

BENTON TOWNSHIP
LACKAWANNA COUNTY, PENNSYLVANIA

ORDINANCE NO. 1-2001

AN ORDINANCE PROVIDING FOR THE REGULATION OF COMMERCIAL COMMUNICATION DEVICES, INCLUDING BUT NOT LIMITED TO, CELLULAR PHONE ANTENNAE, ANTENNAE FOR COMMUNICATION SERVICE REGULATED BY THE PA PUBLIC UTILITY COMMISSION, AND OTHER COMMERCIAL ANTENNAE AND ASSOCIATED FACILITIES, AND PRESCRIBING PENALTIES FOR VIOLATIONS.

BE IT ENACTED AND ORDAINED by the Township of Benton, Lackawanna County, Pennsylvania, under the authority granted by the Pennsylvania Second Class Township Code, Act of May 1, 1933 (P.L. 103, No. 69), reenacted and amended July 10, 1947 (P.L. 1481, No 567), as amended; and it is hereby enacted and ordained by the authority of the same as follows:

SECTION 1 -- SHORT TITLE

This Ordinance shall be known and may be cited as *THE COMMERCIAL COMMUNICATION DEVICE REGULATION ORDINANCE OF BENTON TOWNSHIP*.

SECTION 2 -- PURPOSE

The purpose of this Ordinance is to protect the general safety and welfare of the citizens of Benton Township and to:

- A. Accommodate the need for communication devices while regulating their siting and number in the Township in recognition of the need to protect the public safety and welfare.
- B. Minimize the adverse visual effects of communication devices and support structures through proper design, siting and vegetative screening.
- C. Avoid potential damage to adjacent properties from communication device support structure failure and falling ice, through engineering and proper siting of support structures.
- D. Encourage the joint use of any commercial communication device support structures and to reduce the number of such structures needed in the future.

SECTION 3 -- DEFINITIONS

When terms, phrases, or words are not defined, they shall have their ordinarily accepted meanings or such as the context may imply. For the purpose of this Ordinance, the following words, terms and phrases have the meaning herein indicated:

Commercial Communication Device - Any device which is intended for transmitting or receiving commercial television, radio or telephone communications, excluding the following which are not appropriate subject of the zoning ordinance:

- 1. Industrial, scientific and medical equipment as regulated by the Federal Communications Commission in 47 CFR 18.
- 2. Military and government radar antennas and associated communication towers used for navigational

- purposes as regulated by 47 CFR 87.
3. Amateur (ham) and citizen band transmitting and receiving antennas and associated communication towers as regulated by 47 CFR 97 and 47 CFR 95, respectively, and which are less than one hundred (100) feet in height.
 4. Radio transceivers normally hand-held or installed in a vehicle, such as an automobile, truck, trailer or water craft.
 5. A radio frequency machine which is designated and marketed as a consumer product, such as microwave ovens and radio control toys.

Commercial Communication Device Support Structure - Any pole, telescoping mast, tower, tripod, or any other structure which supports a commercial communication device.

Commercial Communication Device Support Structure Height - The vertical distance measured from the base of the support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the height.

SECTION 4 – APPLICATION; REGULATIONS

Applications for the installation or erection of any commercial communication device (CCD) or any commercial communication device support structure shall be submitted to the Township Board of Supervisors. The following regulations shall apply to every CCD and CCD support structure installed or erected at any location.

- A. Existing Tall Structures - In cases where a CCD site is proposed with a CCD that is attached to an existing communications tower, smoke stack, water tower, or other tall structure, the applicant shall provide the following information to the Township
 1. Evidence from a Pennsylvania registered professional engineer certifying that the proposed installation will not exceed the structural capacity of the building or other structure, considering wind and other loads associated with the antenna location.
 2. Detailed construction and elevation drawings indicating how the antennas will be mounted on the structure to document that the antenna are secure and safe.
 3. Evidence of agreements and/or easements necessary to provide access to the building or structure on which the antennas are to be mounted so that installation and maintenance of the CCD and associated equipment can be accomplished.
 4. All other information necessary to document compliance with the requirements of this Ordinance.
- B. New Structures - In cases where a CCD site is proposed with a CCD that is not mounted on an existing structure, the applicant shall provide all information required for major subdivisions and land developments by the Benton Township Subdivision and Land Development Ordinance and all other information necessary to document compliance with the requirements of this Ordinance.

SECTION 5 -- STANDARDS

The following standards shall apply to every CCD and CCD support structure installed or erected at any location. In addition, all other applicable Township ordinances shall apply.

- A. Location Requirement and Number - The applicant shall demonstrate to the satisfaction of the Township, using technological evidence, that the CCD and support structure must go where it is proposed, in order to satisfy its function in the company's grid system. The number of CCD to be installed at a site by an applicant may not exceed the current minimum necessary to ensure the adequacy of current service required by the Federal Communications Commission (FCC) license held by that applicant. The applicant must document the need for the additional CCD to ensure the adequacy of current service.
- B. Co-location: New Tower - If the applicant proposes to build a tower (as opposed to mounting the CCD on an existing structure), the Township may require the applicant to demonstrate that it contacted in writing the owners of tall structures within a one (1) mile radius of the site proposed, asked for permission to install the CCD on those structures, and was denied. This would include smoke stacks, water towers, tall buildings, CCD support structures of other cellular phone companies, other communications towers (fire, police, etc.) and other tall structures. The Township may deny the application to construct a new tower if the applicant has not made a good faith effort to mount the CCD on an existing structure thereby documenting that there exists no other support structure which can reasonably serve the needs of the owner of the proposed CCD. A good faith effort shall demonstrate that one (1) or more of the following reasons apply to a particular structure:
1. The proposed equipment would exceed the structural capacity of the existing structure and its reinforcement cannot be accomplished at a reasonable cost.
 2. The proposed equipment would cause radio frequency interference with other existing equipment for that existing structure and the interference cannot be prevented at a reasonable cost.
 3. Such existing structures do not have adequate location, space, access or height to accommodate the proposed equipment or to allow it to perform its intended function.
 4. Addition of the proposed equipment would result in electromagnetic radiation from such structure exceeding applicable standards established by the federal communications commission governing human exposure to electromagnetic radiation.
 5. A commercially reasonable agreement could not be reached with the owners of such structures.
- C. CCD Height - The applicant shall demonstrate that the CCD is at the minimum height required to function satisfactorily. No CCD and support structure that is taller than this minimum height shall be approved.
- D. Setbacks - If a new CCD support structure is constructed (as opposed to mounting the CCD on an existing structure) or if the CCD height exceeds the height of the existing structure on which it is mounted by more than fifteen (15) feet, the minimum setbacks in this §§D shall apply.
1. Separate Parcel - If the parcel on which the CCD and support structure is a separate and distinct parcel, the distance between the base of the support structure and any adjoining property line shall not be less than the height of the CCD structure. The setback for equipment containers, other accessory structures and guy wire anchors shall be a minimum of thirty (30) feet.

2. Lease, License or Easement - If the land on which the CCD and support structure is leased, or is used by license or easement, the setback for any part of the CCD, the support structure, equipment containers, other accessory structures, and guy wire anchors shall be a minimum of thirty (30) feet from the line of lease, license or easement. In any case, the distance between the base of the support structure and any adjoining property line (not lease, license or easement line) shall not be less than the height of the CCD structure.
- E. CCD Support Structure Safety - The applicant shall demonstrate that the proposed CCD and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice or other debris, electromagnetic fields, or radio frequency interference. All support structures shall be fitted with anti-climbing devices, as approved by manufacturers. The applicant shall submit certification from a Pennsylvania registered professional engineer that a proposed CCD and support structure will be designed and constructed in accordance with the current Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, published by the Electrical Industrial Association/Telecommunications Industry Association and applicable requirements of any applicable building code. Within forty-five (45) days of initial operation, the owner and/or operator of the CCD and support structure shall provide a certification from a Pennsylvania registered professional engineer that the CCD and support structure comply with all applicable regulations.
- F. Fencing - A fence shall be required around the CCD support structure and other equipment, unless the CCD is mounted on an existing structure. The fence shall be a minimum of eight (8) feet in height.
- G. Landscaping - Landscaping may be required to screen as much of the support structure as possible, the fence surrounding the support structure, and any other ground level features (such as a building), and in general buffer the CCD and support structure site from neighboring properties. The Township may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if the same achieves the same degree of screening as the required landscaping. If the CCD is mounted on an existing structure, and other equipment is housed inside an existing structure, landscaping shall not be required. In addition, existing vegetation on and around the site shall be preserved to the greatest extent possible.
- H. Co-location; Other Uses - In order to reduce the number of CCD support structures needed in the community in the future, the proposed support structure shall be required to accommodate other users, including but not limited to other cellular phone companies, and local fire, police, and ambulance companies. The applicant shall provide evidence of written contact with all wireless service providers who supply service within the Township for the purpose of assessing the feasibility of co-located facilities. The proposed structure, if evidenced by need as determined by the Township, shall be constructed to provide available capacity for other providers should there be a future additional need for such facilities.
- I. Licenses; Other Regulations; Insurance - The applicant must demonstrate that it has obtained the required licenses from the Federal Communications Commission, the PA Public Utility Commission and other agencies. The applicant shall also document compliance with all applicable state and federal regulations. The applicant shall submit the name, address and emergency telephone number for the operator of the CCD; and a Certificate of Insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the CCD and support structure.

- J. Access - Access to the CCD and support structure shall be provided by means of a public street or easement to a public street. The easement shall be a minimum of twenty (20) feet in width and shall be improved to a width of at least fourteen (14) feet with an all weather road for its entire length.
- K. Color and Lighting; FCC and PA DOT Notice - CCD support structures under two hundred (200) feet in height should be painted silver or have a galvanized finish retained, in order to reduce the visual impact. Support structures may be painted green up to the height of nearby trees. Support structures two hundred (200) feet in height or taller, those near airports, or those which are otherwise subject to Federal Aviation Administration (FAA) regulations shall comply with the said regulations. No CCD support structure may be artificially lighted except in accord with Federal Aviation Administration requirements. The applicant shall provide a copy of the response to *Notice of Proposed Construction or Alteration* forms submitted to the FAA and PA DOT Bureau of Aviation, and the CCD and support structure shall comply with all FAA and PA DOT requirements.
- L. Communications Interference - The applicant shall document that the radio, television, telephone or reception of similar signals for nearby properties will not be disturbed or diminished.
- M. Historic Structures - A CCD shall not be located on a building or structure that is listed on a historic register or within five-hundred (500) feet of such a structure.
- N. Discontinued Use - Should any CCD or support structure cease to be used as a communications facility, the owner or operator or then owner of the land on which the CCD and support structure is located, shall be required to remove the same within one (1) year from the abandonment of use. Failure to do so shall authorize the Township to remove the facility and assess the cost of removal to the foregoing parties. The Township may also require a financial guarantee from the applicant for the removal of the structure, such guarantee in an amount deemed adequate by the Township and in a form approved by the Township Solicitor.
- O. Site Plan - A full site plan shall be required for all CCD and support structure sites, showing the CCD, CCD support structure, building, fencing, buffering, access, and all other items required in the Township Subdivision and Land Development Ordinance. The site plan shall not be required if the CCD is to be mounted on an existing structure and the CCD does not exceed the height of the existing structure by more than fifteen (15) feet.

SECTION 6 -- ENFORCEMENT; PERMIT REQUIRED

The Board of Supervisors shall enforce the provisions of this Ordinance and no CCD or CCD support structure shall be installed or erected until a permit for the same has been issued by the Board of Supervisors. The Board of Supervisors may, when considering an application for a CCD or CCD support structure, conduct a public hearing prior to taking action on the application.

SECTION 7 -- VIOLATIONS; PENALTIES FOR VIOLATIONS

- A. Violation- Any person who shall erect or install any CCD or CCD support structure contrary to any of the terms and provisions of this Ordinance, or any person who shall fail to abide by any terms of an approval granted under this Ordinance, shall be deemed in violation of this Ordinance.
- B. Fine -Any person, partnership or corporation who or which has violated or permitted the violation of

any of the provisions of this Ordinance shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Township, pay a judgment of not more than six hundred dollars (\$600.00) plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. No judgment shall commence or be imposed, levied or be payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of this Ordinance shall be paid over to the Township.

- C. Costs - The cost and expense of removing or correcting any violation of this Ordinance, including but not limited to, materials, labor, and legal fees, together with a penalty of twenty (20) percent, shall be collected from the violator in any manner provided by law. The recovery of such costs of abatement, together with the penalty, shall be in addition to the penalty prescribed in §7,A.
- D. Other Remedies - In addition to any penalty therein provided, any person, persons, firm, partnership or corporation who or which shall violate any provision of this Ordinance shall be subject to any law or laws, of the Commonwealth of Pennsylvania, which affords a remedy for such violation in any court of the Commonwealth.

SECTION 8 -- SEVERABILITY

Should any section, subsection, clause, provision or other portion of this Ordinance be declared invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance; the Board of Supervisors having adopted this Ordinance as if such invalid portions had not been included therein.

SECTION 9 -- CONFLICTS

Should any provision of this Ordinance be in conflict with any other section, provision, regulation or standard of any other Township ordinance, the more restrictive shall apply.

SECTION 10 -- EFFECTIVE DATE

This Ordinance shall become effective five (5) days after enactment.

ENACTED AND ORDAINED into law by the Board of Supervisors of Benton Township, Lackawanna County, Pennsylvania, this 8 day of March of 2001.

Tommy A. Seymour
Bruce Decker
Norman J. Galven

ATTEST: Mary P. Sartor