

Act No. 1.

Sponsored By: David Forster

LOCAL LAW

INTRO. NO. 1 - 1999

OF THE TOWN OF EAST OTTO
COUNTY OF CATTARAUGUS
STATE OF NEW YORK

A LOCAL LAW AMENDING THE ZONING ORDINANCE
OF THE TOWN OF EAST OTTO
TO REGULATE COMMUNICATION TOWERS

Pursuant to Article 10 of the Municipal Home Rule Law

BE IT ENACTED by the Town Board of the Town of East Otto, Cattaraugus County,
New York, as follows:

SECTION 1 - PREAMBLE

The Planning Board of the Town of East Otto has recommended that the Town Board adopt the within Local Law for the purposes, *inter alia*, of protecting and providing for the public health, safety and general welfare of the Town and guiding the future growth and development thereof by adopting regulations applicable to the siting and use of cellular towers in the Town.

SECTION 2 - STATEMENT OF PURPOSE

The Town Board hereby determines that it is necessary for the protection of public health, safety and general welfare of the Town and to properly guide its future growth and development by adopting regulations applicable to the siting and use of cellular towers.

SECTION 3 - SUPERSESSION OF TOWN LAW

This local law is intended to supersede and does supersede the provisions of §§264 and 265 of the Town Law to the extent that such statutory provisions establish procedures for the adoption and amendment of zoning ordinances.

SECTION 4 - AMENDMENT OF ARTICLE IV OF ZONING ORDINANCE

Article IV, Section 4.2 of the Zoning Ordinance of the Town of East Otto, effective November 16, 1993, as previously amended, entitled "Definitions", is hereby amended to include the following:

APPLICANT: any person, persons, corporation, partnership, joint venture or other entity making application for approval of a special use permit or other permit required by the terms of this local law.

ANTENNA: an arrangement of wires or metal rods used in transmitting or receiving electromagnetic waves.

BREAKPOINT: the location on a communication tower of a designed feature which, in the event of a tower failure, would result in the tower falling within the boundaries of the property on which it is located.

COMMUNICATION TOWER: a guyed, monopole or self-support tower constructed as a freestanding structure, or in association with a building, other permanent structure or equipment, containing one or more antenna intended for transmitting or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electromagnetic communication.

DISTRICT or ZONING DISTRICT: refers to zoning districts as defined in the Town of East Otto Zoning Ordinance.

EMF: electromagnetic field.

GUYED TOWER: a communication tower that is supported, in whole or in part, by a system of guy wires and ground anchors.

MAXIMUM HEIGHT: the difference in elevation between the top of a communication tower and the elevation of the ground at the base of the tower. In the case of towers mounted on buildings or other structures, the maximum height shall be measured from the elevation of the ground at its lowest point immediately adjacent to such building or structure.

MONOPOLE TOWER: a communication tower consisting of a single pole constructed without guy wires and ground anchors.

"NIER": Non-ionizing electromagnetic radiation.

PLANNING BOARD: the Planning Board of the Town of East Otto.

SELF-SUPPORT TOWER: a communication tower that is constructed without guy wires and ground anchors.

TOWN BOARD: the Town Board of the Town of East Otto.

UTILITY SERVICE FACILITIES: elements of a utility distribution, collection or transmission network required by their nature to be relatively dispersed throughout the service area. Typical utility service facilities include, but are not limited to, electrical distribution substations, sewage lift stations and telephone exchange buildings and structures.

100 PERCENT CLEAR ZONE: the requirement that, in the event of a communication tower failure, the entire height of the tower would fall completely within the boundary of the property on which it is located.

SECTION 5 - AMENDMENT OF ARTICLE XVIII OF THE ZONING ORDINANCE

Article XVIII, previously EFFECTIVE DATE is renumbered to be Article XIX of the Town of East Otto Zoning Ordinance.

The following Article XVIII, entitled "COMMUNICATION TOWERS", is hereby enacted, effective ten days following publication thereof as required by Town Law §133:

18.1. PURPOSE OF THIS ARTICLE.

18.1.1 The regulations of this article are intended to:

18.1.1.1 provide for the appropriate location and development of communication towers to serve the residents and businesses of the Town of East Otto; and

18.1.1.2 minimize adverse effects of towers and accessory structures through careful design, siting, and screening; and

18.1.1.3 avoid potential damage to adjacent properties from tower failure through engineering and siting of the tower structures; and

18.1.1.4 maximize the use of any new or existing communication tower to reduce the number of towers needed in the area; and

18.1.1.5 guarantee that the tower shall be removed, without cost to the Town when it ceases to be utilized or becomes unsafe.

18.2. WHERE PERMITTED

18.2.1 Communication towers will be permitted only in Agricultural Districts located in the Town of East Otto.

18.2.2 Communication towers may be placed in a Residential District by special permission of the Town Board upon recommendation of the Planning Board. Towers located in a Residential District shall be limited to non-commercial use by the owner of the property on which the tower is located.

18.3. REGULATIONS

18.3.1 The Regulations specified in this section shall apply in addition to any requirements for the zoning district in which the communication tower or accessory structure is to be located.

18.3.2 Certification required. All plans for construction of communication towers including foundation plans shall be certified by a professional engineer licensed to practice in the State of New York. The completed construction shall also be certified for compliance with the plans and specifications by a professional engineer licensed to practice in the State of New York.

18.3.3 Communication towers shall be located to ensure compatibility with surrounding land uses. To help ensure compatibility with surrounding land uses and proposed uses the applicant shall furnish any information which may be required by the Town Board, the Planning Board, the Town Engineer or any other person or persons employed by the Planning Board to fully review and evaluate the potential impact of a proposed tower.

18.3.4 A line of sight analysis may be required by the Town Planning Board. If required, it shall include the following information:

18.3.4.1 Identification of significant existing natural and man made features adjacent to the proposed tower location, to indicate those features that will provide buffering for adjacent properties and public rights-of-way.

18.3.4.2 Identification of at least three (3) specific points within the 2,000 foot radius of the proposed tower from which the line of sight analysis is presented. At least one (1) of these points selected, shall be at the point of highest elevation within the 2,000 foot radius, excepting, of course, the site of the tower location. The exact location of the specific points to be included within the line of sight analysis shall be determined in coordination with the Town Engineer prior to preparation and completion of the analysis.

18.3.4.3 Statement as to the potential visual and aesthetic impacts of the proposed tower on all adjacent properties.

18.3.4.4 Such other information as may be required by the Planning Board to fully review and evaluate the potential impact of the proposed tower.

18.3.5 A visual impact analysis, if required by the Town Planning Board, shall be prepared and signed by a professional engineer licensed to practice in the State of New York. The Town of East Otto may employ, at the expense of the applicant, professional assistance to review the findings and conclusions of the visual impact study.

18.3.6 The Planning Board may deny any application for a permit for a communication tower if the line of sight analysis indicates that any of the following may occur:

18.3.6.1 the tower may adversely affect the surrounding neighborhood, indicated when an average of at least 50% of the total height of the tower will be visible from one or more of the points utilized for the line of sight analysis or;

18.3.6.2 the proposed tower will be of a height, bulk and scale that is not compatible with the surrounding residential and nonresidential uses or;

18.3.6.3 the location, type or intensity of lighting will adversely affect the land uses or proposed uses in the vicinity of the tower.

18.3.7 Additional uses permitted on site:

18.3.7.1 Communication towers may be located on sites containing another principle use in the same buildable area. Communication towers may occupy a leased parcel meeting minimum lot size requirements of the district in which it is located. The separation of a parcel for such use shall require Planning Board approval of a subdivision as specified in the Town of East Otto Subdivision Regulations. When joint use of a lot is permitted, the requirements for separation between the tower and any other buildings or structures shall apply. An exception to this requirement may be granted in the case of unoccupied structures used to house equipment essential to the operation of the tower.

18.3.7.2 When two (2) or more parcels are utilized for the purpose of meeting separation or setback requirements, the applicant must provide documentary evidence, that any property so utilized will not be used in any manner which would violate the separation or setback requirements. This separation between towers and other on site uses is required to provide for the health, safety and welfare of individuals and structures occupying the same site.

18.3.7.3 Communication towers may not be located on joint use sites where the other use of the site includes storage, distribution or sale of volatile, flammable, explosive or hazardous materials, including, but not limited to, LP gas, propane, gasoline, natural gas, and corrosive or dangerous chemicals.

18.3.8 Additional antennae, communication dishes and similar receiving or transmitting devices. Any antennae, communication dishes or similar receiving or transmitting devices proposed for attachment to an existing communication tower shall require application to the Planning Board for a permit and shall require review in the same manner as required for the original installation. The intent of this requirement is to ensure the structural integrity, visual aesthetics and land use compatibility of communication towers upon which additional antennae, communication dishes or other similar devices are to be installed. The application for approval to install additional antennae, communication dishes or other similar devices shall include certification from a professional engineer licensed to practice in the State of New York, stating that the additional devices will not adversely affect the structural integrity of the tower.

18.3.9 Shared use of Communications towers. The Planning Board may require the applicant to provide the following on its application:

18.3.9.1 a statement from the Cattaraugus County Planning Board regarding the availability of tower facilities either existing or approved but unbuilt that may meet the needs of the applicant.

18.3.9.2 a written evaluation of the feasibility of sharing a communication tower if an appropriate communication tower or towers is available. The evaluation shall analyze, but is not limited to the following factors:

18.3.9.2.1 structural capacity of the tower or towers;

18.3.9.2.2 radio frequency interference;

18.3.9.2.3 geographic area service requirements;

18.3.9.2.4 mechanical or electrical incompatibilities;

18.3.9.2.5 ability or inability to locate necessary equipment on the tower or towers;

18.3.9.2.6 cost, if fees or costs involved in sharing would substantially exceed the cost of a new tower over a period of twenty (20) years.

18.3.9.2.7 any restrictions or limitations of the Federal Communications Commission that would preclude the sharing of the tower or towers.

18.3.9.3 A tower that is found to be inappropriate for sharing shall be assumed inappropriate for sharing the same type of facilities in the future. The Planning Board shall maintain a record of all such findings and shall notify the Cattaraugus County Planning Board of any such findings and shall provide a list of any such towers to future applicants. Such towers shall not require evaluation on future applications for similar facilities.

18.3.9.4 The Planning Board shall not approve an application for a communications tower if, in the opinion of the Board, a shared facility is reasonably available to the applicant.

18.3.10 Setbacks and related location requirements.

18.3.10.1 Communication towers shall comply with the location requirements of Tables 1 through 3 contained herein.

18.3.10.2 All towers and other structures to be located on the same property shall conform to the setback requirements established in the Town of East Otto Zoning Ordinance.

18.3.11 Compliance with requirements of other governmental agencies. The applicant shall furnish sufficient proof of compliance with the requirements of the State

Environmental Quality Review Act, the Federal Aviation Administration, the Federal Communications Commission and any other Federal, State, or County agency having jurisdiction over the placement and operation of communication towers and facilities. The Planning Board may employ a consultant to review and evaluate the documentation of such compliance and the applicant shall be required to pay the cost of such review in addition to the application fees required by the Town of East Otto Fee Schedule.

18.3.12 Fencing and landscaping requirements.

18.3.12.1 Where required by the Location Tables contained herein, a minimum 8 foot high fence shall be erected around the base of the communications tower. The purpose of this fence is to prevent any unauthorized person or persons from accessing the tower, therefore it shall meet at least the following requirements:

18.3.12.1.1 in addition to the eight foot height requirement, a minimum of three (3) stands of barbed wire shall be placed at the top of the fence;

18.3.12.1.2 the bottom of the fencing material shall be no more than six (6) inches above the finished grade line;

18.3.12.1.3 access gates shall be kept locked at all times except when authorized personnel are within the fenced area;

18.3.12.1.4 the fence shall be inspected a minimum of once each month and any repairs required to maintain the above requirements shall be made immediately.

18.3.13 Warning signs.

18.3.13.1 If high voltage electricity is necessary for the operation of the tower or accessory facilities, warning signs indicating high voltage shall be permanently attached to the fence, at least one sign for each side and not more than 40 feet apart.

18.3.13.2 No Trespassing signs shall be permanently attached to the fence at least one for each side and not more than 40 feet apart.

18.3.14 Lighting. Artificial tower lighting shall be limited to mandatory safety lighting required by Federal, State or County regulatory agencies having jurisdiction over communications towers. Security lighting around the tower may be permitted by the Code Enforcement Officer if such lighting does not adversely affect nearby residents or property owners. If such security lighting is subsequently found to adversely affect nearby properties, it shall be removed or disabled except during emergency situations.

18.3.15 Non-interference. The applicant must submit a statement signed by a professional engineer, licensed to practice in the State of New York, certifying that the construction or operation of the tower will not interfere with the usual and customary transmission or reception of radio, television, telephone, or other service enjoyed by area residential and nonresidential properties. If such interference does become a problem, the owner, operator, lessee, or carrier shall jointly or severally take immediate action to correct the problem in accordance with Federal regulations governing electromagnetic interference problems.

18.3.16 Monopoles, Communication discs prohibited. Unless specifically authorized by the Planning Board upon recommendation of the Town Engineer, communications discs may not be installed on monopole communication towers.

18.4. STATEMENT OF OPERATIONS REQUIREMENTS. As required by the Location Tables contained herein, the applicant shall submit a written operations procedure which shall include but not be limited to the following:

18.4.1 Equipment storage. Mobile or immobile equipment not currently being used in direct support of the tower operation or repair shall not be parked or stored on the site of the communications tower.

18.4.2 Signs and advertising. The use of any portion of the tower or the accessory facilities for signs or advertising purposes including company name, banners, streamers, etc. is prohibited. The exceptions to this rule are the warning signs described in paragraph 3.13 herein and one sign, not more than ten (10) square feet in area, stating name of the company, address, and emergency phone numbers.

18.4.3 Inspections. Periodic inspection of communications towers will be required to ensure structural integrity. Such inspections will be required as follows:

18.4.3.1 monopole towers, at least once every ten (10) years;

18.4.3.2 self-support towers, at least once every five (5) years; and

18.4.3.3 guyed towers, at least once every three (3) years.

18.4.3.4 Inspections shall be conducted by a professional engineer licensed to practice in the State of New York. A written report of these inspections shall be filed with the Code Enforcement Officer of the Town. If the inspection indicates any repairs or improvements are required, the owner, operator, lessee, or carrier shall make or cause to be made, jointly or severally, any such repairs. If the prescribed repairs are not made within sixty (60) days after the date of inspections, the Town Board may require the tower to be removed.

18.4.4 Replacement of nonconforming communication towers. Any nonconforming communication tower, antenna, or similar transmitting device that becomes damaged shall be repaired or replaced subject to the requirements of this Local Law.

TABLE 1

Location Requirements Communications Towers 50 to 100 Feet in Height

	Monopole	Guyed	Self-Support
Height	50-100 feet	50-100 feet	50-100 feet
Required setback from property line	Greater of 20% of tower height or required zoning district setback	Greater of 100% of break point or required zoning district setback	Greater of 20% of tower height or required zoning district setback
Minimum distance from residential zoning district <i>or</i> required structures	500 feet	500 feet	500 feet
Minimum distance between towers	1000 feet	1000 feet	1000 feet
Minimum distance from other on sit principal uses	Greater of 20% of tower height or 25 feet	Greater of 100% of breakpoint or 25 feet	Greater of 20% of tower height or 25 feet
Minimum setback for tower supports	Greater of 20 feet or required setback of zoning district	Greater of 20 feet or required setback of zoning district	Greater of 20 feet or required setback of zoning district
Review	Planning Board	Planning Board	Planning Board
Line of sight analysis to be provided	If required by Planning Board	If required by Planning Board	If required by Planning Board
Setback from public highway	Greater of tower height or zoning district requirement	Greater of tower height or zoning district requirement	Greater of tower height or zoning district requirement
Fencing Required	yes	yes	yes
Statement of Operations Procedure	no	no	no

TABLE 2

Location Requirements for Communications Towers 101 to 150 Feet in Height

	Monopole	Guyed	Self-support
Height	101-150 feet	101-150 feet	101-150 feet
Required setback from property line	Greater of 20 % of tower height or required zoning district setback	Greater of 100% of breakpoint or required zoning district setback	Greater of 20 % of tower height or required zoning district setback
Minimum distance from residential zoning district <i>or</i> residential structures	500 feet	500 feet	500 feet
Minimum distance between towers	1000 feet	1000 feet	1000 feet
Minimum distance from other on site principal uses	20% of tower height	100% breakpoint	20% of tower height
Minimum setback for tower supports	Greater of 20 feet or required setback for zoning district	Greater of 20 feet or required setback for zoning district	Greater of 20 feet or required setback for zoning district
Review	Planning Board	Planning Board	Planning Board
Line of sight analysis to be provided	If required by Planning Board	If required by Planning Board	If required by Planning Board
Setback from public highway	Greater of tower height or zoning district requirement	Greater of tower height or zoning district requirement	Greater of tower height or zoning district requirement
Fencing Required	yes	yes	yes
Statement of Operations Procedure	If required by Planning Board	If required by Planning Board	If required by Planning Board

TABLE 3.1

Location Requirements for Communications Towers More than 150 Feet in Height

	Monopole	Guyed	Self-Support
Height	Greater than 150 feet	Greater than 150 feet	Greater than 150 feet
Required setback from property line	Greater of 20% of tower height or required setback of zoning district	Greater of 100% of breakpoint or required setback of zoning district	Greater of 20% of tower height or required setback of zoning district
Minimum distance from residential zoning district or residential structures	500 feet	500 feet	500 feet
Minimum distance between towers	1000 feet	1000 feet	1000 feet
Minimum distance from other on sit principal uses	20% of tower height	100% breakpoint	20% of tower height
Minimum setback for tower supports	Greater of 20 feet or required setback for zoning district	Greater of 20 feet or required setback for zoning district	Greater of 20 feet or required setback for zoning district
Review	Planning Board	Planning Board	Planning Board
Line of Sight analysis to be provided	yes	yes	yes
Setback from public highway	Greater of tower height or zoning district requirement	Greater of tower height or zoning district requirement	Greater of tower height or zoning district requirement
Fencing Required	yes	yes	yes
Statement of Operations Procedure	If required by Planning Board	If required by Planning Board	If required by Planning Board

18.7 EFFECTIVE DATE

This Local Law shall become effective upon filing in the office of the Secretary of State.

18.5. REMOVAL OF OBSOLETE OR UNUSED FACILITIES.

18.5.1 Removal.

18.5.1.1 Obsolescence or discontinuance of use. The applicant shall submit to the Planning Board a letter of intent committing the tower owner and his/her successors in interest to remove the tower, antenna(e), accessory structures and other improvements if the communication tower becomes technically obsolete or ceases to be used for its original intended purpose for twelve (12) consecutive months. The owner, operator, lessee or carrier shall notify the Code Enforcement Officer within thirty (30) days after any such facility ceases to be used for its original intended purpose and removal thereof shall be completed within ninety (90) days after the expiration of such twelve (12) month period.

18.5.1.2 Such letter of intent shall also commit the applicant and its successors in interest to remove the tower and accessory structures within sixty (60) days following receipt of a written report of an inspection indicating that repairs or improvements are required, unless such repairs or improvements are completed within such time period.

18.5.2 Security. The applicant, at the time of obtaining a building permit, must provide a financial security bond for the construction, maintenance and removal of the telecommunication facility, naming the Town of East Otto as Obligee, in an amount to be approved by the Planning Board, but not less than Twenty-Five Thousand Dollars (\$25,000.00). The applicant shall agree to continually renew the board throughout the lifetime of the telecommunication facility and the Planning Board shall the continuing authority and right to review said bond and its amount and reasonably modify the amount in terms of the same if it is not consistent with the intent of this Article.

18.6. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Local Law is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

NOTICE OF PUBLIC HEARING
ON A PROPOSED LOCAL LAW OF
THE TOWN OF EAST OTTO

ENTITLED:

"A Local Law Amending the Zoning Ordinance of the Town of East Otto to Regulate
Communication Towers"

LEGAL NOTICE IS HEREBY GIVEN that, pursuant to a resolution of the Town Board
of the Town of East Otto, adopted November 23, 1999, the said Town Board will hold a
public hearing at the Town Hall in the Town of East Otto, New York on the 14th day of
December, 1999, at 9:00 o'clock p.m. to hear all interested persons for or
against the adoption of a proposed Local Law entitled:

"A Local Law Amending the Zoning Ordinance of the Town of East Otto to Regulate
Communication Towers"

BY ORDER OF THE TOWN BOARD OF THE TOWN OF EAST OTTO:

BY: Helen Lincoln
Clerk

Act No. 1.

Sponsored By: Thomas Heim

**AUTHORIZING PUBLIC HEARING ON LOCAL LAW
INTRODUCTORY NO. 1. - 1999**

WHEREAS, there has been duly presented and introduced at a meeting of the Town Board of the Town of East Otto, held on November 23, 1999, a proposed Local Law entitled: "A Local Law Amending the Zoning Ordinance of the Town of East Otto to Regulate Communication Towers", and

WHEREAS, no Local Law shall be adopted until a Public Hearing thereon has been held by the town Board of the Town of East Otto upon at least five (5) days notice, now, therefore, be it

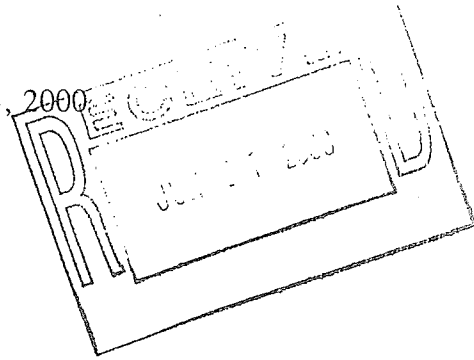
RESOLVED, that a Public Hearing shall be held on the said proposed Local Law by this board on the 14th day of December, 1999 at 9:00 o'clock p.m. at the Town Hall, East Otto, New York, and that at least five (5) days notice of such Hearing shall be given by the Town Clerk by the due posting thereof upon the Bulletin Board of the Town and by publishing such notice at least once in the official newspaper of the Town.



STATE OF NEW YORK
DEPARTMENT OF STATE
41 STATE STREET
ALBANY, NY 12231-0001

ALEXANDER F. TREADWELL
SECRETARY OF STATE

June 15, 2000



DARLENE A. DRY
41 MAIN STREET
PO BOX 227
SALAMANCA, NY 14779-0227

RE: Town of East Otto, Local Law 1, 1999, filed 06/12/2000

The above referenced material was received and filed by this office as indicated. Additional local law filing forms will be forwarded upon request.

Sincerely,

State Records & Law Bureau
(518) 474-2755