

NORTH MIDDLETON TOWNSHIP

CUMBERLAND COUNTY, PENNSYLVANIA

ORDINANCE NO. 2015-04

AN ORDINANCE OF THE TOWNSHIP OF NORTH MIDDLETON AMENDING SECTION 204-12 DEFINITIONS AND WORD USAGE; AND AMENDING AND REPLACING NORTH MIDDLETON TOWNSHIP CODE SECTION 204-49(O) COMMUNICATION ANTENNAS, TOWERS AND EQUIPMENT BUILDINGS TRANSMITTING AND RECEIVING FACILITIES AND ESTABLISHING RELIABLE STANDARDS FOR CONSTRUCTION, SITING, DESIGNING, PERMITTING, MAINTENANCE AND USE OF WIRELESS COMMUNICATION FACILITIES WITHIN THE MUNICIPALITY

The Board of Supervisors of North Middleton Township hereby ordains as follows:

**PURPOSE**

The purpose of this Ordinance is to amend Section 204-12 of the North Middleton Township Zoning Ordinance by removing certain definitions from that Section. The further purpose of this Ordinance is to amend and replace North Middleton Township Code Section 204-49(O) and to establish reliable standards for the construction, siting, design, permitting, maintenance, and use of wireless communication facilities in North Middleton Township, Cumberland County, Pennsylvania (“municipality”). While the municipality recognizes the benefit of wireless communication facilities in providing high quality communications service and enhancement to its residents and businesses, the municipality also recognizes that it has an obligation to protect public safety and to minimize the visual impact of such facilities through the standards set forth in the following provisions.

**I. AMENDMENT TO SECTION 204-12**

Pursuant to Section 204-12 the following definitions contained therein shall be removed:

- 1) Communications Antenna
- 2) Communication Equipment Building
- 3) Communication Tower
- 4) Communication Transmitting and Receiving Facility

The foregoing definitions shall become part of this Ordinance. All other provisions and definitions contained in Section 204-12 shall remain in full force and effect.

## **II. LANGUAGE TO AMEND AND REPLACE SECTION 204-49(O)**

The following provisions contained in section II shall, upon enactment, amend and replace in its entirety Section 204-49(O).

### **Definitions.**

For the purposes of this Ordinance, the following words or terms shall be given the following meanings:

- 1) **Antenna:** Any system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc) or any other wireless antenna. An antenna shall not include tower-based wireless communications facilities (defined below). An antenna shall not include private residence-mounted satellite dishes or television antennae or amateur radio equipment including, without limitation, ham or citizen band radio antennae.
- 2) **Base Station:** A station at a specified site authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics.
- 3) **Co-location:** The placement or installation of new wireless telecommunications facilities on previously approved and constructed wireless support structures, including self-supporting or guyed monopoles and towers, electrical transmission towers, water towers or any other structure not classified as a wireless support structure that can support the placement or installation of wireless telecommunications facilities if approved by the municipality.
- 4) **Commercially Reasonable:** Means terms and pricing that are reasonably consistent with similar wireless facility leases and agreements within a 50 mile radius of the municipality.
- 5) **Distributed Antenna Systems (DAS):** Network of spatially separated antenna sites connected to a common source that provides wireless service within a geographic area or structure.
- 6) **Data Collection Unit (DCU):** These are utilized primarily by electric utility providers. DCU communicate with smart meters to obtain meter readings, restore outages and improve operational control
- 7) **Emergency:** A condition that, (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the rights-of-way to be unusable and result in loss of the services provided.

- 8) **Equipment Compound:** An area surrounding or adjacent to a wireless support structure within which base stations, power supplies or accessory equipment are located.
- 9) **Modification or Modify:** The improvement, upgrade or expansion of existing wireless telecommunications facilities or improvement, upgrade or expansion of the wireless telecommunication facilities located within an existing equipment compound, if the improvement, upgrade, expansion or replacement does not substantially change the physical dimensions of the wireless support structure.
- 10) **Monopole:** A WCF or site which consists of a single pole structure, designed and erected on the ground or on top of a structure, to support communications antennae and connect appurtenances.
- 11) **Non-Tower Wireless Communications Facilities (Non-Tower WCF):** Wireless communications facilities, including but not limited to, antennae and related equipment. Non-tower WCF shall not include support structures for antennae and related equipment.
- 12) **Replacement:** The replacement of existing wireless telecommunications facilities on an existing wireless support structure or within an existing equipment compound due to maintenance, repair or technological advancement with equipment composed of the same wind loading and structural loading that is substantially similar in size, weight and height as the wireless telecommunications facilities initially installed and that does not substantially change the physical dimensions of the existing wireless support structure.
- 13) **Right-of-Way (ROW):** The surface of and space above and below any real property in the municipality in which the municipality has a regulatory interest, or interest as a trustee for the public, as such interests now or hereafter exist, including, but not limited to, all streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the municipality, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for utility purposes. Other municipal owned lands not listed above shall not be considered a right-of-way. The phrase “in the right(s)-of-way” means in, on, over, along, above and/or under the Right(s)-of-Way.
- 14) **Stealth Technology:** State-of-the-art design techniques used to blend objects into the surrounding environment and to minimize the visual impact as much as possible. These design techniques are applied to wireless communications towers, antennae and other facilities which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennae, building-mounted antennae painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.

**15) Substantial Change OR Substantially Change:**

- a) Any increase in the height of the wireless support structure by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, except that the mounting of the proposed wireless telecommunications facility may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas.
- b) Any further increase in the height of a wireless support structure which has already been extended by more than 10% of its originally approved height or by the height of one additional antenna array shall not occur without municipal approval.

**16) Tower:** A self-supporting lattice tower, guy tower, monopole, or any other pole, that is constructed primarily to support an antenna for receiving and/or transmitting a wireless signal.

**17) Tower-Based Wireless Communications Facility (Tower-Based WCF):** A tower and its supporting antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles. DAS hub facilities are considered to be Tower-Based WCFs.

**18) Wireless:** Transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.

**19) Wireless Communications Facility (WCF):** The set of equipment and network components including antennas, transmitters, receivers, base stations, cabling and accessory equipment, used to provide wireless data and telecommunication services. The term shall not include the wireless support structure.

**20) Wireless Support Structure:** A freestanding structure, such as a guyed or self-supporting monopole or tower, electrical transmission tower, water tower or other structure not classified as a wireless support structure that could support the placement or installation of wireless telecommunications facilities if approved by the municipality.

**Permitted Uses for Wireless Communication Facilities (WCF).**

- 1) Communications Towers and related buildings, together with any Tower-Based Wireless Communication Facilities shall not be permitted in Residential Zones (R-1 and R-2) and Mixed Use Zones (VMU and NC).
- 2) Non-Tower-Based Communication Antennas may be located within Residential Zones (R-1 and R-2) and Mixed Use Zones (VMU and NC) if it can be demonstrated they shall employ stealth siting and design solutions and shall be by Conditional Use Only.

- 3) All other Tower-Based Wireless Communication Facilities (WCF), including antennas, towers and associated equipment within North Middleton Township are only permitted by Conditional Use.
- 4) Tower-Based Wireless Communication Facilities shall not be located on a structure that is listed on the National Register of Historic Places, property designated by the municipality in an adopted plan as being historically significant, or in a designated historic district.
- 5) Non-Tower Wireless Communication Facilities (WCF) are permitted by right in all Zoning Districts and right-of-ways subject to the requirements of this section.

### **Bulk and Area Requirements.**

- 1) Setbacks are subject to the following criteria:
  - a) Antenna support structures shall be set back from all lot lines a distance equal to the height of the antenna.
  - b) The structure shall be self-collapsing or have a clear fall area setback equal to the height of the structure and any attached antennas.
- 2) Antenna support structure height is subject to the following criteria:
  - a) The maximum height of any single antenna support structure located at a single site for one antenna shall be at the lowest height to function at the proposed location, based upon specific engineering data pertaining to the function of the antenna support structure to be supplied by the applicant.
  - b) An antenna support structure may exceed the maximum allowable height to allow for the co-location of another antenna, provided that the applicant shows evidence that the antenna support structure will be a shared location site.
- 3) Any utilities extended to the tower site shall be placed underground.
- 4) A WCF located on a building or similar structure shall not exceed a height of fifteen (15) feet above the roof or parapet, whichever is higher, unless the WCF applicant obtains a Conditional Use.

### **Design, Construction, Operations.**

- 1) Antenna support structure design and structural integrity. The owner of the antenna or antenna support structure shall provide a registered professional engineer's report documenting that the structure meets the structural standards of the North Middleton Township Building Code.

- 2) All WCF shall be designed, constructed, inspected, operated, maintained, repaired, modified and removed in strict compliance with all current applicable Federal and State technical, and safety codes.
- 3) No WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services.
- 4) Co-location.
  - a) Tower-based WCF shall be designed to accommodate both the WCF applicant's antennas and comparable antennae for future users.
  - b) As a condition of approval for all tower-based WCFs, the WCF applicant shall provide the municipality with a written commitment that it will allow other service providers to collocate antennae on tower-based WCFs where technically and economically feasible.
- 5) Signage. Tower-based WCF shall include a posted sign at the location. Such signage shall include the ownership, contact name and phone number in the event of an emergency and Federal Communication Commission (FCC) registration number (if applicable). Such signage shall not include commercial advertising and is subject to approval by the Municipality.
- 6) Lighting. WCF shall not be artificially lighted beyond what is required by law. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.
- 7) Noise. WCF shall be operated and maintained so as not to produce noise in excess of applicable noise standards established by the municipality, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis.
- 8) Access
  - a) An access road, turnaround space and parking shall be provided to ensure adequate emergency and service access to tower-based WCFs.
  - b) Maximum use of existing roads, whether public or private, shall be made to the extent practicable.
  - c) Road construction shall at all times minimize ground disturbance and the cutting of vegetation.
  - d) Road grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion.
  - e) Where applicable, the WCF owner shall present documentation to the municipality that the property owner has granted an easement for the proposed facility and maintenance responsibilities.

## 12) Inspections

- a) A copy of any inspection report and certification of continued use, as required by national and state agencies, shall be provided to the municipality following the inspection. Any repairs advised by report shall be completed by the owner within 60 calendar days after the report is filed with the municipality.
- b) The municipality reserves the right to inspect any WCF to ensure compliance with the provisions of the chapter and any other provisions found within the municipal code or state, or federal law. The municipality and/or its agents shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance

## **Aesthetics, Landscaping, and Screening.**

- 1) Stealth Technology. The WCF shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact.
  - a) Tower-based WCFs shall employ stealth technology and the tower painted an appropriate color to harmonize with the character of the area and surrounding land uses.
  - b) Non-tower WCFs shall employ stealth technology and be treated to match the supporting structure in order to minimize aesthetic impact.
  - c) All utility buildings and accessory structures shall be designed to blend into the environment in which they are situated.
- 2) Landscaping Plan. Tower-based WCF located outside the right-of-way shall submit a landscape plan describing the following:
  - a) The WCF applicant shall ensure that the existing vegetation, trees and shrubs located within proximity to the WCF structure shall be preserved to the maximum extent possible.
  - b) If the antenna support structure site is located in an area of existing trees and vegetation, the existing trees and vegetation shall be preserved to the fullest extent possible to keep the area as close as possible to its original condition. The existing trees and vegetation shall be supplemented as needed to fully screen the antenna support base.
  - c) If the site lacks adequate trees and vegetation, the entire perimeter of the fence surrounding the antenna support structure compound shall be provided with Level 2 screening in accordance with Section 204-26 of this chapter.
  - d) Ground mounted equipment associated with, or connected to, a tower-based WCF shall be screened from public view using landscaping and/or screening, as described above.
- 3) Antenna support structures shall be painted in the color that best allows it to blend into the surroundings unless otherwise required by the FAA regulations. The use of grays, blues and greens may be appropriate.

- f) The easement shall comply with the requirements of Chapter 204-32(b) of North Middleton Township Code entitled Access Drive Requirements.
  - g) Vehicular access to the WCF shall not interfere with the parking or vehicular circulations for a principal use, if located on the site.
- 9) Fencing. A security fence with a minimum height of eight (8) feet shall surround any tower-based WCF located outside a right-of-way, including guy wires, associated equipment, and buildings.
- 10) Mounting. Any applicant proposing a non-tower WCF, to be mounted on a building or any other structure, shall submit detailed construction and elevation drawings indicating how the non-tower WCF will be mounted on the structure for review by the municipal building codes office and/or the municipal engineer for compliance with the building code.
- 11) Safety in Rights-of-Way
- a) Schedule of operations. The municipality shall determine the time, place and manner of construction, maintenance, repair and/or removal of all WCFs in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the municipality and the requirements of the Public Utility Code.
  - b) Emergency. Within 60 days following written notice from the municipality, or such longer period as the municipality determines is reasonably necessary or such shorter period in the case of an Emergency, an owner of a WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the municipality, consistent with its police powers and applicable Public Utility Commission regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under any one of the following circumstances:
    - i) The construction, repair, maintenance or installation of any municipal or other public improvement in the right-of-way.
    - ii) The operations of the municipality or other governmental entity in the right-of-way.
    - iii) Vacation of a street or road or the release of a utility easement.
    - iv) An emergency as determined by the municipality.
  - c) Visual obstruction. All WCFs and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the municipality.

### **Replacement, Co-location, or Modification.**

- 1) An application for replacement, co-location or modification of a previously approved wireless support structure or wireless communication facility shall be reviewed for conformance with the municipal building permit requirements, including requirements applicable to the added structural loading of the proposed antennas and accessory equipment. These previously approved facilities shall not be subject to the issuance of new zoning or land use approvals, provided that:
  - a) The proposed co-location, modification or replacement may not substantially change the physical dimensions of the wireless support structure to which the wireless telecommunications facilities are to be attached.
  - b) The proposed co-location, modification or replacement may not further increase the height of a wireless support structure which had already been extended by more than 10% of its originally approved height or by the height of one additional antenna array; provided, however, that nothing herein shall preclude an applicant from further increasing the height of a wireless support structure which had already been extended by more than 10% of its originally approved height or by the height of one additional antenna array if permitted and approved by the municipality.
  - c) The proposed co-location, modification or replacement may not increase the dimensions of the equipment compound approved by the municipality.
  - d) The proposed co-location, modification or replacement complies with applicable conditions of approval applied to the initial wireless telecommunications facilities, equipment compound and wireless support structure.
  - e) The proposed co-location, modification or replacement may not exceed the applicable wind loading and structural loading requirements for the wireless support structure.
- 2) Replacement of wireless communications facilities on existing wireless support structures or within existing equipment compounds may be performed by the applicant without obtaining building or zoning permits from the municipality.

The applicant shall submit documentation regarding any replacement of wireless communication facilities to the municipality.

- 3) Any Substantial Change to an existing tower-based WCF shall require approval of the municipality.

### **Permit Requirements.**

- 1) Applications for the construction of communication antennas, support structures and related facilities shall include a written report containing the following:
  - a) Information describing the tower height and design.

- b) A cross section of the structure.
  - c) Engineering specifications detailing construction of tower, base and guy wire anchorage.
  - d) Information describing the proposed painting and lighting schemes.
  - e) Information describing the tower's capacity, including the number and type of antennas that it can accommodate.
  - f) All tower structure information shall be certified by a licensed professional engineer.
  - g) Certification that there is not suitable space on existing sites or structures where the intended facility can be accommodated and function as required without reasonable modification.
  - h) Technological evidence that the facility must go where proposed in order to satisfy its function in the grid system and provide the quality of service required by law.
  - i) Written authorization from the property owner of the proposed site.
  - j) Inventory of existing towers and potential antenna support structures within a two-mile radius of the proposed site, discussing the unavailability of sites and reasons therefore.
  - k) Evidence of the applicant's good faith efforts to locate the antenna on an existing structure.
- 2) All guy wires shall be clearly marked so as to be visible at all times and shall be located within the fence enclosure.
- 3) All equipment and buildings must comply with the Township building, health, safety, property and other applicable local ordinances.
- 4) An application for a new tower-based WCF shall not be approved unless the municipality finds that the wireless communications equipment planned for the proposed tower-based WCF cannot be collocated on an existing or approved structure or building.
- 5) Any application for approval of a new tower-based WCF shall include a comprehensive inventory of all existing towers and other suitable structures within a two (2) mile radius from the point of the proposed tower, unless the applicant can show to the satisfaction of the municipality that a different distance is more reasonable, and shall demonstrate conclusively why an existing tower or other suitable structure cannot be utilized.
- 6) Gap in Coverage or Capacity. An applicant for a tower-based WCF must demonstrate that a significant gap in wireless coverage or capacity exists with respect to the applicant in the area and that the type of WCF being proposed is the least intrusive means by which to fill that gap in wireless coverage or capacity. The existence or non-existence of a gap in wireless coverage or capacity shall be a factor in the municipality's decision on an application for approval of tower-based WCFs.

- 7) The applicant shall demonstrate that the proposed WCF comply with all applicable standards established by the Federal Communications Commission governing human exposure to electromagnetic radiation.
- 8) Prior to issuance of a zoning permit for the erection of an antenna or antenna support structure, the applicant shall obtain any required land development approvals.
- 9) A formal land development plan is not required if the antenna is to be mounted on an existing structure.
- 10) Evidence shall be submitted from a registered professional engineer certifying that the proposed installation will not exceed the structural capacity of the building or structure, taking into consideration winds and other loads associated with location.
- 11) Retention of Experts. The municipality may hire any consultant(s) and / or expert(s) necessary to assist the municipality in reviewing and evaluating the application for approval of the WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this chapter. The applicant and / or owner of the WCF shall reimburse the municipality for all costs of the municipality's consultant(s) in providing expert evaluation and consultation in connection with these activities.
- 12) Permit Fees. The municipality may assess appropriate and reasonable permit fees directly related to the municipality's actual costs in reviewing and processing the application for approval of a WCF. The amount of this fee may not be in excess of the municipality's actual reasonable cost to review and process the application.
- 13) The applicant, owner or operator of the antenna shall be licensed by the FCC.
- 14) The tower shall comply with all applicable FAA and PennDOT Bureau of Aviation regulations.
- 15) Certification of insurance evidencing general liability in the minimum amount of \$1,000,000 per incident and property damage coverage in the minimum amount of \$1,000,000 per incident is required to cover the tower, antenna and structures.

**Discontinuation, Abandonment and Removal.**

- 1) Nonconforming WCFs. Any nonconforming WCF which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored at their former location, but must otherwise comply with the terms and conditions of this chapter.

- 2) **Discontinuation.** In the event that use of a WCF is planned to be discontinued, the owner shall provide written notice to the municipality of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:
- a) All unused or abandoned WCFs and accessory facilities shall be removed within ninety (90) days of the cessation of operations at the site unless a time extension is approved by the municipality.
  - b) If the WCF and/or accessory facility is not removed within ninety (90) days of the cessation of operations at a site, or within any longer period approved by the municipality, the WCF and accessory facilities and equipment may be removed by the municipality and the cost of removal assessed against the owner of the WCF.
  - c) Any unused portions of WCFs, including antennas, shall be removed within ninety (90) days of the time of cessation of operations.
  - d) In the case of multiple operators sharing the use of a single tower, this provision shall become effective when all users cease operation.
- 3) **Bonding.** The facility owner or operator shall post and maintain funds for removal of all structures associated with the WCF in an amount one-hundred ten percent (110%) of the identified removal costs, as adjusted over time.
- a) The removal funds shall be posted and maintained with a bonding company or Federal or Commonwealth chartered lending institution chosen by the facility owner or operator and participating land owner posting the financial security, provided that the bonding company or lending institution is authorized to conduct business within the Commonwealth and is approved by the municipality.
  - b) An independent and certified Professional Engineer shall be retained by the applicant to estimate the cost of removal without regard to salvage value of the equipment. Said estimates shall be submitted to the municipality after the first year of operation and every five (5) years thereafter.

### **III. MISCELLANEOUS PROVISIONS**

#### **Effective Date.**

This Ordinance shall become effective by operation of law pursuant to the Second Class Township Code of the Commonwealth of Pennsylvania.

#### **Severability.**

In the event that any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provisions, section, sentence, clause or part of this Ordinance or other Ordinances affected by this Ordinance, it being the intent of North Middleton Township that such remainder shall be and shall remain in full force and effect.

**Relationship to Other Ordinances.**

All other Ordinances, parts of Ordinances or parts of Resolutions inconsistent herewith shall be and the same are expressly repealed.

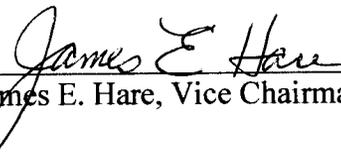
ADOPTED AND ORDAINED this 2<sup>nd</sup> day of July, 2015.

ATTEST:

  
\_\_\_\_\_  
Township Secretary

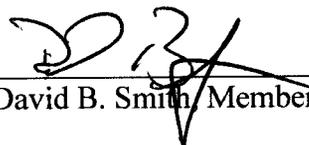
NORTH MIDDLETON TOWNSHIP  
BOARD OF SUPERVISORS

  
\_\_\_\_\_  
Harry Kelso, Chairman

  
\_\_\_\_\_  
James E. Hare, Vice Chairman

\_\_\_\_\_  
Robert A. Reisinger, Member

  
\_\_\_\_\_  
Charles P. McDowell, Member

  
\_\_\_\_\_  
David B. Smith, Member

CERTIFICATE

I, the undersigned, Secretary of the Township of North Middleton, Cumberland County, Pennsylvania (the "Township"), certify that: the foregoing is a true and correct copy of an Ordinance of the Board of Supervisors of the Township (the "Board"), which duly was enacted by affirmative vote of a majority of the members of the Board at a meeting held on July 2, 2015; said Ordinance duly has been recorded in the Ordinance Book of the Township; said Ordinance duly has been published as required by law; and said Ordinance remains in effect, unaltered and unamended, as of the date of this Certificate.

IN WITNESS WHEREOF, I set my hand and affix the official seal of the Township, this 2<sup>nd</sup> day of July, 2015.



Secretary

(SEAL)