CHAPTER 215
ZONING

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[HISTORY: Adopted by the Town of Mount Washington 8-16-1989 Special Town Meeting, Art. I. Amendments noted where applicable.)

GENERAL REFERENCES

Berkshire Planning District — See Ch. 12.
Conservation Commission — See Ch. 23.
Planning Board — See Ch. 69.
Board of Health regulations — See Division 3.
Subdivision of Land — See Ch. 243.

ARTICLE I Purpose

§215-1. Statement of purpose.
The purpose of this chapter is to provide for the Town of Mount Washington all the protection authorized by M.G.L.A. C. 40A, and any amendments thereof, to achieve greater implementation of the powers granted to the municipalities under Article 89 of the Amendments to the Constitution of the Commonwealth in the general interests of public health, safety and welfare, including, but not limited to, the following objectives:

A. To prevent overcrowding of land; to secure safety from fire, flood, panic and other dangers; to conserve health; and to lessen congestion on the roads.

B. To facilitate the adequate provision for transportation, water supply, drainage, sewerage, parks, open space and other public requirements.

C. To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.

D. To preserve and increase amenities by the promulgation of regulations designed to:
   (1) Protect the town's significant environmental features, areas of scenic beauty and sites and structures of historic importance and minimize the adverse effects of development on the town's unique environmental and historic features.
   (2) Employ cooperatively the various measures taken by the town's agencies and individual voters, under diverse legislative authority, for the protection and enhancement of the town's existing rural character, open spaces, low density of population and in the interests of the town's orderly growth at a deliberate pace.

ARTICLE II Definitions

§215-2. Word usage.
For the purpose of this chapter and unless the context of usage clearly indicates another meaning, the following rules of construction apply to the text of this chapter.

A. Words used in the present tense include the future; the singular number includes the plural; and the plural number includes the singular.

B. The words "used" or "occupied" include the words "designed," "intended" or "arranged" to be "used" or "occupied."

C. The words "building," "structure," "lot," "land" or "premises" shall be construed as though followed by the words "or any portion thereof."

D. The word "shall" is mandatory; the word "may" is permissive.

E. The words "including" or "such as" shall not limit a term to specified examples, but are intended to extend its meaning to all other instances or circumstances of like kind or character.

§ 215-3. Terms defined.

For the purpose of this chapter, the following words and terms, as used herein, shall have the meanings or limitations of meaning hereunder defined, explained or assigned.

ACCESSORY USE OR STRUCTURE — A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

AGRICULTURAL USE — Any parcel of land which is used in the raising of agricultural products, livestock, poultry or dairy products, including necessary farm structures, vehicles and equipment. This term does not include commercial riding stables, kennels or facilities for the raising of swine or fur-bearing animals.

BED AND BREAKFAST — A dwelling or accessory building in which three (3) rooms or fewer are rented by a resident family for transient guests, with or without meals, as an accessory use.

BUILDING — A roofed or walled structure used or intended for supporting or sheltering any use or occupation.

BUILDING LOT— A clearly defined parcel of land in one (1) ownership used or available for use as the site of one (1) or more buildings of sufficient area and dimensions to meet this chapter's minimum requirements

DWELLING UNIT— One (1) or more rooms constituting a separate, independent housekeeping establishment with cooking, living, sanitary and sleeping facilities for the use of one (1) family.

DWELLING, ONE-FAMILY— A detached residential building designed for and occupied by one (1) family only.

DWELLING, MULT I FAMILY— A residential building containing more than one(1) but not more than three (3) dwelling units.

FAMILY — One (1) or more individuals related by blood, marriage, or adoption, or not more than five (5) individuals who are not so related living in a single dwelling unit.

LOT FRONTAGE — The continuous distance along the street line, [for comer lots to be measured along one (1) street only] which provides access to the lot from its borders on the street, to be measured only where the lot has a depth of at least twenty (20) feet from the right-of-way line. A private street approved by the Planning Board under the Subdivision

Control Law[1] may provide frontage only for the lots which are contained within the approved subdivision.

MOBILE HOME— A portable, completely enclosed structure built on a permanent chassis, designed as a dwelling unit to be transported after fabrication on its own wheels, or on a flatbed, or detachable wheels. For the purpose of this chapter, the term "mobile home" includes trailers incorporating the characteristics of mobile homes as herein defined.

MUNICIPAL USE — Use of land by the Town of Mount Washington in accordance with the general laws governing municipal powers and functions, including participation in regional uses.

RIGHT-OF-WAY LINE — The right-of-way line of a street as established under public authority or as shown on a plan approved by the Planning Board or, if neither of the above apply, a line parallel to the center line of the road measured back a distance of twenty-five (25) feet and parallel to the center line.

ROAD/STREET— A public way or a way which the Clerk of the Town certifies is maintained and used as a public way; or a way shown on a plan approved and endorsed in accordance with the Subdivision Control Law; or a way in existence when the Subdivision Control Law became effective in Mount Washington on July 31, 1970,[3] having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

SETBACK— The area of the lot extending inward from a lot line for the distance specified in the zoning regulations in which no building or structure may be placed.

STORY — That portion of a building contained between any floor and the floor or the ceiling next above it, but not including any portion so contained if more than one-half (1/2) of such portion vertically is below the average finished grade of the ground adjoining such building.

STRUCTURE— Any construction, erection, assemblage or other combination of materials upon the land, necessitating pilings, footings or a foundation for attachment to the land, including swimming pools and recreational courts.

WETLANDS — The Massachusetts Wetlands Protection Act shall define wetland areas.

1 Editor's Note: See M.G.L.A. C. 41, §§ 81K through 81GG.
2 Editor's Note: See M.G.L.A. C. 41, §§ 81K through 81GG.
3 Editor's Note: See Chapter 243, Subdivision of Land.

ARTICLE III
Use Regulations

215-4. Compliance required.

No building or structure shall be erected, and no building, structure or land shall be used for any purpose or in any manner other than for one (1) or more of the uses hereinafter set forth as permitted by right or set forth as permissible by special permit from the Planning Board.

§ 215-5. Permitted uses by right.

A. Detached one-family dwellings.

B. Municipal use.

C. Religious or educational use ori land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic, or by a religious sect or denomination or by a non-profit educational corporation.

D. Use of land for agriculture, horticulture or floriculture, provided that any structures used as shelters for livestock or poultry are setback at least the minimum setback from any boundary and that all grounds used for pasturing or other purposes involving unrestrained animals are properly fenced.

E. Accessory use or structure incidental to a permitted principal use on the same building lot. Such structure shall not exceed six hundred (600) square feet or twenty-six (26) feet in height. Agricultural uses are exempt from these strictures.
(adopted 7/22/1999)

F. Customary home occupations carried on in their own homes by self-employed resident occupants working at occupations which are limited to the home, carried forth at the home and require no more off-street parking than would ordinarily be used by the household. Customary home occupations do not include gift shops, antique shops, art galleries or other similar retail establishments.

G. The use of a room or rooms in a dwelling or accessory building by a resident occupant for practice of a recognized profession, or by a resident carpenter, painter, plumber, electrician or for a customary home occupation in connection with his or her trade, provided that there is no evidence of business other than a permitted sign, and provided all requirements of Subsection F are met.

§ 215-6. Special permits.

A. Uses which maybe permitted by a special permit to be issued by the Planning Board in accordance with the provisions of M.G.L.A. C. 40A.

(1) Camps.

(2) Boardinghouses.

(3) Bed and breakfasts.

(4) Multifamily dwellings

(5) Conversion of a single-family dwelling unit into a multifamily dwelling.

(6) The display and sale by residents of the premises at a roadside stand of natural products of which the major portion is produced on the premises, provided that:
(a) Any such display or stand be set back at least twenty (20) feet from the right-of-way line and meet minimum sideline requirements; and
(b) There be no illumination of any kind at or for such display or stand after dark; and
(c) Any such display and any operation of such stand be confined to the growing and harvesting seasons applicable to the products produced on the premises.

(7) Accessory building exceeding six hundred (600) square feet footprint or twenty-six (26) feet in height, provided that such building does not derogate from the intent and purpose of this chapter. (Adopted 7/22/1999)

(8) Abandonment. A nonconforming use of land or structure which has been abandoned or not used for a period of two (2) years may be reestablished by special permit; any future use of such premises shall conform to this chapter unless application for a special permit is made within seven (7) years from the date of abandonment or nonuse.

(9) Preexisting nonconforming structures or uses may be extended or altered by special permit from the Planning Board, provided that the Board finds that such change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use. The Planning Board may impose reasonable conditions, safeguards or limitations on such applications for special permits.

(10) Signs. See § 215-20 of this chapter. (Adopted 7/22/1999)

(11) Trailers or mobile homes as temporary dwellings. See § 215-21 of this chapter.

(12) Buildings lawfully in existence prior to August 16, 1989 may be altered, extended or modified within one hundred fifty (150) feet of any lake, pond, brook, or any other body of water providing the Special Permit Authority (Planning Board) finds that there will be no significant impact to any body of water. (Adopted 2/25/1999)

(13) Personal Wireless Services, (also see Sec. 215.26 of this chapter) (Adopted 7/22/1999)

B. Regulation for uses. Every use permitted by right or authorized by special permit under the provisions of this chapter shall be subject to the State Building Code, State Sanitary Code, the town's Board of Health regulations, floodplain and wetlands regulations and all other applicable statutes, bylaws, regulations and deed restrictions, if any.

C. Site plan required. Any application for a special permit shall be accompanied by a surveyed site plan, drawn to scale, indicating the location, size and height of proposed buildings, site improvements, location of bodies of water and/or wetlands and containing such other information as may be required by the Planning Board.

D. Required public hearing. The Planning Board shall hold a hearing on any application transmitted to it by the Town Clerk within sixty-five (65) days from the date of transmittal after having published, posted and sent a notice of such hearing to parties in interest as provided in M.G.L.A. C. 40A, § 11, and after having notified the Planning Boards of

4 Editor's Note: See Division 3 of this Code.

adjacent cities and towns which may forward recommendations with respect to said matter for consideration of the Planning Board as provided in M.G.L.A. C. 40A, § 15.

E. Review by other boards and agencies. The Planning Board shall, within ten (10) days after receipt of an application for special permit, transmit a copy thereof for review to the Board of Health, the Zoning Board of Appeals, the Board of Selectmen and the Conservation Commission. Any other municipal board or any other agent, at the discretion of the Planning Board, may be consulted. Any board or agency to which such applications are referred for review shall make such recommendations as they deem appropriate, in writing, to the Planning Board. However, the failure to make recommendations within thirty (30) days of receipt of the application by such board or agency of the matter for review shall be deemed lack of opposition thereto.

F. Fees for consultants. A condition of a special permit may be to require the Planning Board and the applicant to agree upon an amount to be deposited in a bank account to be drawn against by the Planning Board. Said amount is to be used for hiring or contracting any consultant, including legal counsel, at the discretion of the Planning Board. Any funds not expended at the completion of the project will be refunded to the applicant.

G. Findings required. Before granting a special permit for any use requiring such permit under the provisions of this chapter, the Planning Board shall find that the proposed use:
   (1) Is in compliance with all provisions and requirements of this chapter, and in harmony with its general intent and purpose;
   (2) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
   (3) Will not create undue traffic congestion or unduly impair pedestrian safety;
   (4) Will not adversely affect any water supplies or drainage systems or any municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the town will be unduly subjected to hazards affecting public health, safety or general welfare.

H. Conditions, safeguards and limitations.
   (1) Special permits may be issued subject to such conditions, safeguards or limitations as the Planning Board may impose for the protection of neighboring uses or otherwise serving the purposes of this chapter. Such conditions, safeguards or limitations may include, but not be limited to, the following:
      (a) Front, side and rear yards greater than the minimum required by this chapter; screening buffers or planting strips, fences or walls as specified by the Planning Board.
      (b) Limitations upon the size, number of occupants, method and time of operation, time duration of the permit, or extent of facilities;
      (c) Regulations of number and location of driveways or other traffic features; and off-street parking or other special features beyond the minimum required by this chapter.

(2) Any conditions, safeguards or limitations shall be imposed in writing and shall be made a part of the special permit.

I. Decisions and vote requirements. The Planning Board shall act within ninety (90) days following the date of public hearing. Failure to take final action upon an application for special permit within said ninety (90) days shall be deemed to be a grant of the permit applied for. Special permits issued by the Planning Board shall require a vote of at least four (4) members of the five-member board.

J. Expiration of special permit. A special permit shall lapse in one (1) year if a substantial use or construction has not begun under the permit by such date, except for a reasonable cause.

K. Performance guaranties.

(1) A performance bond or a deposit of moneys or negotiable securities in an amount determined by the Planning Board to be sufficient to cover the cost of all or any part of the conditions specified in the special permit may be required of the applicant; as an alternative, a covenant may be filed, executed and duly recorded by the owner of record running with the land, whereby such conditions as specified in the special permit shall be completed before the special permit is utilized.

(2) All conditions shall have been certified as satisfactorily completed by the Planning Board before the final release of the performance guaranty or covenant.

ARTICLE IV

Zoning Board of Appeals

§ 215-7. **Membership and authority.**

There shall be a Zoning Board of Appeals consisting of five (5) members, to be appointed by the Board of Selectmen as provided in M.G.L.A. C. 40A, § 12. The Board shall act within its statutory powers as provided in M.G.L.A. C. 40A, § 14, and on matters within its jurisdiction under this chapter in a manner prescribed in M.G.L.A. C. 40A, § 15. The Zoning Board of Appeals shall serve also as the Board of Appeals under the Subdivision Control Law as provided in M.G.L.A. C. 41, § 81Z.

§ 215-8. **Statutory powers.**

A. Appeals. The Board is authorized to hear and decide an appeal, as provided in M.G.L.A. C. 40A, § 8, taken by any person aggrieved by reason of his (her) inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L.A. C. 40A; by the Berkshire County Regional Planning Commission; or by any person, including an officer or board of the town or of an abutting town, aggrieved by an order or decision of the Building Inspector or another administrative official, in violation of any provision of M.G.L.A. C. 40A or by this chapter. Any such appeal must be taken within thirty (30) days from the date of the order of decision which is being appealed by filing a notice of appeal with the Town Clerk, as provided in M.G.L.A. C. 40A, § 15. The cost of any studies or reports, including those of legal counsel required by the Zoning Board of Appeals is to be borne by the applicant or applicants.

B. Variances. The Board may authorize upon application, petition or appeal with respect to a particular land or structure a variance from the terms of this chapter where the Board specifically finds that:
(1) There are special circumstances relating to the soil conditions, shape or topography of such land or location of structures and especially affecting such land or structures, but not affecting generally the zoning area in which it is located; and
(2) A literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the applicant, petitioner or appellant; and
(3) Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter.

C. Expiration of variance. If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, they shall lapse and may be reestablished only after notice and a new hearing as provided in § 215-10A herein.

§ 215-9. Conditions, safeguards and limitations.

When granting a variance, the Zoning Board of Appeals may impose conditions, safeguards or limitations, both of time and use, including the continued existence of any particular structure. (Also see § 215-6H 3.2.8 of this chapter.)

§ 215-10. Appeals, applications and petitions.

Any appeal, application or petition to the Zoning Board of Appeals must be filed with the Town Clerk who shall forthwith transmit a copy thereof to the Zoning Board of Appeals.

A. Required public hearing. The Zoning Board of Appeals shall hold a hearing on any application, petition or appeal transmitted to it by the Town Clerk within sixty-five (65) days from the date of transmittal after having published, posted and sent a notice of such hearing to parties in interest as provided in M.G.L.A. C. 40A, § 11, and after having notified the town's Planning Board and the Planning Boards of adjacent cities and towns which may forward recommendations with respect to said matter for consideration of the Planning Board as provided in M.G.L.A. C. 40A, § 15.

B. Review by other boards and agencies. The Zoning Board of Appeals shall, within ten (10) days after receipt of an application, petition or appeal, transmit a copy thereof for review to the Board of Health, the Planning Board, the Board of Selectmen, the Conservation Commission and any other town agency at the discretion of the Zoning Board of Appeals. Any board or agency to which such matters are referred for review shall make such recommendations as they deem appropriate in writing to the Zoning Board of Appeals; provided, however, that failure to make recommendations within thirty (30) days of receipt of the application by such board or agency of the matter for review shall be deemed lack of opposition thereto.

§215-11. Decisions.

The decision of the Zoning Board of Appeals shall be made within one hundred (100) days after the date of the filing of an application, petition or appeal with the Town Clerk. Failure by the Board to act within said one hundred (100) days shall be deemed to be the grant of the relief, application or petition sought in accordance with provisions of M.G.L.A. C. 40A, § 15.

§215-12. Performance guaranties.

A. A performance bond or a deposit of moneys or negotiable securities in an amount determined by the Zoning Board of Appeals to be sufficient to cover the cost of all or any part of the conditions specified in the variance may be required of the applicant; as an alternative, a covenant may be filed, executed and duly recorded by the owner of record running with the land, whereby such conditions as specified in the variance shall be completed before the variance is utilized.

B. All conditions shall have been certified as satisfactorily completed by the Zoning Board of Appeals before the final release of the performance guaranty or covenant.

ARTICLE V **Intensity Regulations**

§215-13. Building lots.

Any building used for dwelling purposes and any building or structure housing a permitted principal use, including any use authorized by a special permit, shall be so constructed and located on a lot as to meet the minimum requirements of lot area, frontage, width, front, side and rear yards, and the maximum height of buildings and structures as set forth in § 215-14, Table of Dimensional Requirements, herein, except as specifically otherwise provided in this chapter.

A. The building lot area shall be not less than three (3) acres and no more than one (1) dwelling unit shall be built or placed on any such lot. Multifamily dwellings shall provide not less than two (2) acres of lot area for each additional dwelling unit.

B. Frontage for any such lot shall be not less than two hundred (200) feet on a public way or a way approved under the Subdivision Control Law, M.G.L.A. C. 41.

C. The minimum front setback for any structure or building shall be one hundred (100) feet, side setback thirty-five (35) feet and rear setback fifty (50) feet. Front setback is to be measured from the right-of-way line where a plan of the way is on file with the Registry of Deeds or, in the absence of such a plan, from a line twenty-five (25) feet from and parallel to the center line of the traveled way.

D. No accessory building or structure shall be located in the minimum front setback area. An accessory building or structure may be erected in the minimum side or rear setback area, but not within twenty-five (25) feet of the property line.

E. No new building shall be constructed within one hundred fifty (150) feet of any lake, pond, brook or any other body of water excepting alterations, extensions or modifications of buildings lawfully in existence prior to August 16, 1989, such alterations, extensions or modifications may be permitted by Special Permit. (See Sec. 215-6 Special Permits) (Adopted 2/25/1999)

F. No septic or leaching field shall be placed within two hundred (200) feet of any lake, pond, brook or any other body of water.

G. No septic or leaching field shall be placed within twenty-five (25) feet of any property line.

H. No building shall be in excess of three (3) stories or thirty-five (35) feet measured from the sill of the foundation to the roof line.

I. No building or structure shall be constructed on a building lot where the building or structure is to be situated on a grade, which is greater than fifteen percent (15%).

§ 215-14. Dimensional Requirements.

A. Minimum Lot: Area: 3 acres
Frontage and Width: 200 Feet

B. Minimum Yards and Setbacks:
Front: 100 feet
Side: 35 feet
Rear: 50 feet

C. Maximum Height for building or structure: 35 feet

§215-15 Personal Wireless Services Overlay District

§215-15.A. Title
This Section shall officially be known, cited, and referred to as the "Personal Wireless Services Overlay District."

§215-15.B. Purpose
The Personal Wireless Services Overlay District ["PWSOD"] is intended to protect the environmental, scenic, recreational, cultural, historic, archaeological, and other natural and man-made resources of the Town of Mount Washington ['Town"] while allowing adequate Personal Wireless Services ["PWS"] to be provided to the Town.

§215-15.C. Description
The PWSOD includes the properties listed below. These properties are included because they are technically feasible and accessible locations for the placement of Personal Wireless Services Facilities, Structures/Towers, and Repeaters that can provide adequate Personal Wireless Services to the Town.
The PWSOD is defined, delineated, and mapped on the map titled "Personal Wireless Services Overlay District ["PWSOD"] of Mount Washington, Massachusetts, dated July 1999." ["Map"], and incorporated by this reference herein.
As shown on the Map, the PWSOD consists of Parcels 2 and 3 on Assessors' Map 1.

Location.	Address	Assessors' Map & Parcel #
Mount Darby	East Street	Map 1; Parcels 2, 3

§215-15.D. Relation to Other Zoning Districts
The PWSOD is an overlay zoning district mapped over other zoning districts. It modifies and, where there is inconsistency, supersedes the articles, sections, and regulations of other zoning districts. Except as so modified or superseded, the articles, sections, and regulations of the underlying zoning districts remain in effect.

§215-15.E. Applicability
Any use of properties within the PWSOD for purposes of placement, design, construction, installation, operation, modification, or removal of PWS Facilities, Structures/Towers, or Repeaters shall be subject to the requirements of §215-26. of the Zoning Bylaw of the Town of Mount Washington, Massachusetts.
(Adopted 7/22/1999)

ARTICLE VI
General Regulations

§ 215-16. Building permits.

A. No building or structure or addition to an existing building or structure exceeding one hundred (100) square feet of floor space shall be erected without the issuance of a building permit. See Articles VII and IX (Guidelines).

B. The Building Inspector shall, within ten (10) days after receipt of an application to build, transmit a copy thereof for review to the Board of Health, Board of Selectmen, Planning Board and the Conservation Commission. The Building Inspector must issue or deny permit applications within thirty (30) days.

§ 215-17. Nonconforming uses.

A.1. The lawful use of any building, structure or land existing at the time of adoption of this chapter, even if not in conformity with its provisions, may be continued. Any building lot whether developed or undeveloped approved by Form A[5] or under the subdivision regulations of the previous bylaw shall be continued as a building lot; lots not meeting the new acreage requirements shall be subject to the setback regulations of the 1970 bylaw [front setback fifty (50) feet, side setback twenty-five (25) feet, rear setback twenty-five (25) feet], for a period of one hundred (100) years from the date of approval of this chapter. The alteration,

[5] Editor's Note: See Article IX, Subsection C

reconstruction, extension or structural change to a non-conforming building or structure is permitted, provided that this does not increase the nonconforming nature of such building or structure. See §§ 215-6A and 215-16C and 215-16D. (Adopted 2/25/1999)

A 2. No special permit will be required if the Special Permit Granting Authority (Planning Board) determines that a proposed extension or alteration to a pre-existing, non-conforming 1 or 2 family residential structure, will not change, expand or increase the nature of said non-conforming building or structure. (Adopted 2/25/1999)

B. Reconstruction of structure damaged by fire or other catastrophe. Any preexisting nonconforming structure or use may be rebuilt or reestablished within five (5) years if damaged or destroyed by fire or other catastrophe. The structure, as rebuilt or restored, shall not be in greater nonconformity with the provisions of this chapter. See § 215-15A.

C. Abandonment. A nonconforming use of land or structure which has been abandoned or not used for a period of two (2) years or more shall not be reestablished, except by special permit from the Planning Board within seven (7) years from the last documented date of such use. Any future use of such premises shall conform to this chapter.

D. Requirements for extension or reconstruction. Preexisting nonconforming buildings, structures or uses may be extended or altered by special permit from the Planning Board, provided that the Board finds that such change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming building, structure or use.

D1. Extension of residential nonconforming structure. Legal preexisting nonconforming residential structures may be extended by continuing the line of the existing footprint of the structure by special permit, provided said extension: is no closer to the front property line than the existing structure; is a minimum of twenty-five feet from the RIGHT OF WAY LINE AS DEFINED IN Sec. 215-3. Terms defined and meets the applicable side and rear set back requirements. See sec. 215-14, Sec. 215-16A, Sec. 215-6 (Adopted 5/2/2000)

§ 215-18. Objectionable uses.

Any use of land, buildings or structures which creates excessive and objectionable noise, fumes, odor, dust, electrical interference or undue traffic is prohibited.

§ 215-19. Hazardous and/or toxic waste disposal.

No land within the Town of Mount Washington may be used for the collection, treatment, storage, burial, incineration or disposal of hazardous and/or toxic waste.

§ 215-20. Sign regulations.

A. Permitted signs.
   (1) Signs not exceeding four (4) square feet in total area and bearing only names of residents or other identification of premises not having commercial connotation.
   (2) One sign not exceeding six (6) square feet in area for a permitted accessory use on the premises, with a special permit from the Planning Board.
   (3) All signs applied to or affixed to a building or structure or which are visible from a public way or any neighboring premises must conform to these sign regulations.
   (Adopted 2/25/1999)

B. Sign restrictions.

(1) No sign shall use moving parts, noise-making devices or blinking, rotating, flashing, red or neon lights, or lights changing in intensity, and no sign shall be placed on the roof of any building or structure or extend above the parapet or eave line.

(2) No illuminated sign or lighting device shall be so placed or directed upon a public way or adjacent premises as to cause glare or reflection that may constitute a traffic hazard or a nuisance.

(3) No sign shall be located off the premises to which it applies, except that directional signs may be allowed by special permit issued by the Planning Board where such signs will serve the public convenience and not be detrimental to the neighborhood with respect to size, location or design.

(4) A freestanding sign may not be closer to the road edge than ten (10) feet and may not exceed eight (8) feet in height above grade.

(adopted 2/25/1999)

C. Exemption from the Sign Regulations

Signs permitted by the First Amendment to the United States of the Constitution are exempt from Mount Washington By-law Sec. 215-20. (Adopted 2/25/1999)

§ 215-21. Mobile homes or trailers.

Mobile homes or trailers may only be used as temporary dwellings with a special permit from the Planning Board after approval from the Board of Health. The term of such permit shall not exceed one (1) year.

A. Trailers or mobile homes as temporary dwellings.

(1) Travel trailers may be permitted and used as a dwelling or accessory dwelling on any building lot for not more than sixty (60) days in any twelve-month period, if a special permit is issued by the Planning Board.

(2) The Planning Board may allow such use of trailers or mobile homes for a longer period of time by extension of a special permit in cases of hardship, provided that:

(a) No extension is issued for longer than twelve (12) months.

(b) The mobile home or trailer is to be used as temporary living quarters by the owner of the premises while the owner is in the process of constructing a dwelling as a separate structure on the building lot.

(c) The owner shall comply with all provisions of the State Environment Code, Title 5, the State Sanitary Code and with the requirements of the Board of Health.

(d) Said mobile home or trailer is not injurious, offensive or noxious. Notwithstanding this provision, nothing shall prevent a travel trailer from remaining on any premises if the same is not being used on said premises for dwelling purposes.

§ 215-22. Construction of driveways abutting public ways.

A. No driveway or road abutting or intersecting any public way shall be constructed hereafter unless approval therefor is granted by the Board of Selectmen. Application for a permit for such construction shall be made in writing to the Board of Selectmen before such construction begins.

B. The Board of Selectmen may grant a permit for such construction upon such conditions as the Board deems proper. The Board may require the installation of culverts and such grading and surfacing as may be required. The construction work shall be done under the supervision of the Board of Selectmen and to its satisfaction. The entire expense of such construction shall be paid by the person to whom the permit was given.

C. The Selectmen may require a bond to guarantee the faithful and satisfactory performance of the work and payment for any damage to public ways and facilities caused by or resulting from the work authorized by the permit. The amount of such bond shall be determined by the Selectmen and shall not exceed the estimated cost of the work and possible damage.

D. No driveways shall exceed fifteen percent (15%) in grade for any portion of their length.

§ 215-23. Sprinkler systems for dwellings having driveways exceeding 8%.
All dwelling units constructed along rights-of-way and accessed by either subdivision roads or private driveways having a grade exceeding eight percent (8%) for a distance longer than two thousand (2,000) feet shall have sprinkler systems installed in compliance with applicable state building codes before issuance of certificate of occupancy.

§ 215-24. Other applicable statutes.
Every use permitted by right or authorized by special permit under the provisions of this chapter shall be subject to the State Building Code, State Sanitary Code, the town's Board of Health Regulations, floodplain and wetlands regulations and all other applicable statutes, bylaws and regulations.

§215-25. Wetlands.
Any use permitted in a wetland area or groundwater recharge area shall be permitted as regulated, subject to the Wetlands Protection Act, M.G.L.A. C. 131, § 40, and subject to all regulations established by the Conservation Commission.

§ 215-26 Personal Wireless Services - see attached. (Adopted 7/22/99)

§ 215-27 Other Wireless Telecommunications Facilities - see attached. (Adopted 7/22/99)

ARTICLE VII Administration and Enforcement

§ 215-28. Administration.
This chapter shall be enforced by the Board of Selectmen through the Building Inspector appointed by the Board as provided in the State Building Code.

A. No permit shall be issued by the Building Inspector unless the application for a permit indicates compliance with this chapter and any other applicable town bylaws and

6 Editor's Note: See Division 3 of this Code.

regulations, the State Sanitary Code and the Board of Health Regulations,[7] the Planning Board's Subdivision Control Regulations[8] and the Wetlands Protection Act, if applicable.

§ 215-29. Construction and use as provided in permits.

A. Special permits or building permits issued on the basis of plans and applications approved by the Board of Selectmen, Board of Health, Planning Board or the Zoning Board of Appeals authorize only the use, arrangement and construction as set forth in such approved plans and applications. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this chapter and punishable as provided herein.

B. Construction or operation under a building or special permit shall conform to any subsequent amendment of this chapter unless the permit is issued before the date of the Town Meeting at which such amendment is adopted, and the use or construction is commenced within a period of not more than six (6) months after the issuance of the permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

§ 215-30. Violations and penalties.

A. If the Building Inspector is requested in writing to enforce this chapter against any person allegedly in violation of it and the Building Inspector declines to act, he shall notify in writing the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen (14) days of receipt of such request.

B. Whoever shall violate any provision of this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than one hundred dollars ($100.) for each offense. Each day such violation continues after the date of notice of such violation from the town's enforcement agent shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action as it deems necessary to prevent or remedy any violation.

ARTICLE VIII Amendment and Validity

§215-31. Amendment.

This chapter may be amended from time to time in an Annual or Special Town Meeting in accordance with M.G.L.A. C. 40A, § 5.

7 Editor's Note: See Division 3 of this Code.
8 Editor's Note: See Chapter 243, Subdivision of Land.

§215-32. Validity.

A. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements. Wherever the requirements of this chapter are at variance with the requirements of any other lawfully adopted regulations or bylaws or with deed restrictions or covenants, the most restrictive or the one imposing the higher standards shall govern.

B. This chapter or any amendment thereto shall take effect on the date on which such adoption or amendment is voted by the Town Meeting.

C. The chapter repeals and replaces the Zoning Bylaw adopted originally on September 21, 1970, and any subsequent amendments made thereto.

D. The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

ARTICLE IX Sample Forms and Applications

A. Guidelines.
B. Application to Build.
C. Form A - Application For Endorsement Of Plan Believed Not To Require Approval
D. Form B - Application For Approval Of Preliminary Plan
E. Form C - Application For Approval Of Definitive Plan
F. Form D - Covenant
G. Form E - Covenant Approval Release
H. Form F - Certificate of Performance

o **Editor's Note: See Chapter 243, Subdivision of Land, for forms and applications.**

§215-26. Personal Wireless Services

§215-26.A. Title

Section 215-26. shall officially be known, cited. and referred to as "Personal Wireless Services" ["Section"].

§215-26.B. Purposes

The purposes of this Section are to:

Preserve the character and appearance of the Town of Mount Washington ["Town"] while simultaneously allowing adequate Personal Wireless Services ["PWS"] to be developed.

Protect the environmental, scenic. recreational. cultural, historic, archaeological, and natural and man-made resources of the Town.

Preserve residential property values within the Town.

Provide standards and requirements for regulation, placement, design, construction, installation, operation, monitoring, modification, and removal of PWS Facilities, Structures/Towers, and Repeaters.

Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, design, construct, install, operate or modify PWS Facilities, Structures/Towers, and Repeaters.

Locate PWS Facilities, Structures/Towers, and Repeaters so that they do not have negative impacts such as visual blight, attractive nuisance, noise, and falling objects on the general health, safety, welfare, and quality of life of Town residents.

Require Co-Locating and Clustering of PWS Facilities, Structures/Towers, and Repeaters.

Require PWS Facilities, Structures/Towers, and Repeaters to be configured and Camouflaged so as to minimize and mitigate their visual impact.

S215-26.C. Authority

In accordance with Sections 215-4. and 215-6. of the "Zoning Bylaw of the Town of Mount Washington" ["Bylaw"], the Planning Board of the Town shall act as the Special Permit Granting Authority ["SPGA"] under this Section.

§215-26.D. Jurisdiction

This Section applies to all Personal Wireless Services as defined in §215-26.G. and located within the corporate limits of the Town or outside the corporate limits as provided by law.

No PWS Facility, Structure/Tower, or Repeater shall be placed, constructed, installed, or operated without a Special Permit from the SPGA as set forth within this Section.

No Major Modification of an Existing Facility, or Major Modification of an Existing Repeater shall be
undertaken without a Special Permit from the SPGA as set forth within this Section.

Removal of a PWS Facility or Repeater that Ceases To Operate shall be done according to §215-26.0. and all other applicable provisions of this Section.

§215-26.E. Enactment

In order that Personal Wireless Services may be provided in accordance with these purposes and policies, this Section is hereby adopted and made effective as of July 22, 1999.

All applications for the placement, design, construction, installation, operation, or modification of PWS
Facilities, Towers/Structures, or Repeaters pending on the effective date of this Section shall be reviewed under this Section.

All applications for the Major Modification Of An Existing Facility or Major Modification Of An Existing Repeater pending on the effective date of this Section shall be reviewed under this Section.

§215-26.F. Consistency with Federal Law

This Section is intended to be consistent with the Federal Telecommunications Act of 1996 in that:

It does not prohibit, or have the effect of prohibiting the provision of Personal Wireless Services. It is not intended to be used to discriminate unreasonably among providers of functionally equivalent services.

It does not regulate Personal Wireless Services on the basis of the environmental effects of radio-frequency emissions to the extent that the regulated PWS Facility Sites, Facilities, and Personal Wireless Services comply with the FCC's regulations concerning such emissions.

It requires that any decision with respect to a PWS Facility or Repeater Special Permit application be made within a reasonable time and be based upon substantial evidence in *a* written record.

§215-26.G. Definitions

§215-26.G.1. Usage

For the purpose of this Section, certain abbreviations, terms, and words shall be used, interpreted, and defined as set forth in §215-26.G.

Abbreviations, terms, and words defined in §215-26.G. appear in the text of this Section with their first letters capitalized. The meaning of each shall be as defined in §215-26.G.

Unless the context clearly indicates to the contrary, words used in the present tense include the future tense, words used in the plural include the singular, and words used in the singular include the plural.

The word "shall" is mandatory; the word "may" is permissive.

The words "including" and "such as" shall not limit a term to specified examples, but are intended to extend its meaning to all other instances or circumstances of like kind or character.

Definitions of terms not defined in §215-26.G. and §215-26.J.7.c. shall be found in §215-2. and §215-3. of the Bylaw and in other federal and state statutes and regulations as selected by the SPGA and its Independent Consultants.

§215-26.G.2. Words and Terms Defined

ABOVE GROUND LEVEL - A measurement of height from the natural grade of a site at the base of the structure being measured.

ACT - The Federal Telecommunications Act of 1996.

ADEQUATE CAPACITY - Capacity is considered to be "adequate" if the Grade Of Service is p.05 or better for a worst-case day in the preceding 30 calendar days, based on the Erlang B Tables, prior to the date of application; or as measured using direct traffic measurement of the PWS Facility in question for existing PWS Facilities requesting major modification, and where the call blocking is due to frequency contention at the Antennas.

ADEQUATE COVERAGE - Coverage is considered to be "adequate" within that area surrounding a Base Station where the predicted (by Radial Plot) or measured (by actual field measurements) median field strength of the transmitted signal for at least 75% of the covered area is equal to or greater than -95 dBm. It is acceptable for there to be holes within the area of Adequate Coverage where the signal is less than -95 dBm as long as the signal regains its strength to equal to or greater than -95 dBm farther away from the Facility. For the limited purpose of determining whether the use of a Repeater is necessary or desirable, there shall be deemed not to be Adequate Coverage within said holes. The outer boundary of the area of Adequate Coverage, however, is that location past which the signal does not regain a strength of equal to or greater than -95 dBm.

ANTENNA - A device that is part of a PWS Facility, and may be attached to a Structure/Tower for transmitting and receiving electromagnetic waves.

AVAILABLE SPACE - The space on a Structure/Tower to which PWS Facilities, Antennas, and other Equipment can be attached based on structural and electromagnetic considerations and specifications determined by the SPGA's Independent Consultants.

BASE STATION - Part of a PWS Facility; the primary sending and receiving site in a PWS network.

BYLAW - "Zoning Bylaw of the Town of Mount Washington, Massachusetts".

CAMOUFLAGE, TO - To disguise or hide PWS Facility Sites, Facilities, Structures/Towers, Base Stations, Antennas, Repeaters, Equipment, and Equipment Shelters using vegetation, structures, screens, paint, finish, and other materials.

CEASE TO OPERATE, TO -To no longer perform normal functions associated with a PWS Facility, Structure/Tower, or Repeater on a continuous and ongoing basis for a period of 180 calendar days.

CHANNEL - The segment of the radiation spectrum from an Antenna that carries one signal; an Antenna may radiate on many Channels simultaneously.

CLUSTER, TO - To construct or install two or more Structures/Towers and/or PWS Facilities as close together as technically feasible and within one PWS Facility Site if possible. To construct or install two or more Repeaters on one Structure/Tower or Utility Pole.

CO-LOCATE, TO - The use of a single Structure/Tower by more than one PWS Provider. The use of a single Utility Pole by more than one Utility or PWS Provider.

DBM - A decibel milliwatt; a unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to one milliwatt; dBm.

EQUIPMENT - All Antennas, Repeaters, appurtenances, and materials needed to provide Personal Wireless Services.

EQUIPMENT SHELTER - A structure located at a Base Station designed to enclose Equipment used in connection with PWS transmission; not allowed as part of a Repeater Site.

FACILITY - see PERSONAL WIRELESS SERVICES FACILITY. The abbreviation is not used in this Section for WIRELESS TELECOMMUNICATIONS FACILITY.

FACILITY SITE - see PERSONAL WIRELESS SERVICES FACILITY SITE. The abbreviation is not used in this Section for WIRELESS TELECOMMUNICATIONS FACILITY SITE.

FAA - Federal Aviation Administration.

FCC - Federal Communications Commission; the Government agency responsible for regulating telecommunications in the United States.

FCC 96-326 - A FCC Report and Order that sets national standards for emissions of radio-frequency emissions from FCC-regulated transmitters. This Report And Order is now contained within 47 CFR 1.1307.

FREQUENCY - See RADIATION PROPAGATION STUDIES.

GRADE OF SERVICE - A measure of the percentage of calls that are able to connect to the Base Station during the busiest hour of the day. Grade Of Service is expressed as a number, such as p.05 - which means that 95% of callers will connect on their first try. A lower number (p.04) indicates a better Grade Of Service.

INDEPENDENT CONSULTANT - A person or commercial or non-commercial entity with expertise in areas pertaining broadly to Personal Wireless Services; selected and hired by the SPGA according to its own criteria; reporting only to the SPGA; with all consulting services and associated costs paid for by the Applicant.

LEASE - A contract granting use or occupation of property during a specified period of time that may or may not involve fees or payments.

MAJOR MODIFICATION OF AN EXISTING FACILITY - Any change or proposed change in number of Antennas, change in Antenna type or model, repositioning or reorienting of Antennas, power input or output, average or peak power levels, duty cycle, bandwidth, frequency, or change in number of Channels per Antenna above the maximum number approved under an existing PWS Facility/Structure/Tower Special Permit; or, any other change or proposed change not previously approved under an existing PWS Facility/Structure/Tower Special Permit. Any change or proposed

change to the Structure/Tower upon which a PWS Facility is mounted, including additions to height or width, physical change, or change in footprint. Any change or proposed change in a PWS Facility Site including removal of trees, grading, excavation, physical change, or change in footprint.

MAJOR MODIFICATION OF AN EXISTING REPEATER - Any change or proposed change in location of a Repeater at the Repeater Site for which a PWS Repeater Special Permit has been received. Any change or proposed change in power input or output, average or peak power levels, bandwidth, frequency; or, any other change or proposed change not previously approved under an existing PWS Repeater Special Permit.

MONITORING - The measurement of radiation and near fields from a PWS Facility Site as a whole or from individual PWS Facilities, Structures/Towers, Antennas, or Repeaters.

The measurement of radiation and near fields from a PWS Repeater Site as a whole or from individual Repeaters.

Measurement is by use of appropriate instruments in the field and by computation as determined by the SPGA and its Independent Consultants.

MONITORING PROTOCOL - The protocol for measuring radiation and near fields from existing and new PWS Facility Sites, Facilities, Antennas, Repeaters, and Repeater Sites based on the use of appropriate instruments and computation as determined by the SPGA and its Independent Consultants.

The protocol for testing with instruments is the Cobbs Protocol or its equivalent. As technology changes, the SPGA may require, by written regulation, the use of other testing protocols.

The guidelines for computation are contained in the FCC Office of Engineering and Technology's Bulletin 65, Edition 97-01 "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields", or any future revisions or amendments thereof.

PERSONAL WIRELESS SERVICES ["PWS"] - Commercial Mobile Services, unlicensed wireless services, and common carrier wireless exchange access services. These services include: Cellular Services, Personal Communications Services ["PSC"], Specialized Mobile Radio Services, Enhanced Specialized Mobile Radio Services, and Paging Services. These services may be provided by persons or commercial or non-commercial entities and may or may not be provided in exchange for fees or payments.

PERSONAL WIRELESS SERVICES FACILITY ["PWS FACILITY"] - Any and all Antennas, Equipment (excluding Repeaters), Structures/Towers, Base Stations, and Equipment Shelters used by a PWS Provider to broadcast and receive the radio-frequency waves that carry its Personal Wireless Services; and, any and all locations of said Antennas, Equipment (excluding Repeaters), Structures/Towers, Base Stations, and Equipment Shelters, or any parts thereof. This PWS Facility may be located on one or more Structures/Towers owned and permitted by another owner or entity.

PERSONAL WIRELESS SERVICES FACILITY SITE ["PWS FACILITY SITE"] - The location or potential site within a PWSOD owned, Leased, or controlled by one or more PWS Providers, and upon which one or more PWS Facilities (including Antennas, Equipment, Structures/Towers, Base Stations, and Equipment Shelters) and required landscaping are located.

PERSONAL WIRELESS SERVICES FACILITY/STRUCTURE/TOWER SPECIAL PERMIT ["FST/SP"] - The Special Permit that must be obtained in order to place, design, construct, install, operate, or remove any PWS Facility or Structure/Tower or for any Major Modification Of An Existing Facility within the PWSOD of the Town. See also Personal Wireless Services Repeater Special Permit.

PERSONAL WIRELESS SERVICES OVERLAY DISTRICT ["PWSOD"] - Specific area determined by engineering analysis to contain sites where Adequate Service may be provided to the Town and which, at the same time, have the potential to reduce or mitigate negative impacts in accordance with §215-26.B. of this Section. The PWSOD is further defined in §215-15. of the Bylaw.

PERSONAL WIRELESS SERVICES PROVIDER ["PWS PROVIDER"] - A person or commercial or non-commercial entity licensed by the FCC to provide Personal Wireless Services to persons or entities, whether or not in exchange for fees or payments.

PERSONAL WIRELESS SERVICES REPEATER SITE ["PWS REPEATER SITE"] - The Structure/Tower or Utility Pole within a PWSOD, or the Utility Pole outside a PWSOD on which a Repeater is installed. A Repeater Site does not have Equipment Shelters.

PERSONAL WIRELESS SERVICES REPEATER SPECIAL PERMIT ["R/SP"] - The Special Permit that must he obtained in order to place, design, construct, install, operate, or remove any
Repeater, or for Major Modification Of An Existing Repeater within the Town.

RADIAL PLOT - See RADIATION PROPAGATION STUDIES.

RADIATION PROPAGATION STUDIES - Computer-generated estimates of the radiation emanating from Antennas sited on a specific Structure/Tower or Repeaters sited on a specific Structure/Tower or Utility Pole. Type of Antenna or Repeater, height Above Ground Level and above mean sea level, directional gain, power input and output, average and peak power levels, duty cycle, bandwidth, frequency, topography of the PWS Facility Site or Repeater Site and its surroundings, and other factors may be taken into account to create these simulations.

They are the primary tool for determining whether or not a PWS Facility Site can provide Adequate Coverage by the PWS Facility proposed for that PWS Facility Site or whether or not a PWS Repeater Site can provide Adequate Coverage by the Repeater proposed for that PWS Repeater Site.

REPEATER - A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas not able to receive Adequate Coverage directly from a Base Station. A

Repeater may be attached to a Structure/Tower or Utility Pole within a PWSOD or to a Utility Pole outside a PWSOD.

REPEATER SITE - See PERSONAL WIRELESS SERVICES REPEATER SITE.

SECTION - Unless clearly indicated otherwise, §215-26. titled "Personal Wireless Services" under Article VI of the "Zoning Bylaw of the Town of Mount Washington, Massachusetts"; on file with the Select Board and Town Clerk.

SPECIAL PERMIT GRANTING AUTHORITY ["SPGA"] - The Planning Board of the Town of Mount Washington, Massachusetts.

STRUCTURE/TOWER - Any building, tower, or other constructed materials within the PWSOD upon which a PWS Facility or any portion or part thereof or a Repeater can be located and which supports PWS transmission, receiving and relaying Antennas, and Equipment.

TELEPORT - A multi-user commercial or non-commercial facility utilizing satellite dishes of greater than 2.0 meters in diameter designed to uplink to communications satellites for transmission of data.

TOWN - The Town of Mount Washington, Massachusetts, unless clearly indicated otherwise.

USABLE SPACE - The space on a Utility Pole above the minimum grade level which can be used for the- attachment of wires, cables, and associated Equipment.

UTILITY - Any person or entity that is a local exchange carrier or an electric, gas, water, steam, or other public utility, and that owns, Leases, or controls Utility Poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communications.

UTILITY POLE - A pole owned, Leased, or controlled by a Utility; already in use by a Utility; with ducts, conduits, rights-of-way, and other infrastructure already in place and in use; and, in compliance with all applicable federal, state, and municipal statutes, bylaws, and regulations.

WIRELESS TELECOMMUNICATIONS - The transmission of writing, signs, signals, pictures, and sounds of all kinds without aid of wire, cable, or other similar connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services incidental to such transmission.

WIRELESS TELECOMMUNICATIONS FACILITY ["WT FACILITY"] - Any and all Antennas, Equipment, Structures/Towers, Base Stations, and Equipment Shelters used to broadcast and receive wireless telecommunications (excluding Personal Wireless Services); and, any and all locations of said Antennas, Equipment, Structures/Towers, Base Stations, and Equipment Shelters, or any parts thereof.

WIRELESS TELECOMMUNICATIONS FACILITY SITE ["WT FACILITY SITE"] - The site owned, Leased, or controlled by one or more Wireless Telecommunications Providers, and upon which one or more Wireless Telecommunications Facilities (including Antennas, Equipment, Structures/Towers, Base Stations, and Equipment Shelters) and landscaping are located.

WIRELESS TELECOMMUNICATIONS PROVIDER ["WT PROVIDER"] - A person or commercial or non-commercial entity licensed by the FCC to provide Wireless Telecommunications (excluding Personal Wireless Services) to persons or entities, whether or not in exchange for fees or payments.

§215-26.H. Provision of Independent Consultants

Upon submission of an application for a Special Permit under this Section, the Applicant shall pay a review fee determined by the SPGA, in accordance with M.G.L. Chapter 44, Section 53G, consisting of reasonable costs to be incurred by the SPGA for the employment of Independent Consultants. The Independent Consultants shall each be qualified professionals with a record of service to municipalities in at least one of the following fields: telecommunications engineering; structural engineering; Monitoring of electromagnetic fields; or other relevant fields of experience as determined by the SPGA.

The SPGA shall select the Independent Consultants after consultation with the Town's Select Board, Board of Health, and Conservation Commission, each of which may propose a list of qualified candidates.

§215-26:1. General Standards for PWS Facilities, Structures/Towers, and Repeaters

§215-26.1.1. Prohibition of Teleports

There shall be no Teleports within the PWSOD or any other area of the Town.

§215-26.1.2. Locations

PWS Facilities and Structures/Towers shall be located only within the PWSOD of the Town.

PWS Repeaters shall be located within the PWSOD or on existing and functioning Utility Poles elsewhere in the Town provided the Utility Poles meet the requirements of §215-26.K. and any other applicable provisions of this Section.

§215-26.1.3. Special Permits

No PWS Facility, Structure/Tower, or Repeater shall be placed, designed, constructed, installed, operated, or modified without first obtaining a Special Permit from the SPGA in accordance with the requirements set forth in this Section.

One or both of two kinds of Special Permits are required: A PWS Facility/Structure/Tower Special Permit ["FST/SP"] or a PWS Repeater Special Permit ["R/SP"].

A Special Permit shall not be granted for a PWS Facility or Structure/Tower to be built on speculation.

No outstanding application for a Special Permit may be transferred to any other person or entity.

All local zoning and federal, state, and municipal permitting requirements must be complied with fully before construction or installation may commence. Certified documentation of all such permits shall be received by the SPGA before construction or installation commences.

§215-26.I.3.a. PWS Facilities and Structures/Towers [FST/SP]

An FST/SP is required for the placement, design, construction, installation, and operation of PWS Facilities or Structures/Towers. A FST/SP is also required for Major Modification Of An Existing Facility. An Applicant shall meet all requirements established in §215-26.J., submit all information required in §215-26.1.8. to the SPGA, and fulfill the requirements of all other applicable provisions of this Section.

§215-26.I.3.b. PWS Repeaters [R/SP]

A R/SP is required for the placement, design, construction, installation, and operation of a Repeater. A R/SP is also required for Major Modification Of An Existing Repeater. An Applicant shall meet all requirements established in §215-26.K., submit all information required in §215-26.K.5. to the SPGA, and fulfill the requirements of all other applicable provisions of this Section.

An R/SP may be applied for by a person or entity that is currently applying for a FST/SP under this Section, or by a person or entity that has previously received a FST/SP under this Section, or by an entity that is providing Personal Wireless Services to the Town from a Wireless Telecommunications Facility Site ["WT Facility Site"] or PWS Facility Site outside the Town.

If a person or entity is applying for a FST/SP and a R/SP, both applications shall be submitted and examined concurrently.

§215-26.J. Application Requirements for PWS Facility/Structure/Tower Special Permit [FST/SP]

§215-26.J.l. General Terms

A PWS Facility Site may not be prepared, developed, or improved on speculation.

A Special Permit shall not be granted for a PWS Facility or Structure/Tower to be built on speculation. If the Applicant is not simultaneously installing a PWS Facility on the Structure/Tower, it shall provide a copy of its existing Lease with a PWS Provider. Said Provider shall provide all necessary data to comply with the terms of this Section as part of the Applicant's application or the Special Permit shall not be granted.

§215-26.J.2. Primary Coverage, Adequate Coverage, and Adequate Capacity

If primary coverage (50% or more) from a proposed PWS Facility is outside the Town, a Special Permit may be denied unless the Applicant demonstrates to the satisfaction of the SPGA that the Applicant has exhausted all legal options to locate within the town that would be primarily receiving service from the proposed PWS Facility.

No new PWS Facility or Structure/Tower shall be permitted unless the SPGA finds the Applicant cannot provide Adequate Coverage and Adequate Capacity to the Town under any of the following conditions:

From any WT Facility Site or PWS Facility Site in the Town or in abutting towns located within five miles for PCS, eight miles for Cellular Service, and eight miles for all other Personal Wireless Services of any boundary of the Town.

From any WT Facility Site or PWS Facility Site in the Town or in abutting towns with distances as described in the preceding paragraph and with any and all adjustments that might provide Adequate Coverage to the Town.

From any existing Structure/Tower within the PWSOD.

By adding Repeaters to existing or permitted Repeater Sites, WT Facility Sites, or PWS Facility Sites in the Town or in abutting towns.

§215-26.J.3. Co-Location and Clustering

The SPGA shall require Co-Location of PWS Facilities and Structures/Towers whenever technically feasible.

The SPGA shall require Clustering of PWS Facilities and Structures/Towers whenever technically feasible.

No PWS Facility shall interfere with then-current configurations of public safety WT Facilities serving the Town.

§215-26.J.4. Design Standards

All network connections to and from the PWS Facility Site and all power to the PWS Facility Site shall he installed underground whenever feasible. During initial construction of the access road to the

PWS Facility Site, if cable is to be laid underground, sufficient conduit shall be laid to accommodate the maximum possible number of PWS Providers licensed to provide Personal Wireless Services to the Town and surrounding areas. The SPGA shall consult with the Applicant and the SPGA's Independent Consultants to determine whether or not the installation of underground utilities is feasible.

The SPGA shall have the right to determine the type of construction of the Structure/Tower.

§215-26.J.4.a. Setbacks

Structures/Towers, Base Stations, and Equipment Shelters shall be located a minimum of 25 feet away from and within the outer boundary of the PWSOD.

§215-26J.4.b. Height Limits

The maximum height of PWS Structures/Towers including Antennas and Equipment shall be the lesser of 105 feet Above Ground Level or the minimum height determined by the Independent Consultants to provide the Applicant Adequate Coverage from the PWS Facility proposed for installation on the Structure/Tower.

No Antenna shall be located less than 25' Above Ground Level unless the SPGA and its Independent Consultants determine otherwise.

§215-26J.4.c. Equipment Shelters

Equipment Shelters shall be designed to be architecturally similar to and compatible with each other, and shall be no more than 12 feet high. Whenever possible, Equipment Shelters shall be joined or clustered so as to appear as one building. Equipment Shelters shall be used only for the housing of Equipment being used for the particular PWS Facility Site on which they are located.

§215-26.J.4.d. Fencing

PWS Facility Sites shall be completely fenced at a distance of no less than 25' from the nearest edge of all Structures/Towers, Base Stations, and Equipment Shelters. Fences shall be built to a height of six (6) feet and gated. Use of razor wire is not permitted.

§215-26.J.4.e. Signs

There shall be no signs, except that the following signs shall be required in the locations indicated:

A sign no greater than two (2) square feet indicating the name of the PWS Facility Site's owner and a 24-hour emergency telephone number shall be posted adjacent to the entry gate.

"No Trespassing" or other warning signs shall be posted on all sides of the fence so that anyone approaching the PWS Facility Site from any direction shall be warned.

All signs shall conform to the sign regulations of this Bylaw.

§215-26J.5. Visibility Standards

PWS Facility Sites, Facilities, and Structures/Towers shall minimize, to the extent feasible, adverse visual impacts on the environment. To ensure this result, the SPGA may impose reasonable conditions including siting, Camouflage, and lighting standards and specifications.

All such requirements shall be maintained by the Special Permit holder such that the visual effect continues to be minimized to the same extent or greater than that required by the Special Permit at the initial installation.

§215-26.J.5.a. Siting

Whenever possible, a new PWS Facility or Structure/Tower shall be sited on the side of a mountain, rather than on the crest, to minimize visual impacts.

§215-26.J.5.b. Camouflage

The SPGA shall have the right to determine all types of Camouflage. The SPGA may require a Structure/Tower to resemble or mimic a native coniferous species of tree to minimize its adverse visual impact.

§215-26.J.5.c. Lighting

Unless required by the Federal Aviation Administration, no lighting of PWS Facility Sites, Facilities, or Structures/Towers is permitted, except for manually-operated emergency lights for use only when operating personnel are on site.

§215-26.J.6. Environmental Standards

§215-26J.6.a. Wetlands

No PWS Facility Site, Facility, or Structure/Tower shall be located within 200' of the edge of any of the following areas: a federal, state, or municipally-designated wetland; the outer riparian zone of a river or perennial stream; or, a state or municipally-certified vernal pool.

§215-26J.6.b. Habitats

No PWS Facility Site, Facility, or Structure/Tower shall be located within the habitat of any rare, endangered, or threatened wildlife or plant species listed in federal, state or municipal registries.

§215-26.J.6.c. Noise

No PWS Facility Site or Facility shall generate noise in excess of 30 decibels at any boundary of the PWSOD. The SPGA may hire a qualified acoustical engineer as an Independent Consultant to assure compliance with this provision.

§215-26.J.7. Safety Standards

§215-26.J.7.a. Aviation Hazards

No PWS Facility or Structure/Tower that would be classified as a hazard to air navigation as defined by FAA regulations (14 CFR) is permitted.

§215-26.J.7.b. Roads and Access

Access shall be provided to the PWS Facility Site, Facility, and Structure/Tower by a roadway that respects the natural terrain, does not appear as a scar on the landscape, and is approved by the SPGA and the chiefs of all Town emergency services to assure emergency access at all times.

Consideration shall be given to design that minimizes erosion, construction on unstable soils or on steep slopes, and effects on wetlands as defined in federal, state, and municipal statutes, bylaws, and regulations.

§215-26.J.7.c. Equipment and Waste Storage

Storage of unused or discarded Antennas or Equipment or anything not used directly for the provision of Personal Wireless Services is prohibited at PWS Facility Sites.

Storage or disposal of oil and hazardous materials and waste at PWS Facility Sites is prohibited.

The meanings of the terms hazardous materials and waste shall be as defined in M.G.L. Chapter 21E, Section 2, and 42 U.S.C. 9601, with future revisions and amendments thereof; and, other applicable federal, state, and municipal statutes, bylaws, and regulations.

§215-26.J.7.d. Stormwater

Stormwater run-off caused by PWS Facility Site improvements shall be mitigated and retained at the PWS Facility Site.

§215-26.J.8. Required Documentation for FST/SP

The Applicant shall provide to the SPGA all the information requirements listed in §215-26.J.8. for each proposed PWS Facility, Structure/Tower, or Major Modification Of An Existing Facility. The

materials submitted by the Applicant to the SPGA shall be in the form of written documentation and shall be certified as required by the SPGA.

§215-26.J.8.a. General Information

The exact legal name, address or principal place of business, and phone number of the Applicant. If the Applicant is not a natural person, it shall also list the state under which it was created or organized.

The name, title, address, and phone number of the person to whom correspondence or communications regarding the application are to be sent. Notice, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the Applicant.

Name, address, phone number, and written consent to apply for this Special Permit, of the owner of the PWS Facility Site on which the Structure/Tower or PWS Facility is proposed.

Name, address, phone number, and written consent to apply for this Special Permit of the owner of the Structure/Tower on which the PWS Facility is proposed.

§215-26.J.8.b. Existing or Permitted WT Facility Sites and PWS Facility Sites

The Applicant shall provide written documentation of all existing or permitted PWS Facility Sites in the Town and existing or permitted WT Facility Sites and PWS Facility Sites in abutting towns located within five miles for PCS, eight miles for Cellular Service, and eight miles for any other Personal Wireless Services from any boundary of the Town.

For each existing or permitted WT Facility Site and PWS Facility Site, it shall demonstrate with written documentation that the WT Facility Site or PWS Facility Site is not already providing, or does not have the potential by adjustment or by using Repeaters to provide, Adequate Coverage and Adequate Capacity to the Town.

Notwithstanding anything else in §215-26.J.8.b.i., §215-26.1.S.b.ii., and §215-26.1.S.b.iii. the Applicant may request that the requirement to provide written documentation be waived or modified as to any or all existing or permitted WT Facility Sites and PWS Facility Sites more than three miles outside and from any boundary of the Town. Such a request shall be submitted in writing and shall be supported by a statement of reasons and supporting material.

The SPGA may waive or modify said requirement if it finds that consideration of the written documentation as to which waiver is sought is not necessary because the intended technology is clearly not feasible for use at said WT Facility Site or PWS Facility Site.

The SPGA's finding as to the waiver request shall be based on all the evidence which may include then-current industry standards, government regulatory standards or materials, and input from the SPGA's Independent Consultants.

§215-26 J.8.b.i. Current Configurations

The written documentation for each existing or permitted WT Facility Site and PWS Facility Site examined and listed shall include the requirements listed in §215-26.J.8.b.i.(a). and §215-26J.8.b.i.(b).

§215-26.J.8.b.i.(a). Structure/Tower

The exact Structure/Tower location: longitude and latitude (to degrees, minutes, seconds); street address; and, number of nearest Utility Pole (if applicable).

Ground elevation above mean sea level at the base of the Structure/Tower.

Height of Structure/Tower Above Ground Level.

Height of Structure/Tower relative to the average tree canopy.

Maximum feasible and allowable structural height of Structure/Tower.

Mechanical specifications of Structure/Tower.

§215-26.J.8.b.i.(b). Antennas and Repeaters

For each Antenna and Repeater on Structure/Tower:

Type.

Manufacturer. Model

number.

Specifications (including mechanical, electrical, and electrical grounding requirements).

Mounting location on Structure/Tower.

Height on Structure/Tower Above Ground Level.

Directional gain.

Bandwidth.

Carrier frequency.

Number of Channels.

Power input and output.

Average and peak power levels.

Duty cycle.

Maximum power output per Channel.

Radial Plots at the highest levels possible that include near fields.

This information shall also be provided for all Antennas and Repeaters in the aggregate.

§215-26.J.8.b.ii. With Adjustments

The Applicant shall demonstrate with written documentation that it has analyzed all possible adjustments to any and all existing or permitted WT Facility Sites and PWS Facility Sites in order to enable the provision of Personal Wireless Services with Adequate Coverage and Adequate Capacity to the Town.

§215-26.J.8.b.iii. With Repeaters

The Applicant shall demonstrate with written documentation that it has analyzed the feasibility of using Repeaters in conjunction any or all existing or permitted WT Facility Sites and PWS Facility Sites in order to enable the provision of Personal Wireless Services with Adequate Coverage and Adequate Capacity to the Town.

Radial Plots of all Repeaters considered for use in conjunction with existing or permitted WT Facility Sites and PWS Facility Sites shall be provided as part of the application.

§215-26.J.8.c. Deeds and Leases

A deed showing all covenants, restrictions, and easements on the property on which the PWS Facility or Structure/Tower is proposed.

A written, irrevocable contract valid for the duration of the existence of the Structure/Tower to own, Lease, or control Available Space for Co-location on the Structure/Tower at fair-market prices and terms for commercial entities or on other reasonable terms for non-commercial entities, without discrimination to other PWS Providers.

A copy of an existing Lease with a PWS Provider if the Applicant is not simultaneously installing a PWS Facility on the Structure/Tower. Said PWS Provider shall provide all necessary data to comply with the terms of this Section as part of the Applicant's application or the Special Permit shall not be granted.

§215-26.J.8.d. Licenses, Permits, and Reviews

For each proposed PWS Facility, Structure/Tower, or Major Modification Of An Existing Facility the documentation shall include copies of all submittals and showings pertaining to: FCC licensing; Environmental Impact Statements and other environmental reviews; FAA Notice of Construction or Alteration; and, all other necessary local zoning and other federal, state, and municipal permits.

Certified documentation of compliance with all other federal, state, and municipal statutes, bylaws, and regulations shall also be provided to the SPGA.

§215-26.J.8.e. Engineering Documents

For each proposed PWS Facility, Structure/Tower, or Major Modification Of An Existing Facility the documentation shall include:

All data, assumptions, and calculations relating to service coverage and power levels regardless of whether categorical exemption from Routine Environmental Evaluation under the FCC rules is claimed.

All information submitted in compliance with requirements of Massachusetts Department of Public Health, 105 CMR 122: NON-IONIZING RADIATION LIMITS FOR: THE GENERAL PUBLIC FROM NON-OCCUPATIONAL EXPOSURE TO ELECTROMAGNETIC FIELDS, EMPLOYEES FROM OCCUPATIONAL EXPOSURE TO ELECTRO-MAGNETIC FIELDS, AND EXPOSURE FROM MICROWAVE OVENS or any revisions and amendments thereof as the Department of Public Health may, by written notice, create.

Aeronautical Studies.

§215-26.J.8.f. Plans and Maps

For each proposed PWS Facility, Structure/Tower, or Major Modification Of An Existing Facility the documentation provided to the SPGA shall include the plans and maps listed in §215-26.J.8.f.i., §215-26.J.8.f.ii., §215-26.J.8.f.iii., and §215-26.J.8.f.iv.

Required plans and engineering plans shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts.

Plans shall be on 24" x 36" sheets, on as many sheets as necessary, and at scales which are no smaller (i.e. no less precise) than specified in §215-26.J.8.f.i., §215-26.J.8.f.ii., §215-26.J.8.f.iii., and§215-26.J.8.f.iv.

Each plan sheet shall have a title block indicating the project title, sheet title, sheet number, date, revision dates, scale, and original seal and signature of the professional engineer and other professionals who prepared the plan.

Survey plans shall be stamped and signed by a professional land surveyor registered in Massachusetts.

The SPGA may waive any of the following requirements for plans and maps if it finds that consideration of the written documentation is not necessary because the requested documentation is clearly not related to the application under consideration for use at the PWS Facility Site.

The SPGA's findings as to the waiver of these requirements shall be based on all the evidence, which may include then-current industry standards, government regulatory standards or materials, and input from the SPGA's Independent Consultants.

Upon completion of installation, a certified document shall be provided to the SPGA that specifies all components that have been installed at the PWS Facility Site.

§215-26J.8.f.i. Facility Site Plans

Plans, elevations, sections, and details shall be shown at appropriate scales but no smaller than 1" = 40' (1:480 or metric equivalent 1:500).

The site plan must have been completed, on the ground, by a professional land surveyor within two years prior to the application date.

The site plan shall include all the information listed in §215-26.1.8.f.i.(a), and §215-26.J.8.f.i.(b).

§215-26.J.8.f.i.(a). Existing Conditions

All boundaries of the PWSOD.

All boundaries of all properties within the PWSOD.

All existing structures and buildings within the PWSOD.

The existing access roadway to and within the PWSOD.

All existing utilities to and within the PWSOD.

All boundaries of all PWS Facility Sites within the PWSOD.

All fences at the boundaries and within the PWSOD.

All existing Structures/Towers, guy wires, Equipment, Equipment Shelters, and Base Stations.

The location of the existing Structure/Tower on which the PWS Facility is proposed: longitude and latitude (to degrees, minutes, seconds); street address; and, number of nearest Utility Pole (if applicable).

Ground elevation above mean sea level at the base of the existing Structure/Tower base.

The entire vicinity within a 400-foot radius of the existing Structure/Tower with topography drawn with a minimum of two-foot (0.6 meter) contour interval.

Stone walls or fence lines, cleared and wooded areas, and individual trees with diameters greater than 12" within a 200-foot radius from the base of the existing Structure/Tower (labeled with their current heights).

§215-26.J.8.f.i.(b). Proposal

Proposed boundaries of the PWS Facility Site.

Proposed location of the Structure/Tower: longitude and latitude (to degrees, minutes, seconds); street address; and, number of nearest Utility Pole (if applicable).

Proposed locations of Structure/Tower, guy wires, Equipment, Equipment Shelter, and Base Station within the PWS Facility Site.

Ground elevations above mean sea level at the base of the proposed Structure/Tower, at the base of any guy wires, and the corners of Equipment, and Equipment Shelter.

Setback distances to the base of the proposed Structure/Tower, guy wires, Equipment, Equipment Shelter, and Base Station.

The entire vicinity within a 400-foot radius of the proposed Structure/Tower with topography drawn with a minimum of two-foot (0.6 meter) contour interval.

Stone walls or fence lines, cleared and wooded areas, and individual trees with diameters greater than 12" within a 200-foot radius from the base of the proposed Structure/Tower (labeled with their current heights).

Boundaries of any wetlands, floodplains, watercourses, vernal pools, and of any bodies of water within 200' of the edge of the proposed PWS Facility Site or any related facilities or access ways.

All proposed improvements to the PWS Facility Site.

Proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines, and whether underground or above ground.

Plans of proposed access driveway or roadway and parking area at the PWS Facility Site, including grading, drainage, and traveled width, and including a cross section of the access drive indicating the width, depth of gravel, paving, or surface materials.

Limits of areas where clearing or altering vegetation is proposed, and justification for any such clearing or alteration.

Proposed alterations that might affect a federal, state, or municipally designated wetland.

Detailed plans for drainage of surface and sub-surface water; plans to control erosion and sedimentation both during construction and as a permanent measure.

Locations and specifics of proposed Camouflaging, landscaping, ground cover, fencing, and signs.

§215-26.J.8.f.ii. Structure/Tower Plans

Plans, elevations, sections, and details shall be shown at appropriate scales but no smaller than 1"= 10'.

The following information shall be provided to the SPGA:

Two cross sections through proposed Structure/Tower drawn at right angles to each other, and showing the ground profile to at least 100 feet beyond the limit of clearing.

Proposed spot elevations at the base of the proposed Structure/Tower.

Dimensions of the proposed height of Structure/Tower Above Ground Level.

Indication of the maximum allowable structural height of the Structure/Tower after addition of any modular sections.

Locations of all Antennas on the Structure/Tower.

Mechanical specifications of Structure/Tower including electrical grounding requirements.

Details of typical Structure/Tower foundation, including cross sections and details. Show all ground attachments, specifications for anchor bolts and other anchoring hardware.

Details of proposed exterior finish and Camouflage of the Structure/Tower.

Height of the Structure/Tower relative to the average tree canopy.

Illustration of the modular structure of the proposed Structure/Tower indicating the heights of sections that could be removed or added in the future to adapt to changing communications conditions or demands.

A professional structural engineer's certified written description of the proposed Structure/Tower and its capacity to support additional Antennas, Repeaters, or other communications facilities at different heights and the ability of the Structure/Tower to be shortened if future communications facilities no longer require the original height.

A description of Available Space on the Structure/Tower, providing illustrations and examples of the type and number of PWS Facilities that could be mounted on the Structure/Tower.

Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration.

§215-26.J.8.f.iii. Antennas and Equipment Plans

Plans, elevations, sections, and details shall be shown at appropriate scales but no smaller than 1"= 10'.

Requirements shall be shown for each proposed Antenna and for all Antennas in the aggregate on the Structure/Tower.

For each Antenna on Structure/Tower:

Type, manufacturer, and model number.

Specifications (including mechanical, electrical, and electrical grounding requirements).

Mounting location on Structure/Tower.

Height on Structure/Tower Above Ground Level.

Directional gain in dB referenced to a half-wave dipole in free space.

Bandwidth as a percentage of the carrier frequency.

Carrier frequency in MHz.

Number of Channels, projected and maximum.

Antenna power input and return loss.

Average and peak power levels.

Duty cycle.

Maximum power input per Channel.

Radial Plots at the highest input power levels possible that include near fields, possible multipath and ground reflectivity effects.

Potential electromagnetic coupling to trees or any other dielectric or metal objects surrounding the PWS Facility; identify potential RF hotspots.

Give the total number of Antennas proposed for the Structure/Tower and their relative positions, polarization, and aperture size.

Also, a polar plot of power densities in watts/cm^2 for all Antennas in their operational configuration including ground reflectivity effects for vertical or horizontal polarization and possible multipath effects.

Specifications for all Equipment shall be provided to the SPGA.

§215-26.J.8.f.iv. Equipment Shelter Plans

Floor plans, elevations and cross sections of proposed Equipment Shelter shall be shown at a scale of no smaller than 1/4" = l'(l:48).

Show representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.

§215-26.J.9. Balloon Test

Within 35 calendar days of submitting an application, Applicant shall arrange to fly, or raise upon a temporary mast, a three-foot-diameter brightly colored balloon at the maximum height and at the location of the proposed PWS Facility or Structure/Tower.

Two dates (tbe second date is in case of poor visibility on the first date), times and location of this balloon test shall be advertised and posted at the town hall by the Applicant, at 7 and 14 days in advance of the first test date in a newspaper with a general circulation in the Town. The Applicant shall inform the SPGA and the Select Board, in writing, of the dates and times of the test, at least 14 days in advance. Tbe balloon shall be flown for at least four consecutive hours sometime between 9:00 a.m. and 5:00 p.m. on the dates chosen.

§215-26.K. Application Requirements for PWS Repeater Special Permit [R/SP]

§215-26.K.1. Eligibility

A person or entity that is applying for, or has received and is in compliance with a current FST/SP under this Section may apply for a R/SP.

A person or entity that is providing PWS to the Town from a Base Station outside the Town may also apply for a R/SP.

§215-26.K.2. Coverage

The use of Repeaters to assure Adequate Coverage or to fill holes within areas of otherwise Adequate Coverage while minimizing the number of required Structures/Towers is permitted and encouraged.

Repeaters shall not be used to extend the signal in a Radial Plot beyond the original boundaries of the Radial Plot without approval by the SPGA.

Applicants shall detail the number, location, power output, and coverage of any proposed Repeaters in their systems and provide engineering data to justify their use.

§215-26.K.3. Location, Co-Location, and Clustering

Within the PWSOD, a Repeater shall be only located on an existing Structure/Tower that meets the standards in §215-26.1. or on a Utility Pole that meets the conditions set forth in §215-26.K.

Outside the PWSOD, a Repeater shall be only located on a Utility Pole that meets the following conditions:

The Utility Pole is being used by a Utility.

All necessary infrastructure to provide service to and from the Utility Pole is in place.

Ducts and conduits to the Utility Pole are in place and have room to accommodate all wiring associated with the Repeater.

Rights-of-way and roadway access are in place.

The Utility Pole meets the requirements of all applicable federal, state and municipal statutes, bylaws, and regulations.

No Repeater shall be located closer than 100 feet to an existing Dwelling Unit, nor less than 25 feet or more than 50 feet Above Ground Level.

No Repeaters shall be located above an elevation of 2000 feet above mean sea level.

§215-26.K.4. Visibility Standards

Repeaters shall be located so as to have the least possible impact on the views of the residents of the Town.

The SPGA may require Camouflaging to reduce the visual impacts of Repeaters.

No Repeater shall be visible from the Appalachian Trail, the Taconic Trail, or other public recreational trails indicated on hiking and trail maps.

All such requirements shall be maintained by the Special Permit holder such that the visual effect continues to be minimized to the same extent or greater than that required by the Special Permit at the initial installation.

§215-26.K.5. Required Documentation for R/SP

The Applicant shall provide to the SPGA all the information requirements listed in §215-26.K.5. for each proposed Repeater or Major Modification Of An Existing Facility.

The materials submitted by the Applicant to the SPGA shall be in the form of written documentation and shall be certified as required by the SPGA.

§215-26.K.5.a. General Information

Exact legal name, address or principal place of business, and phone number of the Applicant. If the Applicant is not a natural person, it shall also list the state under which it was created or organized.

The name, title, address, and phone number of the person to whom correspondence or communications in regard to the application are to be sent. Notice, orders, and other papers may be served upon the person so named, and such service shall be deemed to be service upon the Applicant.

Name, address, phone number, and written consent to apply for this Special Permit of the owner of the Repeater Site on which the Repeater is proposed.

Name, address, phone number, and written consent to apply for this Special Permit of the owner of the Structure/Tower or Utility Pole on which the Repeater is proposed.

§215-26.K.5.b. Deeds and Leases

For each proposed Repeater or Major Modification Of An Existing Repeater the documentation shall include a deed showing all covenants, restrictions, and easements on the property on which the PWS Repeater Site is proposed.

Documentation shall also include a written, irrevocable contract to own, Lease, or control Available Space for Co-Location on a Structure/Tower or to own, Lease, or control Usable Space on a Utility Pole at fair-market prices and terms for commercial entities or on other reasonable terms for non-commercial entities, without discrimination to other PWS Providers.

§215-26.K.5.c. Licenses, Permits, and Reviews

For each proposed Repeater or Major Modification Of An Existing Repeater the documentation shall include copies of all submittals and showings pertaining to: FCC Licensing; Environmental Impact Statements and other environmental reviews; and, all other necessary local zoning and other federal, state, and municipal permits.

Certified documentation of compliance with all other federal, state, and municipal statutes, bylaws, and regulations shall also be provided to the SPGA.

§215-26.K.5.d. Engineering Documents

For each proposed Repeater or Major Modification Of An Existing Repeater, the documentation shall include:

> All data, assumptions and calculations relating to service coverage and power levels regardless of whether categorical exemption from Routine Environmental Evaluation under the FCC rules is claimed shall be provided to the SPGA.
>
> All information submitted in compliance with requirements of Massachusetts Department of Public Health, 105 CMR 122: NON-IONIZING RADIATION LIMITS FOR: THE GENERAL PUBLIC FROM NON-OCCUPATIONAL EXPOSURE TO ELECTROMAGNETIC FIELDS, EMPLOYEES FROM OCCUPATIONAL EXPOSURE TO ELECTRO-MAGNETIC FIELDS, AND EXPOSURE FROM MICROWAVE OVENS or any revisions and amendments thereof as the Department of Public Health may, by written notice, create.

§215-26.K.5.e. Plans and Maps

The Repeater Site layout, grading, and utilities shall be shown at a scale no smaller than 1" = 40 feet (1:480 or metric equivalent 1:500).

For each proposed Repeater or Major Modification Of An Existing Repeater the site plan shall show the following information:

> Location of all abutting properties within 300 feet of proposed Repeater, and names of current owners of each.

The entire vicinity within a 300-foot radius of the Repeater with topography drawn with a minimum of 2 feet (0.6 meter) contour interval.

Exact location (in longitude and latitude, to degrees, minutes, seconds) as well as by street address or pole number (if applicable).

Ground elevation.

Type, manufacturer and model number of proposed Repeater.

Height of proposed Repeater Above Ground Level.

Proposed output frequency.

Proposed number of channels.

Proposed power input.

Proposed maximum power output per channel.

Radial Plots at the highest levels possible.

Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration.

§215-26.L. Evaluation of Special Permit Applications

Upon submission of a complete application for a Special Permit under this Section, the Applicant shall send 15 copies or any other number as requested of the full application to the SPGA.

It shall also send copies of the full application to the SPGA's Independent Consultants for their analysis, review, and comment. It shall notify the SPGA by certified mail of its compliance with this requirement.

The SPGA shall send copies of the full application to environmental and other public and nonprofit entities that administer activities on lands open to the public within the Town for their analysis, review, and comment. The SPGA shall also notify them of public hearing dates. Organizations shall include the National Park Service, the Massachusetts Department of Environmental Management, the Massachusetts Division of Fisheries and Wildlife, the Appalachian Trail Conference, the Appalachian Mountain Club, The Nature Conservancy, the Audubon Society, and the Berkshire Natural Resources Council.

The Applicant for a Special Permit under this Section shall grant permission to the SPGA, Town officers, and Independent Consultants to conduct any necessary site visits with unlimited access.

§215-26.M. Approval Criteria and Findings

In addition to the findings required in §215-6. of the Bylaw, the SPGA shall, in consultation with its Independent Consultants, make all of the following findings before granting a FST/SP or R/SP:

That the Applicant is proposing to locate a PWS Facility or Structure/Tower within a PWSOD, or a Repeater within a PWSOD or on a Utility Pole; and

That the Applicant cannot use existing PWS Facility Sites in the Town or WT Facility Sites or PWS Facility Sites in abutting towns, either with or without the use of Repeaters, to provide Adequate Coverage and Adequate Capacity to the Town; and

That for a FST/SP, if the Applicant does not own the PWS Facility Site, it has a Lease for Available Space on the Structure/Tower at fair-market prices and terms for commercial entities or on other reasonable terms for non-commercial entities; and,

That for a R/SP, if the Applicant does not own the Repeater Site, it has a Lease for Available Space on the Structure/Tower or Usable Space on the Utility Pole at fair-market prices and terms for commercial entities or on other reasonable terms for non-commercial entities; and,

That the Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the PWS Facility Site, Facilities, Structure/Towers, or Repeaters; and,

That the proposal shall comply with FCC 96-326 and any and all other applicable FCC regulations, regarding emissions of electromagnetic radiation and that the required Monitoring program is in place and shall be paid for by the Applicant; and,

That the proposed PWS Facility Site, Facility, Structure/Tower, or Repeater will not have an undue adverse impact on the Town's environmental, scenic, recreational, cultural, historic, archaeological, and other natural and man-made resources; and,

That the Applicant has complied with all local zoning and federal, state, and municipal permitting requirements and regulations.

Any decision by the SPGA to deny an application for a Special Permit under this Section shall conform with §332 [47 U.S.C. 332] (7)(B)(ii),(iii) of the Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

§215-26.N. Monitoring and Evaluation of Compliance

It shall be a condition of any Special Permit under this Section that all PWS Facilities shall be Monitored to determine their compliance with the FCC 96-326 standard for emission of radio-frequency radiation.

Monitoring shall be based on the Monitoring Protocol. A copy of the Monitoring Protocol for each Special Permit shall be on file with the Select Board and the Town Clerk.

§215-26.N.l. Pre-testing

It shall be a condition of any Special Permit granted under this Section that after the granting of a Special Permit and before the Applicant's PWS Facility or Repeater begins transmission the Applicant shall pay for an Independent Consultant to Monitor the background levels of electromagnetic frequency radiation around the PWS Facility Site or Repeater Site on which the PWS Facility or Repeater is located. The Independent Consultant shall use the Monitoring Protocol.

A report of the Monitoring results shall be prepared by the Independent Consultant and submitted to the SPGA, the Select Board, the Board of Health, the Building Inspector, and the Town Clerk in order to determine the PWS Facility's or Repeater's radio-frequency emissions and compliance with FCC regulations.

§215-26.N.2. Initial Test

It shall be a condition of any Special Permit granted under this Section that after the granting of a Special Permit and within 30 calendar days after the Applicant's PWS Facility or Repeater begins transmission, the Applicant shall pay for an Independent Consultant to Monitor the levels of electromagnetic frequency radiation around the PWS Facility Site or Repeater Site on which the PWS Facility or Repeater is located. The Independent Consultant shall use the Monitoring Protocol.

A report of the Monitoring results shall be prepared by the Independent Consultant and submitted to the SPGA, the Select Board, the Board of Health, the Building Inspector, and the Town Clerk in order to determine the PWS Facility Site's or Repeater Site's radio-frequency emissions and compliance with FCC regulations.

Any Major Modification Of An Existing Facility, physical modification of a PWS Facility Site, or the activation of any additional permitted channels shall be cause for new Monitoring in accordance with this subsection.

Any Major Modification Of An Existing Repeater or physical modification of a Repeater Site shall be cause for new Monitoring in accordance with this subsection.

§215-26.N.3. Ongoing Monitoring

It shall be a condition of any Special Permit granted under this Section that in order to determine ongoing compliance with FCC regulations after transmission begins, the owner of any PWS Facility or Repeater shall pay for an Independent Consultant to conduct routine annual Monitoring of electromagnetic frequency radiation emitted from the PWS Facility Site or Repeater Site. The Independent Consultant shall use the Monitoring Protocol.

A report of the Monitoring results shall be prepared by the Independent Consultant and submitted to the SPGA, the Select Board, the Board of Health, the Building Inspector and the Town Clerk in order to determine the PWS Facility Site's or Repeater Site's radio-frequency emissions and compliance with FCC regulations.

Any Major Modification Of An Existing Facility, physical modification of a PWS Facility Site, or the activation of any additional permitted channels shall be cause for new Monitoring in accordance with §215-26.N.2. and §215-26.N.3.

Any Major Modification Of An Existing Repeater or physical modification of a Repeater Site shall be cause for new Monitoring in accordance with this subsection.

§215-26.N.4. Excessive Emissions

If Monitoring reveals that a PWS Facility Site or Repeater Site exceeds the FCC 96-326 standard or any other applicable FCC standard then the owners of all PWS Facilities utilizing that PWS Facility Site shall be so notified. Abutters shall also be notified. Notices shall be posted at the Facility Site or Repeater Site and at the town hall of the Town.

The owner shall submit to the SPGA and the Building Inspector a plan for the reduction of emissions to a level that complies with the FCC 96-326 standard and any and all other applicable FCC regulations within 5 calendar days of initial notification of non-compliance.

That plan shall reduce emissions to the applicable FCC standard within 10 calendar days of initial notification of non-compliance.

Failure to accomplish this reduction of emission within 15 calendar days of initial notification of non-compliance shall be a violation of the Special Permit, and shall be subject to a cessation order and to-penalties and fines as specified in §215-29. under Article VII of the Bylaw.

Such fines shall be payable by all owners of PWS Facilities with Antennas on the PWS Facility Site, or all owners of Repeaters until compliance is achieved.

Compliance shall be demonstrated by use of the Monitoring Protocol in accordance with §215-26.N.2. and §215-26.N.3.

§215-26.N.5. Structural Inspection

It shall be a condition of the Special Permit that the PWS Facility, Structure/Tower, or Repeater owner shall pay for an Independent Consultant (a licensed professional structural engineer) to conduct inspections of the structural integrity and safety or the Structure/Tower (or Utility Pole used for Repeaters). Structures/Towers (or Utility Poles used for Repeaters) shall be inspected every five years, or more frequently if required by the SPGA, the Select Board, the Board of Health, or the Building Inspector. A report of the inspection results shall be prepared by the Independent Consultant and submitted to the SPGA, the Select Board, the Board of Health, the Building Inspector and the Town Clerk.

Any Major Modification Of An Existing Facility (or Major Modification Of An Existing Repeater) that includes changes to the Structure/Tower (or Utility Pole used for a Repeater) dimensions or Antenna numbers or type shall require new structural inspection.

§215-26.N.6. Unsafe PWS Facility Site, Facility, Structure/Tower, or Utility Pole

Should the inspection of any PWS Facility Site, Facility, or Structure/Tower (or Utility Pole used for a Repeater) reveal a structural defect which, in the determination of the Independent Consultant or Building Inspector renders it unsafe, the following actions must be taken:

> Within 10 calendar days of notification of unsafe structure, the owner of the Facility Site, Facility, or Structure/Tower (or Utility Pole used for a Repeater) shall submit a plan to remediate the structural defect to return the Facility Site, Facility, or Structure/Tower (or Utility Pole used for a Repeater) to its original approved specifications.
>
> This plan shall be initiated within 20 calendar days of notification.

Failure to accomplish this remediation of structural defect(s) within 30 calendar days of initial notification shall be a violation of the Special Permit and subject to penalties and fines as specified in §215-29. under Article VII of the Bylaw. Such fines shall be payable by the owner of the PWS Facility Site, Facility, or Structure/Tower (or Utility Pole used for a Repeater) until compliance is achieved.

After 31 calendar days, the SPGA may issue a cessation order and require the dismantling and removal of the unsafe Facility Site, Facility, or Structure/Tower (or Utility Pole used for a Repeater).

Failure to comply may mean the SPGA will order the Facility Site, Facility, or Structure/Tower (or Utility Pole used for a Repeater) removed at the owner's expense, using monies from the Maintenance bond posted by the owner.

§215-26.0. Removal Requirements

§215-26.0.1. Routine Removal Standards

A PWS Provider that wishes to remove a PWS Facility or Repeater shall notify the SPGA, Board of Health, Building Inspector, and Conservation Commission at least 30 calendar days before removal begins.

At the time of removal, the PWS Facility Site or Repeater Site shall be remediated such that all improvements made for the PWS Facility or Repeater are removed.

The PWS Facility Site or Repeater Site from which the PWS Facility or Repeater is being removed shall not be reused as a Facility Site or Repeater Site without applying for another Special Permit.

§215-26.0.2. Cease To Operate Standards

Any PWS Facility or Repeater that Ceases To Operate shall be removed. At the time of removal, the Facility Site or Repeater Site shall be remediated such that all PWS Facility or Repeater improvements that have Ceased To Operate are removed.

If all PWS Facilities on a Structure/Tower have Ceased To Operate in that time, the Structure/Tower shall also be removed and the owner of the Structure/Tower shall revegetate the access road in its entirety to the standards required by the SPGA. Existing trees shall only be removed with the written permission of the SPGA, and only if the SPGA determines such removal of trees is necessary to complete the required removal of PWS Facilities or Repeaters.

§215-26.P. Performance Guarantees

As a condition of the Special Permit, the Applicant shall:

Post an initial cash bond in a reasonable amount determined and approved by the SPGA. This bond shall be in force to cover the costs of remediation of any damage to the landscape that occurs during the clearing of the PWS Facility Site, and to cover the cost of the removal of the PWS Facility, Structure/Tower, or Repeater from the PWS Facility Site, and remediation of the landscape, should the PWS Facility or Repeater Cease To Operate.

Post a maintenance bond for the access road, PWS Facility Site, Structure/Tower, and Repeater in amounts approved by the SPGA.

§215-26.Q. Fees and Insurance

PWS Facility Sites, Facilities, Structures/Towers, and Repeaters shall be insured by the owner against damage to persons or property. The owner shall provide a Certificate of Insurance to the Town Clerk, with copies to the SPGA and Building Inspector, before commencing construction, and on an annual basis thereafter. The Town shall be an additional named insured. Limits for coverage shall be specified by the SPGA as a condition of the Special Permit.

A schedule of fees for PWS Facility, Structure/Tower and Repeater permitting and renewal, any Monitoring of emissions and inspection of Structures/Towers (and Utility Poles used for Repeaters), and any other fees shall be established by the SPGA pursuant to M.G.L. c. 40A, §9. This schedule may be amended from time to time.

§215-26.R. Permit Expiration and Renewal

Any Special Permit granted under this Section shall lapse if the Applicant fails to begin construction in a substantial fashion (as determined by the Building Inspector) on the PWS Facility or Structure/Tower within six months of said grant.

All Special Permits granted under this Section shall be granted for five years with the SPGA retaining the option, at its discretion, to renew said Special Permit for additional five-year periods, if the SPGA determines that the PWS Facility, Structure/Tower, or Repeater so permitted shall have been and shall remain in compliance with all terms and conditions of this Section and Bylaw and of any conditions placed upon the original Special Permit at the time of granting.

§215-27. Other Wireless Telecommunications Facilities

WHEREAS, the Town has adopted Bylaw Sections 215-15. and 215-26. to regulate Personal Wireless Services; and,

WHEREAS, the Town of Mount Washington is undertaking a comprehensive study with respect to regulating the use of land for Wireless Telecommunications Facilities other than for Personal Wireless Services; and,

WHEREAS, there have been significant changes in Federal law regulating wireless communications facilities because of the enactment of the Telecommunications Act of 1996 by the United States Congress; and,

WHEREAS, there have been significant changes in State law regulating the zoning of wireless communications facilities because of the recent decision of the Massachusetts Department of Telecommunications and Energy; and,

WHEREAS, the telecommunications field is experiencing rapidly evolving technology that offers alternatives and modifications to towers, such as placement of antennas on other structures and concealment of equipment; and,

WHEREAS, the Town may have a limited number of sites feasible or desirable for the placement of Wireless Telecommunications Facilities; and,
WHEREAS, the Town wishes to act carefully in a field with evolving law and technology, to investigate ways to preserve the character of the community while serving the needs of its people, and to devise an orderly process for granting permits by drafting an amendment to the Bylaw which is comprehensive, practical, equitable, and addresses the concerns of the Town on number, size, appearance, site standards, and location of Wireless Telecommunications Facilities; and,

WHEREAS, it is desired to protect the Town from ill-advised and inappropriate development of Wireless Telecommunications Facilities pending a thorough review and the formulation of such a zoning amendment; and,

WHEREAS, the Planning Board has determined that nine months is necessary for such a comprehensive review and development of a Bylaw Subsection on Wireless Telecommunications Facilities other than for Personal Wireless Services;

Now, therefore, no Wireless Telecommunications Facility other than a Personal Wireless Services Facility or Repeater shall be permitted before April 22, 2000. Nor shall any Wireless Telecommunications Facility other than a Personal Wireless Services Facility be added to existing and legal communications structures and towers or a Repeater be added to existing and legal communications structures, towers, and utility poles in the Town before April 22, 2000. Nor shall any Special Permit be issued nor any Building Permit be issued for any Wireless Telecommunications Facility other than a Personal Wireless Services Facility or Repeater before April 22, 2000.

Personal Wireless Services Facilities and Repeaters shall only be permitted according to §215-15. and §215-26..of the Bylaw.

Terms defined and applying to this Section only:

Personal Wireless Services: Commercial Mobile Services, unlicensed wireless services, and common carrier wireless exchange access services. These services include: Cellular Services, Personal Communications Services, Specialized Mobile Radio Services, Enhanced Specialized Mobile Radio Services, and Paging Services. These services may be provided by persons or commercial or non-commercial entities, and may or may not be provided in exchange for fees or payments.

Personal Wireless Services Facility: Any and all materials, antennas, equipment (excluding Repeaters), structures/towers, base stations, and equipment shelters used to broadcast and receive the radio-frequency waves that carry Personal Wireless Services; and, any and all locations of said materials, antennas, equipment (excluding Repeaters), structures/towers, base stations, and equipment shelters, or any parts thereof.

Repeater: A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas not able to receive adequate coverage directly from a base station.

Section: §215.27. of the Zoning Bylaw of the Town of Mount Washington, Massachusetts.
Wireless Telecommunications Facility: Any and all materials, antennas, equipment (other than customer-premises equipment), structures/towers, base stations, equipment shelters, and Repeaters used to provide Wireless Telecommunications Services; and, any and all locations of said materials, antennas, equipment, structures/towers, base stations, equipment shelters, and Repeaters, or any parts thereof.

Wireless Telecommunications Services: Services that facilitate the transmission of writing, signs, signals, pictures, and sounds of all kinds without the aid of wire, cable, or other similar connection between the points of origin and reception of such transmission. These services may be provided by persons or commercial or non-commercial entities, and may or may not be provided in exchange for fees or payments.

Definitions of other terms used in this Section shall be found in §215-2. and §215-3. and §215-26. of the Bylaw.