access road to the property.
3. Section 30-22 (a), page 6- Amends language in (a)(2)(3). The location hierarchy is a recommended list and this was one area of the hearing process that was cumbersome. The proposed amendments are designed to still provide guidance to applicants regarding the County's recommended preference in site location while making the process more efficient.
4. Section 30-22 (c), page 7- Removes this subsection. This is another area that was cumbersome and redundant as the County already requires a detailed explanation regarding site locations in 30-22 (a)(2).
5. Section 30-22 (g), page 8- Amends the setback requirements from the height of the wireless structure plus 10 % from the adjacent property to the wireless structure's engineered fall zone plus 10% (as sealed by a licensed engineer) (g)(1). The amended section also moves and clarifies the accessory structure setback in the new (g)(2).
6. Section 30-22 (h)-(m), pages 8-9 (formerly Section 30-23 #s 19-23, 26)- These requirements were located in Section 30-23 under application and review process. The reason for moving the requirements is that they are standards not application or process requirements. With exception to (h) the language has not changed, it has just been moved within the document. Subsection (h) has been modified to reflect the requirement of accessory structures. The concealment technologies are encouraged and the Board of Commissioners can make that a condition of approval (Section 30-22 (d)(3).
7. Section 30-23 (b)(3)(a)(b), pages 15-16- These amendments clarify that there is only a quasi-judicial hearing for a conditional use permit. In this situation the public hearing is considered ex-parte

communication and any thoughts or information shared at that hearing cannot be considered in a quasi-judicial hearing. For this reason, it is better to clarify that the quasi-judicial hearing is the only hearing that is held to consider a conditional use application. I will note that all quasi-judicial hearings are open to the public, but only those parties with standing may participate in the hearing process.

8. Section 30-23 (b)(3)(iii), page 16- Amends the standard of findings related to diminution in value of adjacent properties. This standard as currently written is very difficult for the Board of Commissioners, or any board that uses this criterion as a required finding, in a conditional use approval process, to approve any application. The proposed language still applies the criterion, but the finding is shifted to an opposing party to show diminution in value.

9. Section 30-23 (b)(5), pages 16-17- The amendment removes the ability to resubmit the same or substantially similar applications within a year of denial of the original application. Since this is a quasi-judicial process and not a legislative process there is not an ability to re-hear the same or substantially similar application. If denied, an applicant can appeal the decision to Superior Court.

10. Section 30-23 (c)(2)(b) and (c)(6)- page 19- Amends the text to have the Board of Adjustment hear appeals of Staff reviews instead of the Planning Board. There is a need to consolidate our quasi-judicial functions across our many boards. This amendment will allow the Planning Board to focus on legislative based policy issues and the Board of Adjustment focus on quasi-judicial cases.

November 15, 2016

JACKSON COUNTY PLANNING BOARD

Statement of Consistency pursuant to G.S. 153A-341

Re: Proposed amendment to the Wireless Communications Ordinance.

The Jackson County Planning Board has found the amendments to the ordinance are supported by the Jackson County Land Development Plan.

We find the proposed amendments to the Wireless Communications Ordinance to be consistent with the goal identified on page 42 of Jackson County's Land Development Plan. More specifically:

- To promote twenty-first century infrastructure (broadband etc.) to meet the needs of high-tech businesses.

We therefore consider the proposed amendments to be reasonable and in the public interest.

Signed: _____

Chairman, Jackson County Planning Board

Chapter 30 - TELECOMMUNICATIONS

ARTICLE I. - IN GENERAL

Secs. 30-1—30-18. - Reserved.

ARTICLE II. - WIRELESS COMMUNICATIONS ORDINANCE[1]

Footnotes:

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Editor's note—Ord. No. O2008-02, §§ I—XIII, adopted Aug. 15, 2015, amended Ch. 30, Art. II, §§ 30-19—30-50, in effect repealing and reenacting said article as set out herein. Former Art. II pertained to similar subject matter and derived from Ord. of 3-28-2002 and Ord. No. 008-02, §§ 1, 4—29, 31—33, adopted Feb. 18, 2008.

Sec. 30-19. - Purpose and legislative intent.

The purpose of this wireless communications ordinance is

(1) To provide for the public health, safety and welfare by ensuring that residents, businesses and public safety operations in Jackson County have reliable access to wireless communications networks and mobile broadband communications services while also providing for the protection of Jackson County's communities, residents, and natural resources;

(2) To encourage colocation of communications facilities on existing towers;

(3) To encourage the use of existing buildings and structures as locations for communications facilities; and

(4) To establish a fair and efficient process for review and approval of applications.

To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless communication facilities complies with all applicable federal laws, including without limitation Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, and to assure compliance with applicable state laws, including Session Law 2013-185, Jackson County adopts this wireless communications ordinance. By enacting this article it is Jackson County's intent to ensure Jackson County has sufficient wireless infrastructure to support public safety communications throughout Jackson County and to ensure access to reliable wireless communications services throughout all areas of Jackson County while protecting communities, residents, and natural resources.

(Ord. No. O2008-02, § I, 8-15-2015)

Sec. 30-20. - Definitions.

For the purposes of this article, the following definitions apply:

Abandonment means cessation of use of a wireless support structure for wireless communications activity for at least the minimum period of time specified under this article.

Accessory equipment means any equipment serving or being used in conjunction with a wireless communication facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

Administrative approval means approval that the planning department is authorized to grant after administrative review.

Administrative review means non-discretionary evaluation of an application by the planning department. This process is not subject to a public hearing. The procedure for administrative review is set forth in section 30-23(d) of this article.

Antenna means communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

Application means a formal request submitted to the county to construct or modify a wireless support structure or a wireless facility.

Base station means a station at a specific site authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics.

~~Board means Jackson County Board of Commissioners.~~

Broadband is another term for bandwidth, or the amount of data that can be sent through a connection to access high-speed internet.

Building permit means an official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.

Camouflage means the use of any combination of materials or coloration that disguises wireless support structures or towers and antennas as something else (such as a tree).

Carrier on wheels or cell on wheels (COW) means a portable self-contained wireless facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.

Co-location means the placement or installation of wireless communication facilities on existing structures, including electrical transmission towers, water towers, buildings and other structures capable of structurally supporting the attachment of wireless communication facilities in compliance with applicable codes.

Communications means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

Concealed wireless facility means any wireless facility that is integrated as an architectural feature of an existing structure or any new wireless support structure designed to conceal the presence of antennas or towers so that the purpose of the facility or wireless support structure is not readily apparent to a casual observer.

County means Jackson County, NC.

Electrical transmission tower means an electrical transmission structure used to support high voltage overhead power lines. The term shall not include any utility pole.

Eligible facilities request means a request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

Equipment compound means an area surrounding or near the base of a wireless support structure within which are located wireless communication facilities.

Existing structure means a wireless support structure, erected prior to the application for collocation or substantial modification under this article, that is capable of supporting the attachment of wireless

communication facilities, including, but not limited to, electrical transmission towers, buildings and water towers.

FAA means the Federal Aviation Administration, or it's duly designated and authorized successor agency.

Fall zone means the area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

FCC means the Federal Communications Commission, or it's duly designated and authorized successor agency.

Height means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightning protection device.

Jackson County Board of Commissioners means the governing body of Jackson County with the exception of when applications for conditional use permits are located within the zoning jurisdiction of a municipality. In these cases, Jackson County Board of Commissioners means the governing body of the municipality in which the zoning jurisdiction is located.

Monopole means a single, freestanding pole-type structure supporting one or more antennas. For the purposes of this article, a monopole is not a utility pole.

Ordinary maintenance means ensuring that wireless communication facilities and wireless support structures are kept in good operating condition. Ordinary maintenance includes inspections, testing and modifications that maintain functional capacity and structural integrity; for example, the strengthening of a wireless support structure's foundation or of the wireless support structure itself. Ordinary maintenance includes replacing accessory equipment within an existing equipment compound and relocating existing antennas to different height levels on an existing monopole or tower upon which they are currently located, but does not include replacing existing antennas with new antennas of any size, weight, shape and/or color. Ordinary maintenance includes replacement of damaged equipment with similar equipment provided the replacement equipment does not exceed the height, diameter, weight, or other attribute of the original equipment by more than ten percent. ordinary maintenance does not include substantial modifications.

Planning board means the Jackson County Planning Board

Planning department means the Jackson County Planning Department and its staff.

Planning director means the Jackson County Planning Director or his/her designee.

Replacement pole means the pole of equal proportions and of equal height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless communication facilities or to accommodate collocation. Requires removal of the wireless support structure it replaces.

Search ring means the area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Substantial modification means the mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

(1) Increasing the existing vertical height of the structure by the greater of (i) more than ten percent or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

(2) Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support

structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

(3) Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

Tower means a lattice-type or monopole structure, guyed or freestanding, or other structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal. A tower is a wireless support structure as defined in this article.

Utility pole means a structure owned and/or operated by a public utility, municipality, electric membership corporation or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

Water tower means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

Wireless communication facility means the set of equipment and network components, inclusive of the underlying wireless support structure or tower, and including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless communications services to a discrete geographic area.

Wireless communication facility permit means the permit issued by the Jackson County Board of Commissioners following the review and approval process set forth in this article allowing the construction of a new wireless support structure or a substantial modification as defined in this article. The permit is a conditional use permit and the process for obtaining such a permit, as set forth in section 30-22(a) of this article, requires a public hearing.

Wireless support structure means a new or existing structure, including but not limited to a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless communication facilities.

(Ord. No. O2008-02, § II, 8-15-2015)

Sec. 30-21. - Approvals required for wireless communication facilities and wireless support structures.

(a) Overall procedure and desired outcomes for approving and issuing permits for wireless communication facilities. In order to ensure that the placement, construction, and modification of wireless communication facilities protect the county's health, safety, public welfare, environmental features, the nature and character of communities and neighborhoods and other aspects of the quality of life within the county, while providing an adequate level of wireless communications service within the county, Jackson County hereby adopts an overall policy with respect to the review, approval and issuance of permits for wireless communication facilities for the express purpose of achieving the following outcomes:

(1) Implementing an application process for person(s) seeking approval of wireless communication facilities.

(2) Requiring review of applications for any new wireless communication facilities as required or otherwise specified in this article.

(3) Establishing a procedure for examining an application and issuing the required permit(s) for wireless communication facilities that is both fair and consistent.

(4) Promoting, and requiring wherever possible, the sharing and/or collocation of wireless communication facilities among service providers.

(5) Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of wireless communication facilities in such a manner as to minimize the physical and visual

impact on the community, including, but not limited to, the use of concealment technology and camouflaging.

(6) Providing for a level of service that provides access to adequate wireless communication throughout Jackson County.

(7) In approving a wireless communication facilities, the county shall find that the proposed facility site is the most appropriate in regards to being the least visually intrusive within the community.

(b) Requirements for review and approvals.

(1) No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of a wireless communication facilities as of the effective date of this section without having first obtained the required permit for a wireless communication facilities as defined in section 30-20 or an administrative review as defined in section 30-20, whichever is applicable.

(2) If constructed as required by permit, all legally permitted wireless communication facilities that existed on or before the effective date of this section shall be allowed to continue as they presently exist, provided however, that they are operating as originally permitted and that any modification of an existing wireless communication facilities permitted by this article complies with the applicable provisions of this article.

(3) Ordinary maintenance of a wireless communication facilities as defined in this article and that does not exceed the conditions of the wireless communication facilities permit does not require an application for a wireless communication facilities permit but may require a building permit. Additional construction or site modification shall not be considered to be ordinary maintenance.

(c) Exclusions. The following shall be exempt from this section:

(1) Any facilities expressly exempt from the county's siting, building and permitting requirements.

(2) Any reception or transmission devises expressly exempted under the communications Act of 1996.

(3) Facilities used exclusively for private, noncommercial radio and television reception and private citizen's bands, licensed amateur radio and other similar noncommercial communications.

(4) Facilities used exclusively for providing unlicensed spread spectrum technologies, such as IEEE 802.11a, b, g services (e.g. Wi-Fi and Bluetooth) where the facility does not require a new tower or increase the height of the structure to which it will be attached.

(d) Exempt from all approval processes. The following are exempt from all Jackson County plan approval processes and requirements:

(1) Removal of equipment on an existing wireless tower or wireless communication facility.

(2) Ordinary maintenance of existing wireless communication facilities and wireless support structures, as defined in this article; and

(3) COWs placed for a period of not more than 120 days at any location within Jackson County or after a declaration of an emergency or a disaster by the governor and/or by the Jackson County Board of Commissioners.

(4) Facilities owned or leased by Jackson County or county authorities, e.g. airport authority.

(5) Facilities used exclusively for state and local emergency management communications systems.

(e) Administrative review and approval. The following types of applications are subject to the application and administrative review process as provided in section 30-23(d). No additional plan review is necessary:

(1) Concealed wireless communication facilities that are 60 feet or less in height, in any location;

(2) COWs, if the use of the COW is either not in response to a declaration of an emergency or disaster by the governor and/or by the Jackson County Board of Commissioners, or will last in excess of 120 days;

(3) Collocations;

(4) Facilities used exclusively for providing unlicensed spread spectrum technologies, such as IEEE 802.11a, b, g services (e.g. Wi-Fi and Bluetooth) where the facility requires a new tower or increases the height of the structure to which it will be attached;

(5) Wireless communication facilities placed on utility poles;

(6) Placement of new transmission equipment on an existing wireless support structure or tower; and

(7) Replacement of transmission equipment on an existing wireless support structure or tower or base station that does not result in a substantial modification as defined in this article. This includes both "like kind" replacement and upgrades with dissimilar equipment.

(8) Facilities used exclusively for providing broadband services, provided that the structure to which facilities are attached does not exceed 120 feet in height and does not require the construction of an access road to the property.

(9) Facilities owned by the State of North Carolina.

(f) Wireless communication facilities permit (conditional use permit). The following types of applications are subject to the application and review process as provided in section 30-23(a).

(1) New wireless support structures, including towers;

(2) Substantial modifications to existing wireless communication facilities.

(Ord. No. O2008-02, § III, 8-15-2015)

Sec. 30-22. - Standards for wireless communication facilities.

(a) Location of wireless communication facilities.

(1) It is recommended that applicants for all wireless communication facilities locate, site and construct said wireless communication facilities in accordance with the following priorities, in order:

a. On existing wireless support structures without substantial modification of the tower or structure.

b. On existing wireless support structures with substantial modification(s).

c. On existing structures other than wireless support structures, such as electrical transmission towers and buildings, capable of accommodating the facilities.

d. On properties in areas developed for business use.

e. On properties in areas developed for rural use.

f. On properties in areas developed for residential use.

(2) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation and documentation (i.e. intermodulation study)~~and justification~~ must be provided in the application as to why a site of a~~ll~~ higher priority designation~~s~~ was not selected. ~~The applicant must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site.~~

(3) ~~Notwithstanding the above, t~~The county may approve any site located within an area in the above list of priorities, provided that the county finds that the proposed site is in the best interest of the health, safety and welfare of the county and its inhabitants~~, will not have a deleterious effect on the nature and character of surrounding properties and the community and is otherwise in compliance with this article.~~.

(b) Type and height of wireless support structures and towers.

(1) The usual maximum height for wireless support structures shall be 100 feet. The Jackson County Board of Commissioners may approve increases in wireless support structure height up to a maximum height of 180 feet based on a showing of need and after consideration and satisfaction of the other requirements of this article.

(2) Wireless support structures and towers may be monopole or lattice type.

(3) Wireless support structures and towers may be located on a protected mountain ridge as defined in the Jackson County Mountain and Hillside Development Ordinance provided that:

a. The wireless support structure does not extend more than 20 feet above the average height of the tree canopy within 100 feet of the tower site. If any antenna extends more than two feet from the side of the support structure, the portion of the tower extending above the vegetative canopy shall be camouflaged to appear like the top of a coniferous tree with all antennas concealed within simulated foliage

b. The wireless support structure or tower is not visible from a public road within one-half mile of the proposed site.

c. There is no other wireless support structure or tower located on a ridge within one mile of the proposed site.

d. The proposed wireless support structure or tower is a monopole.

e. The proposed wireless support structure or tower is not visible from and within two miles of the Blue Ridge Parkway.

f. There are no other structures, including electrical transmission towers, within the search area capable of accommodating the wireless communications equipment.

(c) ~~Alternative locations. The application shall consider, identify, and assess reasonable possible alternative locations, heights, designs, and technologies to explain why the proposed facility is deemed preferable to those alternatives.~~

(d) Visibility and noise of wireless communication facilities.

(1) Lighting. Wireless communication facilities shall not be artificially lighted or marked, except as required by federal regulations. If lighting is legally required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. For any wireless communication facilities for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least one mile in a level-terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA. If lighting is required by the FAA or other government agency, then such lighting shall be installed pursuant to the FAA or other government agency standards. The applicant shall present the options for selection by the county, being mindful of the impacts of the proposed lighting upon people whose residences are located at higher elevations.

(2) Retrofitting. In the event a wireless communication facilities that is lighted is modified, at the time of the modification the county may require that the tower be retrofitted with the technology set forth in the preceding subsection.

(3) Camouflage/concealment. All new wireless communication facilities are encouraged to utilize camouflage and/or concealment techniques to the maximum extent feasible. Wireless communications facilities to be located within residential areas, rural areas, and scenic areas are encouraged to employ camouflage or concealment techniques.

(4) Wireless communication facilities finish/color. Structures shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this section and subject to FAA requirements.

(5) Noise. All facilities at a wireless communication facilities, regardless of the owner of the facilities, shall comply with the county's noise control regulations, without exception.

(e) Security of wireless communication facilities. All wireless communication facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

(1) All wireless communication facilities, including antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and

(2) Transmitters and communications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

(f) Signage. Wireless communication facilities shall contain a sign no larger than four square feet shall be installed to containing the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

(g) Setbacks.

(1) ~~All proposed wireless communication facilities be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: a distance equal to the height of the proposed wireless support structure plus ten percent of the height of the wireless support structure, or the existing setback requirement of the underlying zoning district, whichever is greater.~~ Unless otherwise stated herein, each wireless support structure shall be set back from all property lines a distance equal to its engineered fall zone plus 10 percent. ~~Any accessory structure shall be located within the footprint as approved in the communications facility permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated.~~ The setback shall be measured from the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile. ~~Setbacks may be reduced upon receipt of a written approval from the owner(s) of abutting property.~~ Further, the nearest portion of any new access road leading to a wireless communication facilities shall be no closer than 15 feet to the nearest property line.

(2) Accessory structures shall be located within the footprint of the approved facility and meet the minimum property line setbacks for the district or 30 feet from adjacent property lines whichever is more restrictive.

(3) There shall be no development of habitable buildings within the wireless support structure setback set forth in the preceding subsection.

(h) The accessory structures associated with wireless communication facilities shall maximize the use of building materials, colors, and textures designed to blend with and harmonize with the natural surroundings.

(i) All utilities at a wireless communication facilities site shall be installed underground if practical and in compliance with all laws, ordinances, rules and regulations of the county, including

specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

(j) At a wireless communication facilities site an access road and turnaround space for an emergency vehicle shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road design and construction shall comply with the private road standards set forth in the Jackson County Subdivision Regulations. Maintenance of the access roads shall be provided to assure vehicular access to the site at all times. All erosion control and storm water management facilities shall be maintained at all times. A maintenance log that documents inspections of the site and access roads shall be maintained at the communications facility site. The required maintenance log shall be placed in a location accessible at all times to the Jackson County employees charged with review of the log. Inspections shall made at least quarterly by the owner/lessee of the site to confirm that the access road and site are maintained with no erosion or storm water issues and that all equipment is in good order. The employee of the site owner/lessee conducting the inspection shall note the date of the inspection and condition of the site and access road on the inspection log. Inspections logs shall be reviewed at least biennially by the Jackson County Planning Department. Any failure to maintain the inspection log and/or to maintain the erosion control and storm water management measures at the site and on the access roads shall be considered a violation of this article.

(k) All wireless communication facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified, or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the county, state, or United States, including, but not limited to, the most recent editions of the ANSI Code, National Electrical Safety Code, and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

(l) A holder of a wireless communication facilities permit granted under this section shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the county or other governmental entity or agency having jurisdiction over the applicant.

(m) A building permit shall not be issued for construction of the wireless support structure unless there is an FCC authorized or licensed spectrum carrier which has indicated it will be installing equipment to use such spectrum on the wireless support structure.

(Ord. No. O2008-02, § IV, 8-15-2015)

Sec. 30-23. - Application and review process.

(a) Wireless communication facilities permit (conditional use permit) application requirements.

(1) All applications for a wireless communication facilities permit (conditional use permit) shall comply with the requirements set forth in this section.

(2) There shall be a pre-application meeting with the planning director for all wireless communication facilities permit applications. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process and certain issues or concerns the county may have. A pre-application meeting may also include a site visit, if there has not been a prior site visit for the requested facility.

(~~2~~3) The applicant shall be notified by the planning department in writing within 15 working days of submission of an application as to the completeness of the wireless communication facilities application and any deficiencies. An amended application shall be required to correct any deficiencies. In the event the application is resubmitted with correction and denied again, the wireless communication facilities permit application is not refundable.

(~~3~~4) A wireless communication facilities permit shall be considered a conditional use permit and shall be subject to the review and approval processes mandated for such permits. The board may, at its discretion, delegate or designate other official agencies or officials of the county or outside consultants to accept, review, analyze, evaluate and make recommendations to the board with respect to the granting or not granting or revoking wireless communication facilities permits for wireless communication facilities. However, outside consultants shall have no authority to make or change policy for the county.

(~~4~~5) When placing wireless communication facilities or wireless support structures on government-owned property or facilities, only noncommercial wireless carriers and users are exempt from the permitting requirements of this section.

(~~5~~6) No wireless communication facilities or wireless support structures shall be installed, constructed or modified until the wireless communication facilities permit has been approved and a building permit has been issued.

(~~6~~) ~~The application (including all accompanying documents) and any and all representations made by or on behalf of the applicant on the record during the application and hearing process, whether written or verbal, shall be sworn, accurate, complete, detailed, and non-conclusory and shall be deemed to have been relied upon in good faith by the county. Any verbal representation shall be treated as if it were made in writing.~~

~~(7) An application for a wireless communication facilities permit shall be signed on behalf of the applicant by the person vested with the authority to bind and commit the applicant to the conditions of the permit, with the person(s) preparing and signing the application and its accompanying documents being competent to make and having knowledge of the representations made therein and attesting under oath to the truth and completeness of the representations.~~

~~(8) There shall be a pre-application meeting with the planning director for all wireless communication facilities permit applications. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process and certain issues or concerns the county may have. A pre-application meeting may also include a site visit, if there has not been a prior site visit for the requested facility.~~

(~~7~~8) The applicant must provide documentation to verify it has the right to proceed as proposed on the site. This requires an executed copy of the lease with the landowner or landlord or a signed letter of agency acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.

(~~10~~9) The application shall include a statement in writing:

a. That the applicant's proposed wireless communication facilities shall be maintained in a safe manner, and in compliance with all conditions of the wireless communication facilities permit, without exception, unless specifically granted relief by the board in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable county, state and federal laws, rules, and regulations; and

b. That the construction of the wireless communication facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the state.

c. The applicant acknowledges and understands that should the facility not be used for a period of 180 days, the applicant will remove the facility at its expense within 90 days of abandonment as set forth in section 30-27 of this article.

(~~11~~9) Where an engineering certification is required in the application materials, such certification shall bear the signature and seal of a professional engineer licensed in North Carolina.

(~~12~~10) In addition to all other information required by this article, all applications shall contain the following information:

a. Ownership and management:

1. The name, address and phone number of the person preparing the application;

2. The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;

b. The ~~postal~~ 911 address and tax map parcel number of the property;

c. A copy of the FCC license applicable for the intended use of the wireless communication facilities;

d. Written acknowledgement that any new wireless support structure facility shall be structurally designed to accommodate a minimum of three antenna arrays and shall be managed so as to not restrict, prevent or prohibit competition among carriers. Further, applicant acknowledges that any charges made to other users of the facility, shall be reasonable and shall not exceed those charges made by other facility users in Jackson County using similar facilities.

e. The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new wireless support structure that it constructs;

f. A site plan depicting the following:

1. The zoning district or designation in which the property is situated, if applicable;

2. The size of the property footprint on which the proposed facility to be built or attached is located, stated both in square feet and lot line dimensions, topography of the subject property and the adjacent properties, and a survey showing the location of all lot lines. The location, size and height of all existing and proposed facility on the property on which the facility is to be located and adjoining properties;

3. The footprint and type, location and dimensions of any access drive, camouflage, landscaping buffers, fencing and any other improvements exiting on or proposed for the site;

4. Plans for any access road to be constructed to provide access to the site; and

5. Erosion control and storm water management plans for the proposed access road and the facility site.

6. A drawing showing a circle around the proposed facility equal to the setback requirements of Jackson County, if any; for such a facility.

7. A drawing showing any landscaping proposed for the site by the applicant.

g. Elevations showing the profile or the vertical rendition of the wireless support structure identifying proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the pre-existing grade, surrounding trees, materials, camouflage, color and lighting.

h. The azimuth, size and center line height location of all proposed antennas on the supporting structure;

i. Technical information regarding noise and/or sound generated by any generators or other equipment to be used on site, if applicable; if multiple generators are to be used, then the

data should show the cumulative impact of noise generated. A specification sheet from the generator manufacturer providing this information is sufficient to meet this requirement.

j. Safety:

1. If substantially modifying an existing wireless communication facilities

(i) The age of the facility in years, including the date of the grant of the original permit;

(ii) A description of the type of tower, e.g. guyed, self-supporting lattice or monopole;

k. A structural report certified and signed by a professional engineer licensed to do business in North Carolina and bearing that engineer's currently valid stamp, showing the structural adequacy of the proposed or existing structure to accommodate the proposed wireless communication facilities, including any equipment shelter, unless the equipment shelter is located on the lowest floor of a building;

(~~13~~11) Compliance with FAA regulations. Applicant shall comply with all FAA regulations and shall supply any FAA determination for the proposed site. This applies to any modification to a pre-existing tower that adds additional height to the structure.

(~~14~~12) ~~Construction of a new wireless communication facility or tower versus co-location.~~

~~a. The applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing wireless support structures or the use of alternative buildings or other structures within the county that are at or above the surrounding tree height or the tallest obstruction and are within the search ring of the proposed wireless support structure. Jackson County may require copies of written requests and responses for shared use to be provided to the county in the application, along with any letters of rejection stating the reason for rejection. The applicant shall provide information necessary to determine whether co-location is reasonably feasible based upon the available space on existing and approved wireless support structures.~~

~~b. An intermodulation study may be required by Jackson County to justify design claims as related to interference. A claim of interference because of a need to have greater than six feet of vertical clearance between facilities, measured from the vertical centerline of one array to the vertical centerline of another, must be proven by technical data showing that there is no technological alternative that would enable the service to be provided that would require less vertical space, and not merely verbal or written assertions.~~

The owner of a proposed new wireless support structure, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed wireless support structure by other wireless service providers in the future. Failure to abide by the conditions outlined above may be grounds for revocation of the wireless communication facilities permit.

(~~15~~13) In order to better inform the public, in the case of a new wireless support structure (tower), the applicant shall conduct a "balloon test" prior to the initial public hearing on the application. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a ten-foot length, brightly colored balloon at least three feet in diameter at the maximum height of the proposed new wireless support structure (tower).

a. At least 14 days prior to the conducting of the balloon test, the applicant, in coordination with the planning department, shall cause a sign to be erected so as to be clearly visible from the public road nearest the proposed site and shall be removed no later than 14 days after the conduct of the balloon test. The sign shall be readable from the road by a person with 20/20 vision.

b. Such sign shall be placed off, but as near to, the public right-of-way as is possible.

c. Such sign shall contain the location, purpose, times and date(s) of the balloon test and contact information.

d. The dates (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date), times, purpose, and location of this balloon test shall be advertised by the applicant seven and 14 days in advance of the first test date in a newspaper with a general circulation in the county and as agreed to by the county. The applicant shall inform the planning department in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours between 10:00 a.m. and 2:00 p.m. on the dates chosen. The primary date shall be on a weekend, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with photographs from various locations of the balloon shall be provided with the application. Locations from which photographs are to be taken shall be reviewed and approved by the planning department.

e. The applicant shall provide written notice to all property owners and residents of property located within 2,000 feet of the nearest property line of the subject property of the proposed construction of the wireless support structure (tower) and of the date(s), location, and time(s) of the balloon test. Such notice shall be provided at least 14 days prior to the conduct of the balloon test and shall be delivered by first class mail to a resident at the address of such property and to the owner at the mailing address for such owner as listed in the Jackson County property records.

(~~16~~14) All applications for proposed wireless support structures shall contain a demonstration that the facility is sited and designed so as to create the least visual and physical intrusiveness reasonably possible given the facts and circumstances involved, and thereby will have the least adverse visual and physical effect on the environment and its character, on existing vegetation, and on the community in the area of the wireless support structure. The county expressly reserves the right to require the use of camouflage and/or concealment technology or techniques to achieve this goal and such shall be subject to approval by the board.

(~~17~~15) To assist the county in making this determination, the applicant shall furnish a visual impact assessment, which shall include:

a. Pictorial representations (photo simulations) of "before and after" views from key viewpoints inside of the county, including, but not limited to, state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers, or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre application meeting. In addition to photographic simulations to scale showing the visual impact, the application shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed wireless support structure;

b. A pictorial representation or photo simulation of the visual impact of the proposed facility, including, as applicable, the tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as related to the need or appropriateness of screening.

(~~18~~16) The applicant shall demonstrate and provide by drawing and/or photo simulation how it shall effectively screen from view the base and all related equipment and structures of the proposed wireless communication facilities.

~~(19) The wireless communication facilities shall maximize the use of building materials, colors, and textures designed to blend with and harmonize with the natural surroundings. This shall include the utilization of concealment technology and camouflaging as may be required by the county, if the facts and circumstances warrant the use of such technology and/or techniques.~~

~~(20) All utilities at a wireless communication facilities site shall be installed underground if practical and in compliance with all laws, ordinances, rules and regulations of the county, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.~~

~~(21) At a wireless communication facilities site an access road and turnaround space for an emergency vehicle shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road design and construction shall comply with the private road standards set forth in the Jackson County Subdivision Regulations. Maintenance of the access roads shall be provided to assure vehicular access to the site at all times. All erosion control and storm water management facilities shall be maintained at all times. A maintenance log that documents inspections of the site and access roads shall be maintained at the communications facility site. The required maintenance log shall be placed in a location accessible at all times to the Jackson County employees charged with review of the log. Inspections shall made at least quarterly by the owner/lessee of the site to confirm that the access road and site are maintained with no erosion or storm water issues and that all equipment is in good order. The employee of the site owner/lessee conducting the inspection shall note the date of the inspection and condition of the site and access road on the inspection log. Inspections logs shall be reviewed at least biennially by the Jackson County Planning Department. Any failure to maintain the inspection log and/or to maintain the erosion control and storm water management measures at the site and on the access roads shall be considered a violation of this article.~~

~~(22) All wireless communication facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified, or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the county, state, or United States, including, but not limited to, the most recent editions of the ANSI Code, National Electrical Safety Code, and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.~~

~~(23) A holder of a wireless communication facilities permit granted under this section shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the county or other governmental entity or agency having jurisdiction over the applicant.~~

(~~24~~17) Applications will not be transmitted to the board for consideration until the application is deemed complete.

(~~25~~18) The holder of a wireless communication facilities permit shall notify the county of any proposed modification of a wireless communication facility and shall apply to the county to modify, relocate or rebuild a wireless communication facility.

~~(26) A building permit shall not be issued for construction of the wireless support structure unless there is an FCC authorized or licensed spectrum carrier which has indicated it will be installing equipment to use such spectrum on the wireless support structure.~~

(~~27~~19) All applications for a condition use permit and administrative review in the following sections shall be accompanied by the following statements.

a. The information contained in this application is true and accurate and

b. Is signed and sworn before a notary public.

(b) Procedural requirements for a wireless communication facilities permit (conditional use permit). The procedures set forth below for the review and consideration of the proposed wireless communication facilities permit shall be followed for new wireless support structures, substantial modifications, and any other proposal requiring a wireless communication facilities permit as required or otherwise specified in this section. The procedure for review and approval of a wireless communication facilities permit shall be a conditional use permit process, which will require a quasi-judicial hearing by the Jackson County Board of Commissioners.

(1) Plan submittal.

a. Filing of application. An application for a wireless communication facilities permit may be filed by an agent of the applicant who is specifically authorized to submit the application. The application for a wireless communication facilities permit shall be filed with the planning department on a form provided by the planning department, accompanied by all other application materials as provided in this article.

b. Fees. Any application fee, as designated by the board of commissioners, shall be due and payable upon submission of the application.

c. Information required. Each application for a wireless communication facilities permit shall contain the information required on the application form and other information meeting the requirements set forth in this article.

(2) Staff review.

a. Planning department review. Following submittal of the application for the wireless communication facilities permit, the application shall be reviewed by the staff of the planning department for compliance with the requirements of this article. The planning department may request input from consultants and/or experts to assist in the thorough review of the wireless communications permit application. The planning department shall review the permit application within 15 working days of its submittal to determine if the application is complete. When the planning department determines that the application is complete, it shall notify the applicant in writing via electronic mail.

b. Planning department ~~action~~recommendation. Upon review of a complete application and site plan for a wireless communication facilities permit, the planning department may make one of the following recommendations.

1. Approval. If the planning department finds the application and site plan to be in compliance with the requirements of this article, he/she shall forward the recommendation and the wireless communication facilities permit application shall be forwarded to the Jackson County Board of Commissioners for review. If the plan is not revised to meet the conditions within 60 days after the decision by the planning department, the request shall be deemed denied.

2. Approval with conditions. If the planning department recommends approval with conditions, the applicant may revise the application to address the conditions of such recommendation and resubmit it. The revised application shall be reviewed by the planning department and, if the identified conditions are adequately addressed, the revised application shall be forwarded to the Jackson County Board of Commissioners for review and approval. If the plan is not revised to meet the conditions within 60 days after the decision by the planning department, the request shall be deemed denied.

3. Denial. If the planning department recommends denial of the application, the reasons for denial shall be provided in writing to the applicant within 30 days of the action taken. The application may be revised to address the reasons for denial and resubmitted in accordance with the provisions of this article. A recommendation for denial by the planning department shall be considered final action on the request unless, within 30 days of receiving the written recommendation, the applicant provides a written request for review by the Jackson County Board of Commissioners.

(3) Formal review.

a. ~~Public~~ Quasi- Judicial hearing. Upon receipt of a report from the planning department requesting a ~~public~~ quasi-judicial hearing on the application for a wireless communication ~~facilities~~ facility permit, a ~~public~~ hearing shall be scheduled by the Jackson County Board of Commissioners ~~at its quasi-judicial hearing~~ on the application. Notice of all ~~public~~ quasi-judicial hearings shall be in accordance with the North Carolina General Statutes. In

addition, owners of all adjoining properties and all properties abutting any private road to be used to access the proposed site of the proposed facility shall be notified of the ~~public~~ hearing by first class mail ~~by the applicant~~. Such notice shall be provided as required by law prior to the hearing. The ~~public hearing shall be conducted during the~~ quasi-judicial hearing on the application shall be ~~held~~ scheduled by the Jackson County Board of Commissioners and shall meet all requirements for such a hearing.

b. Action by the Jackson County Board of Commissioners.

1. Designation of approval body. The Jackson County Board of Commissioners is hereby designated as the approval body for wireless communication facilities permits required by this article and is granted all necessary authority to carry out this responsibility.

2. Review of the wireless communication facilities permit request. In order to preserve the integrity of the quasi-judicial hearing and at the same time comply with G.S. 153A-323, the Jackson County Board of Commissioners shall consider the wireless communication facilities permit request, at a ~~public hearing, conducted simultaneously with the~~ quasi-judicial hearing.

3. Conditional use standards. The Jackson County Board of Commissioners shall not approve the wireless communication facilities permit application unless and until it finds that the application ~~and~~ meets all ~~the~~ requirements set forth in this article and the Jackson County Board of Commissioners makes the following findings, based on the evidence and testimony presented at the public hearing or otherwise appearing in the record of the case:

(i) That the proposed use or development of the land will not materially endanger the public health or safety;

(ii) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed facility, site and access road design and any mitigation techniques or measures proposed by the applicant;

(iii) That ~~the~~ adjacent/adjoining property owners have not demonstrated that proposed use or development of the land will ~~not~~ substantially injure the value of adjoining or abutting properties;

(iv) That the site can be accessed by service and emergency vehicles; and

(v) That the application, site and proposed improvements comply with all provisions of this article.

4. Decision by the Jackson County Board of Commissioners. The Jackson County Board of Commissioners, after conducting the ~~public~~/quasi-judicial hearing, may: deny approval; table the request pending submittal of additional information; or approve the wireless communications permit with or without additional conditions. The minutes of the Jackson County Board of Commissioners shall state whether the proposed use does or does not meet the requirements set forth in this article for the proposed use, and if the permit request is approved, the findings required by this article for such approval shall be stated within the minutes. The decision on the permit application shall be by a simple majority vote of those members of the Jackson County Board of Commissioners present at the meeting at which the action is taken. Any action taken by the Jackson County Board of Commissioners shall be given to applicant and property owner in writing within 30 days of the date the action is taken. If the application is denied, the Jackson County Board of Commissioners shall state the reason(s) for said denial in its notification to the applicant.

(4) Transfer of approval. A wireless communication permit approval may be transferred to a subsequent owner of the property for which the permit was issued, but may not be transferred to another property.

(5) Resubmission of denied applications. No application for approval of a wireless communication permit shall be filed with or accepted by the planning department that is identical or substantially similar to an application that has been denied by the Jackson County Board of Commissioners. ~~within one year of the Jackson County Board of Commissioners action denying the request. This waiting period may be waived in an individual case, for good cause shown, by the affirmative vote of three-fifths of the members of the Jackson County Board of Commissioners.~~

(6) Modifications. Modifications from the standards established by this article for wireless communication facility are subject to the procedure and standards set forth in section 30-29.

(7) Appeals. An appeal from the decision of the Jackson County Board of Commissioners regarding a wireless communications permit (conditional use permit) application and site plan may be made by an aggrieved party and shall be made to the Jackson County Superior Court. Any appeal to the superior court shall be filed no later than 30 days after a written copy of the decision of the Jackson County Board of Commissioners is received by the applicant.

(8) Permit validity. Approval of a wireless communications permit (conditional use permit) shall be valid for one year from the date of approval by the Jackson County Board of Commissioners. Failure to obtain a building permit, or otherwise initiate the permitted use, within this time shall render the wireless communications permit approval void. The Jackson County Planning Department may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension.

(9) Violations. Violations of the wireless communications permit (conditional use permit) or of any of the conditions attached to the approval shall be considered a violation of this article and subject to the enforcement and penalty provisions set forth in section 30-30 of this article.

(c) Wireless communication facilities permit administrative review application requirements.

(1) All applicants for administrative review to collocate on an existing wireless support structure, to upgrade equipment on an existing wireless support structure, to replace existing equipment, and/or any other activity not meeting the definitions of substantial modification or ordinary maintenance provided in this article shall comply with the requirements set forth below. The Jackson County Planning Department is the agency designated to review and approve applications for administrative review.

(2) The application fee for administrative review shall be as set forth in the county's schedule of fees.

(3) An application to "substantially modify" the parameters of an approved wireless communication facilities as relates to the approved height, profile, number of collocations or footprint shall not qualify for administrative review under this section.

(4) Approval of a wireless communication facilities permit (conditional use permit) by the Jackson County Board of Commissioners shall not be required for an application to modify or to co-locate an antenna array on an existing and properly permitted wireless support structure so long as the co-location or modification does not exceed the parameters set forth in G.S. 153A-349.53 (as amended by S.L. 2013-185), unless for good cause such approval shall be required by the planning board or planning department. Administrative review and approval as set forth below shall be required for such application.

(5) Documentation shall be provided to demonstrate that the applicant has the legal right to proceed as proposed on the site, including an executed copy of the lease with the owner of the facility proposed to be attached to, or a letter of agency, showing the right of the applicant to attach to the structure.

(6) The applicant shall include a written statement that:

a. The applicant's proposed wireless communication facilities shall be maintained in a safe manner, and in compliance with all conditions of all applicable permits and authorizations, without exception, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable county, state and federal laws, rules, and regulations; and

b. The construction of the wireless communication facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the state.

(7) An application for attaching an antenna array, which shall include equipment upgrades and replacement of equipment, under this section shall contain the following information:

a. The name, address and phone number of the person preparing the application;

b. The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;

c. The ~~postal~~911 address and tax map parcel number of the property;

d. A copy of the FCC license or other authorization applicable for the intended use of the wireless communication facilities.

e. A site plan depicting the following:

1. The zoning district or designation in which the property is situated, if applicable;

2. For applications that involve expansion of the ground compound, the size of the property on which the structure to be attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;

3. The location, size and height of all existing and proposed structures on the property on which the structure is located and that is the subject of the application;

4. The footprint, location and dimensions of access drives, landscaping and buffers, fencing and any other existing or proposed site improvements;

5. Unless it is deemed inappropriate or unnecessary by the planning department given the facts and circumstances, the method proposed to effectively buffer and screen from view the base and all related equipment and structures of the proposed Wireless Communication Facilities up to a height of ten feet.

6. Unless already contained in the structural analysis required by Section 30-22(b)(9), elevations showing the vertical rendition of the wireless communication facilities identifying all attachments, and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;

(8) All attachments and exposed cabling shall use concealment techniques to match as closely as possible the color and texture of the structure, whenever practical.

(9) The applicant shall provide a certification by a professional engineer licensed in North Carolina, along with documentation (a structural analysis), including calculations, that prove that the wireless support structure and its foundation as proposed to be utilized, including all proposed attachments, existing attachments, and reserved future attachments, are designed and were constructed to meet all local, county, state, federal and ANSI EIA/TIA 222 as amended requirements for loads, including wind and ice loads and the placement of any equipment on the roof a building after the addition of the proposed new facilities.

(10) All utilities installed for a new wireless communication facilities shall be installed underground when practical and in compliance with all laws, ordinances, rules and regulations of the county, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

(d) Procedural requirements for administrative review and approval. The procedures set forth below for administrative review and approval shall be followed for wireless communication facilities qualifying for administrative review and approval as required or otherwise specified in this section.

(1) Plan submittal.

a. Filing of application. An application for administrative review and approval may be filed by an agent of the company proposing to do the work and who is specifically authorized to submit the application. The application for administrative review and approval shall be filed with the planning department on a form provided by the planning department.

b. Fees. Any application fee, as designated by the board of commissioners, shall be due and payable upon submission of the application.

c. Information required. Each application for administrative review and approval shall contain the information required on the application form and meeting the requirements set forth in this article.

(2) Staff review.

a. Planning department review. Following submittal of the application and information for administrative review and approval, they shall be reviewed by the planning department for compliance with the requirements of this article. The planning department may request input from consultants and/or experts to assist in the thorough review of the wireless communications permit application. The planning department shall review the application package within five working days of its submittal to determine if the application is complete.

b. Planning department action. Upon review of a complete application and site plan for a wireless facility permit, the planning department may make one of the following ~~recommendations~~determinations. Review of a complete application shall require no more than 30 working days.

1. Approval. If the planning department finds the application and related information to be in compliance with the requirements of this article, he shall notify the applicant of the approval and advise that any required building and/or electrical permits may be applied for.

2. Denial. If the planning department denies the request, the reasons for denial shall be provided in writing to the applicant. The site plan and application may be revised to address the reasons for denial and resubmitted in accordance with the provisions of this article. Denial of the request by the planning department shall be considered final action on the request unless, within 30 days of receiving the written recommendation, the applicant provides a written appeal ~~and request for informal review by~~ to the ~~planning board~~Board of Adjustment.

(3) Transfer of approval. An administrative review and approval may be transferred to a subsequent owner of the property for which the permit was issued, but may not be transferred to another property.

(4) Resubmission of denied applications. No application for administrative review and approval shall be filed with or accepted by the planning department that is identical or substantially similar to an application that has been denied by the planning department within one year of the action denying the request. This waiting period may be waived in an individual case, for good cause shown, by the affirmative vote of three-fourths of the members of the planning board.

(5) Modifications. Modifications from the standards established by this article for wireless communication facilities are subject to the procedure and standards set forth in section 30-29.

(6) Appeals. An appeal from the decision of the planning department regarding an application for administrative review and approval may be made by an aggrieved party and shall be made to the Jackson County ~~Planning Board~~Board of Adjustment. Any petition to the ~~planning board~~Board of Adjustment shall be filed with the planning department no later than 30 days after

a written copy of the decision of the planning department is received by the applicant. Appeals of the ~~planning board's~~Board of Adjustment's decisions will be heard before ~~the Jackson County Board of Commissioners in the form of a quasi-judicial hearing~~Superior Court.

(7) Permit validity. Approval of a request for administrative review and approval shall be valid for one year from the date of approval by the planning department. Failure to obtain a building permit, or otherwise initiate the permitted use, within this time shall render the approval void. The Jackson County Planning Department may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension.

(8) Violations. Violations of the wireless communications permit or of any of the conditions attached to the approval shall be considered a violation of this article and subject to the enforcement and penalty provisions set forth in section 30-30 of this article.

(Ord. No. O2008-02, § V, 8-15-2015)

Sec. 30-24. - Retention of consultant/expert assistance cost to be borne by applicant.

(a) The county may hire any consultant and/or expert necessary to assist the county in reviewing and evaluating the application for substantial modifications, new wireless communication facilities, and collocations, including the construction and modification of the site, once permitted, and any site inspections.

(b) To prevent the taxpayers from having to bear the cost related to the issue of the regulation of wireless communication facilities, an applicant shall pay the consultant's fee as set forth in the contractual agreement between the consultant and the county. The amount of the fee shall be based on the cost of services provided and what is usual and customary in Jackson County for the review and permitting assistance related to wireless communication facilities to cover all reasonable costs of consultant and expert evaluation and consultation with the county in connection with the submittal, review and permitting of any application, and where applicable, any lease negotiation, preapproval evaluation and including any construction and modification of the site, once permitted. The payment of the consultant's fee to the county shall precede any work being done as regards to processing an application.

(c) Records of all outside costs associated with the review and permitting process shall be maintained and available for public inspection, in compliance with applicable North Carolina law.

(Ord. No. O2008-02, § VI, 8-15-2015)

Sec. 30-25. - Removal and performance security.

The Applicant and the owner of record of any proposed wireless communication facilities property site, at its cost and expense, shall be jointly required to execute and file with the county a bond, or other form of security acceptable to the county as to type of security and the form and manner of execution, in an amount and with such sureties as are deemed sufficient by the county to assure the faithful performance of the terms and conditions of this section and conditions of any communications facility permit issued pursuant to this section. The amount of the bond or other security shall be at least $75,000.00, with the amount based upon cost estimates for the removal of the wireless support structure or tower and the restoration of the site. Such cost estimates shall be submitted by the applicant and shall be provided by independent contractors. The full amount of the bond or security shall remain in full force and effect throughout the term of the communications facility permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original communications facility permit. All bonds or other forms of security provided as required by this section shall be reviewed every five years to assure that the amount of the security is adequate to cover the cost of the structure removal and site restoration. An increase in the amount of the

security shall be required if it is determined that the amount of the security is insufficient to adequately restore the site.

(Ord. No. O2008-02, § VII, 8-15-2015)

Sec. 30-26. - Reservation of authority to inspect wireless communication facilities.

In order to verify that the holder of a wireless communications facility permit for wireless communication facilities and any and all lessees, renters, and/or licensees of such place and construct such facilities, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the county may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, wireless support structures, antennas and buildings (excluding exteriors) or other structures constructed or located on the permitted site.

(Ord. No. O2008-02, § VIII, 8-15-2015)

Sec. 30-27. - Removal of wireless communication facilities.

(a) Under the following circumstances, the county may determine that the health, safety, and welfare interests of the county warrant and require the removal of wireless communication facilities.

  (1) Wireless communication facilities with a permit have been abandoned (i.e. not used as wireless communication facilities) for a period exceeding 180 days, except for periods caused by force majeure or acts of God, in which case repair or removal shall commence within 90 days of abandonment;

  (2) Permitted wireless communications facilities fall into such a state of disrepair that it creates a health or safety hazard;

  (3) Wireless communications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required communications facility permit, or any other necessary authorization and the special permit may be revoked.

(b) If the county makes such a determination as noted in subsection (a), then the county shall notify the holder of the wireless communications facility permit within 48 hours that said wireless communication facilities are to be removed, the county may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless communication facilities.

(c) The holder of the wireless communication facility permit, or its successors or assigns, shall dismantle and remove such facility, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the county. However, if the owner of the property upon which the facility is located wishes to retain any access roadway to the facility, the owner may do so.

(d) If wireless communication facilities are not removed or substantial progress has not been made to remove the wireless communication facilities within 90 days after the permit holder has received notice, then the county may order officials or representatives of the county to remove the wireless communication facilities at the sole expense of the owner or wireless communication facility permit holder.

(e) If the county removes, or causes to be removed, wireless communication facilities, and the owner of the wireless communication facilities does not claim and remove it from the site to a lawful location within ten days, then the county may take steps to declare the wireless communication facilities abandoned, and sell them and their components.

(f) Notwithstanding anything in this section to the contrary, the county may approve a temporary use permit/agreement for the wireless communication facilities, for no more than 90 days, during which

time a suitable plan for removal, conversion, or relocation of the affected facility shall be developed by the holder of the communications facility permit, subject to the approval of the county, and an agreement to such plan shall be executed by the holder of the permit and the county. If such a plan is not developed, approved and executed within the 90-day time period, then the county may take possession of and dispose of the affected facilities in the manner provided in this section and utilize the bond in this section.

(Ord. No. O2008-02, § IX, 8-15-2015)

Sec. 30-28. - Liability insurance.

(a) A holder of a wireless communication facility permit shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the wireless communication facility permit in amounts as set forth below:

(1) Commercial general liability covering personal injuries, death and property damages $1,000,000.00 per occurrence/$2,000,000.00 aggregate; and

(2) Umbrella coverage: $3,000,000.00.

(Ord. No. O2008-02, § X, 8-15-2015)

Sec. 30-29. - Modifications.

Any applicant desiring modification, waiver, or exemption from any aspect or requirement of this article may request such at the pre-application meeting, provided that the request for modification is detailed in the submitted application for either a communications facility permit or, in the case of an improvement requiring administrative review, in the application submitted for administrative review. All requests shall be heard and decided by the Jackson County Board of Commissioners, which must find that justification is provided for the requested modification, waiver, or exemption. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested modification, waiver, or exemption is solely on the applicant to prove. All requests for a modification, waiver, or exemption shall be accompanied by an application fee as set forth in the schedule of fees and charges. No modification, waiver, or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that the request is justified and is necessary to prevent unnecessary hardship and that, if granted, the modification, waiver, or exemption will have no significant effect on the health, safety, and welfare of the county, its residents, property owners and other service providers and preserves the intent of this article.

(Ord. No. O2008-02, § XI, 8-15-2015)

Sec. 30-30. - Violations and penalties.

(a) Appropriate actions and proceedings may be taken at law or in equity to:

(1) Prevent any violation of this article;

(2) Prevent unlawful construction;

(3) Recover damages;

(4) Restrain, correct or abate a violation; and / or

(5) Prevent illegal use of a building, structure or premises.

No building permit or certificate of occupancy shall be issued nor shall water, sewer or other public facilities or services be extended to or connected with any land or development subject to the standards of this article unless the requirements of this article are satisfied.

(b) Enforcement procedures. When the planning department becomes aware of a violation of this article, it shall be the planning director's duty to notify the owner of the property of the violation. The owner shall immediately remedy the violation.

(1) Notice of violation. If the owner of the land fails to take prompt corrective action, the planning department shall give the owner written notice (by certified or registered mail to his last known address, by personal service, or by posting notice conspicuously on the property) of the following:

a. That the activity is in violation of this article;

b. The nature of the violation, and citation of the section(s) of this article violated;

c. The measures necessary to remedy the violation; and

d. Mechanisms available to appeal the decision of the administrator.

(2) Appeal. Any owner who has received a notice of violation may appeal in writing the decision of the planning department to the board of adjustment within ~~15~~ 30 days following the date of the notice of violation. The board of adjustment shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the notice of violation. In the absence of an appeal, the decision of the planning department shall be final.

(c) Criminal penalty. Any violation of this article or amendments thereto shall constitute a misdemeanor. Those convicted of such violations shall be punished as provided by G.S. 14-4. Each day that a violation continues shall be considered a separate violation and punishment assigned accordingly.

(d) Civil penalty. The owner of any land and any developer, builder, contractor, agent, or other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this article may be held responsible for the violation and subject to the civil penalties and remedies provided herein.

(1) Notice. No civil penalty shall be assessed until the person alleged to be in violation has been notified in accordance with section 30-30(b)(1). If after receiving a notice of violation under section 30-30(b)(1), the owner or other violator fails to take corrective action, a civil penalty may be imposed under this section in the form of a citation. The citation shall be served in the same manner as of a notice of violation. The citation shall state the nature of the violation, shall state the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within 15 days of the date of the citation.

(2) Continuing violation. For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

(3) Penalties. Any person who violates any provision of this article shall be subject to assessment of a civil penalty for each such violation in accordance with the following schedule:

a. Fifty dollars for the first violation;

b. One hundred dollars for the second violation;

c. Two hundred dollars for the third violation; and

d. Five hundred dollars for the fourth and each succeeding violation.

(Ord. No. O2008-02, § XII, 8-15-2015)

Sec. 30-31. - Legal status provisions and effective date.

(a) Severability. Should any section or provisions of this article be decided by a court of competent jurisdiction to be unconstitutional or invalid such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

(b) Conflict with other laws. In interpreting and applying the provisions of this article said provisions shall be held to be the minimum requirements for promoting the intent of this article. This article is not intended to interfere with or abrogate or annul other rules, regulations or ordinances of the county. However, if the requirements of this article are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances of the County of Jackson, the more restrictive or that imposing the higher standards shall govern.

(c) Effective date. This article shall take effect and be in force on August 18, 2015.

(Ord. No. O2008-02, § XIII, 8-15-2015)