

1.
LOCAL LAW NUMBER 5 OF 1998

OF THE TOWN OF DANUBE

A LOCAL LAW REGULATING THE SITING OF TELECOMMUNICATIONS TOWERS, ANTENNAE AND RELATED FACILITIES

Section 1. PURPOSE AND LEGISLATIVE INTENT.

THE TELECOMMUNICATIONS ACT OF 1996 AFFIRMED THE TOWN OF DANUBE 'S AUTHORITY CONCERNING THE PLACEMENT, CONSTRUCTION AND MODIFICATION OF TELECOMMUNICATIONS TOWERS. THE TOWN BOARD OF THE TOWN OF DANUBE FINDS THAT TELECOMMUNICATIONS TOWERS AND RELATED FACILITIES MAY POSE A UNIQUE HAZARD TO THE HEALTH, SAFETY, PUBLIC WELFARE AND ENVIRONMENT OF THE TOWN OF DANUBE AND ITS INHABITANTS. IN ORDER TO INSURE THAT THE PLACEMENT, CONSTRUCTION OR MODIFICATIONS OF TELECOMMUNICATIONS TOWERS AND RELATED FACILITIES IS CONSISTENT WITH THE TOWN'S LAND USE POLICIES, THE TOWN IS ADOPTING A SINGLE, COMPREHENSIVE, TELECOMMUNICATIONS TOWER APPLICATION AND PERMIT PROCESS. THE INTENT OF THIS LAW IS TO MINIMIZE THE NEGATIVE IMPACT OF TELECOMMUNICATIONS TOWERS, ESTABLISH A FAIR AND EFFICIENT PROCESS FOR REVIEW AND APPROVAL OF APPLICATIONS, ASSURE AN INTEGRATED, COMPREHENSIVE REVIEW OF ENVIRONMENTAL IMPACTS OF SUCH FACILITIES, AND PROTECT THE HEALTH, SAFETY AND WELFARE OF TOWN OF DANUBE.

Section 2. Title.

This Law may be known and cited as the Telecommunications Tower Siting and Special Use Permit Law for the Town of Danube.

Section 3. Severability.

- A) If any word, phrase, sentence, part, Section, Subsection, or other portion of this Law or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, Section, Subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Law, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- B) Any special use permit issued under this law shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect,

by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon election by the Town Board.

Section 4. Definitions.

For purposes of this Law, and where not inconsistent with the context of a particular Section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word “shall” is always mandatory, and not merely directory.

1. **“Accessory Facility or Structure”** means an accessory facility or structure serving or being used in conjunction with a Telecommunications Tower, and located on the same property or lot as the Telecommunications Tower, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **“Applicant”** means and shall include any individual, corporation, estate, trust partnership, joint stock company, association of two (2) or more persons, limited liability company, or entity submitting an Application to the Town of Danube for a Special Use Permit for a Telecommunications Tower.
3. **“Application”** means the form approved by the Board, together with all necessary and appropriate documentation that an Applicant submits in its quest to receive a Special Use Permit for a Telecommunications Tower.
4. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to radio, television, cellular, paging, personal Telecommunications services (PCS), and microwave Telecommunications.
5. **“Board”** means the Town Board of the Town of Danube , which is the officially designated agency or body of the community to whom applications for a Special Use Permit for a Telecommunications Tower must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for Telecommunications Towers. The Board may at its discretion delegate or designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for Telecommunications Towers.
6. **“Break point”** means the location on a Telecommunications Tower which, in the event of a failure of the Telecommunications Tower, would result in the Telecommunications Tower falling or collapsing within the boundaries of the property on which the Telecommunications Tower is placed.
7. **“Camouflaged Tower”** means any Tower or supporting structure that, due to design, location, or appearance, partially or completely hides, obscures, conceals, or otherwise disguises the presence of the Tower and one or more Antennas or Antenna arrays affixed thereto.

- 91 8. **“Collapse zone”** means the area in which any portion of a Telecommunications Tower could
92 or would fall, collapse or plunge to the ground or into a river or other body of water. The
93 collapse zone shall be no less than the lateral equivalent of the distance from the Break point to
94 the top of the structure plus ten feet, such being not less than one-half (1/2) the height of the
95 structure.
96
- 97 9. **“Collocation”** means the use of the same telecommunications tower or structure to carry two
98 or more antennae for the provision of wireless services by two or more persons or entities.
99
- 100 10. **“Commercial Impracticability”** or **“Commercially Impracticable”** shall have the meaning
101 in this Law and any Special Use Permit granted hereunder as is defined and applied under the
102 New York Uniform Commercial Code (UCC).
103
- 104 11. **“Completed Application”** means an Application that contains all information and/or data
105 necessary to enable the Board to evaluate the merits of the Application, and to make an
106 informed decision with respect to the effect and impact of the Telecommunications Tower on
107 the Town in the context of the permitted land use for the particular location requested.
108
- 109 12. **“County”** means the New York State county in which the Town, Village or City is physically
110 located.
111
- 112 13. **“Direct-to home satellite services”** or **“Direct Broadcast Service”** or **“DBS”** means only
113 programming transmitted or broadcast by satellite directly to subscribers’ premises without the
114 use of ground receiving equipment, except at the subscribers’ premises or in the uplink process
115 to the satellite.
116
- 117 14. **“EAF”** means the Environmental Assessment Form approved by the New York Department
118 of Environmental Conservation.
119
- 120 15. **“EPA”** means State and/or Federal Environmental Protection Agency or its duly assigned
121 successor agency.
122
- 123 16. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized
124 successor agency.
125
- 126 17. **“FCC”** means the Federal Telecommunications Commission, or its duly designated and
127 authorized successor agency.
128
- 129 18. **“Free standing Tower”** means a Tower that is not supported by guy wires and ground
130 anchors or other means of attached or external support.
131
- 132 19. **“Height”** means, when referring to a Tower or structure, the distance measured from the pre-
133 existing grade level to the highest point on the Tower or structure, even if said highest point is
134 an Antenna.
135
- 136 20. **“NIER”** means Non-Ionizing Electromagnetic Radiation
137
- 138 21. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company,
139 association of two (2) or more persons having a joint common interest, or governmental entity.
140

- 141 22. **“Personal Wireless Facility”** - See definition for ‘Telecommunications Tower’.
- 142
- 143 23. **“Personal Wireless Services”** or **“PWS”** or **“Personal Telecommunications Service”** or
- 144 **“PCS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
- 145
- 146 24. **“Site”** See definition for Telecommunications Tower.
- 147
- 148 25. **“Special Use Permit”** means the official document or permit by which an Applicant is
- 149 allowed to construct and use a Telecommunications Tower as granted or issued by the
- 150 municipality.
- 151
- 152 26. **“State”** means the State of New York.
- 153
- 154 27. **“Telecommunications”** means the transmission and reception of audio, video, data, and other
- 155 information by wire, radio frequency, light, and other electronic or electromagnetic systems.
- 156
- 157 28. **“Telecommunications Tower”** or **“Tower”** or **“Site”** or **“Personal Wireless Facility”**
- 158 means a structure or location designed, or intended to be used, or used to support Antennas. It
- 159 includes without limit, free standing Towers, guyed Towers, monopoles, and similar structures
- 160 that employ camouflage technology, including, but not limited to structures such as a church
- 161 steeple, silo, water Tower, sign or other similar structures intended to mitigate the visual
- 162 impact of an Antenna or the functional equivalent of such. It is a structure intended for
- 163 transmitting and/or receiving radio, television, cellular, paging, personal Telecommunications
- 164 services, or microwave Telecommunications, but excluding those used exclusively for fire,
- 165 police and other dispatch Telecommunications, or exclusively for private radio and television
- 166 reception and private citizen’s bands, amateur radio and other similar Telecommunications that
- 167 do not exceed height limitations addressed elsewhere in Town regulations.
- 168
- 169 29. **“Telecommunications Structure”** means a structure used in the provision of services
- 170 described in the definition of ‘Telecommunications Tower’.
- 171
- 172 30. **“Temporary”** means in relation to all aspects and components of this Law, something
- 173 intended to, or that does, exist for fewer than ninety (90) days.
- 174
- 175 31. **“Town”** means the Town of Danube , New York.

176 **Section 5. Overall Policy and Desired Goals for Special Use**

177 **Permits for Telecommunications Towers.**

178 In order to ensure that the placement, construction, and modification of Telecommunications

179 Towers conforms to the Town’s land use code or Law, the Board creates a Special Use Permit for

180 a Telecommunications Tower. As such, the Board adopts an overall policy with respect to a

181 Special Use Permit for a Telecommunications Tower for the express purpose of achieving the

182 following goals:

183

- 184 1) implementing an Application process for person(s) seeking a Special Use Permit for a
- 185 Telecommunications Tower;
- 186 2) establishing a policy for examining an application for and issuing a Special Use Permit
- 187 for a Telecommunications Tower that is both fair and consistent with the current land
- 188 use code or Law of the Town;

- 189 3) establishing reasonable time frames for granting or not granting a Special Use Permit
190 for a Telecommunications Tower, or recertifying or not recertifying, or revoking the
191 Special Use Permit granted under this Law.
192 4) promoting and encouraging, wherever possible, the sharing and/or collocation of a
193 Telecommunications Tower among service providers;
194 5) promoting and encouraging, wherever possible, the placement of a
195 Telecommunications Tower in such a manner as to cause minimal disruption to
196 aesthetic considerations of the land, property, buildings, and other facilities adjacent
197 to, surrounding, and in generally the same area as the requested location of such a
198 Telecommunications Tower.

199 **Section 6. Special Use Permit Application and Other** 200 **Requirements**

- 201 A) All Applicants for a Special Use Permit for a Telecommunications Tower shall comply
202 with the requirements set forth in this Section.
203
204 B) Any Application for a Special Use Permit for a Telecommunications Tower shall be signed
205 by an officer of the Applicant attesting to the truth and completeness of the information.
206 The landowner, if different than the Applicant, shall acknowledge the Application and
207 verify that they are aware of the Application and are aware that the Town may deny the
208 Application or issue a permit with conditions. At the discretion of the Board, any false
209 statement regarding the requirements of this Section may subject the Applicant to denial of
210 the Application without further consideration or opportunity for correction.
211
212 C) Applications not meeting the requirements stated herein or which are otherwise incomplete,
213 may be rejected by the Board as invalid without prejudice to the resubmission by an
214 applicant of an appropriate and complete Application.
215
216 D) The Applicant shall state in writing:
217
218 1) that the applicant's proposed Telecommunications Tower will be maintained in a safe
219 manner, and in compliance with all conditions of the Special Use Permit, without
220 exception, unless specifically granted relief by the Board in writing, as well as all
221 applicable and permissible local codes, ordinances, and regulations, including any and all
222 applicable County, State and Federal laws, rules, and regulations;
223
224 2) that the construction of the Telecommunications Tower is legally permissible,
225 including, but not limited to the fact that the Applicant is authorized to do business
226 in New York State.
227
228 E) No Telecommunications Tower shall be installed or constructed until the site plan is
229 reviewed and approved by the Board. The site plan Application shall include, in addition to
230 the other requirements for the Special Use Permit under applicable Municipal Code, the
231 following additional information:
232
233 All applications for the construction or installation of a new Telecommunications Tower
234 shall be accompanied by a report containing the information hereinafter set forth. The
235 report shall be signed by a licensed professional engineer registered in the State and shall
236 contain the following information. Where this Section calls for certification, such

certification shall be by a qualified New York State licensed Professional Engineer acceptable to the Town, unless otherwise noted.

- 1) Name and address of person preparing the report;
- 2) Name and address of the property owner, operator, and Applicant, to include the legal form of the Applicant;
- 3) Postal address and sheet, block, and lot or parcel number of the property;
- 4) Zoning District or designation in which the property is situated;
- 5) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
- 6) Location of nearest residential structure;
- 7) Location of nearest habitable structure;
- 8) Location of all structures on the property which is the subject of the Application;
- 9) Location, size and height of all proposed and existing antennae and all appurtenant structures;
- 10) Type, size and location of all proposed and existing landscaping;;
- 11) The number, type and design of the Telecommunications Tower(s) Antenna(s) proposed and the basis for the calculations of the Telecommunications Tower's capacity to accommodate multiple users;
- 12) The make, model and manufacturer of the Tower and Antenna(s);
- 13) A description of the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
- 14) The frequency, modulation and class of service of radio or other transmitting equipment;
- 15) Transmission and maximum effective radiated power of the Antenna(s);
- 16) Direction of maximum lobes and associated radiation of the Antenna(s);
- 17) Applicant's proposed Tower maintenance and inspection procedures and related system of records;
- 18) Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC. If a Special Use Permit is granted, such certification will be provided to the Town on an annual basis on or before the anniversary date of the granting of the Special Use Permit;
- 19) Certification that the proposed Antenna(s) will not cause interference with existing telecommunications devices, though the certifying engineer need not be approved by the Town;
- 20) A copy of the FCC license applicable to the use of the Telecommunications Tower;
- 21) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed Telecommunications Tower on the proposed site, though the certifying engineer need not be approved by the Town;
- 22) For locations where there will be ground disturbance, provide a phase one (1) archeological survey performed by a 36CFR61 qualified archeologist approved by the Town.
- 23) Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites.

- 285 24) Applicant shall disclose in writing any agreement in existence prior to submission
286 of the Application that would limit or preclude the ability of the Applicant to share
287 any new Telecommunications Tower that it constructs.
288
- 289 F) In the case of a new Telecommunications Tower, the Applicant shall be required to submit
290 a report demonstrating its efforts to secure shared use of existing Telecommunications
291 Tower(s). Copies of written requests and responses for shared use shall be provided to the
292 Board.
293
- 294 G) Certification by a licensed engineer that the Telecommunications Tower and attachments
295 both are designed and constructed (“As Built”) to meet all County, State and Federal
296 structural requirements for loads, including wind and ice loads;
297
- 298 H) Certification by a licensed engineer that the Telecommunications Tower is designed with a
299 break point that would result in the Telecommunications Tower falling or collapsing within
300 the boundaries of the property on which the Telecommunications Tower is placed;
301
- 302 I) After construction and prior to receiving a Certificate of Compliance, the Applicant shall
303 have certified by a licensed engineer that the Telecommunications Tower and related
304 facilities are grounded and bonded so as to protect persons and property and installed with
305 appropriate surge protectors.
306
- 307 J) The Applicant shall submit a completed long form EAF and a completed Visual
308 Environmental Assessment form (visual EAF addendum). The Board may require
309 submission of a more detailed visual analysis based on the results of the Visual EAF.
310 Applicants are encouraged to seek pre-application meetings with the Town Board to
311 address the scope of the required visual assessment
312
- 313 K) A Visual Impact Assessment which shall at the Board’s request include:
314
- 315 1) A “ Zone of Visibility Map” which shall be provided in order to determine
316 locations where the Tower may be seen.
317
- 318 2) Pictorial representations of “before and after” views from key viewpoints both
319 inside and outside of the Town, including but not limited to state highways and
320 other major roads; state and local parks; other public lands; historic districts;
321 preserves and historic sites normally open to the public; and from any other
322 location where the site is visible to a large number of visitors or travelers. If
323 requested by the Applicant, the Town Board, acting in consultation with its
324 consultants or experts, will provide guidance concerning the appropriate key sites
325 at a pre-submission conference.
326
- 327 3) An assessment of the visual impact of the Tower base, guy wires and accessory
328 buildings from abutting and adjacent properties and streets.
329
- 330 L) Any and all representations made to the Board , on the record, during the Application
331 process, whether written or verbal, shall be deemed a part of the Application and will be
332 relied upon in that context and in good faith by the Board.
333

- 334 M) The Applicant shall effectively screen from view its proposed Telecommunications Tower
335 base and all related facilities and structures, subject to Board approval.
336
- 337 N) All utilities leading to and away from any Telecommunications Tower site shall be
338 installed underground and in compliance with all laws, rules and regulations of the Town,
339 including specifically, but not limited to, the National Electrical Safety Code. The Board
340 may waive or vary the requirements of undergrounding installation of utilities whenever, in
341 the opinion of the Board, such variance or waiver shall not be detrimental to the health,
342 safety, general welfare or environment, including the visual and scenic characteristics of
343 the area.
344
- 345 O) All Telecommunications Towers and accessory facilities shall be sited so as to have the
346 least practical adverse visual effect on the environment and its character, and the
347 residences in the area of the Telecommunications Tower site.
348
- 349 P) Accessory facilities shall maximize use of building materials, colors and textures designed
350 to blend with the natural surroundings.
351
- 352 Q) An access road and parking will be provided to assure adequate emergency and service
353 access. Maximum use of existing roads, whether public or private, shall be made to the
354 extent not commercially or physically impracticable. Road construction shall at all times
355 minimize ground disturbance and vegetation-cutting. Road grades shall closely follow
356 natural contours to assure minimal visual disturbance and reduce soil erosion potential.
357 Usual requirements regarding weight and carrying capacity for emergency vehicles should
358 apply to access roads.
359
- 360 R) A person who holds a Special Use Permit for a Telecommunications Tower shall
361 construct, operate, maintain, repair, modify or restore the permitted Telecommunications
362 Tower in strict compliance with all current technical, safety and safety-related codes
363 adopted by the Town, the County, the State, or the United States, including but not limited
364 to the most recent editions of the National Electrical Safety Code and the National
365 Electrical Code, as well as accepted and responsibly workmanlike industry practices and
366 recommended practices of the National Association of Tower Erectors. The codes referred
367 to are codes that include, but are not limited to, construction, building, electrical, fire,
368 safety, health, and land use codes.
369
- 370 S) A holder of a Special Use Permit granted under this Law shall obtain, at its own expense,
371 all permits and licenses required by applicable law, rule, regulation or Law, and must
372 maintain the same, in full force and effect, for as long as required by the Town or other
373 appropriate governmental entity or agency.
374
- 375 T) The Board intends to be the lead agency, pursuant to SEQRA. The Board shall conduct an
376 integrated, comprehensive environmental review of the proposed project in combination
377 with its review of the Application under this Law.
378
- 379 U) An Applicant shall submit no fewer than eight (8) copies of the entire Completed
380 Application to the Town Board and a copy of the Application to the legislative body of any
381 adjacent and adjoining municipalities and to the County Planning Agency.
382

V) The Applicant shall examine the feasibility of designing a proposed Telecommunications Tower to accommodate future demand for at least two (2) additional commercial applications, e.g. future collocations. The scope of this examination shall be determined by the Board. The Telecommunications Tower shall be structurally designed to accommodate at least two (2) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Telecommunications Tower is not technologically feasible, or is Commercially Impracticable and creates an unnecessary and unreasonable burden, based upon:

- 1) The number of FCC licenses foreseeable available for the area;
- 2) The kind of Telecommunications Tower site and structure proposed;
- 3) The number of existing and potential licenses without Telecommunications Tower spaces/sites;
- 4) Available space on existing and approved Telecommunications Towers;

W) Unless waived by the Board, there shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. Where the Application is for the shared use of an existing Telecommunications Tower(s) or other high structure, the Applicant should seek to waive any section or sub-section of this Law that may not be required. At the pre-application meeting,. (This may include a site visit if required) the waiver requests, if appropriate, will be decided by the Board and its consultants. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

Section 7. Location of Telecommunications Towers.

A) Applicants for Telecommunications Towers shall locate, site and erect said Telecommunications Towers or other tall structures in accordance with the following priorities, one (1) being the highest priority and four (4) being the lowest priority.

1. on existing Telecommunications Towers or other tall structures;
2. collocation on a site with existing Telecommunications Towers or structures.
3. on municipally-owned properties;
4. on other property in the Town.

If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant or service provider if not granted, or the benefits that might inure, and the beneficiaries of such an alternative site.

An Applicant may not by-pass sites of higher priority by stating the site presented is the only site leased or selected. An Application shall address collocation as an option and if

such option is not proposed, the applicant must explain why collocation is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting collocation, shall not be a valid basis for any claim of Commercial Impracticability or hardship.

Notwithstanding the above, the Board may approve any site located within an area in the above list of priorities, provided that the Board finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants.

- B) Upon filing an Application for a Special Use Permit for a Telecommunications Tower, the Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.
- C) The Applicant shall, in writing, identify and disclose the number and locations of any additional sites that the Applicant has, is, or will be considering, reviewing or planning for Telecommunications Towers in the Town, and all municipalities adjoining or adjacent to the Town, for a two year period from the date of the subject Application.
- D) Notwithstanding that potential sites may be situated in areas described in Subsection (A) of this Section, the Board may disapprove an Application for reasons of non-compatibility, for any of the following reasons.
 - 1) conflict with safety and safety-related codes and requirements;
 - 2) conflict with traffic needs or traffic laws, or definitive plans for changes in traffic flow or traffic laws;
 - 3) conflict with the historic nature of a neighborhood or historical district;
 - 4) the use or construction of a Telecommunications Tower which is contrary to an already stated purpose of a specific zoning or land use designation; or
 - 5) the placement and location of a Telecommunications Tower which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers.
 - 6) or otherwise conflict with the provisions of this Law.

Section 8. Shared use of Telecommunications Tower(s).

- A) Shared use of existing Telecommunications Towers shall be preferred by the Town, as opposed to the proposed construction of new Telecommunications Towers. Additionally, where such shared use is unavailable, location of Antennas on other pre-existing structures shall be considered and preferred. The Applicant shall submit a comprehensive report inventorying existing towers and other appropriate structures within four (4) miles of any proposed new tower site, unless the Applicant can show that some other distance is more reasonable, and outlining opportunities for shared use of existing facilities and the use of other pre-existing structures as a preferred alternative to new construction.
- B) An Applicant intending to share use of an existing Telecommunications Tower or other tall structure shall be required to document the intent of the existing owner to share use.

- 481
482 C) With respect to an Application to share the use of an existing Telecommunications Tower
483 that does not increase the height of the Telecommunications Tower, the Board shall waive
484 such requirements of the Application required by this Local Law as may be upon good
485 cause shown. The purpose to such waivers or other alternative procedures shall be to
486 expedite for the Applicant and the Town the review and permitting for the shared use of an
487 existing Telecommunications Tower.
488
489 D) Such shared use shall consist only of the minimum Antenna array technologically required
490 to provide service within the Town, to the extent practicable, unless good cause is shown.
491

492 **Section 9. Height of a Telecommunications Tower**

- 493 A) The Applicant must submit documentation justifying to the Board the total height of any
494 Telecommunications Tower and/or Antenna and the basis therefor. Such justification shall
495 be to provide service within the Town, to the extent practicable, unless good cause is
496 shown.
497
498 B) Telecommunications Towers shall be no higher than the minimum height necessary.
499 Unless waived by the Board upon good cause shown, the presumed maximum height shall
500 be one hundred-forty (140) feet, based on three (3) collocated antenna arrays and ambient
501 tree height of eighty (80) feet.
502
503 C) The maximum height of any Telecommunications Tower and attached Antennas
504 constructed after the effective date of this Law shall not exceed that which shall permit
505 operation without artificial lighting of any kind or nature, in accordance with municipal,
506 County, State, and/or any federal law and/or regulation.

507 **Section 10. Visibility of a Telecommunications Tower**

- 508 A) Telecommunications Towers shall not be artificially lighted or marked, except as required
509 by law.
510
511 B) Telecommunications Towers shall be of a galvanized finish, or painted with a rust-
512 preventive paint of an appropriate color to harmonize with the surroundings as approved
513 by the Board, and shall be maintained in accordance with the requirements of this Law.
514
515 C) If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of as
516 unobtrusive and inoffensive an effect as is permissible under state and federal regulations,
517 and an artist's rendering or other visual representation showing the effect of light
518 emanating from the site on neighboring habitable structures within fifteen-hundred (1,500)
519 feet of all property lines on which the Telecommunications Tower is located;

520 **Section 11. Security of Telecommunications Towers**

521 All Telecommunications Towers and Antennas shall be located, fenced or otherwise secured in
522 a manner which prevents unauthorized access. Specifically:

- 523
524 1. All Antennas, Towers and other supporting structures, including guy wires, shall be
525 made inaccessible to individuals and constructed or shielded in such a manner that
526 they cannot be climbed or run into; and

- 527
528 2. Transmitters and Telecommunications control points must be installed such that they
529 are readily accessible only to persons authorized by the FCC's licensee to operate or
530 service them.

531 **Section 12. Signage**

532 Telecommunications Towers shall contain a sign no larger than four (4) square feet to provide
533 adequate notification to persons in the immediate area of the presence of an Antenna that has
534 transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of
535 the Antenna(s) as well as emergency phone number(s). The sign shall be located so as to be
536 visible from the access point of the site. No other signage, including advertising, shall be
537 permitted on any Antennas, Antenna supporting structures or Antenna Towers, unless required
538 by law.

539 **Section 13. Lot Size and Setbacks**

- 540 A) All proposed Communications Towers shall be set back from abutting parcels, recorded
541 rights-of-way and road and street lines a distance sufficient to substantially contain on-site
542 all ice-fall or debris from a Tower or Tower failure, and to preserve the privacy and
543 sanctity of any adjoining properties.

544
545 Telecommunications Towers shall be located with a minimum setback from any property line
546 and/or right of way, including highway rights of way, a distance equal to the height of the Tower
547 plus 5% or the existing setback requirement of the underlying zoning district, whichever is greater.
548 Further, any Accessory structure shall be located so as to comply with the minimum setback
549 requirements for the property on which it is situated.
550

551 **Section 14. Retention of Expert Assistance and Reimbursement** 552 **by Applicant**

- 553 A) The Board may hire any consultant and/or expert necessary to assist the Board in
554 reviewing and evaluating the Application and any requests for recertification.
555
556 B) An Applicant shall deposit with the Town funds sufficient to reimburse the Town for all
557 reasonable costs of consultant and expert evaluation and consultation to the Board in
558 connection with the review of any Application. The initial deposit shall be \$7,500.00
559 These funds shall accompany the filing of an Application and the Town will maintain a
560 separate escrow account for all such funds. The Town's consultants/experts shall bill or
561 invoice the Town no less frequently than monthly for its services in reviewing the
562 Application and performing its duties. If at any time during the review process this escrow
563 account has a balance less than \$2,500.00, Applicant shall immediately, upon notification
564 by the Town, replenish said escrow account so that it has a balance of at least \$2,500.00.
565 Such additional escrow funds must be deposited with the Town before any further action
566 or consideration is taken on the Application. In the event that the amount held in escrow by
567 the Town is more than the amount of the actual billing or invoicing, the difference shall be
568 promptly refunded to the Applicant.
569
570 C) The total amount of the funds set forth in subsection (B) of this section may vary with the
571 scope and complexity of the project, the completeness of the Application and other

information as may be needed by the Board or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as required and requested by the Town, shall be paid by the Applicant.

Section 15. Exceptions from a Special Use Permit for a Telecommunications Tower.

- A) No person shall be permitted to site, place, build, construct or modify, or prepare any site for the placement or use of, a Telecommunications Tower as of the effective date of this Law without having first obtained a Special Use Permit for a Telecommunications Tower. Notwithstanding anything to the contrary in this Section, no Special Use Permit shall be required for those exceptions noted in the definition of Telecommunications Tower.
- B) New construction, including routine maintenance on an existing Telecommunications Tower, shall comply with the requirements of this Law.
- C) All Telecommunications Towers existing on or before the effective date of this Law shall be allowed to continue their usage as they presently exist, provided however, that any modification to existing Towers must comply with this Law.

Section 16. Public Hearing Required

- A) Prior to the approval of any Application for a Special Use Permit for a Telecommunications Tower, a public hearing shall be held by the Town Board, notice of which shall be published in the official newspaper of the Town no less than two weeks prior to the scheduled date of the public hearing. In order that the Town may notify nearby landowners, the Applicant, at least three (3) weeks prior to the date of said public hearing, shall be required to provide names and address of all landowners whose property is located within fifteen hundred (1500) feet of any property line of the parcel on which the proposed new Telecommunications Tower is proposed to be located.
- B) The Board shall schedule the public hearing referred to in Subsection (A) of this Section once it finds the Application is complete. The Board, at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary.

Section 17. Acting on an Application for a Special Use Permit for a Telecommunications Tower.

- A) The Board will undertake a review of an Application pursuant to this law in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
- B) The Board may refer any Application or part thereof to any advisory or other committee for a non-binding recommendation.
- C) Except for necessary building permits, and subsequent Certificates of Compliance, no additional permits or approvals from the Town, e.g. site plan or zoning approvals, shall be required for Telecommunications Towers or facilities covered by this Law.

- 617 A) After formally considering the Application, the Board may approve and issue, or deny a
618 Special Use Permit. It's decision shall be in writing and shall be based on substantial
619 evidence upon a record. The burden of proof for the grant of the permit shall always be
620 upon the Applicant.
621
- 622 B) If the Board approves the Special Use Permit for a Telecommunications Tower, then the
623 Applicant shall be notified of such approval in writing within ten (10) calendar days of the
624 Board's action, and the Special Use Permit shall be issued within thirty (30) days after such
625 approval.
626
- 627 C) If the Board denies the Special Use Permit for a Telecommunications Tower, then the
628 Applicant shall be notified of such denial in writing within ten (10) calendar days of the
629 Board's action.
630
- 631 D) The Town's decision on an Application for a Special Use Permit for a
632 Telecommunications Tower shall be supported by substantial evidence contained in a
633 written record.

634 **Section 18. Recertification of a Special Use Permit for a**
635 **Telecommunications Tower.**

- 636 A) At any time between twelve (12) months and six (6) months prior to the five (5) year
637 anniversary date and all subsequent fifth anniversaries of the original granting of a Special
638 Use Permit for a Telecommunications Tower, the holder of a Special Use Permit for such
639 Tower shall submit a written request for recertification. In the written request for
640 recertification, the holder of such Special Use Permit shall note the following:
641
- 642 1) the name of the holder of the Special Use Permit for the Telecommunications
643 Tower;
 - 644 2) if applicable, the number or title of the Special Use Permit;
 - 645 3) the date of the original granting of the Special Use Permit;
 - 646 4) whether the Telecommunications Tower has been moved, re-located, rebuilt,
647 repaired, or otherwise modified since the issuance of the Special Use Permit;
 - 648 5) if the Telecommunications Tower has been moved, re-located, rebuilt, repaired, or
649 otherwise modified, then whether the Board approved such action, and under what
650 terms and conditions, and whether those terms and conditions were complied with
651 and abided by;
 - 652 1) any requests for waivers or relief of any kind whatsoever from the requirements of
653 this Law and any requirements for a Special Use Permit; and
 - 654 2) that the Telecommunications Tower is in compliance with the Special Use Permit
655 and compliance with all applicable codes, laws, rules and regulations.
656
- 657 B) If, after such review, the Board determines that the permitted Telecommunications Tower is in
658 compliance with the Special Use Permit and all applicable codes, laws and rules, then the
659 Board shall issue a recertification Special Use Permit for the Telecommunications Tower,
660 which may include any new provisions that are mutually agreed upon, or required by the force
661 of law or regulation.
- 662 C) If the Board does not complete its review, as noted in Subsection (B) of this Section, prior to
663 the five (5) year anniversary date of the Special Use Permit, or subsequent fifth anniversaries,
664 then the Applicant for the permitted Telecommunications Tower shall receive an extension of

the Special Use Permit for up to six (6) months, in order for the Board to complete its review as noted in Subsection (B) of this Section.

- D) If the holder of a Special Use Permit for a Telecommunications Tower does not submit a request for recertification of such Special Use Permit within the timeframe noted in Subsection (A) of this Section, then such Special Use Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit, or subsequent fifth anniversaries, unless the holder of the Special Use Permit adequately demonstrates to the Board that extenuating circumstances prevented a timely recertification request. If the Board agrees that there were legitimately extenuating circumstances, then the holder of the Special Use Permit may submit a recertification request for the existing Special Use Permit for a Telecommunications Tower to be extended for up to six (6) months in order to allow the Board adequate time to review the recertification request.

Section 19. Extent and Parameters of Special Use Permit for a Telecommunications Tower.

The extent and parameters of a Special Use Permit for a Telecommunications Tower shall be as follows:

- 1) such Special Use Permit shall be non-exclusive;
- 2) such Special Use Permit shall not be assignable or transferable without the express written consent of the Board, and such consent shall not be unreasonably withheld;
- 3) such Special Use Permit may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit for a Telecommunications Tower, or for a material violation of this Law.

Section 20. Application Fee.

- A) At the time that a person submits an Application for a Special Use Permit for a new Telecommunications Tower, such person shall pay an application fee to the Town of Danube \$5,000. If the Application is for a Special Use Permit for collocating on an existing Telecommunications Tower, the fee shall be \$2000.
- B) An Application fee is not required in order to recertify a Special Use Permit for a Telecommunications Tower, unless there has been a modification of the Telecommunications Tower since the date of the issuance of the existing Special Use Permit. In the case of any modification, Subsection (A) shall apply.

Section 21. Performance Security

The Applicant and the owner of record of any proposed Telecommunications Tower property site shall be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount deemed sufficient by the Board to assure the faithful performance of the terms and conditions of this Law and any Special Use Permit issued pursuant to this Law. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until the removal of the Telecommunications Tower, and any necessary site restoration is completed.

Section 22. Reservation of Authority to Inspect Telecommunications Towers

- A) In order to verify that the holder of a Special Use Permit for a Telecommunications Tower and any and all lessees, renters, and/or licensees of a Telecommunications Tower place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and land use codes or other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.
- B) The Town shall pay for all of its costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including Towers, Antennas, and appurtenant or associated facilities, or refusal to otherwise cooperate with the Town with respect to an inspection, or if violations of this Law are found to exist, in which case the holder, lessee or licensee shall reimburse the Town for the cost of the inspection.
- C) Payment of such reimbursement shall be made to the Town within thirty (30) days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is/are appealed in accordance with the procedures set forth in this Law, said reimbursement payment must still be paid to the Town and the reimbursement shall be placed in an escrow account established by the Town specifically for this purpose, pending the final decision on appeal.

Section 23. Liability Insurance.

- A) A holder of a Special Use Permit for a Telecommunications Tower shall secure and at all times maintain public liability insurance, property damage insurance, and umbrella insurance coverage for the duration of the Special Use Permit in amounts as set forth below
- | | |
|-----------------------|---|
| 1) Public liability: | \$1,000,000.00 per person/per occurrence; |
| 2) Property damage: | \$1,000,000.00 per any one (1) claim; |
| 3) Umbrella liability | \$3,000,000.00 |
- B) The public and personal liability and property damage insurance policy shall specifically include the Town and its officials, employees and agents as additional insureds.
- C) The public and personal liability insurance and property damage insurance policy shall be issued by an agent or representative of an insurance company licensed to do business in the State.
- D) The public liability and property damage insurance policy shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.

- 759
760 F) Before construction of a permitted Telecommunications Tower is initiated, but in no case
761 later than fifteen (15) days after the grant of the Special Use Permit, the holder of the
762 Special Use Permit shall deliver to the Town a copy of each of the policies or certificates
763 representing the insurance in the required amounts.

764 **Section 24. Indemnity.**

- 765 A) Any Special Use Permit issued pursuant to this Law shall contain a provision with respect
766 to indemnity. Such provision shall require the holder of the Special Use Permit, to the
767 extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless,
768 and exempt the Town, officials of the Town, its officers, agents, servants, and employees,
769 from any and all penalties, damage, or charges arising out of any and all claims, suits,
770 demands, causes of action, or award of damages, whether compensatory or punitive, or
771 expenses arising therefrom, either at law or in equity, which might arise out of, or are
772 caused by, the construction, erection, modification, location, products performance,
773 operation, maintenance, repair, installation, replacement, removal, or restoration of a
774 Telecommunications Tower within the Town. With respect to the penalties, damages or
775 charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness
776 fees are included in those costs that are recoverable by the Town.
777
778 B) Notwithstanding the requirements noted in Subsection (A) of this Section, an indemnity
779 provision will not be required in those instances where the Town itself applies for and
780 secures a Special Use Permit for a Telecommunications Tower.

781 **Section 25. Fines**

- 782 A) In the event of a violation of this Law or any Special Use Permit issued pursuant to this
783 Law, the Board may impose and collect, and the holder of the Special Use Permit for a
784 Telecommunications Tower shall pay to the Town, fines or penalties as set forth in
785 Section 268 of the Town Law of the State of New York.
786
787 B) Notwithstanding anything in this Law, the holder of the Special Use Permit for a
788 Telecommunications Tower may not use the payment of fines, liquidated damages or other
789 penalties, to evade or avoid compliance with this Law or any Section of this Law. An
790 attempt to do so shall subject the holder of the Special Use Permit to termination and
791 revocation of the Special Use Permit. The Town may also seek injunctive relief to prevent
792 the continued violation of this Law.

793 **Section 26. Default and/or Revocation.**

- 794 A) When any permitted Telecommunications Tower is repaired, rebuilt, placed, moved, re-located,
795 modified or maintained in a way that is inconsistent or not in compliance with either the
796 Town's land use code, or the provisions of this Law or of the Special Use Permit, then the
797 Board shall notify the holder of the Special Use Permit for a Telecommunications Tower of the
798 specific inconsistent, non-compliant or violative use or situation. Such notice shall indicate that
799 the Telecommunications Tower, and any appurtenant or related facilities located at the
800 permitted site, is in violation of or non-compliance with the requirements of this Law or the
801 Special Use Permit, and that the holder of the Special Use Permit is in default of its Special
802 Use Permit, and that the facilities must be returned to consistent, compliant use and status
803 within seven (7) days of the date of the postmark of the Notice, or of the date of personal
804 service of the Notice, whichever is applicable. Notwithstanding anything to the contrary in this

Subsection or any other Section of this Law, if the situation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, in the sole determination of the Board, the Board may, at its sole discretion, order the violative or non-compliant situation remedied within twenty-four (24) hours.

- B) If within the seven (7) day period set forth in Section 26(A) the affected and non-compliant Telecommunications Tower is not brought into compliance with either the land use code, or the provisions of this Law, or of the Special Use Permit, or substantial steps are not taken in order to bring the affected Telecommunications Tower into compliance, then the Board may revoke such Special Use Permit for a Telecommunications Tower, and shall notify the holder of the Special Use Permit within forty-eight (48) hours of such action.

Section 27. Circumstances Resulting in the Removal of a Telecommunications Tower.

- A) Under the following circumstances, the Board may determine that the health, safety, and welfare interests of the Town warrant and require the removal of a Telecommunications Tower.
- 1) a permitted Telecommunications Tower has been abandoned for a period exceeding ninety consecutive days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, which in this case means not used for the intended and permitted purpose for such a period, except for situations caused by the commonly recognized definition of force majeure or Acts of God of an extraordinary and catastrophic nature and effect;
 - 2) a permitted Telecommunications Tower falls into such a state of disrepair that it creates a health or safety hazard;
 - 3) a Telecommunications Tower has been located, constructed, or modified on property located within the Town without having obtained the required Special Use Permit, or other necessary authorization;
- B) If the Board makes such a determination as noted in Subsection (A) of this Section, then the Board shall notify the holder of the Special Use Permit for the Telecommunications Tower within forty-eight (48) hours that said Telecommunications Tower must and shall be removed, unless the Board approves an Interim Temporary Use Agreement/Permit, such as to enable the sale of the Telecommunications Tower.
- C) If a Telecommunications Tower is not removed voluntarily within ninety (90) days after the permit holder has received notice, or substantial progress has not been made to remove the Telecommunications Tower within ninety (90) days of said notice, then the Board may order officials or representatives of the Town to remove the Telecommunications Tower at the sole expense of the owner or permit holder, or the Town, at its discretion, may take possession of the Telecommunications Tower.
- D) If, pursuant to Subsection (C) of this Section, officials, employees, or representatives of the Town remove, or cause to be removed, a Telecommunications Tower, and the owner of the Telecommunications Tower does not claim the property and remove it within ten (10)

days, then the Town may take whatever steps are available under State law to declare the Telecommunications Tower abandoned, and sell the facility and its components.

- E) If the Board approves an Interim Temporary Use Agreement/Permit for the Telecommunications Tower, such Agreement/Permit shall be for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Telecommunications Tower shall be developed by the holder of the permit, subject to the approval of the Board, and an agreement to such plan shall be executed by the holder of the permit and the Town. If such a plan is not developed within the ninety (90) day time frame, then the Town may take possession of and dispose of the affected Telecommunications Tower in the manner noted in Subsection (C) of this Section.
- F) In the event a Telecommunications Tower is no longer used for the purpose specified in the Application, or the Telecommunications Tower ceases operations for a period of one hundred and eighty (180) days in any three hundred and sixty five (365) day period, the holder of the Special use Permit, or its successors or assigns, shall dismantle and remove such Telecommunications Tower, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the Board. However, if the owner of the property upon which the Telecommunications Tower is located wishes to retain any access roadway to the Telecommunications Tower, the owner may do so with the approval of the Board.

Section 28. Relief

Any Applicant desiring relief or exemption from any aspect or requirement of this Law may request such from the Board at a pre-Application meeting, provided that the relief or exemption is contained in the original Application for either a Special Use Permit, or in the case of an existing or previously granted Special Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Board. However, the burden of proving the need for the requested relief or exemption, and its lack of significant effect on the Town or its residents or other service providers, is solely on the Applicant to prove to the satisfaction of the Board. The Applicant shall bear all costs of the Board or the Town in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the Tower or facilities without the specific written permission of the Board, and such permission shall not be unreasonably withheld.

Section 29. Periodic Regulatory Review by the Board.

- A) The Board may at any time conduct a review and examination of this entire Law.
- B) If after such a periodic review and examination of this Law, the Board determines that one or more provisions of this Law should be amended, repealed, revised, clarified, or deleted, then the Board may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the Town, the Board may repeal this entire Law at any time.
- C) Notwithstanding the provisions of Subsections (A) and (B) of this Section, the Board may at any time, and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Law.

Section 30. Adherence to State and/or Federal Rules and Regulations.

- A) To the extent that the holder of a Special Use Permit for a Telecommunications Tower has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Special Use Permit for a Telecommunications Tower, then the holder of such a Special Use Permit shall conform the permitted Telecommunications Tower to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

Section 31. Conflict with Other Laws

Where this Law differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or federal government, the more restrictive or protective of the Town and the public shall apply.

Section 32. Effective Date.

This Law shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

Section 33. Authority.

This Local Law is enacted pursuant to the Municipal Home Rule Law. This Local Law shall supersede the provisions of Town law to the extent it is inconsistent with the same, and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

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