

Article C: Nonconforming Uses and Structures; Special and Conditional Uses; Environmental Impact Analysis; Handicap-Disability Permits

Sec. 13-1-40 Nonconforming Uses and Structures.

- (a) **General Provision.** The lawful use of a building, structure or property which existed at the time this Chapter, or an applicable amendment to this Chapter, took effect and which is not in conformity with the provisions of this Chapter, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions:
- (1) **Allowable Standard.** If the alteration, addition or repair of a building or structure with a nonconforming use or a nonconforming building or structure is prohibited because it is in excess of fifty percent (50%) percent of the structure's area, the property owner may still make the proposed alteration, addition or repair if:
 - a. A nonconforming use is permanently changed to a conforming use.
 - b. The property owner appeals the determination of the Zoning Administrator(s) and County Board of Adjustment or the Circuit Court finds in favor of the property under Secs. 59.694(4) or 59.697(10), Wis. Stats.
 - c. The property owner successfully petitions to have the property rezoned by amendment of this Chapter and Sec. 59.69(5)(e), Wis. Stats.
- (b) **Nonconforming Uses.**
- (1) **Burden of Proof.** A property owner claiming a nonconforming use and exemption from application regulations shall prove by a preponderance of the evidence that:
 - a. The use was legally established.
 - b. The use predated zoning provisions with which it does not comply.
 - c. The use was active and actual prior to adoption of such provisions and not merely casual and occasional or incidental to the principal use of the property in which case no vested right to continue use shall have been acquired.
 - (2) **No Expansion.** A nonconforming use of a structure or premises shall not be expanded or enlarged. No such use shall be expanded within a structure, which, on the date the use became nonconforming, was only partially devoted to such use.
 - (3) **Discontinuance.** If a nonconforming use is discontinued for twelve (12) consecutive months, any future use of the building, structure or property

shall conform to this Chapter.

- (4) **Temporary Structures.** If the nonconforming use of a temporary structure is discontinued, such nonconforming use may not be recommenced.
- (5) **Nuisances.** Uses that are nuisances shall not be permitted to continue as nonconforming uses.

(c) **Nonconforming Buildings and Structures.**

- (1) **Intent.** As specified in the following paragraphs, it is the intent of these provisions to balance the public objectives of this Chapter with the interests of owners of nonconforming buildings and structures by:
 - a. Treating buildings and structures, which are most nonconforming and therefore most contrary to the objectives of this Chapter, more restrictively than buildings and structures, which are more nearly in compliance with the provisions of this Chapter.
 - b. By allowing the improvement or limited expansion of principal buildings and structures essential to the reasonable use of a property provided the adverse effects of such improvements or expansion are adequately mitigated.
- (2) **Nonconforming Accessory Buildings and Structures and Nonconforming Principal Buildings and Structures of Less than 600 Square Feet.** Except as provided in paragraph (6) below regarding reconstruction of damaged or destroyed structures in the shoreland, nonconforming accessory buildings and structures and nonconforming principal buildings and structures of less than six hundred (600) square feet of footprint are limited to ordinary maintenance and repair and shall not be expanded.
- (3) **Nonconforming Principal Buildings and Structures of 600 Square Feet or Larger.** Except as further restricted by the provisions of paragraph (4) below, nonconforming principal buildings and structures of 600 square feet or larger may be improved internally, externally, or expanded provided that:
 - a. A structure that is nonconforming as to structural or dimensional standards may not be expanded or enlarged so as to increase its dimensional nonconformity.
 - b. Where practicable, additions to nonconforming buildings and structures shall conform to all applicable provisions of this Chapter.
 - c. Except as provided in paragraph (4)d. below, the lifetime total of all expansions shall not exceed fifty percent (50%) of the structure's footprint that existed at the time the structure became nonconforming; an owner shall provide documentation of the footprint of a structure at the time it became nonconforming, and any expansion shall be documented by recorded affidavit; and
 - d. The structure may not be substantially reconstructed by

replacement of exterior walls constituting more than twenty-five percent (25%) of the perimeter of the initial structure over the life of the structure. The owner shall provide documentation of the perimeter of the structure at the time this provision took effect and any reconstruction shall be documented by recorded affidavit.

- (4) ***Additional Requirements for Nonconforming Buildings and Structures on Shoreland Lots.*** Except as otherwise provided in paragraphs (4a) and (4b), nonconforming buildings and structures on inland lake lots shall be subject to paragraphs (c)(2) and (3) of this Section, and in addition thereto, principal buildings and structures on such lots of six hundred (600) square feet of enclosed dwelling space or larger shall be subject to the following provisions of this paragraph:
- a. With respect to such structures located less than forty (40) feet from the ordinary high water mark:
 1. Internal improvements shall be confined to the building envelope and may be constructed without a land use permit.
 2. Except as provided in subparagraph b., no new foundations of any kind, additional stories, other expansion, or accessory construction shall be permitted. For the purpose of this section of the Ordinance, repair of 25% or more of the lineal perimeter of the foundation shall be considered a replacement or new foundation and not a repair.
 3. Exterior improvements shall be limited to those which do not change the size or shape of the structure, except that a flat roof may be replaced by a pitched roof, provided that the additional space under the pitched roof may not be used for living area, storage, or other purpose.
 4. Repair or replacement of a foundation or wall(s) which requires any land disturbance in the vegetation protection area shall require a land use permit.
 5. The mitigation requirements of paragraph (5) below are complied with.
 - b. With respect to structures located twenty (20) or more feet but less than forty (40) feet from the ordinary high water mark, a life time maximum of one hundred seventy-five (175) square feet of enclosed dwelling space and located on the landward side of the structure, shall be permitted if the resulting structure's resulting height does not exceed twenty-six (26) feet, its footprint does not exceed one thousand five hundred (1,500) square feet, its roof overhang does not exceed one thousand nine hundred (1,900) square feet, its enclosed dwelling space does not exceed two thousand five hundred (2,500) square feet, and a plan meeting all of the following requirements is submitted to and approved by the Bayfield County Zoning Department and is fully implemented and

complied with:

1. The septic system shall be upgraded in accordance with COM 83, Wis. Adm. Code, and the Bayfield County Sanitary Private Sewage Ordinance.
 2. Water runoff from the structure shall be handled in accordance with best management practices.
 3. A shoreline vegetation protection area shall be established and maintained for at least one-half of the distance from the ordinary high water mark to the structure. Any natural vegetation located closer to the structure than one-half the distance from the ordinary high water mark shall also be maintained.
 4. The mitigation requirements of paragraph (5) below are complied with.
- c. With respect to such structures located forty (40) or more feet but less than seventy-five (75) feet from the ordinary high water mark.
1. The resulting structure shall not exceed twenty-six (26) feet in height, as defined in Section 13-1-22(h).
 2. The addition shall be within the existing footprint or landward thereof and shall not increase the existing footprint by more than fifty percent (50%) nor increase the resulting footprint (of the existing structure and addition combined) beyond one thousand five hundred (1,500) square feet (but this provision does not prohibit an addition to a structure whose existing footprint is more than one thousand five hundred (1,500) square feet if the addition does not increase the footprint);
 3. The resulting structure shall not exceed one thousand nine hundred (1,900) square feet of roof overhang (measured in a horizontal plane);
 4. The resulting structure shall not exceed two thousand five hundred (2,500) feet of enclosed dwelling space (measured for all stories excluding the basement);
 5. No new or raised foundation for the existing structure or any attached accessory structure shall be permitted, though a foundation may be constructed under a permitted lateral addition; and
 6. Any expansion or exterior improvement shall require a land use permit, and the mitigation requirements of paragraph (5) shall apply.
 7. Repair of 25% or more of the lineal perimeter of the foundation shall be considered a replacement or new foundation and not a repair.

- d. Nonconforming principal buildings and structures located on lots on Class 3 lakes which are set back at least seventy-five (75) feet but less than one hundred (100) feet from the ordinary high water mark and nonconforming principal buildings and structures located on lots adjoining or including rivers or streams which are set back at least seventy-five (75) feet but less than one hundred (100) feet from the ordinary high water mark, may be improved and expanded upon the issuance of a land use permit to the same extent as if they were conforming structures provided that:
 - 1. The mitigation requirements of paragraph (5) are complied with; and
 - 2. Any addition is located no closer to the ordinary high water mark than the existing structure; and
 - 3. Such structures shall be subject to paragraph (7) of this subsection.
 - e. A nonconforming principal building or structure whose only nonconformity is its setback from a wetland not adjoining or constituting a part of a navigable water or from an intermittent stream may be improved and expanded upon the issuance of a land use permit to the same extent as if it were a conforming structure provided that:
 - 1. The addition or expansion does not increase the nonconformity.
 - 2. Such structure shall be subject to paragraph 7 of this subsection.
 - f. A building or structure located on a Class 2 or Class 3 lakeshore lot which is greater than ten (10) feet from a side yard setback but less than the distance from a side yard boundary required under Section 13-1-32(b)(1), and which is a nonconforming structure solely for that reason, may be improved and expanded upon the issuance of a land use permit to the same extent as if it were a conforming structure, provided that any expansion must not increase the nonconformity, and such building or structure shall be subject to paragraph (7) of this subsection.
 - g. Nonconforming buildings and structures which are located in more than one setback zone shall comply with the standards of the more restrictive zone.
- (4a) ***Additional Requirements for Nonconforming Buildings and Structures in Planned Unit Developments and Other Multiple Unit Developments.***
- a. Except as otherwise provided in paragraph (4b), nonconforming buildings and structures in planned unit developments, condominium developments, or other developments including a

multiple unit dwelling, hotel, motel, or resort, shall be subject to paragraphs (c) (2) and (3) of this section, and the provisions of Section 13-1-40 (c) (4) a, b, and c, (but not d) shall apply to such buildings and structures which are nonconforming with respect to shoreline setback, except that paragraph 13-1-40 (c) (4) c shall apply to such structures located 40 or more feet but less than 200 feet from the ordinary high water mark. The expansions and improvements permitted under said provisions shall be permitted even if the development is nonconforming with respect to open space requirements.

- b. Mitigation measures described in 13-1-40 (c) (5) c.1, 2, and 3 shall be applied to the percentage of a development's shoreline equal to the percentage interest in the development owned by the owner of the expanded structure, either in front of the expanded structure or spread out over other portions of the shoreline.
- c. New structures added to a development existing as of September 25, 2001, after such date shall meet the requirements applicable to new developments contained in 13-1-32 (e).

- (4b) ***Additional Requirements for Certain Nonresidential Buildings on Shoreland Lots.*** A non-conforming building or portion thereof which is not used for human habitation or a use ancillary thereto may be expanded up to 50% of the square footage of such building or such portion existing at the time the building became nonconforming provided that:
- a. The building is at least 40 feet from the ordinary high water mark.
 - b. The expansion has been authorized by the issuance of a conditional use permit.
 - c. The expansion does not expand any space used in such building for human habitation (including transient habitation) or a use ancillary thereto.
 - d. The expansion does not increase the building's nonconformity with respect to a setback or height requirement and complies with the provisions of this Ordinance in all other respects.
 - e. The mitigation requirements of paragraph (5) below are complied with.
- (5) ***Mitigation Measures.*** As specified in the following provisions, the objective of these mitigation requirements is to compensate for adverse environmental effects when development is permitted to occur within designated shoreline setback areas. A site plan and implementation schedule describing any required mitigation shall be submitted by the property owner or owner's authorized agent and approved by the Planning and Zoning Department and/or Land and Water Conservation Department

prior to issuance of the related land use permit(s). Mandatory mitigation measures shall include:

- a. Evaluation and upgrading of any existing sanitary system on the subject property to comply with COM 83, Wis. Adm. Code, and the Bayfield County Sanitary and Private Sewage Ordinance.
 - b. Implementation of erosion and storm water runoff control measures in accordance with best management practices.
 - c. Accumulating at least four (4) points from among the following proposed or current practices:
 1. Restoration or maintenance of a shoreline vegetation protection area within twenty-five (25) feet of the ordinary highwater mark (OHWM) (1 point).
 2. Restoration or maintenance of a shoreline vegetation protection area within forty (40) feet of the OHWM (2 points).
 3. Restoration or maintenance of a shoreline vegetation protection area within seventy-five (75) feet of the OHWM (3 points).
 4. Restoration of native vegetation along both side yards (1 point).
 5. Removal of nonconforming accessory buildings from the shore setback area (1 point per building).
 6. Use of exterior building materials or treatments that are inconspicuous and blend with the natural setting the site (½ point).
 7. Compliance with Sec. 13-1-32(g) shoreland lighting requirements (½ point).
 8. Other practices agreed upon by the Zoning Department (seawall removal, removal of excessive dockage and mooring, removal of artificial sand beaches, etc.) (Points as determined by the Zoning Department).
- (6) ***Damaged or Destroyed Nonconforming Structures.*** Except as provided in paragraph (7) of this subsection, buildings and structures nonconforming as to shoreland zoning provisions and which are damaged or destroyed by a natural event, including, but not limited to, violent wind, vandalism, fire, flood, ice, snow, mold, or infestation may be reconstructed provided that:
- a. Damage which is due to an intentional act of the owner may only be repaired in conformity with this Chapter;
 - b. The owner must establish the specific extent of damage to a structure and its improvements;

- c. Repair and reconstruction shall be limited to that part of a structure and its specific improvements which are actually damaged and similar building materials shall be utilized;
 - d. Repair and reconstruction shall be in compliance with all other provisions of applicable ordinances; and
 - e. The mitigation requirements of paragraph (5) above shall apply.
- (7) ***Discontinued Use of Nonconforming Structures.*** If the use of a building or structure which is nonconforming as to shoreland zoning provisions is discontinued (as that term is used in Sec. 59.69(10)(a), Wis. Stats., and NR 115.05(3)(e), Wis. Adm. Code) for a period of twelve (12) months, any future use of the structure shall conform to this Chapter.
- (8) ***Location of Accessory Structures.*** An accessory structure to a nonconforming principal structure on a shoreland lot shall comply with the applicable setback set forth in Section 13-1-32 and shall be located at least 10 feet from the principal structure.

(Ord. of 12-12-00, § 12; Ord. No. 2000-003, § 2--4, 6-7-2001)

Sec. 13-1-41 Conditional Uses.

- (a) **Purpose.** Some uses may be necessary or desirable in a particular zoning district, but certain conditions may need to be imposed to make them compatible with the basic uses in that district or an adjoining district. Uses classified as conditional uses are allowed only after consideration by the Zoning Committee and by meeting conditions that make the use compatible with other allowable uses within the district.
- (b) **Procedure.**
- (1) **Notice of Application.** Upon receipt of an application for a conditional use permit, the Zoning Department shall give written notice thereof to all adjoining landowners (whose names and addresses shall be included in the application) and the town clerk of the town in which the property is located, and shall request the town board's recommendation with respect to the application on a form provided by the Zoning Department for that purpose. Such notice shall be sent by first class mail at least seven (7) days prior to a regularly scheduled town board meeting to be held prior to the Zoning Committee hearing and/or meeting at which the application is to be considered. Adjoining landowners and the Town shall be given a deadline of noon of the day of the next regularly scheduled Zoning Committee Meeting following such town board meeting to respond thereto.
 - (2) **Additional Information.** At the request of the Zoning Department the applicant may be required to provide such additional information as the Department deems necessary for adequate review and consideration of

the application by the Zoning Committee, and may be required to meet with the Department for such purpose prior to consideration of the application by the Zoning Committee. Such additional information may include, without limitation:

- a. A plan of the area showing contours, soil types, normal high water mark, groundwater conditions, bedrock, slope and vegetative cover.
- b. Location of buildings, parking areas, traffic access, driveways, walkways, piers, open spaces, and landscaping.
- c. Site plans of buildings, sewage disposal facilities, water supply systems and arrangements of operations thereof.
- d. The estimated number of persons to be living near or using the site, the estimated cost for providing public services.
- e. Specifications for areas of proposed filling, grading, lagooning or dredging.
- f. Other pertinent information necessary to determine if the proposed use meets the requirements of this Chapter.

(3) **Hearing.** After the deadline specified in paragraph 1 above and prior to acting upon an application, the Zoning Committee shall hold a public hearing on an application; notice of which shall be given by Class 2 notice.

(4) **Decision.**

- a. The Zoning Committee shall act upon an application at a public meeting of the Committee following the public hearing thereon. In making its decision the committee shall evaluate the effect of the proposed use upon:
 1. The maintenance of safe and healthful conditions.
 2. The prevention and control of water pollution (including sedimentation), air pollution and noise.
 3. Existing topographic, drainage features and vegetative cover on the site.
 4. The location of the site with respect to floodplains and floodways of rivers or streams.
 5. The erosion potential of the site based upon degree and direction of slope, soil type, and vegetative cover.

6. The location of the site with respect to existing or future access roads.
 7. The amount of liquid wastes to be generated and the adequacy of the proposed waste disposal systems and water supply systems.
 8. The demand for public services, such as police and fire protection, solid waste disposal, schools, road maintenance, sewer and water facilities, etc., which would be affected by the proposed use and the adequacy of existing services to meet the increased demand.
 9. The prevention of the overcrowding of a natural resource, such as a lake.
 10. The potential impact of the proposed use on other lands and land uses in the vicinity and the extent to which it would be compatible or incompatible therewith.
 11. The extent to which the proposed use would be compatible or incompatible with the land use plan, if any, of the Town in which the proposed use would be located and the Bayfield County Land Use Plan, if any.
 12. The community or general welfare.
- b. Upon consideration of the factors listed in subparagraph a, the Zoning Committee may grant the application, deny the application, grant the application with such conditions, in addition to those required elsewhere in this Chapter, that it deems necessary in furthering the purpose of this Chapter, or grant the application in part, with or without conditions, and deny it in part.. Such conditions may include, without limitation, requirements for type of shorecover, increased setbacks and yards, specified sewage disposal and water supply facilities, parking and signs, type of construction, granting or denial of lake access and boat docks to off-lake developments. The Committee may also require that any permit or license required for the proposed use from another governmental entity or agency be obtained before the issuance of a conditional use permit. The Planning and Zoning Department shall notify the applicant in writing of the Planning and Zoning Committee's decision within fifteen (15) days thereafter.
- (c) **Compliance.** If a conditional use permit is approved, an appropriate record shall be made of the land use and structures permitted, and prior to the issuance of the permit the Planning and Zoning Department shall record with the Bayfield County Register of Deeds an affidavit prepared by the Planning and Zoning

Department setting forth the terms and conditions of the permit and a legal description of the property to which they pertain. The terms and conditions of the permit shall be binding upon and inure to the benefit of all current and future owners of such property unless otherwise expressly provided by the permit, or unless the permit terminates under subsection (d) of this section. The recording fee for the affidavit shall be paid by the applicant to the Planning and Zoning Department within ninety (90) days after notice thereof has been sent to the applicant by the Department. If the applicant fails to do so, the Conditional Use Permit shall not be issued and the Planning and Zoning Committee's approval thereof shall become null and void.

(d) **Termination.**

- (1) A conditional use permit shall automatically terminate 12 months from its date of issuance if the authorized building activity, land alteration or use has not begun within such time.
- (2) If a conditional use is discontinued for 36 consecutive months, the conditional use permit authorizing it shall automatically terminate, and any future use of the building, structure, or property to which the permit pertained shall conform to this Chapter.
- (3) Conditional uses with conditions shall be reviewed periodically by the Zoning Department. Where such a use does not continue in conformity with the conditions of the original approval the permit shall be terminated, and such noncompliance shall constitute a violation under this Chapter.

(e) **Bonding.**

- (1) A bond, cash deposit or other security may be required by the Zoning Committee as a condition for the issuance of a conditional use permit to secure compliance with the conditions of the permit.
- (2) The form and amount of such security shall be at the discretion of the Zoning Committee and may be equal to, but not exceed, the amount estimated to cover the costs of meeting those conditions it secures.
- (3) The applicant may file with the Zoning Committee a request for release of the security at such time as the applicant believes that all conditions have been satisfactorily met. Such request shall include the name and address of the applicant, the conditional use permit number, and a legal description of the area for which the release is requested. Upon receipt of such a request
 - a. The Zoning Department shall inspect the designated lands and publish a Class 2 notice of the request, specifying a 30-day period for filing of objections thereto with the Zoning Department.

- b. The Zoning Committee shall hold a public hearing on any objections filed within the 30-day time period, and determine on the basis of the request, the Zoning Department's inspection, and any objections and hearing thereon, whether the conditions have been sufficiently complied with for release of all or a part of the security. If the request is denied in whole or in part, the Committee shall provide the applicant with written reasons for its decision, including a statement of what further actions must be taken for the request to be granted. If the request is granted, the security shall be released in accordance with the Committee's decision.
- (4) Nothing in this subsection shall be construed to infringe upon the Zoning Committee's authority to take appropriate actions on bonds, or other security, including forfeiture of all or part of the security for cause.

Sec. 13-1-41A. Special Uses.

- (a) **Classes of Special Uses.** There are two classes of special uses, Class A special uses (designated as "S-A" in Sec. 13-1-62) and Class B special uses (designated as "S-B" in Sec. 13-1-62).
- (b) **Procedure.**
 - (1) **Class A Special Use Applications.**
 - a. Upon filing an application for a Class A special use permit, with the Zoning Department, the applicant shall give written notice thereof to the town clerk of the town in which the property is located, and shall request the town board's recommendation with respect to the application on a form provided by the Zoning Department for that purpose.
 - b. The Zoning Department may proceed to issue a Class A special use permit without review by the Zoning Committee if all of the following conditions are met:
 - 1. The town board has recommended approval of the application in writing.
 - 2. The Zoning Department determines, after considering the factors listed in Sec. 13-1-41, that the permit may be granted without conditions, or with conditions agreeable to the applicant.
 - c. If both of the conditions in (1)b have not been met within thirty (30) days of the filing of the application, the application shall be considered pursuant to the procedure for consideration of Class B Special Use Permit Applications set forth in paragraphs (2) through

- (5) of this subsection, and a Class B permit fee shall be required, provided that the applicant's payment of the Class A permit fee shall be credited towards the Class B permit fee.
- (2) **Class B Special Use Applications.** Upon receipt of an application for a Class B special use permit, the Zoning Department shall give written notice thereof to all adjoining landowners (whose names and addresses shall be included in the application) and the town clerk of the town in which the property is located, and shall request the town board's recommendation with respect to the application on a form provided by the Zoning Department for that purpose. Such notice shall be sent by first class mail at least seven (7) days prior to a regularly scheduled town board meeting to be held prior to the Zoning Committee hearing and/or meeting at which the application is to be considered. Adjoining landowners and the town shall be given a deadline of noon of the day of the next regularly scheduled Zoning Committee meeting following such town board meeting to respond thereto.
- (3) **Zoning Committee Review.** Applications for Class B special uses and applications for Class A special uses not meeting the criteria of paragraph (1)b above shall be acted upon by the Zoning Committee after the time period for receiving objections and town board recommendations has expired. A public hearing on the application shall not be required but may be held at the discretion of the committee upon a Class 1 or Class 2 notice of the hearing as determined by the committee.
- (4) **Basis for Decision; Conditions.** The Zoning Committee's decision on an application shall be based on a consideration of the factors listed in Sec. 13-1-41. The committee may attach such conditions to the permit as it determines to be necessary to further the purpose of this Chapter.
- (5) **Conditional Use Requirements.** If, after taking into account the factors listed in Sec. 13-1-41 and the purposes of this Chapter, the Zoning Committee determines that the potential impact of a proposed special use is sufficient to warrant application of the requirements for a conditional use, the committee may apply such requirements to the proposed special use.
- (c) **Compliance.** If a special use permit is approved with conditions, an appropriate record shall be made of the land use and structures permitted, and prior to the issuance of a Class B permit the Zoning Department shall record with the Bayfield County Register of Deeds an affidavit prepared by the Zoning Department setting forth the terms and conditions of the permit and a legal description of the property to which they pertain. The recording fee shall be paid by the applicant. The terms and conditions of a special use permit of either class shall be binding upon and inure to the benefit of all current and future owners of the property to which it pertains unless otherwise expressly provided

by the permit, or unless the permit terminates under subsection (d) of this section.

(d) **Termination.**

- (1) A special use permit shall automatically terminate 12 months from its date of issuance if the authorized building activity, land alteration or use has not begun within such time.
- (2) If a special use is discontinued for 36 consecutive months, the special use permit authorizing it shall automatically terminate, and any future use of the building, structure, or property to which the permit pertained shall conform to this Chapter.
- (3) Special uses with conditions shall be reviewed periodically by the Zoning Department. Where such a use does not continue in conformity with the conditions of the original approval the permit shall be terminated and such noncompliance shall constitute a violation under this Chapter.

Sec. 13-1-42 Environmental Impact Analysis.

- (a) **Purpose.** The purpose of an Environmental Impact Analysis is to evaluate proposed actions very carefully in order to assure safe, healthful, productive and aesthetically pleasing surroundings and to discourage ecologically unsound practices. An E.I.A. should inform public decision makers and private individuals of the environmental and economic effects of actions that have been proposed, increase the exchange of information among interested parties, lead environmentally and economically sound projects, and be used as a planning tool for broad aspects of decision making.
- (b) **Uses Requiring an E.I.A.** An Environmental Impact Analysis shall be required for:
- (1) Any subdivision consisting of twenty-five (25) lots or more.
 - (2) Any resort, condominium, planned unit development, motel, hotel or multi-unit dwelling.
 - (3) Any mobile home park, campground or camping resort.
 - (4) Any junk or salvage yard.
 - (5) Post-exploration phase of mining of mineral deposits as required by Section 13-1-25(b).
 - (6) Metallic mining.
 - (7) Nonmetallic mining in a shoreland zone after June 1st, 2007.
 - (8) Any solid waste disposal or landfill site.
- (c) **Evaluation Procedures.**
- (1) In order for the Committee to consider the permit, an E.I.A. must be

submitted along with the application for conditional use.

- (2) Before passing upon the application for a conditional use permit, the Planning and Zoning Committee shall hold a public hearing. Notice of such a public hearing, specifying the time, place, and matters to come before the Planning and Zoning Committee shall be given in the manner specified in Section 13-1-41(e).
 - (3) The Planning and Zoning Department and Planning and Zoning Committee may request review of an E.I.A. by the Wisconsin Department of Natural Resources; the Bayfield County Land and Water Conservation Department; or a private consultant.
 - (4) The Zoning Committee may, in writing, waive the requirement that the applicant provide an E.I.A. where the proposed development is located within the boundary of an unincorporated village established pursuant to Section 13-1-62(n) or in those unique instances where this tool is deemed unnecessary to aid in the decision making process.
- (d) **Required Content of Environmental Impact Analysis.**
- (1) **Summary Statement.** What is the overall anticipated impact of the projects on the environment? Based on this question, prepare a summary statement from the results of the following impact analysis.
 - (2) **The Nature of the Site and Surrounding Area.**
 - a. Characterize the local and regional topography and geology, especially those factors pertinent to the proposed development.
 - b. Describe the soil types of the area to be developed and include a soils map from the Soil Conservation Service.
 - c. Provide the results of percolation tests and core samples and list all foreseen limitations for streets and roads, dwellings and foundations.
 - d. Describe the water resources of the region, including pertinent information on lakes [size, shape, location, important chemical-physical data if requested], streams and groundwater.
 - e. Characterize the existing vegetation of the area to be developed, showing the distribution of the vegetative types on an attached map.
 - f. Summarize present land use patterns, indicating both the nature and the extent of land use in the proposed site and in the surrounding area.
 - (3) **The Proposed Development and Planned Alterations.**
 - a. Provide a map showing the proposed lot locations and boundaries, as well as other important data such as locations of proposed buildings, roads, and easements.

- b. Describe in detail, all proposed land alterations and provide a large scale topographic map [contour interval ten (10) feet or less, preferably two (2) feet] of those proposed alterations. The following points should be considered:
 1. Landscaping details. List all provisions for limiting soil erosion.
 2. Draining or filling of wetlands.
 3. Shoreland alterations.
 4. Do the proposed alterations comply with this Chapter?
 - c. Describe proposed alterations of the existing vegetation, and include any provisions being made to preserve or supplement the existing vegetation.
 - d. Describe plans to dispose of storm and melt water runoff.
 - e. Describe the proposed waste disposal system:
 1. What type of sewage disposal system is anticipated?
 2. What is the anticipated volume of sewerage to be generated?
 3. What are the proposed plans for solid waste disposal?
 - f. Describe the locations and estimated demands of proposed wells.
- (4) ***Impact of the Development on the Natural Surroundings.***
- a. List the species of fish, fowl, or land animals common to the area and their required habitats. What measures will be taken to preserve these habitat areas?
 - b. If the site has frontage on navigable water:
 1. What allowances will be made for natural erosion processes?
 2. What provisions will be made to retard shoreline or bank erosion?
 3. What provisions will be made to avoid enrichment of the water bodies due to sewerage or runoff?
 4. How will surplus runoff from fertilized lawns or fields or from roads be directed off the property?
 5. List any irreversible or irretrievable commitments or of resources that would be involved.
- (5) ***Alternatives to Proposed Action.*** Possible alternatives to potentially problem causing aspects of the project should be discussed. The feasibility of the alternatives should also be brought out.

(6) **Economic-Social Impact.**

a. **Population.**

1. What is the maximum anticipated population of the development?
2. Estimate the total user days per year.

b. **Economic Benefits.** Assessment of the expected economic benefits the community will receive, such as:

1. Inputs into construction trade.
2. Increases in assessed property values.
3. Total anticipated tax revenue.
4. Increased retail sales.

c. **Services.** This Section will assess some of the costs and consequences of servicing the proposed development, such as:

1. Total length of proposed roads.
2. Estimated annual cost of snow plowing.
3. Assessment of potential traffic loads on roads leading from the subdivision to commercial centers.
4. Estimated annual amount of solid waste generated.
5. Estimated annual cost for schools.
6. Distance from the nearest hospital, responsible fire department, and full time police headquarters.
7. Assessment of the potential pressure placed on public recreational facilities and any provisions for reducing such pressure within the development itself.

d. **Assessment.** Assessment of effects resulting from the changing of present land use patterns.

(Ord. No. 2000-003, § 5, 6-7-2001)

Sec. 13-1-43 Wireless Telecommunication Facilities.

- (a) **Purpose and Intent.** The purpose and intent of this section is to provide a uniform and comprehensive set of standards for the development and installation of wireless telecommunication and related facilities. The regulations contained herein are designed to protect and promote public health, safety, community welfare and the aesthetic quality of Bayfield County as set forth within the goals, objectives and policies of the Bayfield County Zoning Ordinance, to encourage managed development of telecommunications infrastructure, while at the same

time not unduly restricting the development of needed telecommunications facilities.

It is intended that the County shall apply these regulations to accomplish the following:

- (1) Minimize adverse visual effects of telecommunication tower, antenna and related facilities through design and siting standards.
- (2) Maintain and ensure that a non-discriminatory, competitive and broad range of telecommunications services and high quality telecommunications infrastructure consistent with the Federal Telecommunications Act of 1996 are provided to serve the community, as well as serve as an important and effective part of Bayfield County's police, fire, and emergency response network.
- (3) Provide a process of obtaining necessary permits for telecommunication facilities while at the same time protecting the legitimate interests of Bayfield County citizens.
- (4) Protect environmentally sensitive areas of Bayfield County by regulating the location, design and operation of telecommunications facilities.
- (5) Encourage the use of alternative support structures, co-location of new antennas on existing telecommunication towers, camouflaged towers, and construction of towers with the ability to locate three (3) or more providers.

Furthermore, this section is not intended to regulate residential satellite dishes or residential television antennas that are used privately. Additionally, it is not intended to regulate satellite dishes/antennas whose regulation is prohibited by Sec. 59.69(4d), or its successor sections, of the Wisconsin Statutes or as permitted by Federal Law.

(b) **Definitions.** For the purpose of this section, the following terms and phrases shall be defined as:

- (1) **Alternative Support Structure.** Clock towers, steeples, silos, light poles, water towers, buildings or similar structures that may support telecommunication facilities.
- (2) **Antenna.** Any system of wires, poles, rods, reflecting discs, or similar devised used for the transmission of reception of electromagnetic waves when such system is either external to or attached to the exterior of a structure. Antennas shall include devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna.
- (3) **Antenna Building Mounted.** Any antenna, other than an antenna with its supports resting on the ground, directly attached or affixed to a building.
- (4) **Antenna Ground Mounted.** Any antenna with its base placed directly on

the ground.

- (5) **Building.** Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure or any individual, animal, process, equipment, goods, or materials of any kind, including equipment cabinets.
- (6) **Camouflaged Tower.** Any telecommunication tower that due to design or appearance hides, obscures, or conceals the presence of the tower and antennas.
- (7) **Colocated Telecommunication Facility.** A telecommunication facility comprised of a single telecommunication tower or alternative support structure supporting multiple antennas, dishes, or similar devices owned or used by more than one (1) public or private entity.
- (8) **Guyed Tower.** A telecommunications tower that is supported in whole or in part by guy wires and ground anchors or other means of support besides the superstructure of the tower itself.
- (9) **Height, Telecommunications Tower.** The distance measured from the original grade at the base of the tower to the highest point of the telecommunications tower. This measurement excludes any attached antennas and lighting.
- (10) **Lattice Tower.** A telecommunication tower that consists of vertical and horizontal supports and metal braces.
- (11) **Monopole.** A telecommunication tower of a single pole design.
- (12) **Navigable Stream or Lake.** As designated on the United States Geological Survey (USGS) map and/or Bayfield County Zoning Maps.
- (13) **Non-Conforming.** Any preexisting telecommunication facility that was in existence prior to the adoption of this Ordinance, whether or not it has been issued a Conditional Use Permit. This definition shall only apply to this specific section and shall not apply to other Bayfield County Zoning Ordinances.
- (14) **Operation.** Means other than nominal use; when a facility is used regularly as an integral part of an active system or telecommunications it shall be deemed in operation.
- (15) **Platform.** A support system that may be used to connect antennas and antenna arrays to telecommunicate towers or alternative support structures.
- (16) **Satellite Dish.** A devise incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, or cornucopia shaped and is used to transmit and/or receive electromagnetic signals. This definition is meant to include, but is not limited to, what are commonly referred to as a satellite earth stations, TVROs and satellite microwave antennas.

17. **Telecommunication Facility.** A facility, site, or location that contains one or more antennas, telecommunication towers, alternative support structures, satellite dish antennas, other similar communication devices, and support equipment which is used for transmitting, receiving, or relaying telecommunications signals, excluding those facilities exempted under subsection (c).
18. **Telecommunication Support Facility.** The telecommunication support buildings and equipment cabinets located at a telecommunication facility, either on the ground or within or on an alternative support structure, which house the electronic receiving and relay equipment.
19. **Telecommunications Tower.** Any structure that is designed and constructed primarily for the purpose of support one or more antennas, including camouflaged towers, lattice towers, guyed towers, or monopole towers. This includes microwave towers, common-carrier towers, and radio and television transmission towers. It shall exclude alternative support structures and those facilities exempted under subsection (c).
20. **Utility Pole Mounted Antenna.** An antenna attached without regard to mounting to or upon an existing or replacement electric transmission or distribution pole, street light, traffic signal, athletic field light, utility support structure or other approved similar structure.
21. **Wireless Telecommunications.** Any of the following:
 - a. "Commercial mobile services" defined as for-profit mobile services available to the public or a substantial portion of the public and providing the ability to access or receive calls from the public switched telephone network. Examples include personal communication services, cellular radio mobile services, and paging.
 - b. Specialized Mobile Radio (SMR) service licensees provide land mobile communications on a commercial (i.e., for profit) or private basis.
 - c. Broadband Cellular Personal Communication Systems (PCS), which are very similar to cellular systems, but operate in a higher frequency band.
 - d. "Unlicensed wireless services" which are services that do not require licenses by the Federal Communications Commission (FCC), but are deployed through equipment that is authorized by the FCC. Direct-to-home satellite services are excluded from this definition. 47 U.S.C. §332(c)(7)(C)(iii).

- e. "Common carrier wireless exchange access services" which are services designed as competitive alternatives to traditional wire line local exchange providers.
 - f. Radio and television broadcasting.
- (c) **Exempt from Conditional Use Permit.** The following shall be permitted without a conditional use permit, provided that the primary use of the property is not a telecommunications facility and that the antenna use is accessory to the primary use of the property. The following shall be exempt from the requirement to obtain a land use permit, unless otherwise noted.
- (1) The use of all receive-only television antenna and satellite dishes.
 - (2) Amateur Radio and/or Receive-Only Antennas. This Ordinance shall not govern the installation of any antenna that is owned and/or operated by a federally licensed amateur radio operator or is used exclusively for receive-only purposes.
 - (3) Mobile services providing public information coverage of news events of a temporary or emergency nature.
 - (4) Free standing (ground mounted antenna) antennas (not supported on or attached to a building) and their support towers, poles or masts may be installed with a land use permit when the overall height of the antennas and their supporting structures do not exceed a height of 50 feet above the original grade at the site of the installation and when said freestanding antenna, support tower, pole or mast is not closer than 1000 feet to another exempt freestanding antenna, support tower, pole or mast.
 - (5) Antennas installed on an existing telecommunications tower, or on or attached to, any existing building (building mounted antenna) or alternative support structure when the height of the antenna and its supporting tower, pole or mast is 30 feet or less above the highest part of the building or alternative support structure to which it is attached. A land use permit is required for any telecommunication support facility exceeding 100 square feet of floor area.
 - (6) Utility pole mounted antennas if the height of the antenna is 30 feet or less above the highest part of the utility pole.
 - (7) Setbacks shall be as set forth in subsection (l)(2).
- (d) **Areas In Which Telecommunication Facility Location is Permitted With Conditional Use Approval.** Telecommunications facilities may be permitted in the following zoning districts, subject to conditional use review and approval by the Bayfield County Zoning Committee, and in compliance with all other applicable sections of this Ordinance: A-1, A-2, F-1, F-2, C, and I.

- (e) **Areas In Which Telecommunication Facility Location is Prohibited.** Notwithstanding subsection (d), no telecommunications facilities, except exempt facilities as defined in subsection (3) which are accessory to the principal use, shall be permitted within:
- (1) Historic sites and districts listed on the National Register of Historic Places;
 - (2) Natural areas and critical species habitat areas as identified by United States Fish and Wildlife Service, United States Environmental Protection Agency, or Wisconsin Department of Natural Resources guidelines;
 - (3) Wetlands as identified in Wisconsin Wetland Inventory (applicants should review wetland use with the U.S. Army Corp of Engineers)
 - (4) Floodplains
 - (5) R-1, R-2, R-3, R-4, R-RB and W Zoning Districts.
- (f) **Conditional Use Application.** Amendment of a prior conditional use permit or locating and constructing a telecommunications facility, including the telecommunications support facility or other supporting equipment used in connection with said telecommunications support facility shall require a conditional use permit. [Location of a collocator's telecommunications support facility may require a land use permit as set forth in subsections (c) and (m).] The Zoning Committee may issue a conditional use permit after review and a public hearing, provided that such conditional use is in accordance with the purpose and intent of this Ordinance, provided that the town clerk of the town in which the facility is proposed to be located shall be given written notice of the application and the public hearing to be held thereon at least two (2) weeks prior to the hearing, and the town board shall be given sixty (60) days after the hearing to provide any input it desires to provide before the Zoning Committee makes a decision on the application.
- (1) **Submittal Information.** For all telecommunications facilities, except exempt facilities as defined in subsection (c), the Zoning Department shall require the following information to accompany every conditional use application:
 - a. Completed conditional use and land use permit applications and applicable fees;
 - b. Original signature of applicant and owner (if the telecommunication facility is located in an easement, the beneficiaries of the easement and underlying property owner must authorize the application);
 - c. The identity of the carrier, provider, applicant, landowner and service provider and their legal status;

- d. The name, address and telephone number of the officer, agent and/or employee responsible for the accuracy of the application;
 - e. A plat of survey, showing the parcel boundaries, tower, facilities, location, access, landscaping and fencing;
 - f. A written legal description of the site;
 - g. In the case of a leased site, a lease agreement, option or binding lease memorandum which shows on its face that it does not preclude the lessee from entering into leases on the site with other provider(s) and the legal description and amount of property leased. The lease shall not be structured so as to create a bar to colocation of other providers. Colocation lease terms, including rent, shall be subject to arbitration, as set forth elsewhere herein, in the event the parties are unable to reach agreement on the issue of rent or other terms.
 - h. A description of the proposed facility including a diagram of the site showing the proposed location of the facility and other significant features, including the height and other dimensions of the facility, a visual representation of the facility, and a description of any proposed lighting;
 - i. A tabular and map inventory of all of the applicant's existing telecommunications facilities that are located within Bayfield County and including all of the existing facilities which do or could provide services within Bayfield County. The inventory shall specify the location, height, type, and design of each of the applicant's existing telecommunication facilities, and the ability of the tower or antenna structure to accommodate additional colocation antennas;
 - j. Certified statement from an RF engineer showing the coverage of the proposed facility;
 - k. Such other information as the Committee may reasonably require to complete processing the application.
- (2) **Colocation.** All telecommunications facilities issued a conditional use permit on or after the effective date of this section and any telecommunication facility previously issued a conditional use permit requiring colocation sites shall make available unused space for colocation of other telecommunication facilities, including space for those entities providing similar, competing services. Colocation is not required if the host facility can demonstrate that the addition of the new service or facilities would impair existing service or cause the host to go offline for a significant

period of time, such as would be occasioned by requiring a replacement tower or reconstruction of an existing tower to facilitate colocation. In general, it is anticipated that colocation will not result in any disruption of service. All colocated and multiple-user telecommunication facilities shall be designed to promote site sharing. Telecommunication towers and necessary appurtenances, including but not limited to parking areas, access roads, utilities shall be shared by the site users whenever possible. Space shall be reasonably available to colocators. In the event the parties are unable to reach agreement on the issue of rent, the parties shall arbitrate the dispute. Each party shall pick a representative for the arbitration panel. The two persons selected shall select a third person. The three persons chosen shall arbitrate the dispute. The parties shall split the costs of arbitration equally. The permittee shall make this arbitration provision known to any party with whom it is unable to reach agreement for colocation. The arbitrator shall consider prevailing market rates in the region, contractual provisions which are standard in the industry, or master colocation agreements on the issue subject arbitration. The arbitration provisions hereof shall be applicable to both the landowner and the telecommunications facility owner or operator when negotiating with a prospective colocator and shall be deemed a condition of any conditional use permit issued hereafter whether or not specifically set forth in said permit. Any party seeking arbitration may request arbitration from the appropriate other party after expiration of ninety (90) days from commencement of negotiations. Arbitration shall be promptly completed. Failure to engage in arbitration as required hereunder shall constitute a violation of this section.

- (3) **Technical Review.** The Zoning Department, upon direction of the Bayfield County Zoning Committee, shall employ on behalf of the County an independent technical expert to review materials submitted in those cases where a technical demonstration of unavoidable need or unavailability of alternatives has been determined necessary by the Committee. Applicant may provide a list of experts to the Committee. The Committee shall not be bound to employ one of the named experts. The applicant shall pay all the costs of said review. The payment to the Zoning Department shall be due upon receipt of the invoice. All invoices, fees and charges accumulated for the technical review must be paid in full prior to the issuance of the conditional use permit.
- (4) **Land Use Information.** For all telecommunications facilities, except exempt facilities as defined in subsection (c), the Zoning Department shall require the following information to be submitted prior to the issuance of the land use application:
 - a. A description of the telecommunications service that the applicant offers or provides, to persons, firms, businesses or institutions;

- b. Federal Communications Commission (FCC) license numbers and registration numbers, if applicable;
- c. Copies of Finding of No Significant Impacts (FONSI) statement from the Federal Communications Commission (FCC) or Environmental Assessment or Environmental Impact Study (EIS), if applicable;
- d. Copies of the determination of no hazard from the Federal Aviation Administration (FAA) including any aeronautical study determination or other findings;
- e. An alternatives analysis shall be prepared by the actual applicant or on behalf of the applicant by its designated technical representative, except for exempt facilities as defined in subsection (3), subject to the review and approval of the Zoning Committee, which identifies at least three sites, technically feasible alternative locations and/or facilities which could provide the proposed telecommunication service. The intention of the alternative analysis is to present alternative strategies, which could minimize the number, size, and adverse environmental impacts of facilities necessary to provide the needed services to the County. The analysis shall address the potential for colocation and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of the proposed site in view of the relative merits of any of the feasible alternatives. Approval of the project is subject to the determination of the Zoning Committee that the site applied for is more advantageous than any available, feasible alternative site. The County may require independent verification of this analysis at the applicant's expense;
- f. Plans indicating security measures (i.e. access, fencing, lighting, etc.);
- g. A report prepared by an engineer licensed by the State of Wisconsin certifying the structural design of the tower and its ability to accommodate additional antennas;
- h. Proof of liability coverage;
- i. Applicant and/or agent shall have copies of an Affidavit of Notification indicating that all operators and owners of airports located within five (5) miles of the proposed site, have been notified via certified mail;
- j. Such other information as the Committee may reasonably require to complete processing the application.

- (g) **Information Report.** The purpose of the report under this subsection is to provide the County with accurate and current information concerning the telecommunications facility owners and providers who offer or provide telecommunications services within the County, or that own or operate telecommunications facilities within the County, to assist the County in enforcement of this subsection, and to assist the County in monitoring compliance with local, state and federal laws.
- (1) **Information Report.** All telecommunications tower owners of any new telecommunications tower shall submit to the Zoning Department a Telecommunications Facility Information Report (the "Report") within forty-five (45) days: (1) following conditional use approval; (2) of receipt of a written request from the Zoning Department; and (3) of any change in occupancy of the tower. The Report shall include the tower owner name(s), address(es), phone number(s), contact person(s), and proof of bond as security for removal. The tower owner shall supply the tower height or current occupancy, if applicable, the number of colocation positions designated, occupied or vacant. This information shall be submitted on the County form provided and designated for such use, and shall become evidence of compliance.
- (2) **Information Report Fee.** Following the conditional use approval and with the initial filing of the Report, the tower owner shall submit to the Planning and Zoning Department a one-time fee of Two Hundred Dollars (\$200.00) per tower site. The fee submittal is the responsibility of each tower owner. Failure to provide this information as required above may result in a civil forfeiture for each day elapsing until the information is received by the Planning and Zoning Department.
- (h) **Removal/Security for Removal.**
- (1) It is the express policy of Bayfield County and this ordinance that telecommunications towers be removed once they are no longer in use and not a functional part of providing telecommunications service and that it is the telecommunications provider's responsibility to remove such telecommunications tower and restore the site to its original condition or a condition approved by the Bayfield County Zoning Department. This restoration shall include removal of any subsurface structure or foundation, including concrete, used to support the telecommunications tower down to 5 feet below the surface. After a telecommunications tower is no longer in operation, the provider shall have one hundred eighty (180) days to effect removal and restoration unless weather prohibits such efforts. Permittee shall record a document with the Bayfield County Register of Deeds showing the existence of any subsurface structure remaining below grade. Such recording shall accurately set forth the location and describe the remaining structure.

- (2) Security for Removal. The owner of any telecommunications tower other than a municipality or other unit of government shall provide to Bayfield County, prior to the issuance of the conditional use permit or the issuance of a zoning permit, a performance bond in an amount based on a written estimate of a qualified remover of said types of structures, or Twenty Thousand Dollars (\$20,000), whichever is less, to guarantee that the telecommunications tower will be removed when no longer in operation. Bayfield County will be named as obligee in the bond and must approve the bonding company. The County may require an increase in the bond amount after five (5) year intervals to reflect increases in the Consumer Price Index. The provider shall supply any increased bond within a reasonable time, not exceeding sixty (60) days, after the County's request. A permittee may submit a letter of credit in the amount set forth above, or, in the alternative, a permittee with several sites in the County may submit a master bond to cover all of said sites. A master bond or a letter of credit may, in the Committee's discretion, be in an amount sufficient to secure removal from one site if the master bond or letter of credit provides for replenishing any amount used as the master bond or letter of credit covers any other site in the County.

(i) **Preexisting Telecommunication Towers and Antennas.**

- (1) Nonconforming and conforming telecommunication towers, antennae and facilities may add, move or replace antennas, the tower and support facilities upon issuance of a land use permit. An existing telecommunication tower may be relocated or reconstructed within fifty (50) feet of its existing location to accommodate colocation subject to meeting all other sections of this Ordinance except subsection (k)(7). Routine maintenance and repair on telecommunications facilities is permitted.

(2) Existing Use Review.

- a. Existing Use Review for Those Towers Structurally Capable to Colocate -

Beginning February 28, 2002, within forty-five (45) days: (1) of receipt of a written request from the Bayfield County Zoning Department; or (2) of any change in ownership or occupancy of the tower, all telecommunications tower owners operating in Bayfield County prior to the adoption of this section shall provide the information required under subsection (a) (except proof of bond and proof of insurance), of this section. Failure to provide this information as required above may result in a civil forfeiture for each day elapsing until the information is received by the Zoning Department.

- b. Existing Use Review for Those Towers Structurally Incapable for Colocation -

By February 28, 2002, within forty-five (45) days: (1) of receipt of a written request from the Bayfield County Zoning Department; or (2) of any change in ownership or occupancy of the tower, all telecommunications tower owners operating in Bayfield County prior to the adoption of this section shall provide the information required under subsection (g) (except proof of bond and proof of insurance), and submit documents that the tower is structurally incapable of colocation. Failure to provide this information as required above may result in a civil forfeiture for each day elapsing until the information is received by the Bayfield County Zoning Department.

(j) **Compliance.**

(1) **Revocation.** Grounds for revocation of the conditional use permit shall be limited to one of the following findings:

- a. The owner of such site, service provider and/or tower owner fails to comply with the requirements of this Ordinance as it existed at the time of the issuance of the conditional use permit;
- b. The permittee has failed to comply with the conditions imposed by the conditional use permit.

(2) **Revocation Process.**

- a. The owner of such site, service provider and/or tower owner shall be notified by certified mail of noncompliance by the Bayfield County Zoning Department.
- b. The owner shall comply with such notice within thirty (30) days to the satisfaction of the Bayfield County Zoning Department.
- c. If compliance is not obtained within thirty (30) days, the Bayfield County Zoning Department shall notify the Bayfield County Zoning Committee of the noncompliance and request permission to proceed with the revocation process. (This time period may be extended by the Zoning Committee to adjust for seasonal limitations or other legitimate factors.)
- d. The Bayfield County Zoning Department shall petition the Bayfield County Board for a public hearing before the Bayfield County Zoning Committee following publication of a Class 2 notice in the legal newspaper of Bayfield County.
- e. A copy of a hearing notice shall be mailed certified to the owner of record of the telecommunications facility at least two weeks prior to the hearing date.

- f. An officer of the Bayfield County Zoning Department shall appear at the hearing before the Bayfield County Zoning Committee to present the evidence of noncompliance. All other interested parties may also give testimony to the Committee.
 - g. In compliance with the procedures of a conditional use hearing, a written decision of the Bayfield County Zoning Committee will be made.
- (3) **Abandonment.** Any antenna or telecommunication tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned. Upon application, the Committee may extend the time limit to abandon once for an additional twelve-month period. Such extension shall be based on the finding that the owner or permit holder is actively seeking tenants for the site. After the expiration of the time periods established above, the following shall apply:
- a. The owner of such antenna or telecommunication tower shall remove said antenna or telecommunication tower including all supporting equipment, building(s) and foundations to the depth as otherwise herein required within ninety (90) days of receipt of notice from the Zoning Department notifying the owner of such abandonment. If removal to the satisfaction of the Zoning Department does not occur within said ninety (90) days, the Bayfield County Zoning Administrator may order removal utilizing the established bond as provided under subsection (9) and salvage said antenna or tower and all supporting equipment and building(s). If there are two or more users of a single tower, then this provision shall not become effective until all operations of the tower cease.
 - b. The recipient of a conditional use permit allowing a telecommunications tower under this section, or the current owner or operator, shall notify the Bayfield County Zoning Department within 45 days of the date when the telecommunication tower is no longer in operation.
- (k) **Structural, Design and Environmental Standards.**
- (1) **Tower, Antenna and Facilities Requirements.** All telecommunications facilities, except exempt facilities as defined in subsection (c), shall be designed to reduce the negative impact on the surrounding environment by implementing the measures set forth below:
- a. All telecommunication facilities shall comply at all times with all Federal Communications Commission (FCC) rules, regulations, and standards. To that end no telecommunication facility or combinations of facilities shall produce at any time power densities in

any inhabited area that exceed the Federal Communications Commission (FCC) adopted standard for human exposure, as amended, or any more restrictive standard subsequently adopted or promulgated by the Federal government. All telecommunication tower and antenna shall meet or exceed the standards and regulations, in place at the time of the issuance of the conditional use permit, of the Federal Aviation Administration (FAA), the Wisconsin State Bureau of Aeronautics, Occupational Safety and Hazard Association (OSHA), the Federal Communications Commission (FCC) and any other agency of the State and/or Federal government with the authority to regulate towers and antennas. Determinations by the State or Federal agencies responsible for enforcing the regulations set forth above shall be binding on the applicant and County.

- b. Telecommunication towers shall be constructed of metal or other nonflammable material, unless specifically permitted by the County to be otherwise,
- c. Satellite dish and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their functions,
- d. Telecommunication support facilities (i.e., equipment rooms, utilities, and equipment enclosures) shall be constructed of nonreflective materials (visible exterior surfaces only). Telecommunication support facilities shall be no taller than fifteen feet (15') in height, measured from the original grade at the base of the facility to the top of the structure, and shall be designed to blend with existing architecture in the area or shall be screened from sight by mature landscaping as required in subsection (12)(e)1., and shall be located or designed to minimize their visibility. Telecommunication support facilities for all tower users at one telecommunications facility shall not exceed a total of 1,000 square feet of floor area.
- e. Telecommunications facilities and antennas shall be designed and constructed in accordance with the State of Wisconsin Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code, Bayfield County Subdivision Ordinance, Bayfield County Sanitation Ordinance, Electronic Industries Association (EIA), American National Steel Institute Standards (ANSI), American National Standards Institute (ANSI), and Electronic Industry Assoc/Telecommunication Industry Association (EITFTIA) 222-E.3., in effect at the time of manufacture. The owner of a telecommunications facility or antenna shall submit to the Zoning Department a statement of compliance with the codes set forth herein.

- f. The maximum height of an antenna platform located on a roof top shall be twenty (20) feet above the roof,
- g. Telecommunication facilities shall not interfere with or obstruct existing or proposed public safety, fire protection or Supervisory Controlled Automated Data Acquisition (SCADA) operation telecommunication facilities. Any actual interference and/or obstruction shall be corrected by the applicant at no cost to the County.

(2) **Height.**

- a. The height of a telecommunication tower shall be measured from the original grade at the base of said tower to the highest part of the tower itself. In the case of building mounted towers the height of the tower includes the height of the portion of the building on which it is mounted. In the case of "crank up" or other similar towers whose height can be adjusted, the height of the tower shall be the maximum height to which it is capable of being raised.
- b. Towers shall be permitted to a maximum height of 199 feet, including antennas, except that this height limitation shall not apply to radio or television broadcasting towers. Unless permitted by the Committee after review, towers shall be constructed so as to accommodate a minimum of three colocation sites. Colocation sites need not be available on the tower as initially placed or constructed, provided that the tower will support at the specified maximum height later addition of at least three colocation sites. Notwithstanding the height and number of colocation sites on the tower as initially placed or constructed, the tower design approved and permitted shall be for a tower capable of extension to 199 feet in height, including the required colocation sites. The Committee may vary the above colocation requirements if use of a monopole is a condition of the permit.
- c. The Planning and Zoning Committee may grant a tower to a height not exceeding 400 feet in height if applicant can demonstrate the need [e.g. increase coverage area, lack of existing towers, impact of density area, alleviating the need for additional towers, greater collocation capability, lighting requirements].

(3) **Lighting.** Telecommunications towers shall be lighted in accordance with rules of the Federal Aviation Administration (FAA) or other applicable regulatory authority. The Committee may require lighting of towers in areas subject to localized air traffic concerns such as crop dusting.

(4) **Site Development, Roads and Parking.** A leased parcel intended for the location of new telecommunications facilities and telecommunication

support facilities shall be located so as to permit expansion for telecommunication support facilities to serve all potential colocators. A parcel owned by the telecommunications carrier and/or provider and intended for the location of new telecommunication facilities and telecommunications support facilities shall meet the minimum size requirement of the zoning district. All sites must be served by an easement sufficient to provide a turnaround and shall use existing access points and roads whenever possible. The access point to the site shall be approved by the Bayfield County Highway Department, State of Wisconsin Department of Transportation, or the applicable township depending on road jurisdiction.

(5) ***Vegetation Protection and Facility Screening:***

- a. Except exempt facilities as defined in subsection (c), all telecommunications facilities shall be installed in such a manner so as to minimize disturbance to existing native vegetation and shall include suitable mature landscaping to screen the facility, where necessary. For purposes of this section, "mature landscaping" shall mean trees, shrubs or other vegetation of a minimum initial height of five (5) feet that will provide the appropriate level of visual screening immediately upon installation.
- b. Upon project completion, the owner(s)/operator(s) of the facility shall be responsible for maintenance and replacement of all required landscaping as long as a telecommunication facility is maintained on the site.

(6) ***Fire Prevention.*** All telecommunication facilities shall be designed and operated in accordance with all applicable codes regarding fire prevention.

(7) ***Noise and Traffic.*** All telecommunication facilities shall be constructed and operated in such a manner as to minimize the amount of disruption caused to nearby properties. To that end all the following measures shall be implemented for all telecommunication facilities, except exempt facilities as defined in subsection (c):

- a. Noise producing construction activities shall take place only on weekdays (Monday through Saturday, non-holiday) between the hours of 6:00 a.m. and 6:00 p.m., except in times of emergency repair, and
- b. Backup generators shall be operated only during power outages and for testing and maintenance purposes.

(8) ***Environmental Studies.*** The telecommunication facility's owner or operator shall cooperate with any bona fide study to determine the impact of the facility on birds or other wildlife, including permitting regular inspection of the area immediately surrounding the facility by those conducting the study.

(l) **Separation and Setback Requirements.**

- (1) Towers shall be separated by a minimum of 2640 feet, except that:
- a. Two (2) telecommunications towers may be permitted to be located within 100 feet of each other subject to conditional use review and approval of the Bayfield County Zoning Committee and subject to meeting the setback requirements.
 - b. Camouflaged towers are exempt from the separation between telecommunications towers requirement listed above.
- (2) **Setbacks.** All setbacks shall be measured from the base of the tower or structure. Notwithstanding any other provisions of this Ordinance, the following minimum setbacks shall apply unless a greater distance is established by the Zoning Committee in a conditional use permit:
- a. Setbacks from all habitable residential buildings, except buildings located on the subject parcel. All new towers shall be set back a distance at least 125% of the height of the tower.
 - b. Set back from the road right of ways of all streets. All new towers shall be set back from all streets a minimum as defined in the Bayfield County Zoning Ordinance. Notwithstanding other provisions of the Zoning Ordinance, a tower shall be set back from all traveled portions of a street or highway a distance not less than its height, unless an engineer has provided a certified opinion that the mode of failure designed for said structure allows placement as close as one-half the height of the tower from the traveled portion of said street or highway.
 - c. Setbacks from property lines. All new towers shall be set back a minimum of 125% of the height of the tower from all property lines, and if the tower is on leased property, from all boundary lines of the portion of the property being leased.
 - d. Guy Wire Anchor Setback. All guy wire anchors shall be at least twenty-five (25) feet from all property lines.
 - e. So as to minimize the potential diminution of property value of neighboring properties, and recognize the economic value of a tower lease to the host property, telecommunications towers shall not be placed closer to a residence existing on February 28, 2002, on neighboring properties than the distance of the tower from the residence or principal structure on the host property. In the event the proposed tower is more than 1/4 mile from such existing residence

on a neighboring property, the Committee may, in its discretion, waive the applicability of this paragraph.

- f. The Committee may approve setbacks in an Industrial zone less than set forth above, except no such reduction may be allowed in a setback from a habitable residential building.
 - g. Setbacks from zoning districts in which towers are prohibited. Every new tower shall be set back a minimum of 300% of its height from the boundary of any zoning district in which the tower would be a prohibited use. If the tower is designed-engineered with a reduced collapse zone the setback shall be 125% of the designed collapse zone.
- (m) **Permits.** A Bayfield County zoning permit is required from the Zoning Department for the location of all telecommunication facilities, except exempt facilities as defined in subsection (c) which do not specify the requirement of a land use permit. The applicant shall submit such information referred to under subsection (f)(1) as may be required by the Zoning Administrator, except the conditional use application and fee. Telecommunications facilities proposed to be colocated on facilities previously approved under this Ordinance shall be exempt from submitting information required under subsection (f)(1), but shall be required to submit a land use permit application for review and approval if the telecommunications support facility exceeds 100 square feet in area.

(1) ***Permitted Uses:***

- a. Locating/installing an antenna that adds no more than fifty (50) feet to the height of an alternative support structure, including placement of additional buildings or other supporting equipment used in connection with said antenna subject to meeting all other sections of this Ordinance except subsection (f) shall require a land use permit.
- b. A telecommunication tower which is being relocated or reconstructed to accommodate colocation may be relocated within fifty (50) feet of its existing location, with the review and approval of a zoning permit from the Zoning Department and shall be subject to meeting other sections of this Ordinance except subsection (f) and subject to meeting Federal Aviation Administration (FAA)/State Bureau of Aeronautics requirements. Routine maintenance and repair on telecommunications facilities is permitted.

(Petition to Amend Zoning Ordinance Dated 2-14-02)

Sec. 13-1-44 Handicap – Disability Permits.

- (a) **Application.** A person claiming coverage under the Federal Americans With Disabilities Act (42 USC ss. 12101 to 12213), the Federal Fair Housing Act (42

USC ss. 3601 to 3631), or the Wisconsin Open Housing Law (Sec. 106.04 Wis. Stats.), as such Acts may be renumbered and/or amended from time to time (hereafter “the Acts”) may apply to the Zoning Department for a handicap--disability permit. The application shall contain sufficient information regarding the handicap or disability purporting to provide coverage under the Acts, and the proposed work and possible alternatives thereto, to enable the Department to determine whether any of the Acts apply. At the Department’s request the applicant shall provide such additional information as the Department may deem necessary to make such a determination.

- (b) **Determination.** If the Department determines that one or more of the Acts applies, that the handicap or disability can be reasonably accommodated with unreasonably undermining the basic purposes of the Bayfield County Zoning Ordinance, and that there are no alternatives for reasonably accommodating the handicap or disability that would have less adverse impact on the purposes of the ordinance, the Department may issue a Handicap--Disability Permit authorizing the proposed work, even if the proposed work does not comply with other provisions of the Zoning Ordinance. Such provisions shall be inapplicable to the authorized work by virtue of this section.
- (c) **Termination.** Any condition authorized by a permit issued hereunder which does not otherwise comply with provisions of the Zoning Ordinance shall be removed or otherwise brought into compliance with such other provisions at such time as coverage under the Acts terminates (such as may be occasioned by change in occupancy) if such removal or compliance can be achieved without inordinate expense and disruption of the remaining structure. Each Handicap--Disability Permit shall describe specifically what actions must be taken upon termination of coverage, and prior to the issuance of the permit the Zoning Department shall record with the Bayfield County Register of Deeds an affidavit prepared by the Department setting forth the terms and conditions of the permit, including such required actions, and a legal description of the property to which they pertain. The recording fees shall be paid by the applicant. The provisions describing and requiring the actions to be taken upon termination of coverage shall be binding upon all current and future owners of the property.

Sec. 13-1-45 through Sec. 13-1-59 Reserved for Future Use.