

TYRINGHAM ZONING BY-LAWS

BERKSHIRE COUNTY
TOWN OF TYRINGHAM

SECTION 1: PURPOSE AND VALIDITY

1.1 Purposes

The purpose of this Bylaw is to provide for the TOWN OF TYRINGHAM all the protection authorized by the General Laws of the Commonwealth of Massachusetts, Chapter 40A as amended, and to promote the health, safety, convenience and welfare of the inhabitants of the Town.

1.2

Conflict Of Laws, Validity, Severability

1.2.1

This Bylaw repeals and replaces the Bylaw of the TOWN OF TYRINGHAM presently designated Chapter VI, adopted on February 3, 1941, and any subsequent amendments made thereto or replacements thereof.

1.2.2

Where this Bylaw imposes a greater restriction upon the use, height, and the area of buildings or structures or the use of premises than is imposed by other Bylaws of the TOWN OF TYRINGHAM, the provisions of this Bylaw shall control.

1.2.3

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof.

1.2.4

In case of any conflict between the wording of this text and the Massachusetts General Laws, the Massachusetts General Laws shall govern.

SECTION 2: DEFINITIONS

2.0

Accessory Building: A subordinate building, the use of which is customarily incidental to that of a principal building and located on the same lot therewith.

2.0.1

Accessory Use: A use customarily incidental and subordinate to the principal and located on the same lot therewith.

2.1

Dwelling, One-Family: A detached residential building, containing one dwelling unit designed for and occupied by one (1) family only, but not including mobile homes whether placed on a foundation or not.

2.2

Dwelling, Two-Family: A detached residential building containing two (2) dwelling units.

2.3

Dwelling Unit: One or more rooms constituting a separate independent house-keeping establishment with cooking, living, sanitary and sleeping facilities for the use of one (1) family.

2.4

Family: One or more individuals related by blood, marriage or adoption, or not more than five individuals who are not so related living in a single dwelling unit.

2.5

Customary Home Occupation: Self-employed resident occupants in their private homes working at an occupation which is limited to the home, carried forth at home, employing no persons outside the household, utilizing no outside structure or equipment, and requiring no more off-street parking facilities than would ordinarily be used by the household, such as dressmaking, preserving, or home cooking, real estate agent, photographer, the giving of private music and dance lessons, or a one-chair beauty parlor. Customary home occupation does not include gift shop, antique shop, or art gallery or similar retail establishment.

2.6 Lot:

An area of land in one ownership with definite boundaries, used or available for use as the site of one or more buildings.

2.7 Lot, Frontage:

The continuous distance along the street line which provides direct access to the lot, except for lots in a turnaround in an approved subdivision where frontage shall be measured at the minimum front setback line as provided in Section 5.1, herein, provided, however, that in order to qualify for frontage under this Bylaw frontage distance shall be maintained for a depth of 30 feet.

2.8 Mobile Home:

A vehicular portable completely enclosed structure built on a permanent chassis, designed as a dwelling unit to be transported after fabrication on its own wheels or on flatbed or detachable wheels. For the purpose of this Bylaw, the term “mobile home” includes trailers incorporating the characteristics of mobile homes as herein defined whether on a foundation or not.

2.9 Municipal Use:

Any Town of Tyringham use of land in accordance with statutory laws governing municipal powers and functions including participation in regional uses.

2.10 Street:

A public way, or a private way either shown on a plan approved in accordance with the Subdivision Control Law, or otherwise qualifying lots along it for frontage under the Subdivision Control Law.

2.11 Large Scale Wind Energy Facility:

All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes but is not limited to transmission, storage, collection and supply equipment, substations, towers, wind turbines, foundations service roads and other appurtenant structures, and facilities and equipment of a height equal or greater than 100 ft.

SECTION 3: ESTABLISHMENT OF DISTRICT

3.1

The Town of Tyringham is hereby zoned as: Agricultural-Residential District

SECTION 4: USE REGULATIONS

Every person or legal entity hereafter planning to construct, structurally alter, or add to a building or to move within or into the town any building structure for the use or availability as a dwelling shall first obtain from the Building Inspector, a permit duly granted in conformity with all provisions of this Bylaw. Such permits shall be issued or denied within fifteen (15) days of receipt of an application properly executed. Except as provided by law or in this Bylaw, no building or structure shall be erected, and no building, structure or land or part thereof shall be used for any purpose or in any manner other than one or more of the uses hereinafter set forth as permitted by right or as permissible by special permit and so authorized. Any special permit granted under this bylaw shall lapse within two (2) years if a substantial use thereof has not commenced within the two years, except for the good cause shown or in the case of construction unless construction has been commenced within two years.

4.1 Uses Permitted By Right

4.1.1

One or two family dwelling and related accessory buildings.

4.1.2

Agricultural purposes, including all types of farming, dairy farming, growing crops, nurseries, greenhouses, maple sugar production, including necessary structures.

4.1.3

Religious or educational use on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic, or by religious sect or denomination, or by a profit or nonprofit educational corporation. Any non-municipal educational use or any religious use is subject to the following regulations:

REGULATIONS

1. Maximum building height - 1 story or 20 feet.
2. Maximum building coverage - 5% of the lot area on which it is located.
3. Setback - two hundred (200) feet buffer surrounding the property to be kept undeveloped except for entrance and exit roadways.
4. Major access roads and major parking areas subject to frequent use day or night shall be paved. Major roads to be eighteen (18) feet wide and shall not exceed a 7'2% grade.
5. Parking areas shall be screened.
6. Parking areas shall be within three hundred (300) feet of the building to be served.
7. Parking requirements:
 - A. Places of assembly: 1 space for every three (3) seats
 - B. Classrooms and / or dormitories:
Grades 1-10 - 1 space for each staff member
for Grades 10-12- 1 space each staff member plus 1 space for every two students
College- 1 space for each staff member plus two (2) spaces for every three (3) students.

4.1.4

The use of a room or rooms in a dwelling or accessory building by a resident occupant for practice of a recognized profession, or by a resident carpenter, painter, plumber, electrician, or other tradesman in connection with his/her trade, or by a resident engaged in a customary home occupation, provided that there is minimal external evidence of any business other than a permitted sign. Such business shall not employ more than five (5) people.

4.1.5

Rental of not more than six (6) rooms in a dwelling by a resident family provided that no separate kitchen facilities are maintained.

4.1.6

The display and sale by a resident of the premises at a roadside stand or otherwise, of farm products the major portion of which are produced on the premises.

4.1.7

Display of sign or signs as regulated in Section 6.2 of this Bylaw.

This is deleted at Town Meeting 2004

4.1.8 Swimming Pools

1. A fence of at least four feet in height shall be constructed surrounding in-ground private swimming pools.
2. Such fence shall be constructed so as to prevent children from climbing over, under, or through it and shall be equipped with a gate which shall be kept closed when not in use.
3. Any existing swimming pools must meet the above requirements within six (6) months of the effective date of this Bylaw.

4.1.9

Water towers or reservoirs, pumping stations and water treatment plants.

4.1.10 Solar Energy By-Law

Definitions:

Solar Energy System: A device or structural design feature whose substantial purpose is to provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

Array: Area where the solar panels are installed.

Site Plan Review Authority: Tyringham Planning Board

REGULATIONS

1. **Building Permit** - No ground-mounted or roof-mounted solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.
2. **Solar Uses Permitted by right with a building permit:** The visuals of the array shall not threaten the scenic, historic, and agricultural character and appearance of the town.
 - (a) **Roof-Mounted Solar Energy Systems:**
 - 1) The solar structure combined with the building will not exceed the town zoning structural height limit of 36 feet.

- 2) The construction of the Solar System shall follow all pertinent building and electrical codes according to Mass General Laws.
- (b) Ground-Mounted Solar Energy Systems supplying energy for residential, agricultural, or granted permitted use.

- 1) The array may occupy no more than 1000 square feet.
- 2) Screening / landscaping will be provided to diminish visual impact from abutters.
- 3) The construction of the Solar System shall follow all pertinent building and electrical codes according to Mass General Laws.

3. Solar Arrays requiring a site Plan Review: Before construction, installation or modification: Any array requiring more than 1000 square feet but no more than one acre. This total one acre area, as measured, shall include the array, all appurtenant and accessory buildings, maintenance roads, landscaping and visual screening elements, and shall not include wetlands. The visuals of the array shall not create an eyesore by threatening the scenic, historic, and agricultural character and appearance of the town. See Site Plan Preview Documents required below.

4. Solar arrays of more than one acre are prohibited.

5. The Municipality of Tyringham is exempt from the requirements of this by-law.
Site Plan Review Document Requirements:

Pursuant to the Site Plan Review process, the project proponent shall provide the following documents, as deemed applicable by the Site Plan Review Authority.

- 1) A sight plan for the proposed project site showing: property lines and physical features, including roads, active farmland and prime farmland soils, wetlands, permanently protected open space, and Priority Habitat Areas.
- 2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- 3) Blueprints or drawings of the solar energy system signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
- 4) One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all Massachusetts Electric Code (527 CMR 12.00) compliant disconnects and over current devices;
- 5) Documentation of the major system components to be used, including the panels, mounting system, and inverter;
- 6) Name, address, and contact information for proposed system installer;
- 7) Name, address phone number and signature of the project proponent, as well as all co-proponents of property owners, if any;
- 8) The name, contact information and signature of any agents representing the project proponent; Photographs from any public or residential vantage point existing in Tyringham that has a view of proposed array site.

9) The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar energy system.

10) Setback and Height Requirements

The setbacks for ground-mounted solar photovoltaic installations, including appurtenant structures and parking areas, shall be at least 50 feet from any property boundary.

The height of a ground-mounted solar photovoltaic installation or any appurtenant structure shall comply with the requirements of the existing Tyringham Zoning Bylaws (36 feet).

11) Drainage

The site Plan shall show adequate measures to prevent pollution of surface or groundwater, to minimize erosion and sedimentation, to prevent changes in groundwater levels, and to prevent increased run-off and potential for flooding.

Drainage shall be designed so that run-off shall not be increased and that neighboring properties will not be adversely affected. A system of groundwater recharge shall be provided that does not degrade groundwater quality. Recharge shall be by storm water infiltration basins or a similar system covered with natural vegetation. Dry wells shall be used only where other methods are not feasible. All basins and wells shall be preceded by oil, grease and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by owner.

12) The project proponent shall submit a plan for the operation and maintenance of the ground-mounted solar energy system, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

13) Proof of liability insurance.

14) A public outreach plan, including a project development timeline, which indicates how the project proponent will meet the required Site Plan Review notification procedures and otherwise inform abutters and the community.

15) Utility Notification – No grid-intertie photovoltaic system shall be installed until evidence has been given to the Site Plan Review Authority that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.

16) Lighting- Lighting of ground-mounted solar energy systems shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar energy system shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

- 17) Signage** – Signs on ground mounted solar energy systems shall comply with the town sign by-law. A sign consistent with the sign by-law shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar energy systems shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar energy system.
- 18) Utility Connections** – Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- 19) Emergency Services** – The ground-mounted solar energy system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief, Police Chief and any Emergency Management entity. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar energy system shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
- 20) Land Clearing, Soil Erosion and habitat Impacts** – Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of a solar energy system or otherwise prescribed by applicable laws, regulations, and by-laws.
- 21) Monitoring and Maintenance** – The ground mounted solar energy system owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief, Emergency Management Director, and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar energy system and any access road(s), unless accepted as a public way.
- 22) Modifications** – All material modifications to a ground mounted solar energy system made after issuance of the required building permit shall require approval by the Site Plan Review Authority.
- 23) Incurred Costs** – In the event the Town incurs expenses (engineer, consultant, etc.) while reviewing the proposed site plan, these expenses will be the responsibility of the owner / operator.
- 24) Abandonment or Decommissioning Removal Requirements** – Any ground mounted solar energy system which has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (a) Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

(25) Abandonment – Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the ground mounted solar energy system shall be considered abandoned when it fails to operate for more than one year without the written consent of the Site Plan Review Authority. If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous, or decommissioned ground mounted solar energy system with all expenses incurred to be the responsibility of the owner and / or operator. As a condition of Site Plan approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation

4.2 Special Permits.

Uses which may be authorized by the Planning Board by Special Permit in Accordance with the Provisions of this Bylaw.

4.2.1

Sawmill, Commercial dog kennel or veterinary hospital.

4.2.2

Golf Course, ski tow, riding stable or other recreational facility of similar character.

4.2.3

Retail business or consumer service establishment, including but not limited to food store, barber, or beauty shop, antique shop, eating establishment, bank or other office use, subject to the following special requirements:

- A. The lot, and its adjacent properties where specific agreements have been secured for such purposes only as long as those agreements are in force, shall be sufficient in size so as to provide suitable off-street parking area with adequate disposal of storm water, capable to accommodate parked vehicles for the maximum capacity use of the proposed facility.
- B. No commercial building, structure, parking area or driveway providing access to or from a public way for such use shall be located within fifty (50) feet of any side or rear property line, unless specifically otherwise authorized by the Board.
- C. The display, storage and sales of products and merchandise are conducted within a building.
- D. Such business shall not employ more than ten (10) permanent employees.

4.2.4

Municipal Uses

4.2.5

Public Utilities

4.2.6

Trailers and Mobile Homes:

The Board of Selectmen may grant a special permit pursuant to General Laws, Chapter 40A, Section 9 and amendments thereto for a travel trailer provided:

- A. Said permit shall not extend longer than one (1) year.
- B. The travel trailer is to be used as temporary living quarters by the owner of the premises.
- C. The owner is in the process of constructing a dwelling as a separate structure on the lot.
- D. The owner shall comply with all provisions of the State Environmental code, Title 5, and with regulations of the Board of Health.
- E. Said travel trailer is not injurious, offensive, or noxious. Notwithstanding this provision, nothing shall prevent a trailer from remaining on any premises, if the same is not used on premises for dwelling purpose, and nothing shall prevent any travel trailer from being replaced by another unit.

4.2.7

Wireless Communication Facilities

4.2.8

Small Scale Wind Energy Systems

1. Purpose:

The purpose of this by-law is to provide for the construction and operation of small wind energy facilities and to provide standards for the placement, design, construction, monitoring, modification and removal of wind facilities that address public safety, minimize impacts on scenic, natural and historic resources of town and provide adequate financial assurance for decommissioning.

2. The provisions set forth in this section shall take precedence over all other sections when considering applications related to the construction, operation and / or repair of wind energy facilities.

3. Applicability:

This section applies to all on site small wind energy facilities, proposed to be constructed after the effective date of this section. This section also includes building integrated wind systems, and physical modifications to existing wind facilities that materially alter the type, configuration, location or size of such facilities or other equipment.

4. Height:

The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade tip height. This measure is also commonly referred to as the maximum tip height (MTH).

5. Special Permit Granting Authority:

The special permit granting authority shall be the Planning Board, as designated by the Tyringham zoning by-laws for the issuance of special permits.

6. Substantial Evidence:

Such evidence as a reasonable mind might accept as adequate to support a conclusion.

7. Building Integrated Wind Energy Facility:

A wind energy facility shall be considered to be building integrated if it is designed to be permanently mounted on a building or other inhabitable structure. This definition applies to wind turbines of any capacity that are designed to be operated in direct contact with a building. This definition also covers, for the purpose of this zoning provisions, other wind

energy facilities primarily used for land based applications which may be permanently mounted and operated on a building.

8. Setbacks:

A wind turbine may not be sited within:

- (a) a distance equal to one and one-half (1.5) times the maximum tip height (MTH) of the wind turbine from buildings, critical infrastructure including Critical Electric Infrastructure and above ground natural gas distribution infrastructure – or private or public ways that are not part of the wind energy facility;
- (b) a distance equal to one and one-half (1.5) times the maximum tip height (MTH) of the turbine from the nearest property line, and private or public way.

9. Set Back Waiver:

The special permit granting authority may reduce the minimum setback distance as appropriate based on site specific considerations, or written consent of the affected abutter(s), if the project satisfies all other criteria for the granting of a special permit under the provisions of this section.

10. General Required Documents:

The special permit application submitted to the Planning Board must, at a minimum include the following:

- (a) A plot plan of the proposed wind facility site, with contour intervals of no more than 10 feet, showing:
 - i. Property lines and physical dimensions of the subject property within 500 feet of the wind turbine from the proposed tower location.
 - ii. Location, dimensions and types of existing major structures on the property
 - iii. Location of the proposed wind system tower, foundations, guy anchors and associated equipment.
 - iv. The right of way of any public road that is contiguous with the property;
 - v. Location of all existing above ground or overhead gas or electric infrastructure, including Critical Electric Infrastructure, and utility rights of way (ROW) and easements, whether fully cleared of vegetation or only partially cleared, within 500 feet of the site parcel;
- (b) Wind Energy facility technical specifications, including manufacturer and model, rotor diameter, tower height, type (freestanding or guyed), foundation type / dimensions
- (c) Tower foundation blueprints or drawings signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.
- (d) Tower blueprints or drawings signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.
- (e) Electrical schematic
- (f) Name, address, phone number and signature of the applicant, as well as all co-applicants or property owners if any.
- (g) The name, contact information and signature of any agents representing the applicant
- (h) A plan for maintenance of the small wind energy facility

Additional Required Supporting Documentation for Building Integrated Wind Energy Facilities:

- (a) Analysis and design documents, completed by a structural engineer registered to practice in the Commonwealth of Massachusetts, demonstrating that the proposed building is structurally sufficient to support the permanent installation of the proposed building integrated wind energy facility. At a minimum, the analysis should address vibration, wind load, and ice load.
- (b) Elevation drawings of building with building integrated wind energy facility installed, viewed from north, south, east and west
- (c) Building schematic detailing point(s) of connection and associated supports for the building integrated wind energy facility

(d) Schematic of attachment method for connecting the building integrated wind energy facility to the building

(e) Specification sheets for wind turbine and all related components (inverters, controllers, disconnects, etc.)

(f) One or three line electrical diagram detailing wind turbine, associated components and electrical interconnection methods, with all NEC compliant disconnects and overcurrent devices

11. A permit shall be granted unless the permit granting authority finds in writing that there is substantial evidence that:

(a) the specific site is not an appropriate location for such use;

(b) there is expected to be any serious hazard to pedestrians or vehicles from the use;

(c) a nuisance is expected to be created by the use; and

(d) adequate and appropriate facilities will be not provided for the proper operation and maintenance of the use

12. Compliance with Laws, Ordinances and Regulations

The Construction and operation of all such proposed wind energy facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

13. Incurred costs:

In the event the Town incurs expenses (engineer, consultant, etc.) while reviewing the proposed special permit, these expenses will be the responsibility of the owner / operator.

14. Proof of Liability Insurance

The applicant shall be required to provide evidence of liability insurance in an amount, and for a duration, sufficient to cover loss or damage to persons and property occasioned by the failure of the facility.

15. Design Standard

(a) Appearance, Color and Finish

FAA Safety consideration on color and appearance should be respected. Where applicant is seeking a non-standard color in an area not regulated by the FAA, the zoning board has authority to regulate color of turbine.

(b) Lighting

Wind turbines shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the wind energy facility, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

(c) Signage

Signs on the wind energy facility shall comply with the requirements of the town's sign regulations, and shall be limited to those necessary to identify the owner, provide a 24 hour emergency contact phone number and warn of any danger.

16. Advertising

Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.

17. Appurtenant Structures

All appurtenant structures to wind energy facilities shall be subject to applicable regulations concerning the bulk and height of structures, lot area, setbacks, and open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Whenever reasonable, structures should be shaded from view by vegetation and /or located in an underground vault and joined or clustered to avoid adverse visual impact.

18. Safety and Environmental Standards

(a) Emergency Services

The applicant shall provide a copy of the project summary, electrical schematic and site plan to the local emergency services entity, as designated by the permit granting authority as well as the local electrical utility company. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan.

All means of disconnecting the wind energy facility shall be clearly marked.

The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

(b) Unauthorized Access

Wind turbines or other structures part of a wind energy facility shall be designed to prevent unauthorized access. For instance, the tower shall be designed and installed so as to not provide step bolts or other climbing means readily accessible to the public for a minimum height of 8 feet above the ground. Electrical equipment shall be locked where possible.

19. Shadow / Flicker

Wind energy facilities shall be sited in a manner that minimizes shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses.

20. Sound

The wind facility and associated equipment shall conform with the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the Permit Granting Authority agree that those provisions shall not be applicable. A source of sound will be considered to be violating these regulations if the source:

(a) Increases the broadband sound level by more than 10 dB(A) above ambient, or

(b) Produces a "pure tone" condition – when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more. These criteria are measured both at the property line and at the nearest inhabited structure. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from DEP. An analysis prepared by a qualified engineer shall be presented to demonstrate compliance with these noise standards, if required by the permit granting authority. The permit granting authority, in consultation with the Department, shall determine whether such violations shall be measured at the property or at the nearest inhabited residence.

21. Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind facility and is otherwise prescribed by applicable laws, regulations, and ordinances, and subject to existing easements, restrictions, and conditions of record.

22. Monitoring and Maintenance

(a) Facility Conditions

The applicant shall maintain the wind energy facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, emergency braking (stopping) and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The project owner shall be responsible for the cost of maintaining the wind energy facility and any access road(s), unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction.

(b) Modifications

All material modifications to a wind energy facility made after issuance of the permit shall require approval by the permit granting authority as provided in this section.

23. Abandonment of Decommissioning /Removal Requirements

Any wind energy facility which has reached the end of its useful life or has been abandoned shall be removed. When the wind energy facility is scheduled to be decommissioned, the applicant shall notify the town by certified mail of the proposed date of discontinued operations and plans for removal. The owner / operator shall physically remove the wind facility no more than 150 days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored to the state it was in before the facility was constructed or any other legally authorized use. More specifically, decommissioning shall consist of:

- (a) Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The permit granting authority may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

24. Abandonment

Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the permit granting authority. The permit granting authority shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the applicant fails to remove the wind energy facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town shall have the authority to enter the property and physically remove the facility with all expenses incurred the responsibility of the owner and / or operator.

25. Expiration

A permit issued pursuant to this ordinance shall expire if:

- (a) The wind energy facility is not installed and functioning within 48 months from the date the permit is issued; or,
- (b) The wind energy facility

4.3 Apartments; Two-Family Dwellings

A dwelling may be converted to a two family dwelling by right, subject to the following requirements:

- A.** Renovation plans and elevations and the location of the building on the lot must be approved in writing by the Planning Board, Board of Health, Board of Selectmen, Conservation Commission and the Building Inspector in respect to their special fields of responsibilities.
- B.** Design plans shall contain provisions for 1.) No more than a total of two dwelling units, 2.) Adequate water, 3.) Sewage disposal facilities and 4.) Off street parking - minimum two per dwelling unit. All plans shall be in conformity with building codes.
- C.** Fire escapes or outside stairways leading to a second story shall not be located on a wall facing a road and shall not occupy any part of the rear or side setbacks under Section 5.5.1 of the bylaws, except in case of hardship.

4.4 Demolition Delay

4.4.1. Purpose

This Bylaw is enacted for the purpose of preserving and protecting significant buildings within Tyringham which reflect distinctive features of the architectural, historical and cultural heritage of the town and to encourage owners of such buildings to seek ways to preserve, rehabilitate or restore them rather than demolish them. To achieve those purposes, the Tyringham Historical Commission is empowered to advise the Building Inspector with respect to the issuance of permits for the demolition of significant buildings. The issuance of demolition permits for significant buildings is regulated as provided in this bylaw.

4.4.2 Definitions

- 1. Building Inspector:** The person occupying the office of Inspector of Buildings or otherwise authorized to issue demolition permits.
- 2. Commission:** The Tyringham Historical Commission
- 3. Demolition:** An act of pulling down, destroying, removing or razing a building or a substantial portion of a building, or commencing the work of total or substantial destruction with the intent of completing same. This would not include removing or replacing decks or porches.
- 4. Historic Resources List:** Tyringham buildings on the National Register of Historic Places, or the State Register of Historic Places, or recorded by the Commission in the Local Inventory of Historic Resources, or built one hundred years ago or earlier.
- 5. Preferably preserved:** Any historically significant building deemed by the Commission to have an important association with the economic, political or cultural development of the town or with important state or national figures or to be an outstanding or last remaining example of a recognized architectural style.
- 6. Significant building:** Any combination of structural materials forming a shelter for persons, animals or property, included on the Tyringham historic resources list to be provided to the Building Inspector by the Commission, or built one hundred years ago or earlier.

4.4.3 Procedure

- 1. Determination by Building Inspector** - Upon receipt of a completed application for a demolition permit, the Building Inspector, in consultation with the Commission, shall establish whether the building is a significant building as defined above. If it is, the demolition permit shall be withheld and the Building Inspector shall forward a copy of the application to the Commission within seven days of filing. The applicant may appeal the Building Inspector's decision by filing an appeal with the Zoning Board of Appeals within 21 days, which Board shall hear such appeal in the same manner and following the same procedures it follows for zoning applications appealing the decision of the Building Inspector. The time periods defined in succeeding sections of this Bylaw shall, if necessary, begin to run after the Zoning Board of Appeals has filed its decision with the Town Clerk.
- 2. Public Hearing** - Notice - After receipt of the permit application, the Commission shall fix a public hearing within 45 days to determine if the building is preferably preserved. Public notice shall be published in a local newspaper by the Commission at the cost of the applicant, of the time, place, and purpose of the hearing once in each of two successive weeks, the first publication not less than fourteen days before the day of said hearing. Notice shall be mailed to the applicant, to owners of all property within 300 feet of the property as they appear on the most recent tax list, and to the Tyringham Planning Board, by the Commission at the cost of the applicant.
- 3. Determination** - If after such hearing the Commission determines that the demolition of the significant building will not be detrimental to the historical or cultural heritage of the town as described under 4.4.2.5 above, the Commission shall so notify the Building Inspector within 10 days. Upon receipt of such notification or upon the failure of the Commission to act on the application within 45 days from the date it received the application, the Building Inspector may issue the demolition permit. If the Commission determines that the significant

building has important associations with the economic, political or cultural development of the town or with important state or national figures or is an outstanding or last remaining example of a recognized architectural style, and is therefore preferably preserved, it shall so notify the Building Inspector in writing. No demolition permit may be issued until twelve months from the date of the Commission's determination. During this twelve-month period, the applicant shall present to the Historical Commission written evidence that a bona fide and reasonable effort has been made to preserve the building, or to locate a purchaser who is willing to preserve, rehabilitate or restore the building or structure on another property. The owner of a building determined to be significant may seek a predetermination by the Commission as to whether the building is preferably preserved by filing an application for a hearing before the Commission with the Building Inspector. The Commission shall schedule a public hearing under the notice provisions of 4.4.3.2 above. If, after a public hearing, the building is determined to be preferably preserved, no demolition permit shall be issued until twelve months after the completed demolition permit application is filed. Any determination made by the Commission shall lapse one year from the date of the determination.

Notwithstanding the preceding paragraphs, the Building Inspector may issue a demolition permit for a preferably preserved building at any time after written receipt of notice from the Commission to the effect that the Commission is satisfied there is no reasonable likelihood that the owner or some other group is willing to preserve, rehabilitate or restore such building.

4. Emergency Measures - Nothing in the Bylaw shall restrict the Building Inspector from immediately ordering the demolition of unsafe structures in accordance with the provisions of Chapter 143 Massachusetts General Laws.

4.4.4 Enforcement -

The Commission and Building Inspector are each authorized to institute any and all proceedings in law and equity as they deem necessary and appropriate to obtain compliance with requirements of this bylaw, or to prevent violation thereof.

Violation shall be punished by a fine of not more than \$300.00 per day payable until such time as a demolition permit has been applied for in accordance with this bylaw. In addition, unless a demolition (or relocation) permit was obtained for such demolition, and unless such permit was fully complied with, the Inspector shall not issue a building permit pertaining to any property on which a building or structure identified and regulated by this section has been demolished, for a period of two (2) years from the date of demolition.

Upon determination by the Commission that the building is preferably preserved, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Building Inspector. Should the owner fail to secure the building the loss of such building through fire or any other cause shall be considered voluntary demolition for the purposes of this bylaw.

4.4.5 Severability

If any section of this bylaw is, for any reason, declared invalid or unconstitutional by any court, every other section, paragraph or part shall continue in full force and effect.

4.5 Prohibited Uses

4.5.1 Large Scale Wind Energy Is Prohibited.

SECTION 5: INTENSITY REGULATIONS

5.1 Size, Frontage, Setbacks.

Any building or structure used for dwelling purposes or housing a principal permitted use, shall be so located on a lot as to meet the following requirements:

	Lot Size	Frontage	Front Setback	Rear and Side Setback
Agricultural				
Residential	1 Acre	200 ft.	50 ft.	30 ft.

Front setback is to be measured from the street right-of-way line where a plan of the way is on file with the Registry of Deeds, or in the absence of such plan from a line 25 feet from and parallel with the center line of the traveled way.

5.2 Septic Or Leaching Fields.

No septic or leaching field shall be placed within two hundred (200) feet of Goose Pond (including Upper-Goose, so-called) or any other lake or great pond, so-called, or Hop Book or tributaries.

5.3 Building Size, Area, Height.

No building shall cover more than 5,000 square feet of land area. Such building shall not exceed 5% of the lot area on which it is located. The height of the building shall not be in excess of 36 feet, measured from the top of the foundation level. This Section shall not apply to Section 4.1.2 uses or 4.1.3 uses.

5.4 Setbacks:

Non-dwelling units. Any structure of size 250 square feet or smaller (garage, shed, outbuilding) not used for a dwelling unit, and of permitted use, shall be so located to meet the following requirements:

Front setback: 50 feet

Side or rear set back: 10 feet Maximum height above grade: 14 feet

SECTION 6: SPECIAL PROVISIONS

6.1 Non-Conforming Structures.

Any lawful use of any building, structure, and / or land may be continued although not conforming with the provisions of this Bylaw but no such non-conforming use shall be changed, extended or enlarged in any manner, except as provided in Section 6.1.3.

6.1.1

If any non-conforming use of any building, structure, and / or land is changed to a conforming use, it shall not thereafter be put into any non-conforming use.

6.1.2

Any non-conforming use of land or of a building or structure discontinued for a period of not less than twenty four (24) consecutive months shall, by the terms of this Bylaw, constitute abandonment of non-conforming usage: Such land or building shall thereafter be used or developed only in accordance with the terms of this Bylaw. A non-conforming structure damaged by fire, explosion or any other catastrophe may be rebuilt provided such rebuilding, reconstruction or restoration shall be undertaken within two (2) years of such catastrophe and the structure as rebuilt, or restored shall not be in greater non-conformity with the provisions of the Bylaw. Such rebuilt, reconstructed or restored structure may be enlarged or changed in use in accordance with the provisions of Section 6.1.3 herein.

6.1.3

An addition to an existing non-conforming single family residence in a residential district is permitted as a manner of right provided that the habitable addition does not increase the habitable floor area of the original structure by more than (50) percent and that any said addition meets street and lot line setback requirements in effect at the time of application.

6.1.4

The Zoning Board of Appeals may authorize by a special permit any extension, alteration or reconstruction of a non-conforming structure to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent, provided that no such extension, alteration, reconstruction or change in use shall be permitted unless the Zoning Board of Appeals finds:

- a) That such change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood;
- b) That such extended, altered and reconstructed structure or changed use shall not be in greater non-conformity with open space, yard and off street parking requirements of this Bylaw.

6.1.5

Nothing of Section 6, shall apply to billboards, signs and other advertising devices subject to the provisions of Section 29-33 inclusive, of Chapter 93 and Chapter 93D.

6.2 Sign Regulations.

6.2.1

No sign or advertising device shall be erected or placed in public view within Town limits without a permit from the Board of Selectmen, except descriptive residential signs or signs pertaining to the use, sale or rental of a dwelling when placed on property by an owner or occupant and providing such signs each do not exceed two (2) square feet in area.

A. Requests for permits shall be submitted along with a rendering of the proposed sign and may be approved by the Board of Selectmen in the following cases only:

1. Recreational establishments in the town. Such signs shall not exceed five (5) square feet in area.
2. On other than residential premises, signs shall be limited to the name of the firm or goods or services available, saleable, or produced on the premises. There shall not be more than two (2) signs or advertising devices per business, excepting those which are attached to and are part of the architectural design of a building or structure including a gas pump. The total area of all signs and/or advertising devices shall not exceed twenty (20) square feet per business nor shall any sign or device project above the eaves or parapet wall of any building to which it is affixed.
3. Non-conforming signs for special occasions not permitted in sub-section 1 and 2 above may be allowed upon application to the Board of Selectmen for a permit not to extend beyond the three (3) month period and upon such terms and conditions as the Board shall stipulate.
4. Any non-conforming sign in use at the time of the adoption of this bylaw may be continued and, if damaged or destroyed by fire, or other unavoidable cause may be restored to its former condition.
5. Any change in a non-conforming sign shall render that sign illegal and shall require a new permit.

B. In no case shall permits be granted for the following:

1. Billboards.
2. Signs or other advertising devices illuminated by other than shaded or indirect white incandescent lights.
3. Signs, banners, or other advertising devices which move, flash or reflect, or which are designed to attract the eye by intermittent or repeated motion or illumination.
4. Signs or lights, which because of their placement or direction and intensity of illumination, constitute a hazard to traffic.
5. A freestanding sign exceeding ten (10) feet in height.

6.2.2

Sound trucks and other advertising sound wagons or vehicles shall not operate on the public highways with said sound or other noise apparatus or devices in operation, except in accordance with a written permit from the Board of Selectmen.

6.3 Junk Cars or Parts.

6.3.1

No unregistered and dilapidated motor vehicle and/or parts thereof shall be permitted on premises if the same are in public view for a period in excess of four (4) weeks.

6.3.2

Upon application to the Board of Selectmen, a temporary permit may be issued to a property owner to keep no more than four (4) unregistered and dilapidated motor vehicles and/or parts thereof for useful purposes on his/her property, providing that, in judgment of the Board, they are suitable enclosed or screened.

6.4 Removal of Earth Material

A. No removal of earth materials, including the stripping of loam or topsoil shall be permitted except when incidental to or required in connection with the following activities:

1. The erection of a building or structure for which a permit has been properly issued.
2. The construction or restoration of a road.
3. Any use incidental to a permitted use.
4. The grading or landscaping of premises, providing this grading is not lower than any adjoining street.
5. Agricultural operations.

B. In no event shall any removal of earth materials, including the stripping of loam or topsoil, be permitted wherein said materials are removed from the parcel unless a special permit shall have first been obtained from the Board of Selectmen pursuant to General Laws, Chapter 40A, Section 4 and subject to the following safeguards:

1. The use will not be injurious, offensive or obnoxious to the neighborhood.
2. The area of excavation will be screened so as to reduce dust and noise.
3. At the termination of operations, the area of excavation will be graded and landscaped according to plans submitted with the special permit.
4. Such other requirements as the Board might reasonably impose.
5. The Board may require a bond with sufficient surety to guarantee the performance of these conditions.

6.5 Radioactive Waste

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6.6 Curb Cut or Driveway Permit

No person shall construct or relocate a driveway or access road from private property to a public way or a way shown on an approved subdivision plan, without first having obtained a written permit from the Board of Selectmen. Applications shall be submitted to the Superintendent of Roads, who shall make recommendations to the Selectmen on issues relating to the installation of aprons, culverts and other features.

6.6.1 Application And Issuance –

Application for said permit shall contain a description of the proposed construction as far as it encroaches upon or affects the way and its shoulders, banks, ditches, drainage, and other features. The permit shall be issued with due consideration of traffic hazards and drainage problems which might result from the proposed driveway. The Permit Granting Authority shall issue or deny said permit within 14 days of application.

Any application for a driveway of such length or grade that it may discharge, in the judgment of the Permit Granting Authority, a substantial volume of water upon a way, or adjacent property, shall be denied until it includes such plans and specifications for proposed drainage facilities as may be required. Such facilities must be so designed as to reduce, disperse, and delay the runoff, or otherwise protect the traveled ways, drainage facilities, and adjacent lands from flooding, erosion, and siltation, and prevent the pollution of waterways or wetlands.

6.6.2 Design Requirements -

- a. Maximum unpaved driveway grade: 10%
- b. Maximum paved driveway grade: 12%
- c. Wherever possible, entrances are to set back sixty-five (65) feet or more from a street corner measured between the nearest edge of the driveway and the crossroad edge of pavement.
- d. Wherever possible, a clear sight distance of at least sixty-five (65) feet should be maintained on either side of the driveway at its point of intersection with the public way.
- e. Driveways shall be so constructed that water from the driveway shall not drain onto the road.
- f. In no instance shall the edges of the driveway entering into the road conflict with the flow of the surface water runoff.
- g. Culverts taking the place of roadside ditches shall have a diameter of not less than twelve (12) inches. Larger diameters may be required.

6.6.3 Design Requirements For Common Driveways

- a. A common driveway shall provide access to no more than three (3) dwelling units.
- b. Maximum length to the last fork of a common driveway shall be 1,000 feet.
- c. The traveled way shall have a minimum width according to the following schedule: If less than 500 feet in length, a minimum width of 12 feet. If more than 500 feet in length, a minimum width of 15 feet.
- d. Frontage on a common driveway may not be used to satisfy zoning frontage requirements.
- e. A common driveway must originate on approved frontage and must observe a twenty -five (25) foot setback from the sideline which the lot of origin shares with a lot not served by the common driveway. The design shall in the opinion of the Permit Granting Authority assure adequate safety and access for emergency vehicles.
- f. The application for a common driveway must be accompanied by a declaration of covenants, easements and restriction for the use and maintenance of said common drives
- g. The sale of lots and/or the erection of buildings is prohibited until such time as the common driveway has been constructed in accordance with the permit approval plan.

h. The Selectmen may grant a waiver of any of the requirements of Section 6.6.3, if they find that it will cause a hardship, financial or otherwise. The Selectmen reserve the right to impose conditions, limitations or safeguards on any permit or extension issued under these regulations, including the imposition of a bond to guarantee the faithful and satisfactory performance of the work.

6.6.4 Relation To Subdivision Regulations –

Where the proposed development constitutes a subdivision, any requirements in Subdivision Regulations of the Town of Tyringham regarding the design of ways shall supersede the requirements of this bylaw.

6.7 Wireless Communication Facilities & Towers

I. PURPOSE

The purpose and intent of this bylaw section is to provide standards for the placement, design, construction, operation, monitoring, modification and removal of Wireless Communication Facilities and Towers.

This bylaw is to be used in conjunction with other regulations adopted by the town, including site plan review and other local bylaws designed to encourage appropriate land use, environmental protection and provision of adequate infrastructure development. The provisions set forth in this bylaw shall take precedence over all other bylaws when considering applications related to the construction, operation, and/or repair of Wireless Communication Facilities and Towers. The Purpose of Bylaw Section 6.7 is to:

- A.** Preserve the character and appearance of the Town of Tyringham while allowing adequate wireless communications services to be developed.
- B.** Protect the scenic, historic, environmental, and natural or man-made resources of Tyringham.
- C.** Locate towers and/or antennas in a manner which protects property values, as well as the general safety, health, welfare and quality of life of the residents of Tyringham and all those who visit this community.
- D.** Regulate the total number and height of towers within the Town of Tyringham to the minimum number and height necessary to provide adequate coverage.
- E.** Provide oversight and input for the regulation, placement, design, appearance, construction, monitoring, modification and removal of wireless communications facilities and towers.
- F.** Promote the sharing of existing towers, and the clustering of new facilities/towers where possible.
- G.** Ensure that facilities/towers are located so that they minimize negative impacts such as –but not limited to -- attractive nuisance, noise, and falling objects.
- H.** Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify wireless communications facilities.

II. CONSISTENCY WITH FEDERAL LAW

These regulations are intended to be consistent with the Federal Telecommunications Act of 1996 in that:

- A.** They do not prohibit, or have the effect of prohibiting, the provision of Personal Wireless Services;
- B.** They are not intended to be used to unreasonably discriminate among providers of functionally equivalent Services;

C. They do not regulate Personal Wireless Services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated Services and Facilities comply with the Federal Communications Commission (FCC) rules and regulations.

D. In case of any conflict between this bylaw and the Telecommunications Act of 1996, the provisions of the Telecommunications Act shall control.

III. EXEMPTIONS

The following wireless communications facilities are exempt from regulation under this Section 6.7: police, fire, ambulance and other emergency dispatch; amateur (HAM) radio, citizens band radio; any existing commercial radio tower, and radio dispatch services for local businesses; antennas used solely for residential household television and radio reception, and satellite dishes measuring 2 meters or less in diameter. Teleports utilizing satellite dishes of greater than 2.0 meters in diameter designed to uplink to communications satellites are not allowed in the Town of Tyringham. Fixed Wireless Broadband Telecommunication Facilities (non mobile/cellular) are subject to bylaw 6.7.1.

IV. INDEPENDENT CONSULTANTS AND SITE INSPECTIONS

A. Due to the complex technical character of the information to be provided by an applicant pursuant to these regulations and the monitoring, testing and inspection of facilities and operation provisions, the Planning Board may hire such consultants as it deems reasonably necessary to assist the Board in making determinations.

B. In connection with any application for a Special Permit under this Section 6.7, the applicant shall be required to pay fees to the Town to cover the reasonable costs of outside consultant review of such application as provided in rules promulgated by the Planning Board pursuant to Massachusetts General Law (M.G.L.) Chapter 44, Section 53G. Such costs may include consultant fees at reasonable market rates, covering professional and technical services required beyond the Planning Board's capabilities for a proper and thorough review of the application. No special permit or building permit shall be issued until all such costs have been paid. Such fees shall be deposited into a segregated account, and unexpended funds shall be returned to the applicant as provided in M.G.L. Chapter 44, Section 53G, and any regulations adopted pursuant thereto by the Planning Board.

C. The consultants shall work under the direction of the Tyringham Planning Board. Copies of the consultant's findings and reports shall be made available to the applicant not less than seven

(7) days prior to any meeting of the Planning Board where the consultant's report will be considered. The applicant shall be given opportunity to respond to the report in writing and at the next meeting.

D. Special permit applicants shall obtain written permission from property owners for the town's independent consultants to conduct any necessary site visits.

V. SPECIAL PERMIT CONSIDERATIONS

A. No tower or wireless communications facility shall be erected, constructed, or installed without first obtaining a special permit from the Planning Board. This special permit requirement shall also apply to modifications of existing wireless communication towers, equipment and facilities.

B. In acting on the special permit application, the Planning Board shall proceed in accordance with Section I of this bylaw and Section 7.3 of the Tyringham Zoning Bylaw. The Planning

Board shall consider the following criteria before granting the special permit:

1. The applicant is in compliance with all requirements for special permits in the Tyringham Zoning Bylaw and in this Section 6.7.
2. The application is in compliance with rules and regulations as adopted by the FCC.
3. The applicant has provided all information reasonably required to enable the Planning Board to make an informed decision.
4. The applicant is not already providing adequate coverage to the Town of Tyringham.
5. The applicant has endeavored to provide adequate coverage to the Town of Tyringham with the least number of towers and antennas as are technically and economically feasible.
6. The coverage to be provided benefits primarily the residents of the Town of Tyringham as opposed to the surrounding towns.
7. Whether the applicant has attempted to utilize existing structures or towers.
8. Whether efforts have been made to locate new towers adjacent to existing towers.
9. Whether the applicant has agreed to rent or lease available space on the tower (if structurally able) to other providers under the terms of a fair-market lease, with reasonable conditions and without discrimination to other wireless communication providers.
10. Visual impacts to ridgelines, residential views, scenic areas, and historical sites
11. The degree to which the tower/facility is screened by topographic features.
12. Population density and proximity to the proposed site.
13. Public protection from safety hazards that could result from structural failure, ice accumulation and discharge, and noise nuisance.

C. Any decision of the Tyringham Planning Board to deny an application for a special permit under this regulation shall be in conformance with the Telecommunications Act of 1996 and shall be in writing and supported by substantial evidence contained in a written record.

VI. ADDITIONAL SITING CONSIDERATIONS

The applicant is encouraged, but not required, to make use of available municipal lands if those lands conform to the standards in this Section 6.7 and visual impacts can be minimized.

VII. GENERAL PROJECT/SITE REQUIREMENTS

A. Applicant. If the applicant is not the landowner, the landowner will be considered a co-applicant and must submit the documentation required under these regulations.

B. Access and Utilities. Where new wireless communication towers and facilities require construction of or improvements to access roads, to the extent practicable, roads shall follow the contour of the land and be as inconspicuous as possible. Utility or service lines shall be buried underground. The Planning Board shall request input from the Chiefs (or their designees) of Fire, Police, and other Emergency services regarding the adequacy of emergency access for the planned drive or roadway to the site. The Planning Board may waive the underground requirement at its discretion.

C. Screening, Tower finish, Fencing, Signage and Landscaping shall be at the discretion of the Planning Board and will conform to the surrounding geography and character of the town. Existing vegetation surrounding the site shall be preserved and maintained to the greatest extent possible. All landscaping shall be properly maintained by the owner to ensure its good health and viability. All areas disturbed during project construction shall be replanted with appropriate native species. The Applicant shall obtain a financial surety (to be determined by the Planning Board) to cover the cost of remediation of any damage to the

landscape which occurs during the clearing or grading of the site.

D. Building Design. Communication equipment shelters and accessory buildings shall be designed at the discretion of the Planning Board. Buildings and related structures shall use materials, colors, and textures that will blend them into the natural setting to minimize the visual impact.

E. Height of Towers. Towers shall not exceed the minimum height necessary to provide adequate coverage for the wireless communications facilities proposed.

F. Use of Repeaters. The applicant shall demonstrate that it is not reasonably able to assure adequate coverage, or to create adequate coverage in the Town of Tyringham, from base stations located in other towns or to fill holes within the area of otherwise adequate coverage except by use of repeaters. Applicants shall detail the number, location, power output, and coverage of any proposed Repeaters in their systems and provide engineering data to justify their use.

G. Commercial Advertising. Commercial advertising shall not be allowed on any antenna, tower, accessory building or communications equipment shelter.

H. Lighting. No external lighting is permitted, except for manually operated emergency lights for use only when operating personnel are on site, or as otherwise required by the FCC or FAA.

I. Noise. Noise-producing equipment shall be sited and/or insulated to guarantee that no increase in noise above ambient levels occurs, measured at the property line.

J. Air Navigation. No tower or wireless communications facility that would be classified as a hazard to air navigation, as defined by the Federal Aviation Regulations, is permitted.

K. Setback Requirements. Tower setbacks shall be measured from the base of the tower (unless guy-wired) to the nearest point along each property line of the parcel on which it is located. Where guy wire supports are used, setbacks will begin at the base of the guy wire anchor to the ground, not at the base of the tower.

1. Wireless communications facilities or towers, including guy-wire anchors and protective fencing, if any, shall not be located:

a. Closer than (500) feet in a horizontal distance to any boundary line of the property upon which the tower(s) or facilities are located. The distance shall be measured from the base of the tower or from the nearest guy wire anchor to the boundary line. This restriction may be reduced if the applicant has obtained written consent from the owners of all properties located within the setback of such facility or tower. Such consent must be in writing.

b. Within the habitat of any state-listed rare or endangered wildlife or species.

c. Within the area regulated by the Massachusetts Wetlands Protection Act. (Massachusetts General Law Chapter 131 section 40).

d. Setback Waiver. The Planning Board may increase or decrease the minimum setback distance as appropriate based on project and site specific considerations, such as tower type, topography, tree cover, etc., to allow for consideration of factors that may mitigate the impact to abutters. The Planning Board shall use this waiver provision sparingly and cautiously and shall do so only when such waiver will result in a significant enhancement to the site design and the impact on the town and abutters.

The Planning Board shall pay particular attention to Section I (Purpose) of the Wireless Communication bylaw when considering granting setback waivers.

2. No Repeater shall be closer than 50' to a dwelling unit measured at ground level, nor less than 35' above the ground. The applicant's dwelling shall be deemed exempt from this requirement.

L. Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the tower/facility or otherwise prescribed by applicable laws, regulations, and bylaws.

Tower/facility design shall minimize fragmentation of open space areas and shall avoid permanently protected open space when feasible. Towers/facilities also shall be located in a

manner that does not have significant negative impacts on rare species in the vicinity.

M. Hazardous Materials. No hazardous materials or waste shall be discharged on the site of any Wireless Telecommunication Facility. If any hazardous materials or wastes are to be used on site, there shall be provisions for full containment of such materials or waste. An enclosed containment area, designed to contain at least 110 percent of the volume of the hazardous materials or waste stored or used on the site is required.

N. Monitoring and Maintenance. The applicant shall maintain the tower/facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The project owner shall be responsible for the cost of maintaining the tower/facility and any access road(s), unless accepted as a public way.

O. Reporting. Notice shall be provided to the town of any change in ownership of the Wireless Telecommunication Facility.

VIII. GENERAL APPLICATION REQUIREMENTS & REQUIRED DOCUMENTATION

The following shall be required in all applications:

A. Contract with Provider.

An applicant for a wireless communications tower /facility special permit must be a wireless communications provider, and/or must provide a copy of its lease/contract with an existing wireless communications provider. A "Letter of Intent" from a service provider to the applicant may be considered in the early stages of the application process, providing that a final lease agreement is submitted to the Planning Board before the award of a special permit. A special permit will not be granted for a tower/facility to be built on speculation. Copies of all lease/contracts must be provided with the application.

B. Appropriate Signatures/Contacts.

All applications shall require that the landowners, if different from the tower/facility owners and/or service providers, be co-applicants. Required documents include one each displaying original signature(s), and 5 photocopies. The following shall be provided:

1. Signature(s) of landowner(s), applicant(s), tower/facility owner(s).
2. An affidavit from the owner of the property acknowledging responsibility for the removal of a tower or facility that is deemed "abandoned" or unsafe by the Planning Board in consultation with the Building Inspector, or is in violation of this section, or whose permit has expired and has not been renewed by the Planning Board.
3. An affidavit from the landowner expressing written consent for co-application, and copies of any and all leases or other agreements with tower/facility owners, applicant(s) or other service providers.
4. The exact legal name, address, principal place of business, and phone number of the following:
 - a. Applicant and Co-Applicants. If any applicant is a business or corporation, trust, association, or other organized group or legal entity it shall also give the type of business entity and the state in which it is registered as well as the date of such creation or registration.
 - b. Person to whom communications relating to the application are to be sent.
 - c. Person to be contacted in the event of an emergency involving the facility.
 - d. Owner(s) of the property on which the proposed facility/tower is to be located.

- e. Owner(s) of the facility/tower on which the proposed equipment is to be located.
 - f. Owner(s) of any equipment that will be placed on the proposed facility/tower.
5. Written permission from the property owner(s) of the proposed facility site(s) for the Town employees, Town representatives or consultants engaged by the Planning Board to conduct any necessary site visit(s).
 6. The names and addresses of the record owners of all abutting properties.

C. Evidence of Need.

1. Existing Coverage. The applicant shall provide written documentation demonstrating that existing wireless communications facility sites in Tyringham and in abutting towns cannot reasonably be made to provide adequate coverage and/or adequate capacity to the Town of Tyringham.
2. Repeaters. The applicant shall demonstrate and document in writing that they have analyzed the feasibility of repeaters in conjunction with all existing facility sites that could provide adequate coverage and/or adequate capacity to the Town of Tyringham. Radial or tiled coverage plots of all repeaters considered for use in conjunction with these facility sites shall be provided as part of the application.
3. Indirect Service. The applicant shall demonstrate which portion of a tower or facility and which antennas, if any, are intended to provide communications capability to the applicant, as opposed to providing direct service to customers. Such provision of indirect service may be considered if reasonable alternatives are not available and the overall effect is consistent with the purposes set forth in Section I of this regulation.
4. Five Year Plan: All applications shall be accompanied by a written five-year plan for the utilization of the proposed facilities. This plan shall include justification for capacity in excess of immediate needs, as well as plans for any further development within the Town of Tyringham.
5. The applicant shall further demonstrate that they have investigated all available "state of the art" alternative technologies which might be effectively employed to provide adequate coverage and/or adequate capacity to the Town of Tyringham in lieu of its proposed facility.

IX. REQUIRED LEGAL AND TECHNICAL DOCUMENTATION

The following additional documents are required in all applications:

- A. Federal and State Permits. Applicant shall submit copies of all pertinent submittals and showings pertaining to: FCC permitting/licensing; Environmental Assessments and Environmental Impact Statements; FAA Notice of Construction or Alteration; Aeronautical Studies; all pertinent data, assumptions and calculations relating to service coverage. Copies of all information submitted in compliance with requirements of any Massachusetts state agencies shall also be submitted.
- B. Surety. Details of proposed method of financial surety as required in this bylaw (Landscaping/Screening, Abandonment, Duty/Failure to Remove)
- C. Commitment to Available Space: Dependent on tower/facility design, applicants for new tower/facility construction or modification permits may be required to provide a written, irrevocable commitment valid for the duration of the existence of the tower/facility, to rent or lease available space for co-location on the tower/facility at fair market prices and terms, without discrimination to other wireless communications providers.
- D. Lease of Tower: Applicants for a special permit for a facility to be installed on an existing tower shall provide a copy of its lease/contract with the owner of the existing structure.
- E. Applicant's Plans for Other Facility Sites: Applicants shall submit copies of any applications or plans for other new facility sites proposed within a 10-mile radius of the Town

of Tyringham.

F. Site Plans and Maps. Applicants shall submit physical plant plans, prepared, stamped and signed by a professional engineer. Survey plans shall be stamped and signed by a land surveyor registered in Massachusetts. Signal propagation and radio-frequency studies, plots and related material shall be prepared, clearly identified and signed by a qualified radiofrequency engineer. Power density calculations shall be in accordance with "worst case" formulas in the Office of Engineering and Technology (FCC Bulletin 65, August 1997). Radial plots shall be in bright colors, showing clear demarcations between signal strengths. Plans shall be on 24" x 36" sheets, on as many sheets as necessary, and at scales which are no smaller (i.e. no less precise) than listed below. Each plan sheet shall have a title block indicating the project title, sheet title, sheet number, date, revision dates, scale(s), and original seal(s) and signature(s) of the professional(s) who prepared the plan. Proposed site plans (include 5 copies) require the following:

- 1. Location Map** Copy of a portion of the most recent U.S.G.S. Quadrangle Map, at a scale of 1:25:000, and showing the area within at least two miles from the proposed facility/tower site. Indicate the facility/tower location and the exact latitude and longitude (degrees, minutes, and seconds to the nearest tenth).
- 2. Vicinity Map** at a scale of 1" = 416' (1:5000) with contour intervals no greater than 10 feet (3 meters) showing the entire vicinity within 2500' radius of the facility/tower site, and including the topography, public and private roads and driveways, buildings and structures, bodies of water, wetlands, landscape features, historic and archaeological sites, and habitats for endangered or threatened species. Indicate the property lines of the proposed facility/tower site parcel and of all abutters to the facility/tower site parcel (from assessor's maps or available surveys). Indicate any access easement or right of way needed for access from a public way to the tower and/or facility site, and the names of all abutters or property owners along the access easement or who have deeded rights to the easement. Locate all residential or commercial structures, schools, churches, or public buildings within 1750' of the proposed base of the tower/facility.
- 3. Existing Conditions Plan:** A recent survey of the area within 500' of the facility/tower site at a scale no smaller than 1" = 40' with topography drawn with a minimum of 2' contour intervals, showing existing utilities, property lines, existing buildings or structures, stone walls or fence lines, wooded areas, existing water wells and springs, individual trees with diameters greater than 12" within a 200' radius from the base of a proposed tower (labeled with their current heights). Show the boundary of any wetlands or floodplains or watercourses, and of any bodies of water included in the Watershed Protection District within 500' from the facilities or access ways, or appurtenances. The survey must have been completed, on the ground, by a land surveyor registered in Massachusetts within two years prior to the application date.
- 4. Proposed Site Plan:** Proposed facility site layout, grading and utilities at the same scale as or larger than the Existing Conditions Plan (above), showing the following:
 - a.** Proposed facility/tower location and any appurtenances, including supports and guy wires, if any, and any accessory building (communication equipment shelter or other). Indicate property boundaries and setback distances to the base(s) of the tower and to the nearest corners of each of the appurtenant structures to those boundaries, and dimensions of all proposed improvements. Where protective fencing is proposed, indicate setback distances from the edge of the fencing.
 - b.** Indicate proposed spot elevations at the base of the proposed facility/tower and at the base of any guy wires, and the corners of all appurtenant structures.
 - c.** Proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines, and exact locations of the underground route. Detailed plans for emergency power generation including:

- i.** Demonstration of percent of electrical demand being proposed in event of loss of commercial power.
- ii.** Type of fuel, storage method and expected means and frequency of fuel delivery to the site for power generation.
- iii.** Amount of generator time based on historic power reliability for the area of the facility, proposed frequency and duration of tests, and description of muffler system and methods for noise abatement.
- iv.** Feasibility of wind and/or solar power in conjunction with storage batteries.
- d.** Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration.
- e.** Any direct or indirect wetlands alteration proposed.
- f.** Detailed plans for drainage of surface and/or sub-surface water; plans to control erosion and sedimentation both during construction and as a permanent measure.
- g.** Plans indicating locations and specifics of proposed screening, landscaping, ground cover, fencing, etc.
- h.** Plans of proposed access driveway or roadway and parking area at the facility/tower site. Include grading, drainage, and traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.
- i.** Plans showing any changes to be made to an existing facility's landscaping, screening, fencing, lighting, drainage, wetlands, grading, driveways or roadways, parking or other infrastructure as a result of a proposed modification of the facility.

G. Proposed Tower and Appurtenances Plan:

- 1.** Plans, elevations, sections and details at appropriate scales but no smaller than 1" = 10'.
- 2.** Two cross sections through proposed towers drawn at right angles to each other, and showing the ground profile to at least 100 feet beyond the limit of clearing, and showing any guy wires or supports. Dimension of the proposed height of tower above average grade at tower base. Show all proposed antennas, including their location on the tower.
- 3.** Details of proposed tower foundation, including cross sections and details. Show all ground attachments, specifications for anchor bolts and other anchoring hardware.
- 4.** Detail proposed finish of the tower.
- 5.** Indicate relative height of the tower to the tops of surrounding trees as they presently exist, and the height to which they are expected to grow in ten years.
- 6.** Illustration of the modular structure of the proposed tower indicating the heights of sections which could be removed or added in the future to adapt to changing communications conditions or demands.
- 7.** A professional structural engineer's written description of the proposed tower structure and its capacity to support additional antennas or other communications facilities at different heights and the ability of the tower to be shortened if future communications facilities no longer require original height.
- 8.** A description of available space on the tower, providing illustrations and examples of the type and number of wireless communication facilities which could be mounted on the structure.

H. Proposed Communications Equipment Shelter Plan:

- 1.** Floor plans, elevations, and cross sections at a scale no smaller than 1/4" = 1' of any proposed appurtenant structure.
- 2.** Representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.

I. Proposed Equipment Plan:

- 1.** Plans, elevations, sections and details at appropriate scale, no smaller than 1" = 10'.
- 2.** Number of antennas and repeaters, as well as the exact locations of antennas and of

all repeaters (if any) located on a map as well as by degrees, minutes and seconds to the nearest tenth of latitude and longitude.

3. Mounting locations on tower or structure, including height above ground.
4. A recent survey of the facility site at a scale no smaller than 1" = 40' showing horizontal and radial distances of antenna(s) to nearest point on property line, and to the nearest dwelling unit.
5. Antenna(s) types, manufacturer(s), model number(s).
6. For each antenna, the antenna gain, and antenna radiation pattern.
7. Number of channels per antenna, projected and maximum.
8. Power input to the antenna(s).
9. Power output, in normal use and at maximum output for each antenna and all antennas as an aggregate.
10. Output frequency of the transmitter(s).
11. For modification of an existing facility with multiple emitters, the results of an inter-modulation study to predict the interaction of the additional equipment with existing equipment.

J. Visibility Maps/Sight Lines:

1. A minimum of eight (8) view lines in a zero (0) to two (2) mile radius from the site, shown beginning at True North and continuing clock-wise at forty-five degree intervals.
2. Applicant shall utilize the U.S.G.S. Quadrangle map, at a scale of 1" = 400', with vertical scale of 1" = 40'. Trees shall be shown at existing heights and at projected heights in ten years.
3. A map of the Town of Tyringham on which any visibility of the proposed facility / tower from a public way (including all existing public rights of way), shall be indicated.

K. Balloon Tests for new tower applications:

Within 35 days of submitting an application, the applicant shall arrange to fly, or rise upon a temporary mast, a three foot diameter brightly colored balloon at the maximum height of the tower and within 50 horizontal feet of the center of the proposed tower. The dates (including a second date, in case of poor visibility on the initial date), times and location of this balloon test shall be advertised by the applicant at 7 and 14 days in advance of the first test date. Such notice will be printed in a newspaper with a general circulation in the Town of Tyringham. The applicant shall inform the Planning Board, the Board of Selectmen, and all abutting property owners, 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 sometime between 9:00 AM and 5:00 PM on the dates chosen.

L. Visual Analysis:

The applicant shall develop and submit a written analysis of the visual impact of the proposed tower. This analysis shall include photographs of the balloon test taken from at least 10 different perspectives within the Town of Tyringham.

X. MONITORING AND EVALUATION OF COMPLIANCE

The Tyringham Planning Board and Building Inspector shall have authority over the hiring of independent engineers to enforce monitoring and compliance with this section.

- A. Monitoring Protocol: The Planning Board shall consult with an independent engineer regarding the choice of a monitoring protocol to be used. The same protocol will be used from year to year until such time as new protocols are developed.

- B. Pre-Testing: After the granting of a special permit and before the facility begins transmission, the applicant shall pay for an independent consultant engineer, chosen and hired by the Planning Board, to monitor the background levels of emissions around the proposed facility site and at appropriate distances from it, and/or at any repeater locations to be utilized for the applicant's wireless facilities. The independent consultant shall use industry current monitoring protocols. A report of the monitoring results shall be prepared by the independent consultant and submitted to the Select Board, the Planning Board, Building Inspector, and the Town Clerk.
- C. Post-Testing: Within 30 days after transmission begins, the owner(s) of any wireless services located on the tower/facility site shall pay for an independent consultant engineer, chosen and hired by the Planning Board, to conduct testing and monitoring of emissions from said site, and to report results of said monitoring.
 - 1. There shall be routine annual monitoring of emissions by the independent engineer and reported as specified above.
 - 2. Any Major Modification of an existing facility, or the activation of any additional permitted channels, shall require new monitoring.
- D. Excessive Emissions: Should the monitoring of a facility site reveal that the site exceeds the current FCC standards and guidelines, the owner(s) of all facilities utilizing the site shall be notified. In accordance with FCC requirements, the owner(s) must immediately reduce power or cease operation as necessary to protect persons having access to the site, tower, or antennas. In addition, the owner(s) shall submit to the Planning Board and the Building Inspector an analysis of what caused the problem and a plan for the reduction of emissions to a level that complies with the FCC standards within 10 business days of non-compliance. Failure to accomplish this reduction of emissions within 15 business days of initial notification of non-compliance shall be a Zoning Violation subject to fines and such other remedies as are otherwise available to the Town, Planning Board or Building Inspector pursuant to this Zoning Bylaw and the Massachusetts General Laws. Such fines shall be payable by those providers with antennas on the facility site, until compliance is achieved.
- E. Structural Inspection of Towers: Tower owner(s) shall pay for an independent consultant, a licensed structural engineer chosen and hired by the Planning Board, to conduct inspections of the tower's structural integrity and safety. Guyed towers shall be inspected every three years. Monopoles and non-guyed lattice towers shall be inspected every five years. A report of the inspection results shall be prepared by the independent consultant and submitted to the Select Board, the Planning Board, the Building Inspector, and the Town Clerk. Any major modification of an existing facility which includes changes to the tower dimensions or antenna numbers or type shall require a new structural inspection.
- F. Unsafe Structure: Should the inspection of any facility reveal any structural defect(s) which, in the opinion of the independent consultant renders that facility unsafe, the following actions must be taken:
 - 1. Within 10 business days of notification of an unsafe structure, the owner(s) of the facility shall submit a plan to remediate the structural defect(s).
 - 2. Failure to accomplish this remediation of structural defect(s) within a time period agreed upon by the Planning Board and Building Inspector shall be a Zoning Violation subject to fines. Such fines shall be payable by the owner(s) of the facility until compliance is achieved.

XI. CO-LOCATION

Licensed carriers shall share facilities and sites with other licensed carriers where feasible, thereby reducing the number of stand-alone facilities. The conversion of a single-use facility to a co-location shall be considered a modification.

XII. INSURANCE & INDEMNIFICATION, SURETY, AND BONDS

A. Financial Surety: As a condition of approval of a special permit, the applicant shall provide a separate demolition bond in an amount determined and approved by the Planning Board. The bond shall be for a duration, and in a form and manner of surety as determined by the Planning Board, with provision for inspection and town removal of facilities in the event of failure to perform by the responsible parties as defined in this bylaw.

B. Performance Bonds: The Planning Board shall require additional performance bonding or other performance guarantee, payable at the time of application, as deemed necessary to protect facility building site(s) during construction; and to hire independent consultants/engineers to review applications and monitor facilities.

C. Insurance: The Town of Tyringham shall not enter into any lease agreement, or otherwise authorize a tower site or facility by any wireless communication service provider until and unless the town obtains assurance that such operator (and those acting on its behalf) has adequate insurance as determined by the Planning Board. At a minimum, the following insurance requirements shall be satisfied:

- 1.** A wireless communications facility operator shall not commence construction or operation of the facility without obtaining all insurance required under this section and approval of such insurance by the Planning Board, nor shall a wireless communication facility operator allow any contractor or subcontractor to commence work on its contract until all similar such insurance required of the same has been obtained and approved by the Planning Board. The required insurance must be obtained and maintained for the entire period the wireless communication facility is in existence. If the operator, its contractors or subcontractors do not have the required insurance, the town will order such entities to cease operation of the facility until such insurance is obtained and approved by the Planning Board.

- 2.** Certificate(s) of insurance verifying such insurance shall be filed with the Planning Board at the time of application. For entities that are entering the market, the certificate(s) shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse of coverage. Such certificate(s) should provide the name, address and phone number of the insurance carrier; and identify an agent in case of inquiries.

- 3.** The certificate(s) of insurance shall contain a provision that coverages afforded under such policies shall not be canceled until at least thirty (30) days prior written notice has been given to the town. All insurance policies shall be issued by companies authorized to do business under the laws of the Commonwealth of Massachusetts.

- 4.** Where applicable, in the event that the insurance certificate(s) provided indicates that the insurance will terminate or lapse during the term of the lease agreement with the town, then in that event the wireless communication facility(s) operator shall furnish a renewed certificate of insurance as proof that equal and like coverage remains in effect for the balance of the lease term, at least thirty (30) days prior to the expiration of the date of such insurance. A wireless communication facility operator and its contractors or subcontractors engaged in work on the operator's behalf, shall maintain minimum insurance in the amounts determined by the Planning Board to cover liability, bodily injury, and property damage. The insurance shall cover, but not be limited to, the following exposures: premises, operations, and certain contracts. Such coverage shall be written on an occurrence basis and shall also be required under any lease agreement between the town and the wireless communication facility operator.

D. Indemnification: The town shall not enter into any lease agreement or otherwise authorize tower siting by a wireless communication service provider until and unless the town obtains an adequate indemnification from such provider. This indemnification must at least:

1. Release the Town of Tyringham from, and against, any and all liability and responsibility in or arising out of the construction, operation or repair of the wireless communication facility. Each wireless communication facility operator must further agree not to sue or seek any monies or damages from the town in connection with this matter.

2. Indemnify and hold harmless the Town of Tyringham, its elected and appointed officers, agents, servants, and employees, from and against any and all claims, demands, or causes of action whatsoever kind of nature, and the resulting losses, costs, expenses, reasonable attorney's fees', liabilities, damages, orders, judgments or decrees, sustained by the town or any third party arising out of, or by any reason of, or resulting from, or out of each wireless communication facility(s) operator's, agent's, employee's, or servant's negligent acts, errors, or omissions.

3. Provide that the covenants and representations relating to the indemnification provision shall survive the term of any agreement and continue in force and effect as to the responsibility of the party to indemnify.

XVI. ABANDONMENT, DISCONTINUATION OF USE, OR DECOMMISSIONING

A. Any wireless communication facility which has reached the end of its useful life or has been abandoned shall be removed. The owner/operator shall physically remove the facility no more than 180 days after the date of discontinued operations. The applicant shall notify the town building inspector by certified mail of the proposed date of discontinued operations and plans for removal.

Decommissioning shall consist of:

1. Physical removal of all towers, structures, equipment, security barriers and electrical lines from the site.
2. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
3. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation. Existing trees shall only be removed if necessary to complete the required removal.

B. Any wireless communication facility which ceases to operate for six (6) consecutive months shall be deemed to be abandoned and shall be removed within 180 days. "Cease to operate" is defined as not performing the normal functions associated with a wireless communication facility and its equipment on a continuous and on-going basis for a period of six (6) consecutive months. Determination of the date of abandonment shall be made by the Building Inspector who shall have the right to request documentation and/or affidavits from the wireless communication facility owner/operator/service provider(s) regarding the subject of facility usage. Failure or refusal for any reason by the owner/operator/service provider(s) to respond within twenty (20) days to such a request shall constitute a prima facie evidence that the communications facility has been abandoned.

C. Upon a determination of abandonment and notice thereof to the owner/operator/service provider(s), the owner(s) and all others listed as Responsible Parties shall remove the abandoned facilities and remediate the site within 180 days. At the time of removal, the facility site shall be remediated such that all wireless communication facility improvements which have ceased to be utilized are removed. If all facilities on a tower have ceased to operate, the tower shall also be removed, and the site shall be revegetated.

XVII. PARTIES SUBJECT TO DUTY TO REMOVE

The following are considered jointly and severally to be the Responsible Parties for tower/facility removal and site remediation:

1. The owner of the abandoned tower/facility (and if different, the operator of the abandoned tower/facility.)
2. The owner of the land upon which the abandoned tower/facility is located.
3. The lessee, if any, of the land upon which the tower/facility is located.
4. The sub lessee or sub lessees, if any, of the land upon which the tower/facility is located.
5. Any communications service provider who, or which, by ceasing to utilize the tower/facility or otherwise failing to operate any of its transmitters or antennas on the tower/facility for which it leased space or purchased the right to space on the tower/facility for its transmitters or antennas, and by such ceasing or failure to utilize the tower/facility, in fact caused the tower/facility to become abandoned.
6. Any person to whom, or entity to which, there has been transferred or assigned any license issued by the FCC and under which the tower/facility owner/operator operated the tower/facility.
7. Any person or entity which has purchased all or a substantial portion of the assets of the tower/facility owner/operator/service provider(s).
8. Any entity which has merged with, or which has arisen or resulted from a merger with, the tower/facility owner or operator or service provider(s).
9. Any person or entity which acquired the owner or the operator of the abandoned tower/facility.
10. Any parent or subsidiary of any of the foregoing which happens to be a corporation.
11. Any managing partner of any of the foregoing which happens to be a limited partnership.
12. Any partner of any of the foregoing which happens to be a general partnership.

XVIII. FAILURE TO REMOVE

In the event that the responsible parties have failed to remove the tower and/or restore the facility site within 180 days, the Town of Tyringham may remove the tower and restore the site using the surety bonds or other security deposited at the time of application, and may thereafter initiate judicial proceedings against the Responsible Parties for any portion of the cost not covered by such security.

XIX. SEVERABILITY

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby.

Section 6.7.1 Fixed Wireless Broadband Telecommunication Facilities & Towers

I. PURPOSE

The purpose and intent of this bylaw section is to provide standards for the placement, design, construction, operation, monitoring, modification and removal of Fixed Wireless Broadband Telecommunication Facilities, Repeaters and Towers. FWBTF differ from traditional microwave and cell-based telecommunications infrastructure in size, scope, and purpose.

This bylaw is to be used in conjunction with other regulations adopted by the town, including site plan review and other local bylaws designed to encourage appropriate land use, environmental protection and provision of adequate infrastructure development. The provisions set forth in this bylaw shall take precedence over all other bylaws when considering applications related to the construction, operation, and/or repair of Fixed Wireless Broadband Telecommunication Facilities, Repeaters and Towers. As in the Wireless Communications bylaw (6.7), the purpose of Bylaw Section 6.7.1 is to:

- A. Preserve the character and appearance of the Town of Tyringham while allowing adequate wireless communications services to be developed.
- B. Protect the scenic, historic, environmental, and natural or man-made resources of Tyringham.
- C. Locate towers and/or antennas in a manner which protects property values, as well as the general safety, health, welfare and quality of life of the residents of Tyringham and all those who visit this community.
- D. Regulate the total number and height of towers within the Town of Tyringham to the minimum number and height necessary to provide adequate coverage.
- E. Provide oversight and input for the regulation, placement, design, appearance, construction, monitoring, modification and removal of fixed wireless communications facilities and towers.
- F. Promote the sharing of existing towers, and the clustering of new facilities/towers where possible.
- G. Ensure that towers/antennas are located so that they minimize negative impacts such as – but not limited to -- attractive nuisance, noise, and falling objects.
- H. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify fixed wireless communications facilities.

II. APPLICABILITY

This bylaw applies to all FWBTF, Repeaters and Towers proposed to be constructed in designated locations after the effective date of this bylaw. This bylaw also pertains to physical modifications to existing FWBTF, Repeaters and Towers that materially alter the type, configuration, or size of such facilities or related equipment.

III. EXEMPTIONS

The provisions of this bylaw shall not apply to:

- A. Wireless telecommunications facilities providing safety or emergency services for any federal, state or municipal body;
- B. Amateur radio antennas licensed by the Federal Communications Commission and subject to General Laws Chapter 40A, section 3, provided that such antennas are not used for any commercial purpose and do not exceed 35 feet in height;
- C. Home television or internet access antennas;
- D. Medical facilities for transmittal of clinical medical information.

No FWBTF or Repeater shall be considered exempt from this bylaw for any reason whether or not said Facility or Repeater will share a Tower or other structure with such exempt uses.

IV. DEFINITIONS

- **Co-location:** The use of a single free-standing FWBTF by more than one carrier.
- **Existing Structure:** Residential or commercial buildings, barns, silos, water towers, public utility transmission poles or towers, or other similar structures where wireless telecommunication technology is to be deployed.
- **Height:** The height of a wireless transceiver tower structure measured from the grade at the base of the tower to its' highest point.
- **Special Permit Granting Authority:** The Planning Board shall be the Special Permit Granting Authority for all Wireless Telecommunication Facilities and Wireless Transceiver Antenna Arrays proposed for or sited in all locations throughout the Town of Tyringham.
- **Provider or Carrier:** Any person, corporation or other entity engaged in the business of providing wireless telecommunications services.
- **Repeater or Secondary Access Point:** A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive adequate coverage directly from a Wireless Telecommunication Facility
- **Fixed Wireless Broadband Telecommunications Facility:** A facility consisting of the structures, including towers and antennas mounted on towers and buildings, equipment and equipment shelters, accessory buildings and structures, involved in sending and receiving telecommunications, radio signals and high-speed (Broadband) internet service to non-mobile subscribers.
- **Wireless Transceiver Antenna Array:** Any series of antenna or array of antennas, including Repeaters, that receives and transmits telecommunications or radio signals as well as high-speed (Broadband) internet service to subscribers.
- **Wireless Transceiver Tower Structure:** A lattice structure or framework, or monopole that is designed to support wireless transceiver antenna arrays used in fixed wireless broadband networks.

V. GENERAL REQUIREMENTS

The following requirements are common to all Fixed Wireless Broadband Telecommunication Facilities:

A. Compliance with Laws, Bylaws and Regulations. The construction and operation of all such proposed FWBTF shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

B. Building Permit and Building Inspection. No FWBTF shall be erected, constructed, installed or modified as provided in this section without first obtaining a Special Permit from the Planning Board and a building permit from the Town building inspector. Under the state building code, work must commence within six (6) months from the date a building permit is issued, however, an applicant may request an extension of the permit and more than one extension may be granted.

C. Fees. The application for a Special Permit for a Fixed Wireless Broadband Telecommunication Facility must be accompanied by the required fee.

D. Site Plan Review. No FWBTF shall be erected, constructed, installed, or modified without first complying with the Site Plan Review process.

E. General

1. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts.
2. Applicant must demonstrate the following to the satisfaction of the Planning Board:
 - a. That existing structures or towers cannot accommodate the Wireless Transceiver Antenna Array and associated equipment for the proposed project.
 - b. The location of the Wireless Transceiver Tower Structure is necessary and that the size and height of the tower structure is the minimum necessary for the purpose.

F. Required Documents. Pursuant to the site plan review process, the applicant shall also

provide the following documents:

1. A site plan showing:

- a.** A locus plan prepared and certified by a professional engineer depicting all property lines, the exact location and dimension of all components of the proposed facility including all structures, streets, landscape features, including contours, residential dwellings and all buildings within 500 feet of the proposed facility;
- b.** A narrative description of the proposed facility including the location and identification of all components together with a statement describing the purpose of each component and its intended function plus photographs or other graphic illustrations fairly depicting the physical appearance of the proposed components;
- c.** An itemized description of other FWBTF owned and/or operated by the applicant or for which the applicant is currently seeking approval and which are either located in the Town of Tyringham or within a two mile radius of the Town of Tyringham or which are capable of providing service to customers operating within the Town of Tyringham;
- d.** A description of all federal, state and local licenses, permits, or other approvals obtained by the applicant to date or to be obtained by the applicant prior to construction of the proposed facility;
- e.** A statement as to whether an Environmental Assessment (EA), a Draft Environmental Impact Statement (DEIS) or Environmental Impact Statement (EIS) is or will be required under the National Environmental Protection Act or the National Historic Preservation Act, and if so, a copy of the said EA, DEIS, or EIS;
- f.** A description in both geographical and radio frequency terms of the scope and quality of the service currently being provided to the Town of Tyringham by the applicant's existing facilities, if any;
- g.** A description in both geographical and radio frequency terms as to the need to be addressed by the proposed facility;
- h.** A description in both geographical and radio frequency terms as to precisely the manner in which the proposed facility addresses the needs identified in subsection g. above;
- i.** A statement describing the current state of technology available to provide wireless telecommunications services, and whether any such technology is available and feasible;
- j.** A statement as to whether the applicant considered any alternatives to a free-standing facility including but not limited to co-locating on an existing facility and, if so, the reason(s) such alternatives are not being proposed;
- k.** A description of the radio frequency testing procedures conducted by the applicant in connection with the proposed facility, if any, and the results thereof;
- l.** A statement as to whether the proposed facility will have any impact on an environmentally, historically or archaeologically significant area in the vicinity of the proposed facility;
- m.** A statement setting forth the applicant's projected future needs for fixed wireless telecommunication facilities within the Town of Tyringham;

- n.** A description of the terms of any co-location agreements between the applicant and any other provider of fixed wireless telecommunication services

to the Town of Tyringham and whether the applicant is seeking approval of co-location facilities on the proposed free standing facility, and if so, a detailed description in compliance with the preceding sub-sections of all components of the co-location facility for which the applicant is seeking approval.

o. Location of all existing and proposed roads, both public and private, and including temporary roads and driveways, on the site parcel and adjacent parcels within 500 feet of the site parcel;

p. Any existing overhead utility lines;

q. Existing areas of tree cover, including average height of trees, on the site parcel and any adjacent parcels within a distance, measured from the FWBTF tower foundation, of 1.2 times the height of the proposed tower;

r. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting (other than FAA lights), screening vegetation or structures;

s. Tower foundation blueprints or drawings signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts;

t. Tower blueprints or drawings signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts;

u. One or three line electrical diagram detailing the FWBTF, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over-current devices;

v. Documentation of the FWBTF's manufacturer and model, tower height, tower type (freestanding or guyed), and foundation type/dimensions;

w. Name, address, phone number and signature of the applicant, as well as all co-applicants or property owners, if any;

x. The name, contact information and signature of any agents representing the applicant; and

y. A maintenance plan for the Fixed Wireless Telecommunication Facility;

2. Documentation of actual or prospective access and control of the project;

3. Balloon Tests: Within 35 days of submitting an application, the applicant shall arrange to fly, or rise upon a temporary mast, a three foot diameter brightly colored balloon at the maximum height of the tower and within 50 horizontal feet of the center of the proposed tower. The dates (including a second date, in case of poor visibility on the initial date), times and location of this balloon test shall be advertised by the applicant at 7 and 14 days in advance of the first test date. Such notice will be printed in a newspaper with a general circulation in the Town of Tyringham. The applicant shall inform the Planning Board, the Board of Selectmen, and all abutting property owners, 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 sometime between 9:00 AM and 5:00 PM on the dates chosen.

4. Visual Analysis: The applicant shall develop and submit a written analysis of the visual impact of the proposed tower. This analysis shall include photographs of the balloon test taken from at least 10 different perspectives within the Town of Tyringham.

5. Proof of liability insurance, in an amount, and for a duration, sufficient to cover loss or damage to persons and property occasioned by the failure of the facility;

6. Certification of height approval from the Federal Aviation Administration;

7. Description of financial surety that satisfies Section VIII.

Note: The Planning Board may waive documentary requirements as it deems appropriate.

G. Criteria for attaching a Fixed Wireless Transceiver Antenna Array or Repeater to existing structures are as follows:

- 1.** Attaching a Fixed Wireless Transceiver Antenna Array or Repeater to any existing public utility transmission towers or poles, or newly installed poles if adjacent to existing public utility transmission poles, shall be permitted if the height of the Fixed Wireless Transceiver Antenna Array or Repeater is not over ten (10) feet in height above the utility transmission tower or pole.
- 2.** If the Fixed Wireless Transceiver Antenna Array or Repeater exceeds ten (10) feet in height, the applicant must provide the Planning Board technical justification for the additional height. The Planning Board may grant the additional height if they determine that it does not have an undue visual impact on the scenic character or appearance of the area.
- 3.** Installation of the Fixed Wireless Transceiver Antenna Array or Repeater and associated equipment inside an existing structure where it is not visible from the street shall be permitted.
- 4.** Installation of the Fixed Wireless Transceiver Antenna Array or Repeater on the exterior of an existing structure shall be permitted if the array or repeater is less than ten (10) feet in height above the roofline. If the exterior installation of a Fixed Wireless Transceiver Antenna Array or Repeater exceeds ten (10) feet in height above the roofline of the existing structure, the applicant must provide the Planning Board technical justification for the additional height. The Planning Board may grant the additional height if they determine that it does not have an undue visual impact on the scenic character or appearance of the areas.
- 5.** Installation of the Fixed Wireless Transceiver Antenna Array or Repeater and associated equipment on a pre-existing HAM Operator Tower shall be permitted.

H. Site Control. The applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for installation and operation of the proposed FWBTF. Control shall include the legal authority to prevent the use or construction of any structure for human habitation within the setback areas.

I. Site Requirements

- 1. Applicant.** If the applicant is not the landowner, the landowner will be considered a co-applicant and must submit the documentation required under these regulations.
- 2. Access and Utilities.** Where new wireless communication towers and facilities require construction of or improvements to access roads, to the extent practicable, roads shall follow the contour of the land and be as inconspicuous as possible. Utility or service lines shall be buried underground. The Planning Board shall request input from the Chiefs (or their designees) of Fire, Police, and other Emergency services regarding the adequacy of emergency access for the planned drive or roadway to the site. The Planning Board may waive the underground requirement at its discretion.
- 3. Screening, Tower finish, Fencing, Signage and Landscaping** shall be at the discretion of the Planning Board and will conform to the surrounding geography and character of the town. Existing vegetation surrounding the site shall be preserved and maintained to the greatest extent possible. All landscaping shall be properly maintained by the owner to ensure its good health and viability. All areas disturbed during project construction shall be replanted with appropriate native species. The Applicant shall obtain a financial surety (to be determined by the Planning Board) to cover the cost of remediation of any damage to the landscape which occurs during the clearing or grading of the site.
- 4. Building Design.** Communication equipment shelters and accessory buildings shall be designed at the discretion of the Planning Board. Buildings and related structures

shall use materials, colors, and textures that will blend them into the natural setting to minimize the visual impact.

5. Height of Towers. Towers shall not exceed the minimum height necessary to provide adequate coverage for the fixed wireless communications facilities proposed.

6. Use of Repeaters / Secondary Access Points. The applicant shall demonstrate that it is not reasonably able to assure adequate coverage, or to create adequate coverage in the Town of Tyringham, from base stations located in other towns or to fill holes within the area of otherwise adequate coverage except by use of repeaters or secondary access points.

7. Commercial Advertising. Commercial advertising shall not be allowed on any antenna, tower, accessory building or communications equipment shelter.

8. Lighting. No external lighting is permitted, except for manually operated emergency lights for use only when operating personnel are on site, or as otherwise required by the FCC or FAA.

9. Noise. Noise-producing equipment shall be sited and/or insulated to guarantee that no increase in noise above ambient levels occurs, measured at the property line.

10. Air Navigation. No tower or wireless communications facility that would be classified as a hazard to air navigation, as defined by the Federal Aviation Regulations, is permitted.

11. Setback Requirements. Tower setbacks shall be measured from the base of the tower (unless guy-wired) to the nearest point along each property line of the parcel on which it is located. Where guy wire supports are used, setbacks will begin at the base of the guy wire anchor to the ground, not at the base of the tower.

J. Setbacks. FBWTF towers may not be sited within:

1. A distance equal to one point two five times (1.25x) the height of the tower from buildings, critical infrastructure, or private or public ways that are not part of the FBWTF;

2. one point five times (1.5x) the height of the tower from the nearest existing residential structure; and,

3. one point two five times (1.25x) the height of the tower from the nearest boundary line.

4. The distance shall be measured from the base of the tower or from the nearest guy wire anchor to the closest boundary line.

K. Setback Waiver. The Planning Board may increase or decrease the minimum setback distance as appropriate based on project and site specific considerations, such as tower type, topography, tree cover, etc., to allow for consideration of factors that may mitigate the impact to abutters. The Planning Board shall use this waiver provision sparingly and cautiously and shall do so only when such waiver will result in a significant enhancement to the site design and the impact on the town and abutters. The Planning Board shall pay particular attention to Section I (Purpose) of this bylaw when considering granting setback waivers.

L. Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the FBWTF or otherwise prescribed by applicable laws, regulations, and bylaws.

FBWTF design shall minimize fragmentation of open space areas and shall avoid permanently protected open space when feasible. FBWTF also shall be located in a manner that does not have significant negative impacts on rare species in the vicinity.

M. Hazardous Materials. No hazardous materials or waste shall be discharged on the site of any Fixed Wireless Telecommunication Facility. If any hazardous materials or wastes are to be used on site, there shall be provisions for full containment of such materials or waste. An enclosed containment area, designed to contain at least 110 percent of the volume of the hazardous materials or waste stored or used on the site is required.

N. Monitoring and Maintenance. The applicant shall maintain the FWBTF in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The project owner shall be responsible for the cost of maintaining the FWBTF and any access road(s), unless accepted as a public way.

O. Reporting. Notice shall be provided to the town of any change in ownership of the Fixed Wireless Telecommunication Facility.

P. Modifications. All material modifications to a FWBTF made after issuance of the required building permit shall require approval by the Planning Board.

Q. Provision of Independent Consultants

1. Due to the complex technical character of the information to be provided by an applicant pursuant to these regulations and the monitoring, testing and inspection of facilities and operation provisions, the Planning Board may hire such consultants as it deems reasonably necessary to assist the Board in making determinations.

2. In connection with any application for a Special Permit under this Section 6.7.1, the applicant shall be required to pay fees to the Town to cover the reasonable costs of outside consultant review of such application as provided in rules promulgated by the Planning Board pursuant to Massachusetts General Law (M.G.L.) Chapter 44, Section 53G. Such costs may include consultant fees at reasonable market rates, covering professional and technical services required beyond the Planning Board's capabilities for a proper and thorough review of the application. No special permit or building permit shall be issued until all such costs have been paid. Such fees shall be deposited into a segregated account, and unexpended funds shall be returned to the applicant as provided in M.G.L. Chapter 44, Section 53G, and any regulations adopted pursuant thereto by the Planning Board.

3. The consultants shall work under the direction of the Tyringham Planning Board. Copies of the consultant's findings and reports shall be made available to the applicant not less than seven (7) days prior to any meeting of the Planning Board where the consultant's report will be considered. The applicant shall be given opportunity to respond to the report in writing and at the next meeting.

4. Special permit applicants shall obtain written permission from property owners for the town's independent consultants to conduct any necessary site visits.

R. Abandonment, Discontinuation of Use, or Decommissioning

1. Removal Requirements - Any FWBTF which has reached the end of its useful life or has been abandoned shall be removed. The owner/operator shall physically remove the facility no more than 180 days after the date of discontinued operations. The applicant shall notify the town building inspector by certified mail of the proposed date of discontinued operations and plans for removal.

Decommissioning shall consist of:

(a) Physical removal of all towers, structures, equipment, security barriers and electrical lines from the site.

(b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.

(c) Stabilization or re-vegetation of the site as necessary to minimize erosion.

The Planning Board may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

Existing trees shall only be removed if necessary to complete the required removal.

2. Abandonment - Any FWBTF which ceases to operate for six (6) consecutive months shall be deemed to be abandoned and shall be removed within ninety (90) days. "Cease to operate" is defined as not performing the normal functions associated with a FWBTF and its equipment on a continuous and on-going basis for a period of six (6) consecutive months. Determination of the date of abandonment shall be made by the Building Inspector who shall have the right to request documentation and/or affidavits from the FWBTF owner/operator/service provider(s) regarding the subject of facility usage. Failure or refusal for any reason by the owner/operator/service provider(s) to respond within twenty (20) days to such a request shall constitute a prima facie evidence that the communications facility has been abandoned.

3. Upon a determination of abandonment and notice thereof to the owner/operator/service provider(s), the owner(s) and all others listed as responsible parties shall remove the abandoned facilities and remediate the site within 180 days. At the time of removal, the facility site shall be remediated such that all FWBTF improvements which have ceased to be utilized are removed. If all facilities on a tower have ceased to operate, the tower shall also be removed, and the site shall be revegetated.

VI. PARTIES SUBJECT TO DUTY TO REMOVE

The following are considered jointly and severally to be the responsible parties for tower/facility removal and site remediation:

1. The owner of the abandoned tower/facility (and if different, the operator of the abandoned tower/facility.)
2. The owner of the land upon which the abandoned tower/facility is located.
3. The lessee, if any, of the land upon which the tower/facility is located.
4. The sub lessee or sub lessees, if any, of the land upon which the tower/facility is located.
5. Any communications service provider who, or which, by ceasing to utilize the tower/facility or otherwise failing to operate any of its transmitters or antennas on the tower/facility for which it leased space or purchased the right to space on the tower/facility for its transmitters or antennas, and by such ceasing or failure to utilize the tower/facility, in fact caused the tower/facility to become abandoned.
6. Any person to whom, or entity to which, there has been transferred or assigned any license issued by the FCC and under which the tower/facility owner/operator operated the tower/facility.
7. Any person or entity which has purchased all or a substantial portion of the assets of the tower/facility owner/operator/service provider(s).
8. Any entity which has merged with, or which has arisen or resulted from a merger with, the tower/facility owner or operator or service provider(s).
9. Any person or entity which acquired the owner or the operator of the abandoned tower/facility.
10. Any parent or subsidiary of any of the foregoing which happens to be a corporation.
11. Any managing partner of any of the foregoing which happens to be a limited partnership.
12. Any partner of any of the foregoing which happens to be a general partnership.

VII. FAILURE TO REMOVE

In the event that the responsible parties have failed to remove the tower and/or restore the facility site within 180 days, the Town of Tyringham may remove the tower and restore the site using the surety bonds or other security deposited at the time of application, and may thereafter initiate judicial proceedings against the Responsible Parties for any portion of the cost not covered by such security.

VIII. FINANCIAL SURETY

The applicant shall provide a form of surety, either through an escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the Fixed Wireless Telecommunication Facility and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the Planning Board. Such surety shall have either an automatic renewal date clause or no expiration date. Such surety will not be required for municipally- or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

IX. SEVERABILITY

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby.

6.8 FLOODPLAIN DISTRICT

6.8.1 Use Regulations

a. The Floodplain District is established as an overlay district to all other districts. All development, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the requirements of the Massachusetts State Building Code pertaining to construction in floodplains (currently Section 3107).

b. There shall be established a “routing procedure” which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health and Building Inspector for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

6.8.2 Statement Of Purpose, Existing Regulations

a. Statement of Purpose

The purpose of the Floodplain District are to:

- 1) Ensure the safety through reducing the threats to life and personal injury;
- 2) Eliminate new hazards to emergency response officials;
- 3) Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- 4) Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions the community beyond the site of flooding;
- 5) Eliminate costs associated with response and cleanup of flooding conditions;
- 6) Reduce damage to public and private property resulting from flooding waters.

b. Existing Regulations

All development in the district including structural and non-structural activities whether permitted by right or by special permit must be in compliance with the following:

- 1) Section of the Massachusetts state Building code, which addresses floodplain and coastal high hazard areas (currently 780 CMR 3107.0, "Flood Resistant Construction"),
- 2) Wetlands Protection regulations, Department of Environmental Protection (DEP) (currently 310CMR 10.00);
- 3) Inland Wetlands Restriction, Restriction, DEP (currently 310 CMR 13:00);
- 4) Minimum requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);
- 5) Any Variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

6.8.3 Floodplain District Boundaries And Base Flood Elevation Data, Floodway Data

- a. The Floodplain District is herein established as an overlay district. The District includes all special flood hazards areas designated on the Tyringham FIA Flood Hazard Boundary Maps issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated Nov. 29, 1974 as Zone A. Flood Hazard boundary Maps are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, Conservation Commission.
- b. Floodway Data

In Zone A, the best available Federal, State, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

ILLUSTRATION FLOODWAY ELEVATION

6.8.4 Notification Of Floodway Alteration

Notify, in a riverine situation, the following of any alteration or relocation of a watercourse:

- a. Adjacent communities
- b. NFIP State Coordinator
Massachusetts Office of Water Resources
251 Causeway St. Suite 700
Boston, MA 02202
- c. NFIP Program Specialist
FEMA Region I, 6th Floor
99 High St.
Boston, MA 02109

6.8.5 Permitted Uses

The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill or storage or materials or equipment:

- a. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
- b. Forestry and nursery uses
- c. Outdoor recreational uses, including fishing, boating, play areas, etc.
- d. Conservation of water, plants, wildlife
- e. Wildlife management areas, foot bicycle, and/or horse paths
- f. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises
- g. Buildings lawfully existing prior to the adoption of these provisions

6.8.6 Definitions

AREA OF SPECIAL FLOOD HAZARD is the land in the floodplain within a community subject to a one percent or greater change of flooding in any given year. The area is designated as Zone A.

BASE FLOOD means the flood having one percent change of being equaled or exceed in any given year

DEVELOPMENT means any manmade change to improved or unimproved real estate, including but not limited to building, or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DISTRICT means floodplain district.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National Flood Insurance Program, FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

FLOOD HAZARD BOUNDARY MAP (FHBM) means an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A.

FLOOD INSURANCE STUDY means an examination, evaluation, and determination of flood hazards, and if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOODWAY means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a buildings' lowest floor, PROVIDED, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

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

vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term “Manufactured Home” does not include park trailers, travel trailers, other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION means for floodplain management purposes, structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates. **NEW CONSTRUCTION** means structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

ONE-HUNDRED-YEAR FLOOD – see **BASE FLOOD**.

REGULATORY FLOODWAY – see **FLOODWAY**

SPECIAL FLOOD HAZARD AREA means an area having special flood and/or flood related erosion hazards, and shown on an FHBM as Zone A,

STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. **STRUCTURE**, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a foundation. For the latter purposes, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building of the premises.

SUBSTANTIAL IMPROVEMENT means any repair, reconstruction, or improvement of a structure the cost of which equals or exceeds 50 per cent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration affects the external dimensions of the structure.

ZONE A means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.

6.9 SNOW OR RUBBISH ON ROADS. – THIS BY-LAW WAS MOVED TO THE GENERAL BY LAWS 8.8

SECTION 7: ZONING BOARD OF APPEALS AND SPECIAL PERMITS

7.1 Membership and Authority

There shall be a Zoning Board of Appeals consisting of five (5) members and two (2) associated members to be appointed by the Board of Selectmen as provided in Section 12, Chapter 40A of the General Laws. The Board shall act within its statutory powers as provided in Section 4, Chapter 40A (M.G.L.) and on matters within its jurisdiction under this Bylaw in a manner prescribed in Section 15, Chapter 40A, (M.G.L.)

7.2 Statutory Powers of The Zoning Board Of Appeals

7.2.1 Appeals

The Board is authorized to hear and decide an appeal, as provided in Section 8, Ch. 40A (G.L.), taken by any person aggrieved by reason of his (her) ability to obtain a permit or enforcement action from any administrative officer under the provisions of Chapter 40A G.L., by the Berkshire County Regional Planning Commission, or by any person including an officer or board of the Town of Tyringham, or of an abutting town, aggrieved by an order or decision of the Building Inspector, or other administrative official, in violation of any provision of Chapter 40A (G.L.) or this Bylaw. Any such appeal must be taken within thirty (30) days from the date of the order or decision which is being appealed, by filing a notice of appeal with the Town Clerk, as provided in Section 15, Ch. 40A (G.L.)

7.2.2 Variances

The Board may authorize upon appeal or upon petition with respect to a particular land or structure a variance from the terms of this Bylaw where the Board specifically finds that owing to circumstances relating to the soil conditions, shape or topography or such land or structures and especially affecting such land or structure, but not affecting generally the zoning district in which it is located, literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw.

7.2.3 Decision By The Board Of Appeals

The decision of the Board of Appeals shall be made within one hundred (100) days after the date of the filing of an appeal, application or petition with the Town Clerk except in regard to special permits as provided in Section 7.3.5 herein. Failure by the Board to act within said one hundred (100) days shall be deemed to be the grant of relief, application or petition sought.

7.2.4 Expiration Of Variance

If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance they shall lapse, and may be re-established only after notice and a new hearing as provided in Section 7.3.1 herein.

7.3 Special Permits

Any board designated as Special Permit Granting Authority in this Bylaw may hear and decide applications for special permits upon which such board is specifically authorized to act under this Bylaw in accordance with the provisions of Section 9, Chapter 40A of the General Laws. The Board of Selectmen shall appoint annually an associate member of the Planning Board who shall be available to sit on the Board for the purpose of acting on a special permit application, in the case of absence, inability to act, or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Board, pursuant to C.40A s.9.

7.3.1 Required Hearing And Notice

Special permits may only be issued following public hearings held within sixty-five (65) days after filing an application with the Special Permit Granting Authority. Notice of Public hearing shall be given by publication in the newspaper of general circulation in the town once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of such hearing and by mailing it to "Parties in interest" as provided in Section 11, Ch. 40A (G.L.) which include the petitioner, abutters, owners of land directly opposite on any public or private street or way and owners of land within three hundred (300) feet of the property line, all as they appear on the most recent applicable tax list, the Planning Board, and the Planning Board of every abutting municipality.

7.3.2 Review By Other Board Or Agencies

The Special Permit Granting Authority shall within ten (10) days after receipt of an application for special permit transmit a copy thereof for review to the Board of Health, the Planning Board, the Board of Selectmen, the Conservation Commission and any other board or agency at the discretion of the Special Permit Granting Authority. Any board or agency to which such applications are referred for review shall make such recommendations as they deem appropriate in writing, provided however, the failure to make recommendations within thirty-five (35) days of receipt of such board or agency of the application for review shall be deemed lack of opposition thereto.

7.3.3 Findings Required

Before granting a special permit for any use requiring such permit under the provisions of this Bylaw, the Special Permit Granting Authority shall find that the proposed use:

- a) Is in compliance with all provisions and requirements of this Bylaw and in harmony with its general intent and purpose.
- b) It is essential or desirable to the public convenience or welfare at the proposed location.
- c) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood.
- d) Will not create undue traffic congestion, or unduly impair pedestrian safety.
- e) Will not overload any public water, drainage or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the town will be unduly subjected to the hazards affecting public health, safety or general welfare.

7.3.4 Conditions, Safeguards, and Limitations

Special permits may be issued subject to such conditions, safeguards or limitations as the Special Permit Granting Authority may impose for the protection of neighboring uses or otherwise serving the purposes of this Bylaw.

7.3.5 Decisions By Special Permit Granting Authority

Special Permit Granting Authority shall act within ninety (90) days following the date of public hearing. Failure to take final action upon an application for special permit within said ninety (90) days shall be deemed to be a grant of the permit applied for.

7.3.6 Expiration Of Special Permit

A special permit shall lapse in one (1) year if a substantial use or construction has not begun under the permit by such date except for a good cause.

SECTION 8: ADMINISTRATION AND ENFORCEMENT

8.1

This Bylaw shall be administered and enforced by the Board of Selectmen and the Building Inspector appointed by the Board under the State Building Code.

8.2

Construction or operation under a building or special permit shall conform to any subsequent amendment of this Bylaw unless the permit is issued before the first publication of the required notice of public hearing by the Planning Board on such amendment and the use of construction is commenced within a period of not more than six (6) months after the issuance of the permit, and in cases involving construction, unless such construction is continued through completion as continuously and expeditiously as is reasonable.

8.3

Anyone violating any of the provisions of this Bylaw may be fined not more than \$100.00 for each offense. Each day that such violation continues shall constitute a separate offense.

8.4

The town has voted to accept the provisions of M.G.L. Ch. 140, Section 147A, which enables the Town to enact bylaws and set and collect fees relative to the regulation of dog/animals or take any other action in relation thereto. The town has voted to accept the provisions of M.G.L. Ch. 40, Section 22F, empowering any municipal board or officer to issue a license, permit, certificate or to render a service and fix reasonable fees for all such licenses, permits or certificates issued pursuant to statutes or regulations wherein the entire proceeds of the fee remain with such issuing town.

8.8 Regulation and Control of Fire Detection and Alarm Systems

Section 1.

Regulations and Control of Fire Detection and Alarm systems. By definition, “ Fire detection and Alarm systems”, are those installed in privately owned structures, residential, educational, religious, commercial, industrial, which, when activated, result in an alarm of fire being transmitted, Alarm transmittal may be by the sounding of an external alarm, alerting the general public; by automatic telephone call; by personal telephone call; by direct connection; or by any other means. This section shall consist of the following paragraphs:

1. No fire detection and alarm system as defined, shall be installed without obtaining a permit from the Fire Chief. Owners of existing alarm systems maintained in the town shall, within 60 days of the enactment of this by-law file for a permit.
2. The owner/owners of the property in which the system is installed shall furnish, in writing, to the Fire Chief, telephone numbers (other than the protected premises) with the names of responsible individuals who are authorized to respond to emergency calls and provide access to the structure. Enough names and numbers shall be furnished to insure availability of at least one such individual at any hour of the day or night. This list shall be revised, as required, to be kept current and accurate.
3. No testing, repairing, altering, or other actions, which might result in the transmittal of an alarm to the Fire Department shall be performed without prior notification to the Fire Department, Fire department dispatch center, and/or alarm monitoring station.
4. Failure to comply with any of the requirements of Paragraph 1 through 3 shall be punishable by a fine of \$25.00 assessed to the property owner and payable to the Town of Tyringham, for deposit in the Fire Alarm Fund and sent to the Fire Department.

5. All installation will be inspected and tested prior to the permit being validated. Upon validation the installation may be connected.
6. Devises shall have lightning surge protection.
7. Devises shall not activate on account of power interruptions. Voice messages shall not exceed 15 seconds in duration. Devices shall not dial more than twice for the same alarm.
8. Equipment shall be serviced by a competent serviceman at least once every two years. Reports of such service shall be made to the chief of the Fire Department.
9. False alarms of fire are those alarms transmitted, when no fire condition exists, and are the result of negligence, or defective equipment. The owner of any property in which a false alarm is transmitted shall be penalized in accordance with the following schedule:
 - A. The first false alarm shall be free of charge, and a written warning from the Fire Chief to the property owner, including this section,
 - B. The second false alarm (within twelve (12) months of the date of first false alarm) a fine of \$100.00 shall be assessed to property owner payable to the Town of Tyringham for deposit in the Fire Alarm Fund and sent to the Fire Department.
 - C. The third and subsequent false alarms (within twelve (12) months of the first false alarm) a fine of \$200.00 shall be assessed to the property owner payable to the Town of Tyringham for deposit in the Revolving Fire Alarm Fund and sent to the Fire Department.
10. When the Fire Department responds to an alarm of fire by fire alarm activation, where the premises are unoccupied, and the department is unable to gain access to the structure; and is unable to contact any of the individuals listed for access; the Fire Officer in command may if he/she has reasonable concern or suspicion that a fire or other emergency exists within the structure, may make a forcible entry to determine whether or not such conditions exist. The Fire Officer shall:
 - A. Notify the Police Department of this action.
 - B. Secure the premises insofar as feasible.
 - C. Continue efforts to contact the individuals listed as responsible for the structure.
 - D. Enter the action taken in the Fire Department report for that incident.

SECTION 9: AMENDMENT AND VALIDITY

9.1 Amendment

This Bylaw may be amended from time to time in an annual or special town meeting in accordance with Chap. 40A. Section 5 of the General Laws.

9.2 Validity

9.2.1

This Bylaw, or any amendment thereto, shall take effect on the date on which such adoption or amendment is voted by the Town Meeting.

9.2.2

This Bylaw repeals and replaces the protective Bylaw adopted September 12, 1972 and subsequent amendments made thereto.

9.2.3

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof.

SECTION 10: ACCESSORY DWELLING UNIT BYLAW

1.0 PURPOSE AND INTENT

10.1.1

Provide homeowners with a means of obtaining rental income, companionship, security, and services, thereby enabling them to stay more comfortably in homes and neighborhoods they might otherwise have to leave.

10.1.2

Add moderately priced rental units to the housing stock.

10.1.3

Encourage a form of housing that offers increased sustainability and conservation of resources.

10.1.4

Protect stability, property values, and the residential character of the neighborhood.

2.0 DEFINITIONS

10.2.1

Primary Dwelling: A building in which the principal use of the lot is conducted. Such a building would be a single-family dwelling or a two-family dwelling.

10.2.2

Accessory Dwelling Unit (ADU): A detached, self-contained housing unit, located on the same lot as the Primary Dwelling, that complies with the provisions of this bylaw. Such a building shall be a single-family dwelling.

3.0 USE AND DIMENSIONAL REGULATIONS

10.3.1 Conditions for Accessory Dwelling Units (Adu):

- A.** Only one ADU may be created on a lot.
- B.** The structure must comply with required setbacks.
- C.** The ADU shall be placed to the rear of the Primary Dwelling.
- D.** The ADU must be within 100 yards of the Primary Dwelling.
- E.** The total square footage of an ADU (including any additions) shall not be greater than 800 square feet.
- F.** Only one dwelling unit at a time on the lot, either Primary or Accessory, shall be rented.
- G.** At least four off-street parking spaces shall be provided on the lot to serve the Primary Dwelling and the ADU.
- H.** A home occupation may be allowed in the Primary Dwelling and/or the ADU. Additional parking is required as per Tyringham Zoning Bylaw Section 4.2.3A.
- I.** The construction of any ADU must conform with the State Building Code, Title V of the State Sanitary Code, and other local bylaws/ordinances and regulations.
- J.** The visuals of the ADU shall not be in conflict with the scenic, historic, and agricultural character and appearance of the town.

4.0 ADMINISTRATION AND ENFORCEMENT

10.4.1

It shall be the duty of the Building Inspector to administer and enforce the provisions of this bylaw.

10.4.2

No building shall be constructed or changed, in either use or configuration, until the Building Inspector has issued a building permit. No permit shall be issued until a Sewage Disposal Works permit has first been obtained from the Board of Health. Any new building or structure shall conform to all adopted state and town laws, bylaws, codes and regulations. No building shall be occupied until a certificate of occupancy has been issued by the Building Inspector.

10.4.3

As the Special Permit Granting Authority (SPGA), the Planning Board may, after making findings of fact that support the decision, approve modifications to the dimensional regulations of this bylaw (Sections 10.3.1.e and/or 10.3.2.b), that will not exceed those standards by more than fifteen [15] percent.

10.4.4

Any placement of the ADU other than to the rear of the Primary Dwelling (reference 10.3.1.c) requires a Special Permit from the SPGA.