



*Town of Lexington*

## **PLANNING BOARD**

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Robert Creech, Chair  
Robert D. Peters, Vice Chair  
Ginna Johnson, Clerk  
Richard L. Canale  
Charles Hornig  
Michael Leon, Associate

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### **RECOMMENDATION REPORT OF THE LEXINGTON PLANNING BOARD ARTICLE 14: AMEND ZONING BYLAW – WIRELESS COMMUNICATION FACILITIES**

#### **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 five (5) in favor, zero (0) in opposition, and zero (0) 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.

#### **BOARD COMMENT**

The Planning Board considers this to be a necessary change to the existing Bylaw. 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 2020 Annual Town Meeting were postponed to a Fall 2020 Special Town Meeting. 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 2020 Annual Town Meeting and Fall 2020 Special Town Meeting.

#### **Annual Town Meeting Public Hearing Proceedings (March 2020)**

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

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

#### MARCH 4, 2020

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

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

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

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

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

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

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

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

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

- 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.

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.

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.

### **Fall Special Town Meeting Public Hearing Proceedings (September 2020)**

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 Fall 2020 Special Town Meeting-2.

#### **SEPTEMBER 9, 2020**

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.

The Planning Board provided the following comments:

- 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.

Mr. Pogran of the Communications Advisory Committee spoke in favor of the proposed Article, noting that the Communications Advisory Committee worked in the Spring of 2020 with Mr. Hornig to finalize the proposed Article and Lexington is presently behind the curve with the Federal Regulations.

**SEPTEMBER 23, 2020**

Mr. Creech requested comments from the Planning Board. The following comments were provided.

- Richard Canale referenced his review of Tim Dunn's comments and questioned which of his comments were incorporated. Mr. Hornig provided a review of the items included in the revised Bylaw.
- Ginna Johnson requested clarification regarding allowed dimensional standards. Mr. Hornig stated that basically, the Applicant would need to be proven wrong. Ms. Johnson expressed her concerns regarding the lack of information available to the public.
- Mr. Hornig reviewed Mr. Dunn's comments relative to small wireless communication facilities, required permitting processes.
- Mr. Canale shared his screen to present a revised Table of Uses, which included a review of a Wireless Communication Facility over 55 feet tall and a Small Wireless Facility. Mr. Canale requested clarification regarding the height of a facility.
- Mr. Canale and Mr. Hornig requested clarification regarding which uses require site plan review. Mr. Canale and Mr. Creech suggested that the site plan review requirement be expressed in the use table for clarity. Mr. Hornig agreed to make the change.
- Mr. Hornig provided a review of the "Shot Clock" requirements and amendments relative to a suggestion by Mr. Dunn, in addition to permitting processes.

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

**ARTICLE MOTION**

That the Zoning Bylaw, Chapter 135 of the Code of the Town of Lexington be amended as follows, (~~struck through~~ text is to be removed and underlined text is to be added), and

further that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Code of the Town of Lexington:

A. Amend row O.1.08 of Table 1, Permitted Uses and Development Standards, so that it reads:

		GC	RO	RS	RT	CN	CR S	CS	CB	CL O	CR O	C M	CS X
O.1.08	Wireless communication facility *Yes if concealed as per § 6.4.4a <u>Small Wireless Facility</u> (See § 6.4.)	<u>SP*</u> <u>R*</u>	<u>SP*</u> <u>R*</u>	<u>SP*</u> <u>R*</u>	<u>SP*</u> <u>R*</u>	<u>SP*</u> <u>R*</u>	<u>SP*</u> <u>R*</u>	<u>SP*</u> <u>R*</u>	<u>SP*</u> <u>R*</u>	<u>SP*</u> <u>R*</u>	<u>SP*</u> <u>R*</u>	<u>SP*</u> <u>R*</u>	<u>SP*</u> <u>R*</u>

B. Replace § 135-6.4 with the following:

**6.4 WIRELESS COMMUNICATION FACILITIES.**

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

1. Protect the scenic, historic, environmental and natural or man-made resources of the Town;
2. Protect property values;
3. Minimize any adverse impacts on the residents of the Town (such as, but not limited to, attractive nuisance, noise and falling objects) with regard to the general safety, welfare and quality of life in the community;
4. Provide standards and requirements for regulation, placement, construction, design, modification and removal of wireless communication facilities;
5. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify wireless communication facilities;
6. Encourage the use of certain existing structures and towers;
7. Minimize the total number and height of towers located within the community;
8. Require tower sharing and clustering of wireless communication facilities where they reinforce the other objectives in this section; and
9. Be in compliance with the Telecommunications Act.

**6.4.2 Applicability.** The requirements of this section shall apply to all wireless communication facilities, except where federal or state law or regulations

exempt certain users or uses from all or portions of the provisions of this section. No wireless communication facility shall be considered exempt from this section by sharing a tower or other structure with such exempt uses.

**6.4.3 Location of Facilities; Priorities.** Wireless communication facilities shall be located according to the following priorities. Applicants shall demonstrate that they have investigated locations higher in the following priority ranking than the one for which they are applying and whether such sites are available and, if applicable, under what conditions. The priorities are:

1. Within an existing structure concealed;
2. Within an existing structure and camouflaged;
3. Camouflaged on an existing structure, including but not limited to an existing utility pole, water tower, or building, and of a compatible design;
4. Co-located with existing wireless communication facilities;
5. On Town of Lexington owned land which complies with other requirements of this section and where visual impact can be minimized and mitigated;
6. On existing structures that comply with the other requirements of this section and where visual impact can be minimized and mitigated; and
7. On new towers.

**6.4.4 Site Development Requirements.** The following standards shall apply:

1. Shelters and accessory buildings. Any communication equipment shelter or accessory building shall be designed to be architecturally similar and compatible with the surrounding area. Whenever feasible, a building shall be constructed underground.
2. Security and signs. Except for small wireless facilities, the wireless communication facility shall be completely secure from trespass or vandalism; and a sign not larger than one square foot shall be posted indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone number. Advertising on any antenna, tower, fencing, accessory building or communication equipment shelter is prohibited.
3. Lighting. Unless required by the Federal Aviation Administration, no exterior night lighting of towers or the wireless communication facility is permitted except for manually operated emergency lights for use when operating personnel are on site.
4. Dimensional Standards. A wireless communication facility that exceeds the height restrictions of § 4.3 or occupies a front, rear, or side yard is permitted if the restrictions would materially inhibit provision of wireless services under the Telecommunications Act.

**6.4.5 Application; Procedures.**

1. The applicant or co-applicant for any permit for a wireless communication facility must be a wireless communication service provider who has authority from the FCC to provide wireless communication services for the facility being proposed. The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of the filing of the application for the permit.
2. Review by the Communications Advisory Committee. The Select Board's Communications Advisory Committee shall review an applicant's application and make recommendations to the Building Commissioner as to the application's adherence to the provisions of this section.
3. Permits. Each application for a permit must contain site plans with sufficient detail that would enable the Town to determine whether the proposed facility meets the requirements of this section.

**6.4.6 Regulations.** The Select Board may adopt regulations concerning the appearance of wireless communication facilities consistent with the Telecommunications Act.

**6.4.7 Removal Requirements.** Any wireless service facility that ceases to operate for a period of one year shall be removed. 'Cease to operate' is defined as not performing the normal functions associated with the wireless service facility and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the facility site shall be remediated such that all wireless communication facilities that have ceased to operate are removed. If all facilities on a tower have ceased to operate, the tower (including the foundation) shall also be removed and the site shall be revegetated by the owner. Existing trees shall only be removed if necessary to complete the required removal.

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

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

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" 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" 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**

***Charles Hornig moved that the Planning Board recommend favorable action for Article 14: Amend the Zoning Bylaw – Wireless Communication, as presented. Richard Canale seconded the motion. The Planning Board voted in favor of the motion 5-0-0. MOTION PASSED***

Robert Creech ..... yes  
 Robert Peters..... yes  
 Ginna Johnson..... yes  
 Richard Canale .....yes  
 Charles Hornig .....yes

**Record of Vote**

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

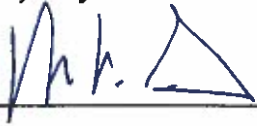
***Charles Hornig moved that the Planning Board vote to allow the Chair of the Planning Board to sign all documents for the Planning Board during the COVID-19 State of Emergency. Robert Peters seconded the motion. The Planning Board voted in favor of***



***the motion 5-0-0 (Roll Call: Robert Peters - yes; Charles Hornig - yes; Richard Canale - yes; Ginna Johnson - yes; and Robert Creech - yes). MOTION PASSED***

**Signature of the Planning Board**

Signatures of a majority of the Planning Board,

A handwritten signature in blue ink, appearing to read 'R. Creech', is written over a horizontal line.

Robert Creech, Chair