



Town of Lexington

PLANNING BOARD

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Robert Creech, Chair
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Charles Hornig
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RECOMMENDATION REPORT OF THE LEXINGTON PLANNING BOARD

ARTICLE 14: AMEND ZONING BYLAW – WIRELESS COMMUNICATION FACILITIES

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RECOMMENDATION

The Planning Board **unanimously** recommends that Town Meeting **APPROVE** the motion under Article 14: Wireless Communication **Facilities**. On Wednesday, September 23, 2020, after a series of public hearings, the Planning Board voted to recommend favorable action with a vote of [redacted] in favor, [redacted] in opposition, and [redacted] in abstention for Article 14: Wireless Communications **Facilities**.

BACKGROUND

As Lexington and other communities across the country prepare for the roll-out of 5G technology, the Federal Communications Commission (FCC) has developed new regulations and shot clocks for the review of such infrastructure. Article **14: Wireless Communication Facilities** would update the Zoning Bylaw to reflect changes in federal law and regulations relative to wireless communication facilities. These changes include streamlining permitting of wireless facilities on private property to meet federal 'shot clock' deadlines by not requiring special permits and expanding acceptable justifications for adding new facilities.

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BOARD COMMENT

Although the Planning Board considers this to be a necessary change to the existing Bylaw, The Planning Board also realizes that it will result in a lot of additional communications infrastructure being installed throughout the Town. Design guidelines are now being developed that will allow oversight of the utility companies that will install the equipment.

PUBLIC HEARING PROCESS

Due to COVID-19, all of the zoning articles initially scheduled for the Annual Town Meeting scheduled for March of 2020 were postponed to a Fall Special Town Meeting of 2020. Due to the length of time between the Annual and Fall Special Town Meetings, the Planning Board was required to hold new public hearings. To ensure all information heard during the public hearings has been communicated, this section of this report provides a review of the public hearings held for the Annual Town Meeting 2020 and Fall Special Town Meeting 2020.

Annual Town Meeting Public Hearing Proceedings (March 2020)

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On Wednesday, March 4, 2020, after the publication of the legal advertisement in the Lexington Minuteman Newspaper on February 18, 2020, and February 25, 2020, and notification sent to parties of interest, the Planning Board opened its public hearing for

40 Article 40 Wireless Communication. The Planning Board closed the public hearing and made
41 a favorable recommendation to the Annual Town Meeting of 2020.

42 The Planning Board during the public hearing process provided comments, in addition to
43 taking public comments. Much of the discussion during the Wednesday, March 4, 2020,
44 public hearing was relative to why this is important now and whether it could wait. Kenneth
45 Pogran of the Communications Advisory Committee (CAC) guided the Planning Board,
46 noting that such amendments to the existing Wireless Communications Bylaw would bring
47 the Lexington Zoning Bylaw into compliance with federal regulations.

48 MARCH 4, 2020

49 Robert Creech, Chair, opened the public hearing for Article 40: Wireless Communication
50 Facilities and requested a presentation.

51 Charles Hornig presented a PowerPoint presentation entitled Article 40: Wireless
52 Communication Facilities. The presentation covered topics such as Why this change? and
53 a review of Small Wireless Facilities.

54 Mr. Creech requested comments from members of the Planning Board. The Planning
55 Board provided the following comments.

- 56 • Richard Canale requested clarification regarding the status of efforts by Carol
57 Kowalski, Assistant Town Manager of Development, relative to wireless
58 communication. Mr. Hornig and Ms. Loomis provided clarification regarding the
59 differences between the Planning Board and the efforts of Ms. Kowalski. Mr.
60 Canale questioned if there have been other communities with bylaws relative to
61 5G wireless communication. Mr. Hornig provided a review of his research on
62 other communities' regulations.
- 63 • Mr. Hornig, Mr. Creech, Ginna Johnson, and Robert Peters did not have any
64 comments and requested to hear from members of the public.

65 Mr. Creech opened the floor for public comment. The following comments were
66 provided.

67 Mr. Creech recognized Kenneth Pogran, Communications Advisory Committee. It was
68 noted that the passing of this Bylaw would bring the Town's Wireless Communication
69 into compliance with federal regulations. Mr. Pogran stated that the CAC voted to
70 support the proposed Town Meeting Article on Wireless Communication Facilities.

71 Mr. Creech requested clarification regarding wireless communication, in addition to
72 providing examples of installation in Lexington.

73 Members of the Planning Board provided questions and requested clarification from Mr.
74 Pogran.

- 75 • Ms. Johnson requested clarification regarding the number of installations per
76 block and questioned if there was a way to regulate the installation.
- 77 • Robert Peters requested clarification regarding installation and stress on the pole,
78 thereby requiring replacement of the pole.

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- Mr. Creech requested clarification as to whether if the CAC supported the proposed Bylaw to Town Meeting. Mr. Pogran stated that the CAC fully supports this article.
 - Mr. Canale requested clarification as to how the CAC would be involved in reviewing the regulation of wireless installations. Mr. Canale further provided a review of the Somerville, MA regulations.
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85 Mr. Creech questioned the reach of the proposed regulations. Mr. Hornig stated that the proposed language meets the Federal Communication Commission (FCC). Mr. Creech reviewed various sections of the proposed language and requested modifications to the language.

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89 Mr. Creech requested clarification as to what the Planning Board was thinking.

- Ms. Johnson stated that she did not have any objection as to what was being proposed.
 - Mr. Canale requested to review the policies being prepared by Ms. Kowalski before the proposed regulations.
 - Mr. Hornig requested a presentation of Ms. Kowalski relative to the proposed design guidelines.
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96 **Fall Special Town Meeting Public Hearing Proceedings (September 2020)**

97 On Wednesday, September 9, 2020, after the publication of the legal advertisement in the Minuteman Newspaper on August 20, 2020, and August 27, 2020, and notification sent to parties of interest, the Planning Board opened its public hearing for Article 14: Amend Zoning Bylaw – Wireless Communications Facilities. A continued public hearing was held on Wednesday, September 23, 2020. At such time the Planning Board closed the public hearing and made a favorable recommendation to the Annual Town Meeting of 2020.

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104 **SEPTEMBER 9, 2020**

105 The Planning Board reviewed and discussed the proposed amendments to the Lexington Zoning Bylaw, relative to Wireless Communications. Charles Hornig presented a PowerPoint presentation that provided an overview of Why this change? and what is being proposed.

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109 The Planning B

- Richard Canale requested clarification of a question proposed in February regarding consistency between what occurs on private land and public head relative to Wireless Communication. Mr. Hornig provided clarification of the dovetailing of the two regulation efforts. Mr. Canale requested guidance from the Communications Advisory Committee.
 - Ginna Johnson provided a review of her observations of such infrastructure and the concerns about potential impacts on the environment.
 - Mr. Hornig stated that the current regulations in the Zoning Bylaws are currently in violation of federal regulations.
 - Mr. Canale requested clarification about how many communities have been rushing to amend their regulations to their bylaws and ordinances.
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123 Mr. Pogran of the Communications Advisory Committee spoke in favor ~~of the~~
 124 proposed Article, ~~noting that the Communications Advisory Committee worked in~~
 125 the Spring of 2020 with Mr. Hornig to finalize the proposed Article and Lexington is
 126 presently behind the curve with the Federal Regulations.

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127 **SEPTEMBER 23, 2020**

128 **INSERT**

129 All comments and discussions during the public hearing process can be reviewed on the
 130 video stream capture of the public hearing and the associated meeting minutes.

131 **ARTICLE MOTION**

132 That the Zoning Bylaw, Chapter 135 of the Code of the Town of Lexington be amended as
 133 follows, (~~struck through~~ text is to be removed and underlined text is to be added), and further that
 134 non-substantive changes to the numbering of this bylaw be permitted in order that it be in
 135 compliance with the numbering format of the Code of the Town of Lexington:

136 A. Amend row 0.1.08 of Table 1, Permitted Uses and Development Standards, so
 137 that it reads:

		GC	RO	RS	RT	CN	CRS	CS	CB	CLO	CRO	CM	CSX
0.1.08	Wireless communication facility *Yes if concealed as per § 6.4.4 (See § 6.4.)	SP* Y	SP* Y	SP* Y	SP* Y	SP* Y	SP* Y	SP* Y	SP* Y	SP* Y	SP* Y	SP* Y	SP* Y

138 B. Amend § 135-6.4 so that it reads:

139 **6.4 WIRELESS COMMUNICATION FACILITIES.**

140 **6.4.1** Purpose. This section permits the use of wireless communication facilities within
 141 the Town, regulates their impacts and accommodates their location and use in a
 142 manner intended to:

- 143 1. Protect the scenic, historic, environmental and natural or man-made
 144 resources of the Town;
- 145 2. Protect property values;
- 146 3. Minimize any adverse impacts on the residents of the Town (such as, but not
 147 limited to, attractive nuisance, noise and falling objects) with regard to the
 148 general safety, welfare and quality of life in the community;
- 149 4. Provide standards and requirements for regulation, placement, construction,
 150 ~~monitoring~~, design, modification and removal of wireless communication
 151 facilities;
- 152 5. Provide a procedural basis for action within a reasonable period of time for
 153 requests for authorization to place, construct, operate or modify wireless
 154 communication facilities;

- 158 6. Encourage the use of certain existing structures and towers;
- 159 7. Minimize the total number and height of towers located within the
- 160 community;
- 161 8. Require tower sharing and clustering of wireless communication facilities
- 162 where they reinforce the other objectives in this section; and
- 163 9. Be in compliance with the ~~federal~~ Telecommunications Act of 1996.
- 164 **6.4.2** Applicability. The requirements of this section shall apply to all wireless
- 165 communication facilities, except where federal or state law or regulations
- 166 exempt certain users or uses from all or portions of the provisions of this
- 167 section. No wireless communication facility shall be considered exempt from this
- 168 section by sharing a tower or other structure with such exempt uses.
- 169 **6.4.3** Location of Facilities; Priorities. Wireless communication facilities shall be
- 170 located according to the following priorities. Applicants shall demonstrate that
- 171 they have investigated locations higher in the following priority ranking than the
- 172 one for which they are applying and whether such sites are available and, if
- 173 applicable, under what conditions. The priorities are:
- 174 1. Within an existing structure concealed;
- 175 2. Within an existing structure and camouflaged;
- 176 3. Camouflaged on an existing structure, ~~such as including~~ but not limited to an
- 177 existing utility pole electric transmission tower or an existing radio antenna,
- 178 ~~a water tower, or building, and of a compatible design;~~
- 179 4. Co-located with existing wireless communication ~~service~~ facilities;
- 180 5. On Town of Lexington owned land which complies with other requirements
- 181 of this section and where visual impact can be minimized and mitigated;
- 182 6. ~~If adequately demonstrated to the SPCA in the special permit process that~~
- 183 ~~each of the priorities set forth above is not feasible, erection of a new facility~~
- 184 ~~that complies On existing structures that comply with the other~~
- 185 ~~requirements of this section and where visual impact can be minimized and~~
- 186 ~~mitigated; and~~
- 187 7. On new towers.
- 188 ~~**6.4.4** Facilities Permitted by Right. A concealed wireless communication facility may~~
- 189 ~~be installed in a structure on a lot in a commercial district provided all the~~
- 190 ~~requirements for a wireless communication facility building permit are met.~~
- 191 ~~**6.4.5** Facilities Authorized by Special Permit. A wireless communication facility may be~~
- 192 ~~installed in the locations indicated in § 6.4.3, provided all prescribed conditions,~~
- 193 ~~listed below, are met and the SPCA grants a special permit:~~
- 194 1. ~~Multifamily dwelling. A concealed wireless communication facility may be~~
- 195 ~~installed in a building or in a structure on a building on a lot on which a~~
- 196 ~~dwelling other than a one-family or two-family dwelling is the principal use~~

197 provided all residents of such dwelling or facility receive 30 days' notice
198 before the application for a special permit is submitted.

199 ~~2. Institutional, agricultural, natural resource or commercial uses in residential~~
200 ~~districts.~~

201 ~~a. A concealed wireless communication facility may be installed in a~~
202 ~~building or in a structure on a building on a lot on which an~~
203 ~~institutional, agricultural, natural resource or commercial use in a~~
204 ~~residential district (as provided in Table 1) is the principal use.~~

205 ~~b. A wireless communication facility may be installed if it is co-located~~
206 ~~with an existing electrical power transmission line tower, an existing~~
207 ~~nonconforming transmitting or receiving tower, or a water tower,~~
208 ~~provided that the wireless communication facility is camouflaged and~~
209 ~~does not exceed the height of the tower.~~

210 ~~c. For the purposes of this section, an electrical power transmission~~
211 ~~tower, an existing transmitting or receiving tower or antenna for~~
212 ~~commercial activities other than a wireless communication facility~~
213 ~~shall be considered to be a commercial use in a residential district.~~

214 ~~3. Uses in commercial districts. A wireless communication facility may be~~
215 ~~installed on a lot in a commercial district provided the wireless~~
216 ~~communication facility is camouflaged and does not exceed the height~~
217 ~~requirements of § 4.4.~~

218 **6.4.6** Site Development Requirements. The following standards shall apply:

- 219 1. Shelters and accessory buildings. Any communication equipment shelter or
220 accessory building shall be designed to be architecturally similar and
221 compatible with the surrounding area. Whenever feasible, a building shall be
222 constructed underground.
- 223 2. Setbacks. Any new tower shall be set back at least one time the height of the
224 tower plus 10 feet from each lot line of the site on which the tower is located.
225 Any non-concealed antenna shall be set back at least one time the height of
226 the antenna, as measured from the ground level, from each lot line of the site
227 on which the antenna is located. However, if the antenna is being attached to
228 an existing ~~tower structure~~ whose setback is already approved, either by
229 right, by special permit or by variance, and ~~if the SPGA determines that~~ the
230 addition of the antenna does not materially alter the basis of that prior
231 approval, then no new, independent setback requirement shall be created by
232 the addition of the antenna. ~~In nonresidential districts or on Town of~~
233 ~~Lexington owned land,~~ The SPGA may grant a special permit to allow a lesser
234 setback if it makes a finding that such lesser setback provides adequate
235 safety, promotes co-location or improves design, and will not negatively
236 impact the appearance and character of the neighborhood.
- 237 3. Security and signs. ~~Except for small wireless facilities, the area around the~~
238 wireless communication facility shall be completely secure from trespass or

239 vandalism, and a sign not larger than one square foot shall be posted
240 adjacent to the entry gate indicating the name of the facility owner(s) and a
241 twenty-four-hour emergency telephone number. Advertising on any antenna,
242 tower, fencing, accessory building or communication equipment shelter is
243 prohibited.

244 4. Lighting. Unless required by the Federal Aviation Administration, no exterior
245 night lighting of towers or the wireless communication facility is permitted
246 except for manually operated emergency lights for use when operating
247 personnel are on site.

248 5. New towers. Any new ~~freestanding~~ tower shall be of a monopole
249 construction. ~~New towers shall not exceed the minimum height necessary to~~
250 ~~provide adequate coverage within the Town of Lexington.~~ Erection of a new
251 tower that exceeds the height restrictions listed in § 6.4 is not permitted
252 unless the applicant demonstrates in the special permit process that
253 adequate coverage within the Town of Lexington cannot otherwise be
254 provided met for the locations permitted under § 6.4 of § 4.3 is permitted if
255 the restrictions materially inhibit provision of wireless services under the
256 Telecommunications Act. New towers that are not small wireless facilities
257 require site plan review under § 9.5.

258 ~~6.4.7~~ Justification of Need. The following standards shall apply:

259 1. ~~Coverage area.~~ The applicant shall provide a map of the geographic area in
260 which the proposed facility will provide adequate coverage.

261 2. ~~Adequacy of other facility sites controlled by the applicant.~~ The applicant
262 shall provide written documentation of any facility sites in the Town and in
263 abutting towns or cities in which it has a legal or equitable interest, whether
264 by ownership, leasehold or otherwise. Said documentation shall demonstrate
265 that these facility sites do not already provide, or do not have the potential to
266 provide by site adjustment, adequate coverage.

267 3. ~~Capacity of existing facility sites.~~ The applicant shall provide written
268 documentation that it has examined all facility sites located in the Town and
269 in abutting towns in which the applicant has no legal or equitable interest to
270 determine whether those existing facility sites can be used to provide
271 adequate coverage.

272 4. ~~Adequate coverage through the least disruptive means.~~ The applicant shall
273 provide written documentation that the proposed facility uses the least
274 disruptive technology (through the use of repeaters or other similar
275 technology as it may be developed subsequent to adoption of this bylaw) in
276 which it can provide adequate coverage in conjunction with all facility sites
277 listed above.

278 ~~6.4.8~~ Application; Procedures.

279 1. The applicant or co-applicant for any permit for a wireless communication
280 facility must be a ~~licensed carrier~~ wireless communication service provider

281 who has authority from the FCC to provide wireless communication services
282 for the facility being proposed. The applicant shall submit documentation of
283 the legal right to install and use the proposed facility mount at the time of the
284 filing of the application for the permit.

285 ~~2. Review by the Design Advisory Committee. The Town of Lexington's Design~~
286 ~~Advisory Committee shall review an applicant's site plans and make~~
287 ~~recommendations to the Director of Inspectional Services for by right permit~~
288 ~~applications and to the SPGA for special permits. The Design Advisory~~
289 ~~Committee will make comment on whether the site plans show that a~~
290 ~~proposed wireless communication facility will be concealed for a by right~~
291 ~~permit if built according to the plans, or whether the site plans show that a~~
292 ~~proposed wireless communication facility will be concealed or sufficiently~~
293 ~~camouflaged for a special permit if built according to the plans.~~

294 3. Review by the Communications Advisory Committee. The Select Board's of
295 ~~Selectmen's~~ Communications Advisory Committee shall review an applicant's
296 application and make recommendations to the Director of Inspectional
297 Services Building Commissioner for by right permit applications and to the
298 SPGA for special permits. ~~The Communications Advisory Committee will~~
299 ~~make comment as to the application's adherence to the provisions of this~~
300 ~~section. The Committee may recommend that a consultant be hired by the~~
301 ~~SPGA (at the applicant's expense) if technical expertise is needed.~~

302 4. Permits. Each application for a permit must contain site plans with sufficient
303 detail that would enable the Town to determine whether the proposed
304 facility meets the requirements of this section.

305 ~~6.4.9~~ SPGA. The Board of Appeals shall be the SPGA for permits under § 6.4.

306 ~~6.4.10~~ Regulations. ~~The SPGA shall maintain a set of regulations that contains the~~
307 ~~necessary policies, procedures, and standards to implement the provisions of~~
308 ~~this section. The Select Board may adopt regulations concerning the appearance~~
309 ~~of wireless communication facilities consistent with the Telecommunications~~
310 ~~Act.~~

311 ~~6.4.11~~ Special Permit Criteria. A special permit shall be granted under this section
312 only if the SPGA shall find that the project is in harmony with the general
313 purpose and intent of this section and the SPGA's regulations. In addition, the
314 SPGA shall make the findings required by § 9.4 and the following additional
315 findings:

316 1. ~~That the applicant is not already providing adequate coverage or is unable to~~
317 ~~maintain adequate coverage without the special permit;~~

318 2. ~~That the applicant is not able to use existing facility sites either with or~~
319 ~~without the use of repeaters to provide adequate coverage;~~

320 3. ~~That the proposed wireless service facility minimizes any adverse impact on~~
321 ~~historic resources, scenic views, residential property values, and natural or~~
322 ~~man-made resources;~~

- 323 4. ~~That the applicant has agreed to implement all reasonable measures to~~
324 ~~mitigate the potential adverse impacts of the facilities;~~
325 5. ~~That the facility shall comply with the appropriate FCC regulations regarding~~
326 ~~emissions of electromagnetic radiation and that the required monitoring~~
327 ~~program is in place and shall be paid for by the applicant; and~~
328 6. ~~That the applicant has agreed to rent or lease available space on any tower it~~
329 ~~controls within Lexington or its contiguous towns, under the terms of a fair~~
330 ~~market lease, without discrimination to other wireless service providers.~~

331 ~~6.4.12~~ Conditions. If a special permit is granted, in addition to such terms and conditions as
332 may be authorized by § 9.4 of this bylaw, the SPGA may impose such additional
333 conditions and safeguards as public safety, welfare and convenience may require.

334 ~~6.4.13~~ Denial. Any decision by the SPGA to deny a special permit under this section shall be
335 in conformance with the Telecommunications Act, in that it shall be in writing and
336 supported by substantial evidence contained in a written record.

337 ~~6.4.14~~ Term of Permit. Each special permit shall be valid for a fixed or conditional period of
338 time as determined by the special permit granting authority. A special permit for any
339 wireless communication service facility that exceeds height provisions of § 6.4 shall
340 be valid for a maximum of 15 years. At the end of the approved time period, the
341 facility shall be removed by the carrier or a new special permit shall be required.

342 ~~6.4.15~~ Report. All permitted and special permitted wireless communication facility carriers
343 shall periodically file with the Town, every five years (or sooner if specified in a
344 special permit), on operational aspects of the facility including: power consumption;
345 power radiation; frequency transmission; the number, location, and orientation of
346 antennas; and types of services provided.

347 ~~6.4.16~~ Removal Requirements. Any wireless service facility that ceases to operate for a
348 period of one year shall be removed. Cease to operate is defined as not performing the
349 normal functions associated with the wireless service facility and its equipment on a
350 continuous and ongoing basis for a period of one year. At the time of removal, the
351 facility site shall be remediated such that all wireless communication facilities that
352 have ceased to operate are removed. If all facilities on a tower have ceased to operate,
353 the tower (including the foundation) shall also be removed and the site shall be
354 revegetated by the owner. Existing trees shall only be removed if necessary to
355 complete the required removal. ~~The applicant shall, as a condition of the special~~
356 ~~permit, provide a financial surety or other form of financial guaranty acceptable to the~~
357 ~~SPGA, to cover the cost of removal of the facility and the remediation of the~~
358 ~~landscape, should the facility cease to operate.~~

359 C. Amend § 135-9.4.1.1.c so that it reads:

- 360 c. When an activity or use requires both site plan review and one or more
361 special permits, ~~except for a wireless communication facility.~~

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D. In § 135-10.1, remove the definitions of:

1. "ADEQUATE COVERAGE (WIRELESS COMMUNICATIONS FACILITIES)",
2. "AVAILABLE SPACE",
3. "CARRIER",
4. "CHANNEL",
5. "FACILITY SITE",
6. "MODIFICATION OF AN EXISTING FACILITY (WIRELESS COMMUNICATIONS FACILITIES)",
7. "MONITORING (WIRELESS COMMUNICATIONS FACILITIES)", and
8. "REPEATER".

E. In § 135-10.1, amend the definition of "TELECOMMUNICATIONS ACT" **as follows so that it reads:**

The Federal Telecommunications Act of 1996, as amended, and its implementing regulations.

F. In § 135-10.1, add a new definition "SMALL WIRELESS FACILITY" **reading as follows:**

A type of Wireless Communication Facility where:

- The facility is mounted on a structure 50 feet or less in height including its antennas, is no more than 10 percent taller than other adjacent structures, or does not extend existing structures on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- Each antenna associated with the deployment, excluding associated antenna equipment, is no more than 3 cubic feet in volume; and
- All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

Planning Board Vote

█ moved that the Planning Board recommend favorable action for Article 14: Amend the Zoning Bylaw – Wireless Communication, as presented. █ seconded the motion. The Planning Board voted in favor of the motion ____. **MOTION PASSED**

Robert Creech

400 Robert Peters.....
401 Ginna Johnson.....
402 Richard Canale.....
403 Charles Hornig.....
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405 **Record of Vote**

406 On May 13, 2020, the Planning Board voted to allow the Planning Board Chair to sign
407 documents on behalf of the Planning Board.

408 *Charles Hornig moved that the Planning Board vote to allow the Chair of the Planning*
409 *Board to sign all documents for the Planning Board during the COVID-19 State of*
410 *Emergency. Robert Peters seconded the motion. The Planning Board voted in favor of*
411 *the motion 5-0-0 (Roll Call: Robert Peters – yes; Charles Hornig – yes; Richard Canale –*
412 *yes; Ginna Johnson – yes; and Robert Creech – yes). MOTION PASSED*

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415 **Signature of the Planning Board**

416 Signatures of a majority of the Planning Board,

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Robert Creech, Chair

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