

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2009 Legislative Session, Legislative Day No.: November 24, 2009

Bill No.: 1176 *AS AMENDED*

Expiration Date: January 28, 2010

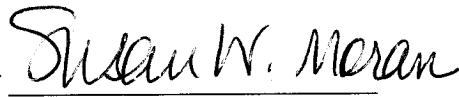
Introduced by: Mr. Bartlett, Mr. Duncan, Mr. Foster, Mr. Harrison, Mr. Pack

A BILL TO AMEND THE TALBOT COUNTY CODE, CHAPTER 190, "ZONING, SUBDIVISION AND LAND DEVELOPMENT", ARTICLE III, LAND USES, §190-105 WIRELESS COMMUNICATION TOWERS GENERAL REQUIREMENTS, GENERAL APPLICATION REQUIREMENTS, COLLOCATION REQUIREMENTS AND SPECIFIC TOWER REQUIREMENTS; ARTICLE IX, ADMINISTRATION, §190-180 SPECIAL EXCEPTION STANDARDS; ARTICLE XI, DEFINITIONS; IDENTIFICATION AND PLACEMENT OF WIRELESS COMMUNICATION PRIORITY PLACEMENT AREA IN ACCORDANCE WITH GUIDANCE PLANS; AND ESTABLISHMENT OF AN ANNUAL LICENSE FEE IN ACCORDANCE WITH A FEE SCHEDULE ADOPTED BY THE COUNTY COUNCIL OF TALBOT COUNTY

By the Council: November 24, 2009

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, December 22, 2009 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 N. Washington St., Easton, Maryland 21601.

By Order



Secretary

A BILL TO AMEND THE TALBOT COUNTY CODE, CHAPTER 190, "ZONING, SUBDIVISION AND LAND DEVELOPMENT", ARTICLE III, LAND USES, §190-105 WIRELESS COMMUNICATION TOWERS GENERAL REQUIREMENTS, GENERAL APPLICATION REQUIREMENTS, COLLOCATION REQUIREMENTS AND SPECIFIC TOWER REQUIREMENTS; ARTICLE IX, ADMINISTRATION, §190-180 SPECIAL EXCEPTION STANDARDS; ARTICLE XI, DEFINITIONS; IDENTIFICATION AND PLACEMENT OF WIRELESS COMMUNICATION PRIORITY PLACEMENT AREA IN ACCORDANCE WITH GUIDANCE PLANS; AND ESTABLISHMENT OF AN ANNUAL LICENSE FEE IN ACCORDANCE WITH A FEE SCHEDULE ADOPTED BY THE COUNTY COUNCIL OF TALBOT COUNTY

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that § 190 of the Talbot County Code entitled "Zoning, Subdivision and Land Development" is amended as set forth herein.

§190-105. *Wireless Communication Towers*

A. Exemptions

Private amateur (ham) radio towers less than 75 feet are exempt from the requirements of this section.

B. General requirements

The following requirements are applicable to all wireless communications towers regardless of height or date of construction:

- (1) Wireless Communication Priority Placement Areas identified on WCPA Guidance Plans shall be given priority for new service. Applications within Wireless Communication Priority Placement Areas meeting all technical and other requirements established by this ordinance shall be presumed to provide optimal value to the County wireless communication network. Applications outside Wireless Communication Priority Placement Areas shall be subject to a presumption that they provide less than optimal value to the County wireless communication network.
- (2) The applicant shall provide written verification that the proposed wireless communication tower is greater than 500 feet from a parcel containing a public playground, ball field or school use. Notwithstanding any other section of this chapter, this limitation shall not be subject to modification by either a special exception or variance. County-owned property may be considered suitable for a tower location on an equal basis with non-County owned property.

- (3) The ground base of any wireless communications tower structure shall be set back from any property line, road, or public recreation area a distance that is the height of the tower plus 10 feet. Notwithstanding any other section of this chapter, this limitation shall not be subject to modification by either a special exception or variance. Any icelfall or debris from tower structural failure shall be contained in the immediate tower area. Any accessory structures shall comply with the minimum building setback requirements of the applicable zoning district. These setback requirements may be reduced through a variance application as provided for in Article IX.
- (4) Wireless communications tower height shall be no higher than necessary to ensure the effective service for the relevant service area, but in no case shall exceed 200 feet. Notwithstanding any other section of this chapter, this limitation shall not be subject to modification by either a special exception or variance.
- (5) The applicant for a wireless communications tower is required to have a letter of intent from at least two Federal Communications Commission (FCC) licensed operators to locate on the wireless communications tower at the time the application is filed with the Planning Office. The application shall not be accepted without proof of the letter of intent that defines type of service(s) to be provided and the time schedule for commencement of services after construction.
- (6) The applicant is required to have at least two FCC licensed operators under contractual agreement to locate on the wireless communications tower prior to issuance of a building permit.
- (7) The wireless communications tower shall be designed to minimize adverse visual and environmental impact (e.g., paint, camouflage, screening, stealth technology, color, use of existing structures and natural landscape, etc.). All equipment shelters shall be maintained in neutral shades consistent with the natural landscape.
- (8) The wireless communications tower and associated appurtenances shall not be lit unless required by federal or state regulations. If lighting is required, the least intensive lighting shall be used.
- (9) The wireless communications tower shall be either a self-supporting monopole or self-supporting lattice structure.
- (10) The applicant shall submit a licensed professional landscaping plan with the site plan application which identifies existing vegetation and specifications, including species, size, and location, of all proposed plant materials to be utilized for buffering and screening of the wireless communications tower structure and equipment structures. A secure fence or enclosure, a minimum of eight feet in height, shall enclose the entire base of the wireless communications facility. All required plantings shall be kept in a live, healthy condition. Any plants not in a live, healthy condition shall be replaced by the applicant to the satisfaction of the Planning Director.

- (11) The owner of a wireless communications tower shall provide financial surety in a form and amount acceptable to the County to secure payment of 125% of the cost of removal of the tower, base, foundation to six feet below ground level, and accessory structures if the tower's use is discontinued for 12 or more continuous months. The surety instrument shall be provided prior to building permit application or for towers existing before adoption of this section, no later than 90 days after the effective date of this ordinance and shall be renewable on January 1st of each year and shall remain in full force and effect while the tower remains in place, and shall require the obligor and the tower owner to provide at least 90 days prior written notice to the County of either its intended expiration or non-renewal. The Planning Office may increase the amount of the surety as necessary from time to time to insure the amount is adequate to cover the cost of removal.
- (12) An abandoned wireless communications tower shall be removed within 90 days of abandonment. If the owner of the tower does not remove the tower, the County may utilize the financial surety to do so and any excess cost of the removal of the tower shall be borne by the property owner of the land on which the tower is located. Talbot County shall retain the right to place a lien against the property until all such excess costs are paid.
- (13) A sign shall identify the property owner, tower owner, contact phone number, and emergency information, and shall comply with the sign requirements of this Chapter. Information on the sign shall be current, and the tower owner shall notify the Planning Director of any information change.
- (14) Panel antennas shall not exceed seven feet in height or two feet in width. Whip antennas shall not exceed 12 feet in height or six inches in diameter. Satellite or dish antennas shall not exceed six feet in diameter. Applicants requesting an exception to the maximum sizes stated above shall be required to apply for a variance from the Board of Appeals.
- (15) Existing wireless communications towers may be demolished and an in-kind replacement constructed within the approved compound of the original tower. The original tower must be removed within 60 days after the completion of the replacement tower. The in-kind replacement may not exceed the height of the original tower or its appurtenances, and all new antenna arrays and dishes must comply with the maximum size criteria. Replacement wireless communications towers shall be submitted for a site plan review in accordance with Article IX and receive a recommendation from the Planning Commission.
- (16) Calculation of height limits for new wireless communications towers shall be measured from the lowest finished grade elevation at the base to the highest point of the tower to include the tower and all antennas, lightning rods and miscellaneous appurtenances. The lowest finished grade elevation may not be changed from the pre-existing natural topography without prior approval from the Planning Director.
- (17) The applicant for a new wireless communications tower outside of a Wireless Communication Priority Placement Area shall provide documentation with the

site plan application proving that existing wireless communications towers and other existing structures over 50 feet in height within a one-mile radius of the proposed location and structures 100 feet or higher from a one-mile to two-mile radius of the proposed location are not viable collocation opportunities.

- (18) Extension of wireless communications towers above the initial approved height shall require a special exception amendment if the original tower was 100 feet or higher.
- (19) Extension of wireless communications towers to 100 feet or higher after initial construction of a tower less than 100 feet shall require a special exception.
- (20) Extension of wireless communications towers to 75 feet, but still less than 100 feet after initial construction of a tower less than 75 feet, shall require a site plan review in accordance with Article IX and receive a recommendation from the Planning Commission.
- (21) All tower owners must submit a certificate of compliance with all current Federal Communication Commission regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility within 90 days of final construction, collocation and activation of equipment.
- (22) All wireless communication tower owners must comply with all federal, state or local laws or regulations, as amended, concerning electromagnetic radiation and other electronic emissions applicable to the facility within 120 days of the effective date of the regulations.
- (23) Tower owners shall submit a report annually in January describing the services provided from the tower on a wireless communication license and registration form to be provided by the Office of Planning and Zoning. Owners of towers existing prior to adoption of this section shall submit a report no later than 90 days after the effective date of this ordinance, and annually by January 31st each year thereafter. The Planning Director may assess fines or revoke the annual tower license if the report is not provided by January 31st of each year.
- (24) Once a tower is erected, financial surety is accepted by the County and upon final building permit compliance inspection; the applicant shall apply for and obtain a wireless communication facility license. Owners of towers existing prior to adoption of this section shall apply for an annual license no later than 90 days after the effective date of this ordinance, and annually by January 31st each year thereafter. The license shall be renewed annually provided the provisions of this ordinance and all state and federal requirements are met. The annual license fee shall be determined in accordance with a fee schedule as adopted by the County Council.
- (25) Revocation of the annual County license shall constitute abandonment of the wireless communication tower. An abandoned wireless communication tower shall be removed in accordance with section (12) above.

C. General application requirements.

All applications shall provide the following information:

- (1) The name, address and telephone number of the corporate headquarters and local office, and current contact information for each office.
- (2) Proof of ownership of the proposed wireless communications tower site or proof of contract or license with owner of the site and the right to construct and operate the proposed tower.
- (3) A copy of FCC license number, date of issuance, and type of license (cellular, PCS, etc.).
- (4) A master report plan of applicant's current proposed communication network for Talbot County, including an illustrative wireless communications map detailing existing and proposed wireless coverage, antenna sites and collocation sites.
- (5) The current zoning of proposed wireless communications tower site.
- (6) The maximum proposed wireless communications tower height.
- (7) The maximum proposed height of antenna in feet above ground level (AGL).
- (8) The wireless communications tower design (self-supporting lattice or monopole).
- (9) The number of potential collocation sites on the proposed wireless communications tower.
- (10) The name, address, and telephone number of the responsible entity for removal of the wireless communications tower if the tower's use is discontinued for 12 or more continuous months.
- (11) Wireless communication towers proposed outside of a Wireless Communication Priority Placement Area shall provide an analysis of the nearest Priority Placement Area and a detailed narrative as to why sites within this area are unsuitable, with the site plan application.
- (12) Proof that the site will not interfere with the County's Emergency Management Communication System. The applicant shall contact the Director of Emergency Management, and obtain written comments from the Director, prior to site plan application submittal for any new tower.
- (13) Site plan applications for a new wireless communications tower 75 feet or greater shall include copies of comments received from the Talbot County Historic Preservation Commission, the State Historic Preservation Office, the Federal Aviation Administration, the Maryland Aviation Administration, the Easton Airport, and the Medivac Unit of the State Police, and any other agency required to be notified by federal or state law. The applicant shall also contact the Maryland Department of the Environment and the U.S. Army Corps of Engineers, as applicable to the site. A site plan application shall not be accepted as complete until each of these agencies has either commented or confirmed it has no comment on the application. The applicant shall forward all comments received from these agencies to the Planning Office for consideration with the site plan application. At the applicant's request, the application shall be submitted to the

Planning Commission to decide whether the application is complete or incomplete. If an incomplete application is not completed within thirty (30) days after written notice from the Planning Office, the matter shall be submitted to the Planning Commission for a decision on the merits of the application. However, if the applicant stipulates in writing that the application is not complete, the time for final action by the County on the application shall be extended, and shall not begin to run again until the application is completed.

- (14) A written statement that collocation sites on the tower shall be made available for lease at fair market rates.
- (15) Information on the type(s) of service (data or voice) to be provided by operators locating on the tower.
- (16) The time period before voice or data service will commence once the tower is constructed.

D. General collocation requirements.

The following requirements apply to all wireless communications collocation applications:

- (1) Collocation is permitted in all zoning districts if the individual antennas meet the size criteria stated in the general requirements section, the antennas are mounted on an existing structure, and the at-grade mechanical equipment meets all applicable zoning requirements.
- (2) The applicant shall obtain a building permit for collocation on an existing wireless communications tower. Prior to building permit application, collocation on structures other than existing wireless communications towers located in all zoning districts shall require a site plan review in accordance with Article IX including a recommendation from the Planning Commission.
- (3) As a condition of permitting and continued operation, collocation space on wireless communications towers constructed after January 26, 2002 shall be made available for lease at fair market rates.
- (4) All building permits shall contain a provision granting Talbot County the right of first refusal to lease or purchase tower space for installation of public telecommunications and data transmission equipment or antennas at negotiated fair market rates.

E. Specific tower requirements (towers less than 75 feet high).

The following requirements are applicable to all wireless communications towers less than 75 feet high:

- (1) All general requirements in part B. of this section.
- (2) All general application requirements in part C. of this section.
- (3) All applicable general collocation requirements in part D. of this section.

- (4) The new construction shall be designed to support a minimum of one FCC-licensed operator.
- (5) The applicant shall provide a project location map and narrative description of the proposed wireless communications tower site.
- (6) New construction of towers less than 75 feet is permitted in all zoning districts except Rural Residential (RR), Town Conservation (TC) and Town Residential (TR) if the individual antennas meet the size criteria stated in the general requirements section and all at-grade mechanical equipment meets all applicable zoning requirements.
- (7) Applications meeting the above criteria require a minor site plan in accordance with Article IX and a building permit.
- (8) When considering approval or denial of the minor site plan for a wireless communication tower, the Planning Director shall place greater emphasis on the impact of a proposed tower site on the surrounding community when it is located outside of a Wireless Communication Priority Placement Area.

F. Specific tower requirements (towers from 75 feet to less than 100 feet high)

The following requirements are applicable to all wireless communications towers from 75 feet to less than 100 feet high.

- (1) All general requirements in part B. of this section.
- (2) All general application requirements in part C. of this section.
- (3) All applicable general collocation requirements in part D. of this section.
- (4) The new tower construction shall be designed to support a minimum of two FCC-licensed operators.
- (5) Construction is allowed in all zoning districts except Rural Residential (RR), Town Conservation (TC) and Town Residential (TR) if the individual antennas meet the size criteria stated in the general requirements section and all at-grade mechanical equipment meets all applicable zoning requirements.
- (6) Applications meeting the above criteria require major site plan review in accordance with Article IX and a building permit.
- (7) When considering approval or denial of the major site plan for a wireless communication tower, the Planning Commission shall place greater emphasis on the impact of a proposed tower site on the surrounding community when it is located outside of a Wireless Communication Priority Placement Area.
- (8) Prior to submittal of the application, the applicant shall:
 - (a) Notify all adjoining property owners by mail of the wireless communications tower proposal, including neighbors, across water bodies that are within 1,000 feet of the property containing the tower site.

- (b) Erect a sign on the proposed site notifying the public of the applicant's intent to construct a wireless communications tower.
 - (c) Provide public notice in the local newspaper of the applicant's request for the new proposed wireless communications tower, identifying location, type, height, etc. at the applicant's expense. The newspaper notice shall include a map showing the proposed tower location, and be approved by the Planning Director.
- (9) The applicant shall provide evidence substantiating that construction of a new wireless communications tower shall not be detrimental to the use, peaceful enjoyment, or economic value of neighboring properties.
- (10) A project location map and narrative description of the proposed wireless communications tower site documenting the area of potential effect, including, but not limited to, residential properties, public rights-of-way, historical sites, parks, conservation areas, and other significant existing structures, shall be provided.
- (11) At the time of site plan application, the applicant shall submit copies of the antenna propagation analysis or drive test studies used for analysis, type of coverage (i.e., single or system), including a coverage and interference analysis.
- (12) If located outside of a Wireless Communication Priority Placement Area, the applicant shall provide a coverage/interference analysis and capacity analysis with the site plan application which demonstrates that the location of the antenna as proposed is necessary to meet the frequency reuse and spacing needs of the wireless communications facility, and to provide adequate coverage and capacity to areas that cannot be adequately served by locating the antenna at an alternative site.

At the applicant's expense, the site plan application for a new wireless communications tower shall include a report prepared by an independent engineer stating:

- (a) It is technically impossible to provide a reasonable level of service by collocating wireless communications antennas on existing structures and that existing wireless communications towers are not adequate to meet the coverage needs for any proposed wireless communications tower if located outside of a Wireless Communication Priority Placement Area, and providing sufficient factual detail to support those conclusions.
- (b) The proposed wireless communications tower and attached antenna does not exceed the minimum height necessary to accomplish the purpose for which it is constructed, and in no case shall exceed 200 feet.
- (c) Frequency of transmission of all proposed antenna on the wireless communications tower.
- (d) Power and size of proposed antenna in effective radiated power (ERP).
- (e) Azimuth of antenna.

- (f) Down-tilt of antenna.
 - (g) Calculations utilized to justify design requirements (i.e., engineering trade-off analysis between height, ERP, antenna performance and coverage area).
 - (h) The wireless communications tower has sufficient structural integrity for its current and future use, including multiple collocation antennas, and that the tower facility complies with all American National Standard Institute (ANSI) standards. Factors to be stated are the maximum wind load and snow/ice load calculations.
- (13) The Planning Commission may require a review of the applicant's engineer's report by an independent consultant of its choosing, cost of the review to be borne by the applicant.

G. Specific tower requirements (towers 100 feet high or higher).

The following requirements are applicable to all wireless communications towers 100 feet high or higher:

- (1) All general requirements in part B. of this section.
- (2) All general application requirements in part C. of this section.
- (3) All applicable general collocation requirements in part D. of this section.
- (4) All wireless communications tower applications 100 feet or higher shall require a special exception in accordance with §190-180D. When considering approval or denial of a special exception application, the Board of Appeals shall place greater emphasis on the impact of a proposed tower site on the surrounding community when it is located outside of a Wireless Communication Priority Placement Area or within a three-mile radius of an existing wireless communications tower that is greater than 75 feet in height.
- (5) Applications meeting the above criteria require major site plan review in accordance with Article IX and a building permit.
- (6) The applicant must obtain major site plan approval prior to applying for a special exception from the Board of Appeals.
- (7) The new construction of a tower from 100 feet to less than 150 feet shall be designed to support a minimum of three FCC-licensed operators.
- (8) The new construction of a tower from 150 feet to less than 180 feet shall be designed to support a minimum of five FCC-licensed operators.
- (9) The new construction of a tower from 180 feet to 200 feet shall be designed to support a minimum of six FCC-licensed operators.
- (10) Allowed by special exception in all zoning districts except Rural Residential (RR), Town Conservation (TC), Town Residential (TR) and Village Center (VC) if the individual antennas meet the size criteria stated in the general requirements section and at-grade mechanical equipment meets applicable zoning requirements.

- (11) The applicant shall provide evidence substantiating that construction of a new wireless communications tower shall not be detrimental to the use, peaceful enjoyment, or economic value of neighboring properties.
- (12) Prior to submittal of the application, the applicant shall:
 - (a) Notify all adjoining property owners by mail of the wireless communications tower proposal, including neighbors, across water bodies that are within 1,000 feet of the property containing the tower site.
 - (b) Erect a sign on the proposed site notifying the public of the applicant's intent to construct a wireless communications tower. Said sign design and size shall be approved by the Planning Director.
 - (c) Provide public notice in the local newspaper of the applicant's request for the new proposed wireless communications tower, identifying location, type, height, etc. at the applicant's expense. The newspaper notice shall include a map showing the proposed tower location, and be approved by the Planning Director.
- (13) The applicant shall conduct a community meeting open to the public to discuss the proposed site plan application for any wireless communications tower. The applicant shall conduct the community meeting at least one week prior to the Planning Commission meeting at which the tower site plan application is scheduled to be reviewed. The meeting shall be held at the applicant's expense and staffing. County staff is not required to attend the community meeting.
- (14) Prior to the Planning Commission meeting for site plan review, the applicant shall perform a highly visible balloon test lasting a minimum of 30 minutes. The date, location, and beginning and ending time of the test shall be published in a local newspaper at least one week prior to the test. The Planning Director shall approve the newspaper notice. The results of the balloon test shall be incorporated into a computerized simulation submitted to the Planning Office 10 days prior to the Planning Commission meeting. The computerized simulation shall illustrate the wireless communications tower at the proposed height, antenna arrangements, maximum number of collocation antennas, and the color scheme of the entire structure, including accessory structures.
- (15) A project location map and narrative description of the proposed wireless communications tower site documenting the area of potential effect, including, but not limited to, residential properties, public rights-of-way, historical sites, parks, conservation areas and other significant existing structures, shall be provided.
- (16) At the time of site plan application, the applicant shall submit copies of the antenna propagation analysis or drive test studies used for analysis, type of coverage (i.e., single or system), including a coverage and interference analysis.
- (17) If located outside of a Wireless Communication Priority Placement Area, the applicant shall provide a coverage/interference analysis and capacity analysis with the site plan application that demonstrates that the location of the antenna as

proposed is necessary to meet the frequency reuse and spacing needs of the wireless communications facility and to provide adequate coverage and capacity to areas which cannot be adequately served by locating the antenna at an alternative site.

- (18) At the applicant's expense, the site plan application for a new wireless communications tower shall be accompanied by a report prepared by an independent engineer stating:
- (a) It is technically impossible to provide a reasonable level of service by collocating wireless communications antennas on existing structures and that existing wireless communications towers are not adequate to meet the coverage needs for any proposed wireless communications tower, if located outside of a Wireless Communication Priority Placement Area, and provide sufficient factual detail to support those conclusions.
 - (b) The proposed wireless communications tower and attached antenna does not exceed the minimum height necessary to accomplish the purpose for which it is constructed, and in no case shall exceed 200 feet.
 - (c) Frequency of transmission of all proposed antenna on the wireless communications tower.
 - (d) Power and size of proposed antenna in effective radiated power (ERP).
 - (e) Azimuth of antenna.
 - (f) Down-tilt of antenna.
 - (g) Calculations utilized to justify design requirements (i.e., engineering trade-off analysis between height, ERP, antenna performance and coverage area).
 - (h) The wireless communications tower has sufficient structural integrity for its current and future use, including multiple collocation antennas and that the tower facility complies with all American National Standard Institute (ANSI) standards. Factors to be stated are the maximum wind load and snow/ice load calculations.
- (19) The Board of Appeals may require a review of the applicant's engineer's report by an independent consultant of its choosing, cost of the review to be borne by the applicant.

§190-180. *Special exceptions*

A. Purpose

Special exception uses or activities are not considered appropriate without additional standards and conditions to ensure that the use is suitable on a particular site. These uses require detailed review of a particular location, design and configuration to determine, against specific standards, the desirability of permitting its establishment on a proposed

site. Special exceptions may require additional regulations and conditions to protect abutting landowners and to preserve the character of the area.

B. Authority

- (1) Special exception uses, as listed in the General Table of Land Uses in Article III, require approval by the Board of Appeals.
- (2) Before deciding on a special exception application, the Board of Appeals shall consider the recommendation of the Planning Commission.

C. General standards

A special exception may be granted only when the Board of Appeals finds from a preponderance of the evidence that the proposed use will satisfy all of the following standards:

- (1) The use will be consistent with the purposes and intent of the Talbot County Comprehensive Plan.
- (2) The use will comply with the standards of the zoning district, in which it is located, except as those standards may have been modified by the granting of a variance.
- (3) The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses and with existing and potential uses in its general area, and will not be detrimental to the economic value of neighboring property.
- (4) The use will not constitute a nuisance to other properties and will not have significant, adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances.
- (5) The use will not have a significant adverse impact on public facilities or services including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services.
- (6) The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic.
- (7) The use will not produce traffic volumes which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, the Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity.
- (8) Any vehicle access to proposed off-street parking areas and drive-in facilities will be designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. In addition, any resulting commercial and truck traffic should not use a residential street nor create a hazard to a developed residential area.

- (9) The use will not significantly adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife.
- (10) The use will not significantly adversely affect adjacent existing agricultural uses.

D. Special exceptions for Wireless Communication Towers

- (1) A special exception or special exception amendment may be granted for a wireless communication tower only when the Board of Appeals finds from a preponderance of the evidence that the proposed use will satisfy the standards of §190-180C(1), (2), and (5) through (10).
- (2) The applicant must obtain major site plan approval prior to applying for a special exception from the Board of Appeals.
- (3) The Board of Appeals shall define as a condition of approval the type(s) of service to be provided and a time schedule for commencement of services upon construction. Amendments to this condition shall require review and approval by the Board.
- (4) The Board of Appeals must find and conclude that consistent with the Telecommunications Act of 1996, any decision to deny an application to place, construct or modify a wireless telecommunication tower is supported by substantial evidence contained in the written record.

E. Additional requirements for special exceptions in the Critical Area

- (1) In addition to the general standards for special exceptions, the Board of Appeals shall determine whether the findings and requirements listed below for each use have been met. The Board shall consider the recommendation of the Planning Commission regarding these criteria.
 - (a) The requirements listed in Article III, Additional Regulations for Specific Uses for the use;
 - (b) For piers, marinas, and water-oriented public recreation, education, research areas, the requirements listed in §190-147.
- (2) The applicant is responsible for proving compliance with each finding and requirement, and consistency with this chapter and the intent of the Critical Area Law. Information necessary for responding to these required findings, if not available locally, shall be obtained from appropriate state and federal agencies.

F. Modification

Approved special exceptions may be modified as follows.

- (1) Minor amendments

The Planning Director may authorize the following minor amendments to an approved special exception:

- (a) Minor amendments in the size and location of drainage ways, driveways, landscape elements or other similar features based on technical or engineering considerations.
 - (b) Minor amendments to the shape or bulk of buildings, provided the modified dimensions comply with all requirements of the zoning district and do not allow buildings closer to property lines or otherwise adversely affect neighboring properties.
 - (c) The addition of minor accessory uses or structures that do not result in an increased impact on neighboring properties.
- (2) Expansion and major amendments

The Board of Appeals may approve expansions and major amendments, as specified below, in accordance with the procedures for the original special exception approval:

- (a) Expansion or enlargement of the use, or of the structures or facilities occupied by the special exception.
 - (b) Modifications to conditions of approval required by the Board of Appeals.
 - (c) Other changes to the use, or to the structures or facilities occupied by the use, deemed by the Planning Director to be major modifications.
- (3) No amendment to a condition of approval imposed by the Board of Appeals shall be considered except on grounds of new evidence or proof of change of conditions.

G. Expiration of a special exception

A special exception shall lapse and become null and void eighteen months following the date on which it was approved, unless:

- (1) Prior to the expiration date, construction is commenced and diligently pursued toward completion; or
- (2) The use for which the permit was granted is commenced within eighteen months; or
- (3) An application for renewal is granted by the Board of Appeals prior to the expiration date for not more than one eighteen month period.

H. Transfer to subsequent owner

A special exception shall be transferable, without formal or written confirmation, to subsequent owners of a property. Any conditions attached to the approval are binding on subsequent owners of the site.

§190-208. Definitions

WCPA Guidance Plan – A map of Talbot County created with the guidance of a telecommunications professional indicating the known gaps, unserved or underserved areas, in

the existing wireless communication network. The County Council may periodically update or amend the Guidance Plan.

Wireless Communication Priority Placement Areas -- Areas in Talbot County identified herein where wireless communication towers would provide optimal value and improve telecommunications coverage, or where coverage is needed to extend the existing wireless network. Modeling for the Wireless Communication Priority Placement Areas assumes a typical cell tower will provide acceptable coverage for a radius of approximately two miles from a tower.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 1176 having been published, a public hearing was held on Tuesday, December 22, 2009 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

BY THE COUNCIL

Read the third time.

ENACTED: December 22, 2009 *AS AMENDED*

By Order Susan W. Moran
Secretary

Harrison – Aye

Pack - Absentee ballot ¹

Duncan – Aye

Foster – Aye

Bartlett - Aye

¹ The ballot as submitted could not be cast or considered because Bill No. 1176 had been amended during the meeting, after the ballot was prepared, and therefore the ballot no longer addressed the substance of the Bill as finally proposed for adoption.