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Town of Lenox

Planning Board

Meeting Agenda

October 25 2022

6:00 p.m.

MEETING AGENDA

Hybrid Meeting

Physical meeting: Town Hall

Zoom Link

<https://us02web.zoom.us/j/88285447913?pwd=UENES3paRVR2SIVmRVpuT1I3c3gxQT09>

Meeting ID: 882 8544 7913

Passcode: 476323

1. **Form A:** 390 Housatonic Street
2. **Wireless Zoning Bylaw Amendment:**
 - a. Discuss mapping work conducted by the Town's consultant, Isotrope LLC; discuss location preferences and draft bylaw language to prepare for a Special Town Meeting in November (t11/17); discuss wireless bylaw content; discuss zoning bylaw amendment public hearing schedule for Special Town Meeting.
 - b. Public comment/questions
3. **Approval of Minutes**
 - October 11, October 18
 - July 26, August 9, September 13 pending completion
4. **Adjourn**

A meeting packet is available on the Town of Lenox Planning Board webpage. It will be available no later than Tuesday, October 25th: <https://www.townoflenox.com/planning-board>

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One tap mobile

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Dial by your location

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+1 719 359 4580 US

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 360 209 5623 US

+1 386 347 5053 US

+1 564 217 2000 US

+1 669 444 9171 US

+1 669 900 9128 US (San Jose)

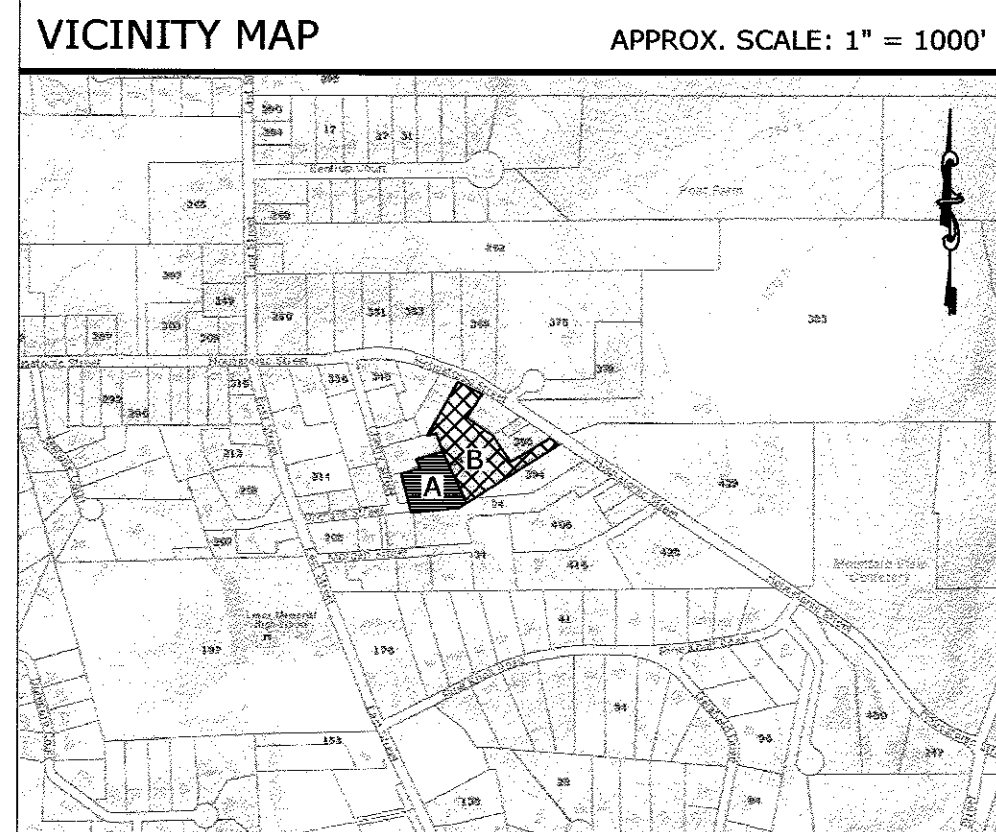
Meeting ID: 882 8544 7913

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Find your local number: <https://us02web.zoom.us/j/88285447913?pwd=UENES3paRVR2SlVmRVpuT1I3c3gxQT09>

1. This Plan of Land is intended solely to represent the boundary lines of the subject property.
2. Unless otherwise noted hereon, this survey plan shall not be construed as depicting the presence, absence, or limits of any or all regulated wetlands or floodplains. Any surface water features shown, such as streams or ponds, are not represented as indicating limits of wetland resource areas.
3. No other permits, approvals, uses, site conditions or suitability are expressed or implied hereby, either directly or by omission.
4. All parcels are subject to and with the benefit of all rights, restrictions, conditions, easements, leases, encumbrances and appurtenances of record.
5. Endorsement does not imply compliance with Wetlands Protection Act or zoning.
6. This survey was prepared without the benefit of an attorney's abstract of title and/or title report and is subject to any statement of facts such abstract or report would have revealed. This property was surveyed by the possession lines found at the time the survey was made.
7. Horizontal Datum is based upon plan entitled "Map of Building Plots Lenox Heights Lenox, Mass.," and filed in Berkshire Middle District Registry of Deeds, Plan Book 417-J Page 134.

Max. Building Coverage (%) = 20



SCALE: 1" = 40'	DWN. BY: HMB	CHK. BY: FJH
DATE: October 12, 2022	DWG. NO. S3099W03-ANR	
JOB NO. S3099	Layout Tab: W01	

PLAN BK 417-J PG 134

Lenox Land

From: Gwen Miller
Sent: Thursday, October 20, 2022 9:25 AM
To: Tom Delasco; Pam Kueber; sue lyman; Kate McNulty-Vaughan;
jh@jharwoodarchitect.com
Cc: Lenox Land
Subject: Fw: Additional maps
Attachments: Existing + Lenox Mtn.JPG; Existing + Town Park at 150.JPG

Good morning,

For your review and for the meeting packet.

Best,
Gwen

Gwen M. Miller, AICP, *She/Her/Hers*

Town of Lenox

Land Use Director/Town Planner

gmiller@townoflenox.com

(413) 637-5500 x 1203

www.townoflenox.com

From: David Maxson <david@isotrope.im>
Sent: Wednesday, October 19, 2022 6:36 PM
To: Gwen Miller <gmiller@townoflenox.com>
Subject: Additional maps

Gwen

Here are maps of coverage from the Town Park above the water tank and from Lenox Mountain.

On further inspection, the spot I picked at the Town Park is just barely in the FAA notification radius of the airport. Moving it a hundred or so feet south will clear that so there will be no risk of it needing lighting. Ground elevation drops about 20 feet -- not a big deal.

Town Park is a very tantalizing location for serving the town center area and being hundreds of feet from nearest residences. Lenox Mountain is too remote to be of much use.

Best

David

--

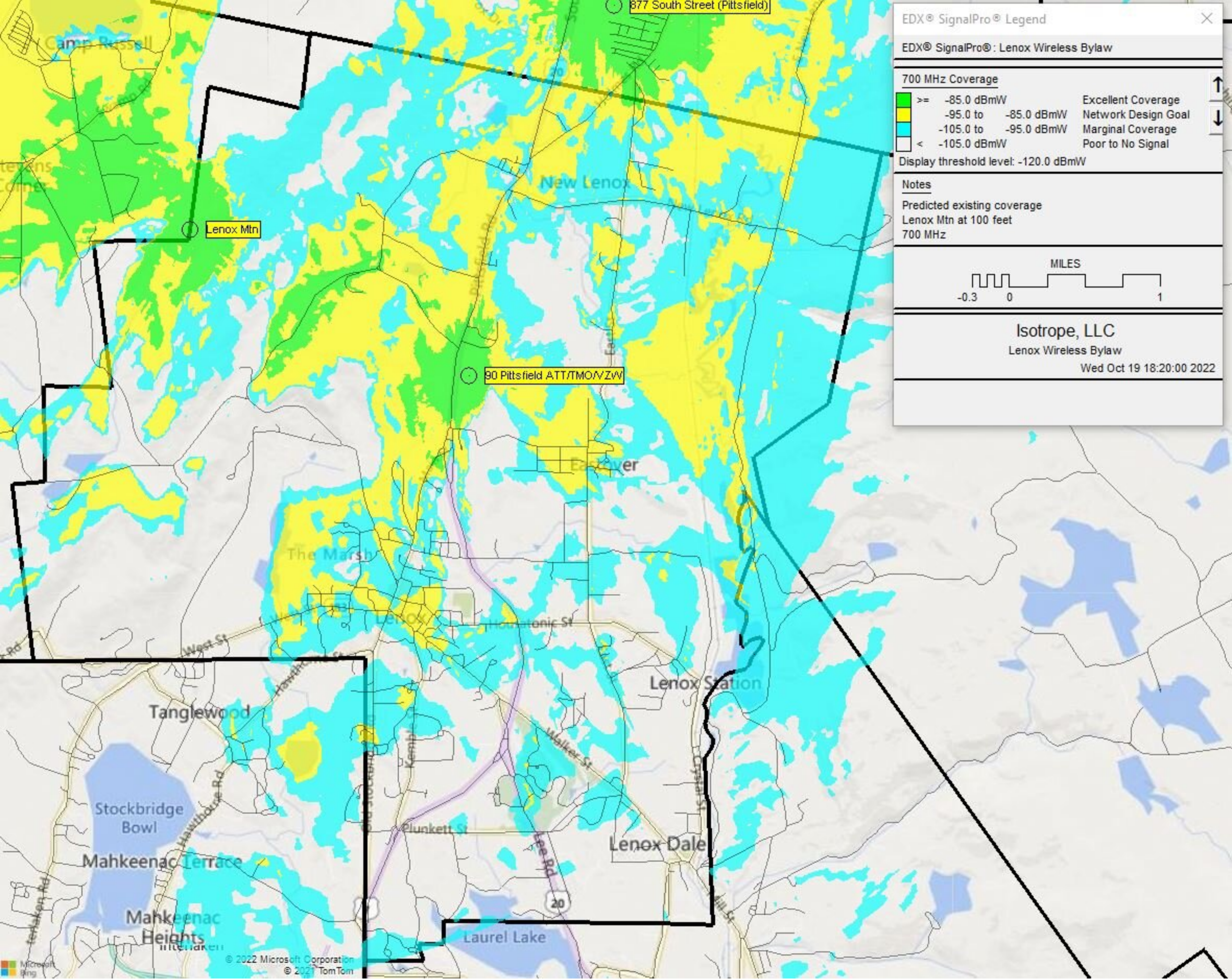
David Maxson, WCP
Isotrope, LLC
503 Main Street

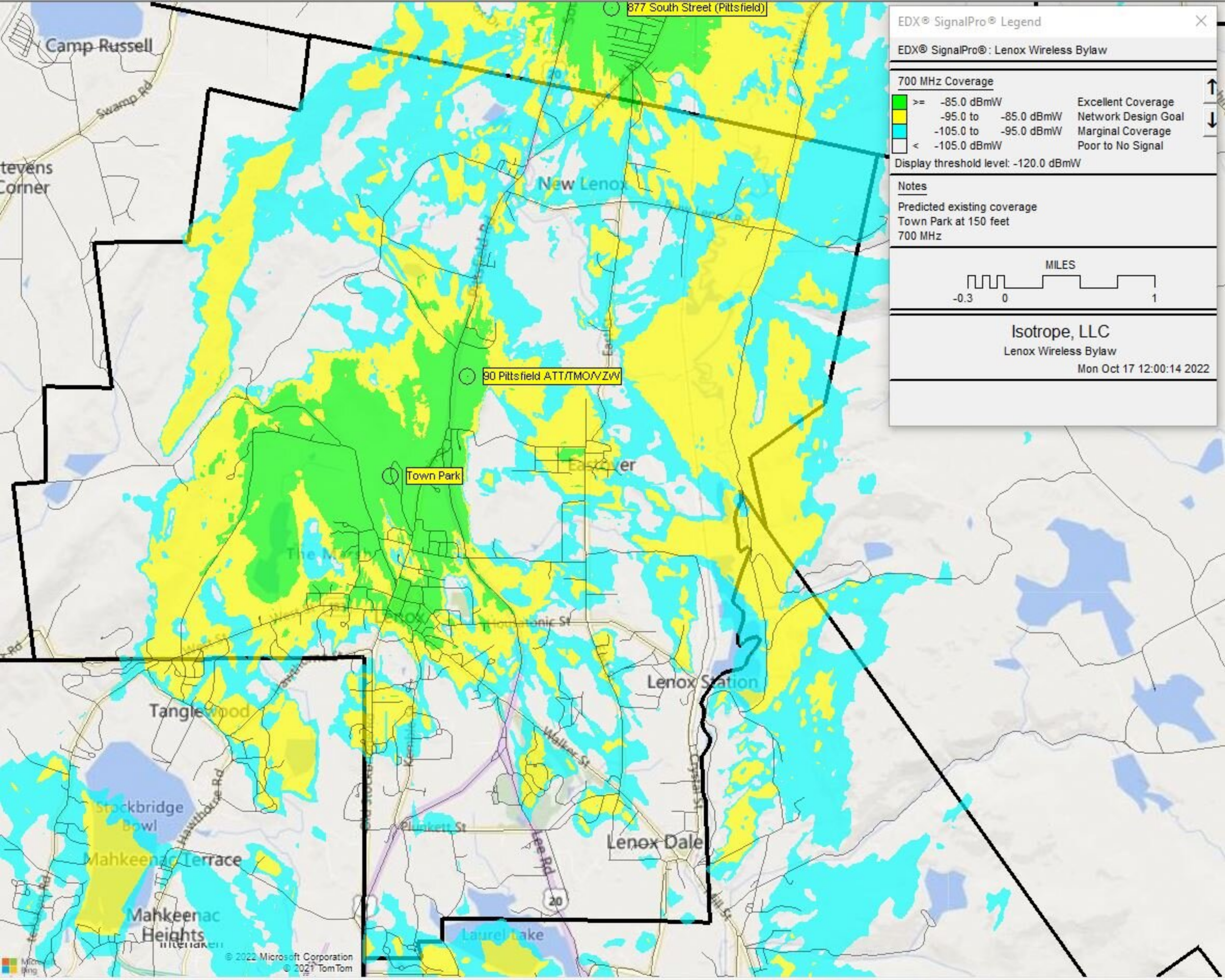
Medfield, MA 02052

508 359 8833 o

617 448 8570 m

David is a certified [IEEE WIRELESS COMMUNICATIONS PROFESSIONAL®](#)





EDX® SignalPro® Legend

EDX® SignalPro®: Lenox Wireless Bylaw

700 MHz Coverage

>=	-85.0 dBmW	Excellent Coverage
	-95.0 to -85.0 dBmW	Network Design Goal
	-105.0 to -95.0 dBmW	Marginal Coverage
<	-105.0 dBmW	Poor to No Signal

Display threshold level: -120.0 dBmW

Notes

Predicted existing coverage
Town Park at 150 feet
700 MHz

MILES

-0.3 0 1

Isotrope, LLC

Lenox Wireless Bylaw

Mon Oct 17 12:00:14 2022

Wireless Communications Bylaw
Status Summary 10/24/22

This draft includes two Use Tables for deliberation, Determination of Needs as distributed last week, incorporates all content (mostly in Application Criteria and Design Criteria) from Specifications and Design Manual as discussed/streamlined with DM, -additional ~~changes~~ edits as discussed/streamlined with DM throughout, including ~~the bylaw ie~~ see Decision section, and some suggested word changes from KMV. 10/20/22 changes not tracked. 10/21/22 changes tracked. Document is printed for packet with changes accepted for readability.

8.18 Wireless Communications Facilities

8.18.1 Purpose

The purpose of this bylaw is to establish general guidelines for the locating of wireless communications facilities, including without limitation, wireless communication towers, antennas, ground equipment, and related accessory structures. The intent of this bylaw is to:

1. Accommodate the growing need and demand for wireless communications services.
2. Establish review procedures to ensure that applications for communications facilities are reviewed for compliance with federal, state, and local regulations and acted upon within a reasonable period of time as required by applicable state and federal regulations.
3. Minimize the impacts of wireless communications facilities on surrounding land uses by establishing standards for location, and compatibility.
4. Encourage the placement of wireless communications facilities on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, or effects upon the natural environment and wildlife.
5. Respond to the policies embodied in the Telecommunications Act of 1996 and subsequent FCC regulation of wireless facility placement in such a manner as not to unreasonably discriminate between providers of functionally equivalent personal wireless services or to prohibit or have the effect of prohibiting personal wireless services.
6. Protect the character of the Town while meeting the needs of its citizens to enjoy the benefits of wireless communications services.

8.18.2 Application and Permits Required

~~All applicants~~ to install, modify or operate a wireless communications facility on property other than a public way shall require a Special Permit (BA) (ZBL 3.4) or Administrative Approval (AA) ~~as outlined in Use Table X~~. Completion of a Lenox Wireless Communications Facility Application form available from the Land Use department is required for each wireless communications facility being requested. Application processing fees for wireless communications facilities shall be paid at the time of application in accordance with the Town of Lenox Fee Schedule.

~~In addition to providing the documentation required within this bylaw, the Application shall include all required exhibits and submittals as required by the Wireless Communications Facilities Standards Specifications & Design Manual, which is maintained by the Planning Board and may be updated periodically.~~

Use Table

<i>Zoning District</i>	<i>R-1A</i>	<i>R-3</i>	<i><u>R-15</u></i>	<i><u>R-30</u></i>	<i><u>C</u></i>	<i><u>C-1A</u></i>	<i><u>C-3A</u></i>	<i><u>I</u></i>
Wireless Communication Facility (subject to approval criteria)	BA	BA	BA	BA	BA	BA	BA	BA
Eligibility Facility Request per 47 USC §1455 (see Section ##### below)	AA	AA	AA	AA	AA	AA	AA	AA

AA = Administrative Approval; BA = Special Permit; N = Not ~~Permitted~~ Permit

OR / FOR DISCUSSION 10/25:

Use Table

Zoning District	R-1A	R-3	<u>R-15</u>	<u>R-30</u>	<u>C</u>	<u>C-1A</u>	<u>C-3A</u>	<u>I</u>
Collocation (parse by concealed/non-c?)								
New Tower (parse by concealed/non-c)								
Small Wireless Facilities								
Substantial Changes and tower replacement/ upgrades more than 10% taller than the original								
Eligibility Facility Request per 47 USC §1455	AA	AA	AA	AA	AA	AA	AA	AA

AA = Administrative Approval; BA = Special Permit; N = Not Permitted

8.18.3 Determination of Need

1. **Demonstration of Need:** All applications for special permits for wireless communications facilities (except eligible facilities requests) shall be accompanied by a demonstration of the need for the proposed facility. Demonstrations of need shall include at a minimum an evaluation of existing coverage and the combined effect of existing and proposed coverage, including coverage maps and an accompanying narrative explaining the maps and the need. When the stated need for the proposed facility includes claims regarding network capacity, applicants shall include information (such as network statistics) demonstrating the capacity need quantitatively.
2. **Determination of Alternatives:** All applications for special permits for wireless communications facilities (except eligible facilities requests) shall be accompanied by a demonstration of a lack of less impactful solutions composed of one or more alternative facilities.
3. **Findings:** To approve such applications, among other findings, the Zoning Board shall find that there is a demonstrated need for the proposed facility that cannot be addressed with a solution composed of one or more alternative facilities that have a lesser impact on the community.
4. **Applicant Assertion of Federal Rights:** If the application involves a project that the applicant asserts federal rights over, the applicant shall provide a brief outline ~~of the~~ the relevant law and the applicant's standing, and include such substantial evidence as is necessary to demonstrate applicant's claim. Examples of such rights are: claims of effective prohibition or discrimination if denied, or assertions that a design qualifies as a ~~S~~small ~~W~~wireless ~~F~~facility or an ~~E~~eligible ~~F~~facilities ~~R~~request.

8.18.4 Facility Impacts

18.18.4(a) Qualitative Criteria

The selection of location and design of WCFs shall conform to the following qualitative criteria:

Review criterion: The Zoning Board, in its review, shall engage (discuss/negotiate/consider?) with the applicant to assess the following preferred qualitative factors, each of which shall be given substantial consideration in deliberations to approve the proposal, or to examine alternative sites.

Application submission criterion: The applicant shall provide substantial evidence why and how they meet or cannot meet each of these objectives and define (defend?) ~~or, if they cannot meet one or more, why not and~~ why and how their proposal is demonstrably

better:

- New Personal Wireless Service Facilities shall not have an undue adverse impact on historic resources, scenic views, residential property values, natural or man-made resources.
- Ideally, a new wireless communications facility shall be located on an existing structure (including an existing tower) in a manner that does not materially increase its impact on the community.
- The preferred locations for ~~each~~ new ~~freestanding~~ Tower ~~iss-are~~ along ~~denser~~ commercial and industrial corridors ~~and-or~~ in suitable municipal locations or other quasi-public sites where ~~both~~ the settings, ~~-and~~ other structures and intensity of uses already in place are more compatible with the industrial nature of wireless facilities. Remote locations on largely undeveloped areas (parcels?) may be acceptable ~~-if~~ the result is a new tower that is generally not visible to the public.
- While setback requirements are included in this bylaw, it is preferred that New Towers be located as far even further from residential lot lines as possible to avoid detrimental visual impacts ~~and -and~~ adversely affecting property values, and to preserve the privacy of adjoining properties.
- New Towers may be acceptable when they do not diminish the quality of experience of Lenox such as by piercing valuable scenic and historic skylines, or sullyng (unduly compromising/diminishing/interrupting) the look of traditional land development and use. ¶
- ~~New Personal Wireless Service Facilities shall not have an undue adverse impact on historic resources, scenic views, residential property values, natural or man-made resources;-~~
- Personal wireless facilities shall be constructed and maintained in compliance with applicable safety and environmental codes and regulations, including without limitation radio frequency energy safety, hazardous materials, noise, building, electrical, and Americans with Disabilities Act.

18.18.4(b) Quantitative Criteria

As a complement to the Qualitative factors and at the discretion of the Zoning Board, new wireless communications facility types shall be considered in accordance with the below preference belows.

Where a lower ranked alternative is proposed, the applicant must provide in its application relevant information demonstrating:

1. ~~1) relevant information demonstrating~~ that diligent efforts were made to adhere to the established hierarchy within the search area, and
 - o that higher ranked options are not technically feasible, practical, or justified given the location of the proposed wireless communications facility, and/or
2. ~~that 2)~~ the impact of the proposed facility is demonstrably better than any available higher priority solutions.

Location preferences are as follows:

First priority <u>preference</u>	Concealed collocation, or Attachment to existing tower (not a substantial change), or
Second preference <u>priority</u>	Camouflaged collocation
Third preference <u>priority</u>	Collocation (not concealed or camouflaged) except substantial change ¹ to existing base station or tower
Fourth preference <u>priority</u>	Substantial change to existing base station or tower (i.e. not an Eligible Facilities Request) New camouflaged or concealed tower
Fifth preference <u>priority</u>	New tower

In addition to the foregoing, before any New Tower is approved, the applicant must demonstrate that it is not feasible to locate their facility on an existing tower or building. Before a new tower is proposed in a residential district, the applicant must also ~~prove~~demonstrate that it is not feasible to locate the facility in other districts or on municipal facilities.

8.18.5 Collocations

Wireless communications facilities may be mounted onto a building or support structure that is not primarily constructed for the purpose of holding wireless communications facilities or as an attachment to an existing tower, subject to the following standards:

1. Antenna Setbacks: An antenna array attached to any structure that is not a tower is exempt from the setback requirements for the zoning district in which ~~such~~ the existing structure is located. An antenna array attached to the side of such a structure may extend up to five feet horizontally from the side of the structure, provided that the antenna array does not encroach upon an adjoining parcel.
2. Height extensions: The top of ~~an~~ the attached antenna shall not extend more than fifteen (15) feet above the structure other than a tower to which it is attached. Notwithstanding this provision, the height of the antenna shall not extend more than eight (8) feet above the maximum allowed height for such a structure in the zone in which it is located. This requirement (which – both or the second?) may be waived to accommodate the height of an architecturally appropriate concealment structure.
3. Stanchion and pole extensions: Additional height may be allowed on power transmission stanchions and utility poles to accommodate the minimum safety separation necessary from electrical lines, as required by the National Electrical Safety Code and the utility provider. For the purposes of classifying an application for the replacement of an existing utility pole, a replacement pole with up to 5 feet greater height above ground (including attachments) is considered a replacement pole and is subject to collocation requirements of this Zoning Bylaw. Replacement utility poles that will be more than 5 feet above ground (including attachments) taller than the pole being replaced will be considered new poles.

8.18.6 New Towers

Mailed Notice to Neighbors. All new towers shall require that mailed notice, meeting the standards of M.G.L. C. 40A, Section 11, be sent to all property owners within 600 feet ~~of the land subject to the application.~~

8.18.6(a) Height Limitation

1. New towers shall not exceed the minimum height necessary to provide adequate coverage for the personal wireless service facilities proposed for use on the tower.
2. In working with the applicant to determine approved height, the Zoning Board will consider the following as part of the Special Permit process:
 - Balancing test:
 - The Personal Wireless Service Facility shall be designed to accommodate multiple users to the maximum extent technologically practicable in order to reduce the number of Personal Wireless Service Facilities ~~which that~~ will be required to be located in the Town.
 - However, at its discretion, the Zoning Board may reduce the ~~space available~~ capacity for multiple facilities ~~(typically by a decrease in height or width)~~ if the Board finds that it is preferable to ~~risk the need for a second tower have more shorter facilities~~ rather than ~~approve~~ one taller facility.
3. The Zoning Board may allow ~~height~~ greater ~~than necessary for the allowable~~ height if such ~~modification height does not materially increase the impacts of the proposed facility. provides adequate safety, promotes co-location or improves design, and will not significantly impact the character and appearance of the neighborhood.~~

8.18.6(b) Setbacks

New freestanding towers shall be subject to the setbacks described below:

1. The minimum setback distance to the nearest residential property line shall be 250 feet.
 - ~~As part of the Special Permit process, t~~The Zoning Board by supermajority vote ~~as part of the Special Permit process~~ may reduce this setback to no less than 1.5 times the tower height based on the following findings:
 - a. ~~This de-waiver~~ does not materially increase the impact of the proposed tower on its surroundings in comparison to satisfying the full setback, or
 - b. There is no viable location on any parcel in the subject area from which to provide the necessary service that would comply with the full setback, or

- c. This ~~waiver~~ results in a design that is fully compatible with the purpose and intent of the Zoning Bylaws.
- 2. Should we have a different waiver possibility for towers less than XX feet?
 - a. If so, findings to make determination. Start with looking at a/b/c above.
- 3. In the C-1A, C-3A, and Industrial Zones *(KMV asks: What about C?)*, the minimum setback from parcels in ~~commercial and industrial non-residential~~ zones shall equal the height of the new tower. The Zoning Board may allow a shorter setback if the shorter setback provides adequate safety and aesthetics.

8.18.7 Design Criteria for All Wireless Communications Facilities

1. A Wireless Communications Facility should not significantly impact viewsheds and views from nearby locations and should be architecturally compatible with respect to such views.
2. Monopole tower designs are preferred over lattice and guyed towers..
3. Concealment or camouflage shall be used when appropriate for mitigating visual impacts. For example (and not a recommendation) a faux carillon tower artfully placed on an institutional parcel or a unipole inconspicuously placed near the rear of a lot might provide satisfactory visual mitigation in some situations. Other options that may be proposed for concealment include mimicking a manmade or natural object that is consistent with the surrounding landscape; for example, field light stanchions for athletic and recreational facilities or developed park areas, clock tower for commercially developed areas, fire watch tower or “monopine” evergreen tree native to Berkshire County for rural or undeveloped areas. With respect to “monopine” designs, they are notorious for being poorly executed and being placed in awkward locations. Care should be taken to consider monopine designs only when they are compatible with the dominant points of view of the tower.
4. Landscaping and existing vegetation shall be employed to minimize visual impacts.
5. Antennas, cables, associated equipment and mounting apparatus should be enclosed, concealed, screened, or obscured so that they are not readily apparent to a casual off-site observer, except that a facility may be approved with exposed antennas and associated equipment if concealment or camouflage would not mitigate any visual impacts and no less visually impactful alternative locations or designs are available.
6. Signage: Commercial messages shall not be displayed on any WCF. Required noncommercial signage shall be restricted to FCC Antenna Structure Registration Number (when required), information about the facility owner/operator, and any additional security and/or safety signs as applicable.
7. Lighting: Lighting shall be prohibited on all WCFs unless required by the Federal Aviation Administration (FAA). Applicants shall demonstrate efforts to avoid FAA lighting requirements, such as reduced tower height or alternative locations. If lighting is required, night lighting shall be red and employ luminaires with the lowest practicable beamspread toward the earth.
8. Noise: Sound levels contributed by facility operations including generators shall not exceed 40 dBA at the property lines of the parcel containing the wireless communications facility and operations when no generator is running shall not exceed 30 dBA at said property lines. Emergency generators are permitted and are exempt from noise requirements during emergencies.

Routine generator tests shall be conducted between 8 AM and 5 PM on business days except holidays.

9. Equipment Compound and Cabinets: When practicable, equipment cabinets should be installed inside existing structures. If installed outdoors, equipment should not be visible to the public and neighbors or be screened behind an architecturally appropriate enclosure., behind a screen on a rooftop, or on the ground with landscape screening as required below. Equipment compounds shall not be used for storage. Equipment compounds shall be subject to the setback requirements of their underlying zone.
10. Parking: WCFs shall include at least one parking space for personnel accessing the facilities in addition to any parking minimums for other uses on the parcel

8.18.8 Eligible Facilities Request

1. The Zoning Board of Appeals is the Administrative Approval Granting Authority and shall grant Administrative Approval of an Eligible Facilities Request. Applicants with Eligible Facilities Requests shall submit application materials and undergo a review process that shall be conducted in a manner consistent with federal limitations. ~~The Zoning Board of Appeals is the Administrative Approval Granting Authority and shall grant Administrative Approval of an Eligible Facilities Request.~~ The Zoning Board ~~may~~ shall verify that the application for an Eligible Facilities Request is bonafide and may apply conditions that are not otherwise preempted by the FCC.
2. The design of an Eligible Facilities Requ~~e~~st shall maintain the appearance intended by the original facility and shall comply with any conditions of prior approvals for wireless facilities on the site, including, but not limited to, color, screening, landscaping, camouflage, concealment techniques, mounting configuration, or architectural treatment.
3. Administrative Approval. Do we want to say anything more about how this is administered? Subject to abutter notification or not? Granted by majority vote? Board: Definition of what comprises and EFR in prior versions if you want to look at.

8.18.8.1 Tower Replacement

1. Existing towers may be replaced pursuant to this Section X.X, provided that the replacement accomplishes a minimum of one of the following:
 - a. Increases the number of wireless service providers the tower can support or otherwise materially improves the provision of wireless service in Lenox;
 - b. Contributes to the reduction of the proliferation of new towers in Lenox;
 - c. Replaces an existing tower with a tower with less impact on the town, such as ~~by being shorter, improving its~~reduced height or improved appearance (by camouflage or concealment).
2. Landscaping: At the time of replacement or upgrade, the tower equipment compound shall be brought into compliance with any applicable landscaping requirements as required by the Wireless Communications Facilities Specification and Design Manual.
3. Setbacks: A replacement of an existing tower shall not be required to meet new setback standards so long as the new tower and its equipment compound do not increase the existing nonconformity.

18.8.10 Application

a. All Applications shall include:

1. Plans: One set of plans at 24" x 36" and 5 sets of plans at 11" x 17" and an electronic original (not scanned) of plans that constitute a customary package of "Zoning Drawings," including, without limitation, locus information, area parcel plans showing abutting lots and a 300 and 600 foot radius, details including property line and other relevant setbacks, proposed easements, utilities, driveways, site improvements, etc; and detailed site plans as necessary to illustrate site development, wetland/river buffers, landscaping, tree cover, etc; elevation drawings and details about the ground equipment and the tower-mounted equipment; any other information the applicant or the Town determines is appropriate for showing the proposed development.
2. Photosimulations: Applicants shall provide photosimulations with their application to demonstrate visual impacts. Photos should have the field of view of a 50-55 mm focal length lens with respect to a standard full-frame 35 mm camera. Photosimulations should be provided showing (a) the impact on viewsheds and neighboring uses as described above and (b) how the design, including concealment, landscaping, topography, existing cover, etc. contribute to minimizing visual impacts. Photos shall be taken from representative locations where the tower is or is expected to be visible or partially visible in any season. Before the photos are taken, applicants shall consult with the Land Use Department to identify sensitive locations that should be added to the photographer's list of locations to photograph. To produce photosimulations for new towers, applicants shall conduct such field testing (such as a balloon/crane test) at their convenience prior to filing the application and notify the Town of the scheduled date and time of such testing.
3. Design: Applicant's zoning drawings shall include details of the concealment or camouflage design.
4. Radio Frequency Emissions Analysis: Applicant shall provide an analysis of radio frequency energy emissions for the proposed and potentially collocating WCFs based on the methods outlined in FCC Office of Engineering and Technology Bulletin 65, demonstrating compliance with applicable safety standards.
5. Noise Analysis: Applicant shall provide a noise analysis of the proposed facility prepared by a qualified professional, demonstrating compliance with the Commonwealth's Department of Environmental Protection regulation of noise and with any noise restrictions of the Town of Lenox.
6. Applicant shall provide a narrative and additional exhibits as necessary to demonstrate fulfillment of and compliance with the criteria outlined in ~~sections~~ all sections of this bylaw 8.18 including, as per the type of application, Sections:
 - 8.18.1 Purpose
 - 8.18.2 Application and Permits Required

- [8.18.3 Determination of Need](#)
- [8.18.4 Facility Impacts](#)
- [8.18.5 Collocations](#)
- [8.18.6 New Towers](#)
- [8.18.7 Design Criteria](#)
- [8.18.8 Eligible Facilities Request](#)
- [8.18.9 Tower Replacement](#)

7. A report and supporting technical data shall be submitted, demonstrating the following:

- a. ~~a)~~ All potential antenna attachments, collocations, and alternative antenna configurations on existing elevated structures, including all usable utility distribution towers within the proposed service area have been examined, and found unacceptable.
- b. ~~b)~~ [A technical report by a qualified professional, which qualifications shall be included, regarding service gaps, service expansions, and/or system capacity or other evidence of need for the Wireless Communications Facility WCF \(Section 8.18.3 Determination of Need \(REFERENCE THE DETERMINATION OF NEED SECTION\), and accompanying exhibits including coverage and other maps, graphics, charts and calculations to support the claims in the report.](#)
- c. ~~be)~~ [The application shall include a written narrative and exhibits describing how the proposed facility's coverage or capacity benefits cannot be substantially achieved by the use of one or more of any higher ranked alternatives \(Section 8.18.3 Determination of Need\) REFER TO DETERMINATION OF NEED SECTION and alternatives ranking section \(Section 8.18.4 Facility Impacts\).](#)

~~Reasoning as to why the adequacy of alternative existing facilities or the replacement of existing facilities are not acceptable or available in meeting the applicant's need, indicating that no existing communications facility could accommodate the applicant's proposed facility, shall consist of any of the following:~~

- d. No existing towers or WCFs located within the geographic area meet the applicant's engineering requirements without increasing the height of the existing tower or structure or otherwise creating a greater visual impact, and why.
- e. ~~2)~~ Existing towers cannot physically accommodate the applicant's proposed wireless communications facilities and related equipment, and the existing facility cannot be sufficiently improved.
- f. Other limiting factors that render existing wireless communications facilities unsuitable. ~~DELETE THESE IF THEY ARE ALREADY COVERED IN DETERMINATION OR QUALITATIVE SECTION. ALSO CONSIDER REPLICATING IN REVIEW/FINDINGS.~~

- g. Demonstration of satisfaction of FAA hazard to air navigation requirements, including as applicable, a professional technical evaluation indicating FAA requires no notification and no lighting will be required, or an FAA Determination of No Hazard.
- h. Balloon test for new Towers.
 - i. During the hearing and to be considered part of the application, applications for new towers the Zoning Board shall require the applicant to conduct a publicly noticed balloon/crane test. If the proposed site is accessible by crane, a crane test is preferred. The applicant shall arrange to raise a red or orange colored balloon no less than three (3) feet in diameter at the maximum height of the proposed tower, and within twenty-five (25) horizontal feet of the center of the proposed tower. A second balloon 20 feet below the first (or at some other height requested by the town) shall also be raised.
 - ii. Notice to abutting property owners shall be pursuant to subsection ##### above
Is this necessary? They will have been notified of hearing, where this date will be determined as part of the application review process.
 - iii. b) A three-foot by five-foot (3' by 5') sign with lettering no less than three (3) inches high stating the date, time, and location, including alternative date, time and location, of the balloon test shall be advertised in a locally distributed paper by the applicant at least seven (7) but no more than fourteen (14) days in advance of the test date and applicant shall provide notice to neighbors of the balloon test date and alternate date.
 - iv. The balloon shall be flown for at least four (4) consecutive hours during daylight hours on the date chosen. The applicant shall record the weather, including wind speed and direction during the balloon test. Photographs taken of the balloon test shall be timed to capture the balloon at its apex during wind-induced motion. The height of the balloon shall be measured, and tether length shall not be relied upon to determine height.
 - v. Re-advertisement will not be required if inclement weather occurs.

8.18.10(b) Eligible Facilities Requests

Eligible Facilities Requests shall be accompanied by evidence demonstrating eligibility under federal law, addressing all points in the federal definition including such information, exhibits and calculations necessary to support the claim and demonstrating compliance with applicable state and local safety codes. Applications ~~containing~~ for ~~e~~Eligible ~~f~~Facilities ~~Requests~~ are not required submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

8.18.11 Employment of Outside Consultants

Pursuant to MGL Ch 44 Sec 53g, the Zoning Board may engage outside consultants at the

expense of the applicant to assist the Zoning Board's review of an application under this Wireless Communications Facilities Bylaw.

8.18.12 Decision

Special Permits: In addition to the findings required by the Bylaw in Section 3.4, the Board of Appeals shall, in consultation with the Independent Consultant(s), make all of the applicable findings before granting the Special Permit as follows:

8.18.12(a) Special Permit Findings

1. The Zoning Board of Appeals shall evaluate the application in light of Section 3.4 of the Zoning Bylaw and make findings and apply conditions as appropriate.
2. The Board also shall make findings that:
 - a. The application meets all the Application Criteria 8.18.10 or is granted waivers to specific application requirements.
 - b. The applicant has/has not met the burden of demonstrating the need for the proposed Wireless Communication Facility Section 8.18.3.
 - c. The application satisfies the Qualitative and Quantitative Criteria for Facility Impacts Section 8.18.4
 - d. The application meets the performance criteria for Collocation (8.18.5), New Tower (8.18.6), or Tower Replacement (8.18.9) as applicable.
 - e. The application is an acceptable Design and meets Design Criteria 8.18.7.
 - f. The application and any waivers granted are consistent with the Purpose 8.18.1 of this Bylaw.

8.18.12(b) Administrative Approval / Eligible Facilities Requests Finding.

Eligible Facilities Requests 8.18.8 shall be granted Administrative Approval consistent with findings based on requirements and application in this bylaw 8.18.

8.18.13 Post Construction RFR Study

Any time after the installation of an approved wireless communications facility, the Town may require operators of such facilities to demonstrate compliance with FCC regulations regarding the safety of all relevant radio frequency emissions from the site (47 CFR 1.1310). As appropriate to the situation, such demonstrations of compliance may require either ~~by~~ the conduct of a field survey of emissions and/or by production of calculations consistent with FCC OET Bulletin 65, as directed by the Town. The Town may require the operator(s) to reimburse the Town for such analysis independently commissioned by the Town. In the event the results demonstrate that the wireless communications facility is not in compliance with the applicable rules, the applicant shall immediately bring the facility into compliance, including by cessation of operations if necessary prior to implementing changes.

8.18.14 Abandonment (Discontinued Use)

1. Towers, wireless communications facilities, antennas, and the equipment compound shall be removed; at the owner's expense; within 180 days of cessation of use.
2. An owner wishing to extend the time for removal or reactivation shall submit an application stating the reason for such extension. The Town may extend the time for removal or reactivation up to 60 additional days upon a showing of good cause. If the tower or antenna is not removed within this time, the Town may give notice that it will contract for removal within 30 days following written notice to the owner. Thereafter, the Town may cause removal of the tower with costs being borne by the owner.
3. Upon removal of the tower, wireless communications facility, antenna, and equipment compound, the development area shall be returned to its natural state and topography and vegetation consistent with the natural surroundings or consistent with the current uses of the surrounding or adjacent land at the time of removal. At the Town's discretion, the foundation may be abandoned in place if reduced to below finished grade.
4. All applicants shall, upon grant of Administrative Approval or a Special Permit, furnish a performance bond or irrevocable letter of credit naming Town of Lenox as beneficiary in the sum of \$50,000.00 ("Performance Bond) which shall ~~provide language~~state, inter alia, ~~stating that~~ it is for the purpose of assuring the removal of the permitted wireless communications facility in the case of abandonment as contemplated herein.

8.18.15 Exempt Facilities

The following ~~items~~ are exempt from the standards for wireless communication facilities notwithstanding any other provisions:

1. Satellite earth stations used for the transmission or reception of wireless communications signals with satellites that are one (1) meter (39.37 inches) or less in diameter in all residential zones and two (2) meters or less in all other zones.
2. A temporary wireless communications facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the Town designee; except that such facility must comply with all federal and state requirements. No communications facility shall be exempt from the provisions of this Section beyond the duration of the state of emergency.
3. A government-owned wireless communications facility erected for the purposes of providing communications for public health and safety.
4. A temporary wireless communications facility for the purposes of providing coverage of a special event, and subject to federal and state requirements. Said communications facility may be exempt from the provisions of this Section up to one week before and after the duration of the special event. Q: Who would oversee such a request?
5. Amateur radio towers solely used for licensed amateur services up to 70 feet in height, or at such additional height as approved by informal application to the Zoning Board of Appeals.

8.18.16 Definitions

The following definitions are used exclusively in the Wireless Communications Bylaw ~~(and are repeated in Town of Lenox Standard Specifications and Design Manual for Wireless Facilities (the “Design Manual”)), as amended:~~

Check whatever is pulled in from Spec/Design to see if we need any additional definitions.

Antenna – a device consisting of exposed elements or of an enclosure containing one or more elements that transmits and/or receives electromagnetic radio frequency signals. Two or more antennas operated by one carrier/owner at one site constitute an antenna array. In context, a single enclosure that contains multiple antenna elements connected to multiple electrical ports that provide for any of the following is considered an antenna herein: multiple frequency bands, multiple input/multiple output arrays, transmit/receive isolation, polarization and space diversity.

~~***Applicable codes*** – building, plumbing, electrical and fire codes adopted by the Commonwealth or the Town; requirements of the National Electric Code or the National Electric Safety Code; and the applicable laws, regulations and requirements of the Federal Communications Commission, the Occupational Safety and Health Administration, as well as any other local, state, or federal agency regulating wireless communications, as any may be amended from time to time.~~

~~***Base station.*** Have the meanings given to them in 47 CFR 1.6100~~

Camouflaged (facility/antennas) – the use of materials added to an installation, including when applicable added to existing architecture, to render a facility or antennas less noticeable.

Collocation - to install a ~~W~~wireless ~~C~~ommunications ~~F~~acility on an existing structure, including but not limited to an existing tower, building, or other structure (such as water or fire tower, pole, etc.).

Concealed (facility, antennas) - a wireless communications facility or portion thereof that is designed in a manner that it is not visible to the public, typically through the use of radio frequency transparent materials integrated with existing architecture; any Tower that is designed to conceal the antennas is considered a concealment.

~~***Eligible Ffacilities Rrequest*** – an application for a type of modification to an existing approved WCFireless Communications Facility as defined in 47 CFR 1.6100.~~

FCC - the Federal Communications Commission of the United States.

Person - an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

~~**Small wireless facility**—“Small Wireless Facilities,” as used herein and consistent with section 1.1312(e)(2), encompasses facilities that meet the following conditions. The facilities:~~

- ~~• are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or~~
- ~~• are mounted on structures no more than 10 percent taller than other adjacent structures, or~~
- ~~• do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;~~
- ~~• Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume; All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;~~
- ~~• The facilities do not require antenna structure registration under part 17 of this chapter;~~
- ~~• The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and~~
- ~~• The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).~~

~~**Substantial change-modification** — a type of modification to an existing approved WCF Wireless Communications Facility as defined in have the meanings given to them in 47 CFR 1.6100~~

Tower - Any structure constructed on the ground for the sole or primary purpose of supporting antennas and their associated equipment.

Wireless Communications Facility (WCF) – an installation of equipment and utilities for the provision of personal wireless services to link remote user equipment to a communications network,

Personal Wireless services – personal wireless services as defined in the National Wireless Telecommunications Policy, 47 U.S.C. 332(c): “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.” Note: This covers telecommunications services offered to the public or a subset thereof using a network of base stations to link remote subscribers to the telecommunications network.

~~**Wireless infrastructure provider**—any person that builds or installs systems or structures that support the operation of wireless communications facilities, such as a tower developer or a provider of distributed antenna system facilities.~~

~~**Wireless services provider**—a person who delivers wireless services to subscribers.~~

**Wireless Communications Bylaw
Status Summary 10/24/22**

This draft includes two Use Tables for deliberation, Determination of Needs as distributed last week, incorporates all content (mostly in Application Criteria and Design Criteria) from Specifications and Design Manual as discussed/streamlined with DM, edits as discussed/streamlined with DM throughout, including see Decision section, and some suggested word changes from KMV. 10/20/22 changes not tracked. 10/21/22 changes tracked. Document is printed for packet with changes accepted for readability.

8.18 Wireless Communications Facilities

8.18.1 Purpose

The purpose of this bylaw is to establish general guidelines for the locating of wireless communications facilities, including without limitation, wireless communication towers, antennas, ground equipment, and related accessory structures. The intent of this bylaw is to:

1. Accommodate the growing need and demand for wireless communications services.
2. Establish review procedures to ensure that applications for communications facilities are reviewed for compliance with federal, state, and local regulations and acted upon within a reasonable period of time as required by applicable state and federal regulations.
3. Minimize the impacts of wireless communications facilities on surrounding land uses by establishing standards for location, and compatibility.
4. Encourage the placement of wireless communications facilities on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, or effects upon the natural environment and wildlife.
5. Respond to the policies embodied in the Telecommunications Act of 1996 and subsequent FCC regulation of wireless facility placement in such a manner as not to unreasonably discriminate between providers of functionally equivalent personal wireless services or to prohibit or have the effect of prohibiting personal wireless services.
6. Protect the character of the Town while meeting the needs of its citizens to enjoy the benefits of wireless communications services.

8.18.2 Application and Permits Required

To install, modify or operate a wireless communications facility on property other than a public way shall require a Special Permit (BA) (ZBL 3.4) or Administrative Approval (AA). Completion of a Lenox Wireless Communications Facility Application form available from the Land Use department is required for each wireless communications facility being requested. Application processing fees for wireless communications facilities shall be paid at the time of application in accordance with the Town of Lenox Fee Schedule.

Use Table

<i>Zoning District</i>	<i>R-1A</i>	<i>R-3</i>	<i><u>R-15</u></i>	<i><u>R-30</u></i>	<i><u>C</u></i>	<i><u>C-1A</u></i>	<i><u>C-3A</u></i>	<i><u>I</u></i>
Wireless Communication Facility	BA	BA	BA	BA	BA	BA	BA	BA
Eligibility Facility Request per 47 USC §1455	AA	AA	AA	AA	AA	AA	AA	AA

AA = Administrative Approval; BA = Special Permit; N = Not Permitted

OR / FOR DISCUSSION 10/25:

Use Table

Zoning District	R-1A	R-3	<u>R-15</u>	<u>R-30</u>	<u>C</u>	<u>C-1A</u>	<u>C-3A</u>	<u>I</u>
Collocation (parse by concealed/non-c?)								
New Tower (parse by concealed/non-c)								
Small Wireless Facilities								
Substantial Changes and tower replacement/ upgrades more than 10% taller than the original								
Eligibility Facility Request per 47 USC §1455	AA	AA	AA	AA	AA	AA	AA	AA

AA = Administrative Approval; BA = Special Permit; N = Not Permitted

8.18.3 Determination of Need

1. **Demonstration of Need:** All applications for special permits for wireless communications facilities (except eligible facilities requests) shall be accompanied by a demonstration of the need for the proposed facility. Demonstrations of need shall include at a minimum an evaluation of existing coverage and the combined effect of existing and proposed coverage, including coverage maps and an accompanying narrative explaining the maps and the need. When the stated need for the proposed facility includes claims regarding network capacity, applicants shall include information (such as network statistics) demonstrating the capacity need quantitatively.
2. **Determination of Alternatives:** All applications for special permits for wireless communications facilities (except eligible facilities requests) shall be accompanied by a demonstration of a lack of less impactful solutions composed of one or more alternative facilities.
3. **Findings:** To approve such applications, among other findings, the Zoning Board shall find that there is a demonstrated need for the proposed facility that cannot be addressed with a solution composed of one or more alternative facilities that have a lesser impact on the community.
4. **Applicant Assertion of Federal Rights:** If the application involves a project that the applicant asserts federal rights over, the applicant shall provide a brief outline^e of the relevant law and the applicant's standing, and include such substantial evidence as is necessary to demonstrate applicant's claim. Examples of such rights are: claims of effective prohibition or discrimination if denied, or assertions that a design qualifies as a Small Wireless Facility or an Eligible Facilities Request.

8.18.4 Facility Impacts

18.18.4(a) Qualitative Criteria

The selection of location and design of WCFs shall conform to the following qualitative criteria:

Review criterion: ~~The Zoning Board,~~ in its review, shall engage **(discuss/negotiate/consider?)** with the applicant to assess the following preferred qualitative factors, each of which shall be given substantial consideration in deliberations to approve the proposal, or to examine alternative sites.

Application submission criterion: ~~The applicant shall provide substantial evidence why and how they meet or cannot meet each of these objectives and define~~ **(defend?)** why and

how their proposal is demonstrably better:

- New Personal Wireless Service Facilities shall not have an undue adverse impact on historic resources, scenic views, residential property values, natural or man-made resources.
- Ideally, a new wireless communications facility shall be located on an existing structure (including an existing tower) in a manner that does not materially increase its impact on the community.
- The preferred locations for each new Tower is along commercial and industrial corridors or in suitable municipal locations or other quasi-public sites where ~~both~~ the settings, other structures and intensity of uses already in place are more compatible with the industrial nature of wireless facilities. Remote locations on largely undeveloped areas (*parcels*?) may be acceptable if the result is a new tower that is generally not visible to the public.
- While setback requirements are included in this bylaw, it is preferred that New Towers be located as far from residential lot lines as possible to avoid detrimental visual impacts and adversely affecting property values, and to preserve the privacy of adjoining properties.
- New Towers may be acceptable when they do not diminish the quality of experience of Lenox such as by piercing valuable scenic and historic skylines, or *sully*ing (*unduly compromising/diminishing/interrupting*) the look of traditional land development and use.
- Personal wireless facilities shall be constructed and maintained in compliance with applicable safety and environmental codes and regulations, including without limitation radio frequency energy safety, hazardous materials, noise, building, electrical, and Americans with Disabilities Act.

18.18.4(b) Quantitative Criteria

As a complement to the Qualitative factors and at the discretion of the Zoning Board, new wireless communications facility types shall be considered in accordance with the below preference below.

Where a lower ranked alternative is proposed, the applicant must provide in its application relevant information demonstrating:

1. that diligent efforts were made to adhere to the established hierarchy within the search area, and
 - that higher ranked options are not technically feasible, practical, or justified given the location of the proposed wireless communications facility, and/or

2. that the impact of the proposed facility is demonstrably better than any available higher priority solutions.

Location preferences are as follows:

First preference	Concealed collocation, or Attachment to existing tower (not a substantial change), or
Second preference	Camouflaged collocation
Third preference	Collocation (not concealed or camouflaged) except substantial change ¹ to existing base station or tower
Fourth preference	Substantial change to existing base station or tower (i.e. not an Eligible Facilities Request) New camouflaged or concealed tower
Fifth preference	New tower

In addition to the foregoing, before any New Tower is approved, the applicant must demonstrate that it is not feasible to locate their facility on an existing tower or building. Before a new tower is proposed in a residential district, the applicant must also demonstrate that it is not feasible to locate the facility in other districts or on municipal facilities.

8.18.5 Collocations

Wireless communications facilities may be mounted onto a building or support structure that is not primarily constructed for the purpose of holding wireless communications facilities or as an attachment to an existing tower, subject to the following standards:

1. Antenna Setbacks: An antenna array attached to any structure that is not a tower is exempt from the setback requirements for the zoning district in which the existing structure is located. An antenna array attached to the side of such a structure may extend up to five feet horizontally from the side of the structure, provided that the antenna array does not encroach upon an adjoining parcel.
2. Height extensions: The top of an attached antenna shall not extend more than fifteen (15) feet above the structure other than a tower to which it is attached. Notwithstanding this provision, the height of the antenna shall not extend more than eight (8) feet above the maximum allowed height for such a structure in the zone in which it is located. This requirement (*which – both or the second?*) may be waived to accommodate the height of an architecturally appropriate concealment structure.
3. Stanchion and pole extensions: Additional height may be allowed on power transmission stanchions and utility poles to accommodate the minimum safety separation necessary from electrical lines, as required by the National Electrical Safety Code and the utility provider. For the purposes of classifying an application for the replacement of an existing utility pole, a replacement pole with up to 5 feet greater height above ground (including attachments) is considered a replacement pole and is subject to collocation requirements of this Zoning Bylaw. Replacement utility poles that will be more than 5 feet above ground (including attachments) taller than the pole being replaced will be considered new poles.

8.18.6 New Towers

Mailed Notice to Neighbors. All new towers shall require that mailed notice, meeting the standards of M.G.L. C. 40A, Section 11, be sent to all property owners within 600 feet.

8.18.6(a) Height Limitation

1. New towers shall not exceed the minimum height necessary to provide adequate coverage for the personal wireless service facilities proposed for use on the tower.
2. In working with the applicant to determine approved height, the Zoning Board will consider the following as part of the Special Permit process:
 - Balancing test:
 - The Personal Wireless Service Facility shall be designed to accommodate multiple users to the maximum extent technologically practicable in order to reduce the number of Personal Wireless Service Facilities that will be required to be located in the Town.
 - However, at its discretion, the Zoning Board may reduce the capacity for multiple facilities (typically by a decrease in height or width) if the Board finds that it is preferable to risk the need for a second tower rather than approve one taller facility.
3. The Zoning Board may allow height greater than necessary for the allowable height if such height does not materially increase the impacts of the proposed facility.

8.18.6(b) Setbacks

New freestanding towers shall be subject to the setbacks described below:

1. The minimum setback distance to the nearest residential property line shall be 250 feet.
 - As part of the Special Permit process, the Zoning Board by supermajority vote may reduce this setback to no less than 1.5 times the tower height based on the following findings:
 - a. This does not materially increase the impact of the proposed tower on its surroundings in comparison to satisfying the full setback, or
 - b. There is no viable location on any parcel in the subject area from which to provide the necessary service that would comply with the full setback, or
 - c. This results in a design that is fully compatible with the purpose and intent of the Zoning Bylaws.
2. Should we have a different waiver possibility for towers less than XX feet?

a. If so, findings to make determination. Start with looking at a/b/c above.

3. In the C-1A, C-3A, and Industrial Zones (KMV asks: What about C?), the minimum setback from parcels in commercial and industrial zones shall equal the height of the new tower. The Zoning Board may allow a shorter setback if the shorter setback provides adequate safety and aesthetics.

8.18.7 Design Criteria for All Wireless Communications Facilities

1. A Wireless Communications Facility should not significantly impact viewsheds and views from nearby locations and should be architecturally compatible with respect to such views.
2. Monopole tower designs are preferred over lattice and guyed towers..
3. Concealment or camouflage shall be used when appropriate for mitigating visual impacts. For example (and not a recommendation) a faux carillon tower artfully placed on an institutional parcel or a unipole inconspicuously placed near the rear of a lot might provide satisfactory visual mitigation in some situations. Other options that may be proposed for concealment include mimicking a manmade or natural object that is consistent with the surrounding landscape; for example, field light stanchions for athletic and recreational facilities or developed park areas, clock tower for commercially developed areas, fire watch tower or “monopine” evergreen tree native to Berkshire County for rural or undeveloped areas. With respect to “monopine” designs, they are notorious for being poorly executed and being placed in awkward locations. Care should be taken to consider monopine designs only when they are compatible with the dominant points of view of the tower.
4. Landscaping and existing vegetation shall be employed to minimize visual impacts.
5. Antennas, cables, associated equipment and mounting apparatus should be enclosed, concealed, screened, or obscured so that they are not readily apparent to a casual off-site observer, except that a facility may be approved with exposed antennas and associated equipment if concealment or camouflage would not mitigate any visual impacts and no less visually impactful alternative locations or designs are available.
6. Signage: Commercial messages shall not be displayed on any WCF. Required noncommercial signage shall be restricted to FCC Antenna Structure Registration Number (when required), information about the facility owner/operator, and any additional security and/or safety signs as applicable.
7. Lighting: Lighting shall be prohibited on all WCFs unless required by the Federal Aviation Administration (FAA). Applicants shall demonstrate efforts to avoid FAA lighting requirements, such as reduced tower height or alternative locations. If lighting is required, night lighting shall be red and employ luminaires with the lowest practicable beamspread toward the earth.
8. Noise: Sound levels contributed by facility operations including generators shall not exceed 40 dBA at the property lines of the parcel containing the wireless communications facility and operations when no generator is running shall not exceed 30 dBA at said property lines. Emergency generators are permitted and are exempt from noise requirements during emergencies.

Routine generator tests shall be conducted between 8 AM and 5 PM on business days except holidays.

9. Equipment Compound and Cabinets: When practicable, equipment cabinets should be installed inside existing structures. If installed outdoors, equipment should not be visible to the public and neighbors or be screened behind an architecturally appropriate enclosure., behind a screen on a rooftop, or on the ground with landscape screening as required below. Equipment compounds shall not be used for storage. Equipment compounds shall be subject to the setback requirements of their underlying zone.
10. Parking: WCFs shall include at least one parking space for personnel accessing the facilities in addition to any parking minimums for other uses on the parcel

8.18.8 Eligible Facilities Request

1. The Zoning Board of Appeals is the Administrative Approval Granting Authority and shall grant Administrative Approval of an Eligible Facilities Request. Applicants with Eligible Facilities Requests shall submit application materials and undergo a review process that shall be conducted in a manner consistent with federal limitations. The Zoning Board shall verify that the application for an Eligible Facilities Request is bonafide and may apply conditions that are not otherwise preempted by the FCC.
2. The design of an Eligible Facilities Request shall maintain the appearance intended by the original facility and shall comply with any conditions of prior approvals for wireless facilities on the site, including, but not limited to, color, screening, landscaping, camouflage, concealment techniques, mounting configuration, or architectural treatment.
3. *Administrative Approval. Do we want to say anything more about how this is administered? Subject to abutter notification or not? Granted by majority vote? Board: Definition of what comprises and EFR in prior versions if you want to look at.*

8.18.8.1 Tower Replacement

1. Existing towers may be replaced pursuant to this Section X.X, provided that the replacement accomplishes a minimum of one of the following:
 - a. Increases the number of wireless service providers the tower can support or otherwise materially improves the provision of wireless service in Lenox;
 - b. Contributes to the reduction of the proliferation of new towers in Lenox;
 - c. Replaces an existing tower with a tower with less impact on the town, such as reduced height or improved appearance (by camouflage or concealment).
2. Landscaping: At the time of replacement or upgrade, the tower equipment compound shall be brought into compliance with any applicable landscaping requirements as required by the Wireless Communications Facilities Specification and Design Manual.
3. Setbacks: A replacement of an existing tower shall not be required to meet new setback standards so long as the new tower and its equipment compound do not increase the existing nonconformity.

18.8.10 Application

a. All Applications shall include:

1. Plans: One set of plans at 24" x 36" and 5 sets of plans at 11" x 17" and an electronic original (not scanned) of plans that constitute a customary package of "Zoning Drawings," including, without limitation, locus information, area parcel plans showing abutting lots and a 300 and 600 foot radius, details including property line and other relevant setbacks, proposed easements, utilities, driveways, site improvements, etc; and detailed site plans as necessary to illustrate site development, wetland/river buffers, landscaping, tree cover, etc; elevation drawings and details about the ground equipment and the tower-mounted equipment; any other information the applicant or the Town determines is appropriate for showing the proposed development.
2. Photosimulations: Applicants shall provide photosimulations with their application to demonstrate visual impacts. Photos should have the field of view of a 50-55 mm focal length lens with respect to a standard full-frame 35 mm camera. Photosimulations should be provided showing (a) the impact on viewsheds and neighboring uses as described above and (b) how the design, including concealment, landscaping, topography, existing cover, etc. contribute to minimizing visual impacts. Photos shall be taken from representative locations where the tower is or is expected to be visible or partially visible in any season. Before the photos are taken, applicants shall consult with the Land Use Department to identify sensitive locations that should be added to the photographer's list of locations to photograph. To produce photosimulations for new towers, applicants shall conduct such field testing (such as a balloon/crane test) at their convenience prior to filing the application and notify the Town of the scheduled date and time of such testing.
3. Design: Applicant's zoning drawings shall include details of the concealment or camouflage design.
4. Radio Frequency Emissions Analysis: Applicant shall provide an analysis of radio frequency energy emissions for the proposed and potentially collocating WCFs based on the methods outlined in FCC Office of Engineering and Technology Bulletin 65, demonstrating compliance with applicable safety standards.
5. Noise Analysis: Applicant shall provide a noise analysis of the proposed facility prepared by a qualified professional, demonstrating compliance with the Commonwealth's Department of Environmental Protection regulation of noise and with any noise restrictions of the Town of Lenox.
6. Applicant shall provide a narrative and additional exhibits as necessary to demonstrate fulfillment of and compliance with the criteria outlined in all sections of this bylaw 8.18 including, as per the type of application, Sections:
 - 8.18.1 Purpose
 - 8.18.2 Application and Permits Required

- 8.18.3 Determination of Need
- 8.18.4 Facility Impacts
- 8.18.5 Collocations
- 8.18.6 New Towers
- 8.18.7 Design Criteria
- 8.18.8 Eligible Facilities Request
- 8.18.9 Tower Replacement

7. A report and supporting technical data shall be submitted, demonstrating the following:

- a. All potential antenna attachments, collocations, and alternative antenna configurations on existing elevated structures, including all usable utility distribution towers within the proposed service area have been examined, and found unacceptable.
- b. A technical report by a qualified professional, which qualifications shall be included, regarding service gaps, service expansions, and/or system capacity or other evidence of need for the Wireless Communications Facility-(Section 8.18.3 Determination of Need, and accompanying exhibits including coverage and other maps, graphics, charts and calculations to support the claims in the report.
- c. The application shall include a written narrative and exhibits describing how the proposed facility's coverage or capacity benefits cannot be substantially achieved by the use of one or more of any higher ranked alternatives (Section 8.18.3 Determination of Need) and alternatives ranking section (Section 8.18.4 Facility Impacts).
- d. No existing towers or WCFs located within the geographic area meet the applicant's engineering requirements without increasing the height of the existing tower or structure or otherwise creating a greater visual impact, and why.
- e. Existing towers cannot physically accommodate the applicant's proposed wireless communications facilities and related equipment, and the existing facility cannot be sufficiently improved.
- f. Other limiting factors that render existing wireless communications facilities unsuitable.
- g. Demonstration of satisfaction of FAA hazard to air navigation requirements, including as applicable, a professional technical evaluation indicating FAA requires no notification and no lighting will be required, or an FAA Determination of No Hazard.
- h. Balloon test for new Towers.
 - i. During the hearing and to be considered part of the application, applications for new towers the Zoning Board shall require the applicant to conduct a

publicly noticed balloon/crane test. If the proposed site is accessible by crane, a crane test is preferred. The applicant shall arrange to raise a red or orange colored balloon no less than three (3) feet in diameter at the maximum height of the proposed tower, and within twenty-five (25) horizontal feet of the center of the proposed tower. A second balloon 20 feet below the first (or at some other height requested by the town) shall also be raised.

- ii. Notice to abutting property owners shall be pursuant to subsection ##### above. Is this necessary? *They will have been notified of hearing, where this date will be determined as part of the application review process.*
- iii. A three-foot by five-foot (3' by 5') sign with lettering no less than three (3) inches high stating the date, time, and location, including alternative date, time and location, of the balloon test shall be advertised in a locally distributed paper by the applicant at least seven (7) but no more than fourteen (14) days in advance of the test date and applicant shall provide notice to neighbors of the balloon test date and alternate date.
- iv. The balloon shall be flown for at least four (4) consecutive hours during daylight hours on the date chosen. The applicant shall record the weather, including wind speed and direction during the balloon test. Photographs taken of the balloon test shall be timed to capture the balloon at its apex during wind-induced motion. The height of the balloon shall be measured, and tether length shall not be relied upon to determine height.
- v. Re-advertisement will not be required if inclement weather occurs.

8.18.10(b) Eligible Facilities Requests

Eligible Facilities Requests shall be accompanied by evidence demonstrating eligibility under federal law, addressing all points in the federal definition including such information, exhibits and calculations necessary to support the claim and demonstrating compliance with applicable state and local safety codes. Applications for Eligible Facilities Requests are not required submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

8.18.11 Employment of Outside Consultants

Pursuant to MGL Ch 44 Sec 53g, the Zoning Board may engage outside consultants at the expense of the applicant to assist the Zoning Board's review of an application under this Wireless Communications Facilities Bylaw.

8.18.12 Decision

Special Permits: In addition to the findings required by the Bylaw in Section 3.4, the Board of Appeals shall, in consultation with the Independent Consultant(s), make all of the applicable findings before granting the Special Permit as follows:

8.18.12(a) Special Permit Findings

1. The Zoning Board of Appeals shall evaluate the application in light of Section 3.4 of the Zoning Bylaw and make findings and apply conditions as appropriate.
2. The Board also shall make findings that:
 - a. The application meets all the Application Criteria 8.18.10 or is granted waivers to specific application requirements.
 - b. The applicant has/has not met the burden of demonstrating the need for the proposed Wireless Communication Facility Section 8.18.3.
 - c. The application satisfies the Qualitative and Quantitative Criteria for Facility Impacts Section 8.18.4
 - d. The application meets the performance criteria for Collocation (8.18.5), New Tower (8.18.6), or Tower Replacement (8.18.9) as applicable.
 - e. The application is an acceptable Design and meets Design Criteria 8.18.7.
 - f. The application and any waivers granted are consistent with the Purpose 8.18.1 of this Bylaw.

8.18.12(b) Administrative Approval / Eligible Facilities Requests Finding.

Eligible Facilities Requests 8.18.8 shall be granted Administrative Approval consistent with findings based on requirements and application in this bylaw 8.18.

8.18.13 Post Construction RFR Study

Any time after the installation of an approved wireless communications facility, the Town may require operators of such facilities to demonstrate compliance with FCC regulations regarding the safety of all relevant radio frequency emissions from the site (47 CFR 1.1310). As appropriate to the situation, such demonstrations of compliance may require either the conduct of a field survey of emissions and/or by production of calculations consistent with FCC OET Bulletin 65, as directed by the Town. The Town may require the operator(s) to reimburse the Town for such analysis independently commissioned by the Town. In the event the results demonstrate that the wireless communications facility is not in compliance with the applicable

rules, the applicant shall immediately bring the facility into compliance, including by cessation of operations if necessary prior to implementing changes.

8.18.14 Abandonment (Discontinued Use)

1. Towers, wireless communications facilities, antennas, and the equipment compound shall be removed at the owner's expense within 180 days of cessation of use.
2. An owner wishing to extend the time for removal or reactivation shall submit an application stating the reason for such extension. The Town may extend the time for removal or reactivation up to 60 additional days upon a showing of good cause. If the tower or antenna is not removed within this time, the Town may give notice that it will contract for removal within 30 days following written notice to the owner. Thereafter, the Town may cause removal of the tower with costs being borne by the owner.
3. Upon removal of the tower, wireless communications facility, antenna, and equipment compound, the development area shall be returned to its natural state and topography and vegetation consistent with the natural surroundings or consistent with the current uses of the surrounding or adjacent land at the time of removal. At the Town's discretion, the foundation may be abandoned in place if reduced to below finished grade.
4. All applicants shall, upon grant of Administrative Approval or a Special Permit, furnish a performance bond or irrevocable letter of credit naming Town of Lenox as beneficiary in the sum of \$50,000.00 ("Performance Bond) which shall state, inter alia, that it is for the purpose of assuring the removal of the permitted wireless communications facility in the case of abandonment as contemplated herein.

8.18.15 Exempt Facilities

The following are exempt from the standards for wireless communication facilities notwithstanding any other provisions:

1. Satellite earth stations used for the transmission or reception of wireless communications signals with satellites that are one (1) meter (39.37 inches) or less in diameter in all residential zones and two (2) meters or less in all other zones.
2. A temporary wireless communications facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the Town designee; except that such facility must comply with all federal and state requirements. No communications facility shall be exempt from the provisions of this Section beyond the duration of the state of emergency.
3. A government-owned wireless communications facility erected for the purposes of providing communications for public health and safety.

4. A temporary wireless communications facility for the purposes of providing coverage of a special event, and subject to federal and state requirements. Said communications facility may be exempt from the provisions of this Section up to one week before and after the duration of the special event. *Q: Who would oversee such a request?*
5. Amateur radio towers solely used for licensed amateur services up to 70 feet in height, or at such additional height as approved by informal application to the Zoning Board of Appeals.

8.18.16 Definitions

The following definitions are used exclusively in the Wireless Communications Bylaw:

Antenna – a device consisting of exposed elements or of an enclosure containing one or more elements that transmits and/or receives electromagnetic radio frequency signals. Two or more antennas operated by one carrier/owner at one site constitute an antenna array. In context, a single enclosure that contains multiple antenna elements connected to multiple electrical ports that provide for any of the following is considered an antenna herein: multiple frequency bands, multiple input/multiple output arrays, transmit/receive isolation, polarization and space diversity.

Camouflaged (facility/antennas) – the use of materials added to an installation, including when applicable added to existing architecture, to render a facility or antennas less noticeable.

Collocation - to install a Wireless Communications Facility on an existing structure, including but not limited to an existing tower, building, or other structure (such as water or fire tower, pole, etc.).

Concealed (facility, antennas) - a wireless communications facility or portion thereof that is designed in a manner that it is not visible to the public, typically through the use of radio frequency transparent materials integrated with existing architecture; any Tower that is designed to conceal the antennas is considered a concealment.

Eligible Facilities Request – an application for a type of modification to an existing approved Wireless Communications Facility as defined in 47 CFR 1.6100.

FCC - the Federal Communications Commission of the United States.

Person - an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

Substantial change — a type of modification to an existing approved Wireless Communications Facility as defined in 47 CFR 1.6100

Tower - Any structure constructed on the ground for the sole or primary purpose of supporting antennas and their associated equipment.

Wireless Communications Facility (WCF) – an installation of equipment and utilities for the provision of personal wireless services to link remote user equipment to a communications network,

Personal wireless services – personal wireless services as defined in the National Wireless Telecommunications Policy, 47 U.S.C. 332(c): “commercial mobile

services, unlicensed wireless services, and common carrier wireless exchange access services.” Note: This covers telecommunications services offered to the public or a subset thereof using a network of base stations to link remote subscribers to the telecommunications network.

Lenox Land

From: Gwen Miller
Sent: Friday, October 21, 2022 11:59 AM
To: Tom Delasco; Kate McNulty-Vaughan; Pam Kueber; sue lyman; jdah@verizon.net; Lenox Land
Subject: Fwd: Following up

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From: Courtney Gilardi <courtneygilardi@yahoo.com>
Sent: Friday, October 21, 2022 11:49:29 AM
To: Gwen Miller <gmiller@townoflenox.com>
Subject: Re: Following up

Hi Gwen,

Thank you for your response.

Last month when I spoke at the Planning board, one of the members said we'd talk about the names of the attorneys and what was on offer at the next meeting, that he wanted to know more but save it for next time.

That didn't happen.

Then this last meeting was cut short due to difficulties so once again, it was not discussed.

I don't think that the planning board knows who these attorneys are, or what is on offer, or has had the ability to learn about the value of having an independent telecom attorney advise in order to make an informed decision. We've never had the opportunity to speak about it.

I've been asking what I need to do to get this on the agenda as an agenda item for 16 months. Do I need signatures? When do I need to have them in by?

I'm deeply concerned that you let David Maxson speak for over 100 minutes of presentation, including statements on health and safety that are a matter of medicine, and legal recommendations that are a matter of law when he is neither a doctor or attorney and has made that clear.

In his letter, he advises you to not get bogged down responding or providing residents with **substantiated evidence** to his statements and advises you to **ignore the TCA** to achieve your goals?

The select board has said they will not be swayed by placards and posters and want substantiated evidence as to why the bylaw should be done a certain way. We have and can continue to provide that substantiated evidence but you need to make space for understanding and meaningful discussion of it.

It seems like what is sent or provided in person from last year has not been read because it it was, the nature of the conversations would be very different.

What time can I come in today to review what is in the written file because I wonder if all the printouts provided by residents are even in it?

We are asking to please have 30 minutes in front of the planning board to have a presentation from non-industry biased subject matter experts.

We are asking you to please work with us and hear solutions and options for changes to the bylaw prior to the town meeting, prior to the two days before the vote.

Can we please get 30 minutes on Tuesday to have an attorney present?

With gratitude,

Courtney

On Friday, October 21, 2022 at 11:20:30 AM EDT, Gwen Miller <gmiller@townoflenox.com> wrote:

Hi Courtney,

We will gather what we can from your list, and I will also share with the Planning Board.

There is time on the agenda for public comment and questions as usual next week. To my knowledge the Board has not opted to consult with one of the attorneys you have suggested. That would be on the agenda if and when they choose to do so.

KPLaw does have experience with this subject matter and advising municipalities and that is the counsel we will use to review the Bylaw draft in advance of the Special Town Meeting.

I am not certain of the public hearing date—we could do the 15th, but sooner might be better. It depends on when the Board is ready and when we can notice the hearing in the newspaper.

Will follow up with your other bullet points.

Thanks,
Gwen

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From: Courtney Gilardi <courtneygilardi@yahoo.com>

Sent: Friday, October 21, 2022 10:47:20 AM

To: Gwen Miller <gmiller@townoflenox.com>

Subject: Following up

Good morning, Gwen,

Thanks for acknowledging my last email. When will you be able to provide me with answers to my previous questions?

I just left a message for you on 413 637 5500 x 1203. I'm following up with additional questions-

1. Will the town of Lenox either yourself or Chris or the Planning board meet with an independent telecom attorney to review the final draft of the wireless zoning bylaw? If yes, when, and if no, why not?
2. Does KP law firm, the town's counsel have telecom experience in revising wireless bylaws with the most up to date information on relevant Massachusetts case law, state statutory law, federal law and the most current FCC and municipal court decisions around municipal placement of towers and emissions, insurance and best practice bylaws other towns are implementing? Will they be reviewing the bylaw?
3. Do you have a map of not just the one macro cell tower that Lenox has (the one Larry Parnass did for the Eagle articles) but can you please provide us a map that also includes **all other wireless facilities in Lenox that currently provide service to the town?**
4. Can the map with hypothetical proposed antenna sites be revised to **distinguish between existing wireless sites and proposed?** (For example, the hypothetical proposed site map in the attached packet includes existing sites like the Lenox Fit macrocell, the CoH antennas but not the Verizon facility at Tanglewood) This is very confusing. Is the Lenox Mountain site an existing tower as there is one there, or is it a hypothetical proposed facility?
5. Can you provide us with the call log of where, if any, emergency services has had dropped calls in Lenox? I requested it when we were going through this last year and was told there is none.
6. Can we please have 30 minutes of time on Tuesday's planning board meeting for an attorney to present?
7. What is the process of for the townspeople to propose suggestions/ revisions to the proposed bylaw and what is the time frame for submitting revisions?
8. Is the plan still to have a meeting on November 15 about the bylaws and then vote on November 17?
9. If so, will the November 15 meeting be dedicated to explaining all topics on the November 17 ballot, or just the bylaw? Will there be citizen comments?

Thanks so much. Please call me today to confirm Jen's request to have 30 minutes of time for subject matter experts to present will be available and that we can go ahead and organize that for October 25. We would like it to be a skilled attorney and we'd need to organize that as soon as possible.

With gratitude,

Courtney

Courtney Gilardi
413 418 6925

Lenox Land

From: Gwen Miller
Sent: Thursday, October 20, 2022 8:30 AM
To: Tom Delasco; Pam Kueber; Kate McNulty-Vaughan; jh@jharwoodarchitect.com; sue lyman
Cc: Lenox Land
Subject: Fwd: Gwen please enter this into the legal record.

Correspondence for your review and for next packet.

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From: Amy Judd <amycjudd1@gmail.com>
Sent: Wednesday, October 19, 2022 10:59:44 PM
To: Gwen Miller <gmiller@townoflenox.com>
Subject: Gwen please enter this into the legal record.

My name is Amy Judd, I live at the Curtis.

Twenty years ago, our town refused cellular antennas on the rooftop of the Curtis building, the only elderly, low income and disabled housing. The select board was not willing to risk the health of the residents despite the wireless company itself telling them the antennas would be fine. The select board listened to the subject matter experts and the people who were actually harmed from antennas.

It did not deny the antennas based on health effects, but for other reasons- and because of a protective wireless zoning bylaw, Lenox was not sued.

Lenox seems to have forgotten how to put its residents first, and Lenox certainly isn't learning from Pittsfield, where the city is now being sued for failing to provide funding for independent outside counsel to advise those in positions of leadership about what can and should be done under Massachusetts general law, state statutory law and under Federal law, namely the 1996 Telecom act.

Lenox residents have been asking for sixteen months for someone, either the town manager, planning or select board to consult with an independent telecom attorney, for one hour- at no expense to them, who can help keep Lenox both connected and protected with the most up to date, best practice, wireless zoning bylaws.

Yet, at every planning board meeting when that request has been made, either the question is ignored, or, "It will be talked about next time."

Next time has not come, emails have not been responded to and we are getting down to the wire- and we don't even have a final draft to review - all for the sake of pushing this through.

We come to these meetings to be involved and yet we hear, "our hands are tied, "we can't have larger setbacks" or "we can't have exclusion zones." Why is it we can't have what our neighboring towns have? Even Pittsfield has a better bylaw to protect its residents now.

I'm tired of- "We can't do that or we'll be sued", and "Our hands are tied" because they are not!

Lenox has an existing wireless zoning bylaw.

Has Lenox's bylaw stopped deployment of antennas or wireless communication? No, absolutely not!

Since the bylaw has been in effect, the Church on the Hill has added AT&T antennas in their steeple. Tanglewood has added a Verizon antenna. There are others throughout Lenox. If you go to antennasearch.com you can see the number of towers and antennas within a 3 mile radius of any address.

Hire Attorney Berg or Pill or Campanelli or McCollough or at least meet with them for free for one hour. Let experts present to the town. If you will not listen to the residents, the home owners, the taxpayers, listen to the attorneys who do this work.

Let them present at the next meeting and comment on how the bylaw could be strengthened for all the reasons: real estate values, notification, setbacks, and recourse if an inappropriately sited tower is proposed by Telecomm providers.

The Curtis is home to 60 or so elderly, disabled residents who are depending on you! Look at your charter on your website. It's your job to look out for the welfare of the Lenox residents.

Thank You,

Amy Judd

Lenox Land

From: Gwen Miller
Sent: Thursday, October 20, 2022 1:37 PM
To: Pam Kueber; Tom Delasco; sue lyman; jh@jharwoodarchitect.com; Kate McNulty-Vaughan; Lenox Land
Subject: Fwd: [Lenox, MA] Meeting attendance for the disabled. (Sent by Laura Turzo, laura.turzo@gmail.com)

Passing this along.

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From: Gwen Miller <gmiller@townoflenox.com>
Sent: Thursday, October 20, 2022 1:31 PM
To: laura.turzo@gmail.com <laura.turzo@gmail.com>
Cc: Lenox Land <LandUse@townoflenox.com>
Subject: Re: [Lenox, MA] Meeting attendance for the disabled. (Sent by Laura Turzo, laura.turzo@gmail.com)

Hello Laura,

I am deeply sorry you were unable to attend or participate in a previous or previous meetings via Teams. We are going to use Zoom going forward. Please let us know if you need any further accommodations to make the meeting accessible for you virtually or in-person. We sincerely wish for all community members to have equal access to our public meetings and have been disappointed and chagrined by the issues with Teams and a hardware component we now know was not up to the task of transmitting audio and video.

I will also share your email with the Planning Board.

Please take care,
Gwen

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From: Contact form at Lenox, MA <cmsmailer@civicplus.com>
Sent: Thursday, October 20, 2022 12:52:11 PM
To: Gwen Miller <gmiller@townoflenox.com>
Subject: [Lenox, MA] Meeting attendance for the disabled. (Sent by Laura Turzo, laura.turzo@gmail.com)

Hello gmiller,

Laura Turzo (laura.turzo@gmail.com) has sent you a message via your contact form (<https://www.townoflenox.com/user/22/contact>) at Lenox, MA.

If you don't want to receive such e-mails, you can change your settings at <https://www.townoflenox.com/user/22/edit>.

Message:

Dear Ms Miller,

The terrible problems I encountered, and the ultimate failure of the Microsoft system meant that as a disabled Lenox resident, I could not participate in an open meeting. I believe this is a violation of my rights and a violation of the open meeting rules.

I have been informed that there are 2 attorneys willing to do an hour pro bono session to offer viewpoints that offers set backs and the use of fiber optic cable that would provide COVERAGE AND SAFETY. I WOULD LIKE TO KNOW WHEN YOU WILL HEAR THESE ATTORNEYS AND HOW I CAN PARTICIPATE IN THIS AND FUTURE OPEN MEETINGS AS A DISABLED PERSON?

All the best,
Laura Turzo

Lenox Land

From: Gwen Miller
Sent: Friday, October 21, 2022 1:19 PM
To: Tom Delasco; Pam Kueber; Kate McNulty-Vaughan; sue lyman; jdah@verizon.net; Lenox Land
Subject: Fwd: Cell service in town

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From: Pam Kueber <pkueber@gmail.com>
Sent: Friday, October 21, 2022 12:47:06 PM
To: Gwen Miller <gmiller@townoflenox.com>
Subject: Fwd: Cell service in town

Correspondence.

----- Forwarded message -----

From: **Pam Kueber** <pkueber@gmail.com>
Date: Thu, Oct 20, 2022 at 10:21 AM
Subject: Re: Cell service in town
To: Kristine Cass <kristinecass@gmail.com>

Hi Kristine,

Thank you for your email. If you would like submit written correspondence, we are certainly looking for citizens to give us indications of what they would like to see.

If you want to keep up with work and/or see latest drafts, watch our meeting packets posted online.

Many thanks - and thank YOU for all you do on Finance Committee!

Pam

On Thu, Oct 20, 2022 at 10:00 AM Kristine Cass <kristinecass@gmail.com> wrote:
Hi Pam,

I just spoke to Chris about draft articles for the Special Town Meeting, and he mentioned some of the issues around the cell reception article. I want to thank you and the Planning Board for all the work you are doing to ensure we can get better reception in town. I cannot think of many things that I favor more strongly than fixing the abysmal cell service in town, so if there is anything I can do to be helpful, please let me know! I will of course be at the meeting to vote, but if there's another way I can help, I'm happy to do so.

Thanks,
Kristine

October 22, 2022

333 West Mountain Road
Lenox, MA 01240
413-822-8012

To The Planning Board,

I would like to take the time to thank you on your diligent efforts to update the bylaw(s) regarding cellular service and coverage here in the Lenox community.

I am sorry to have to miss the meeting on 10/25/22 but I wanted to speak to advancing cellular service in our area, and since I am the only person who owns a property with a cellular tower in Lenox, I feel that I am in a unique position to speak on this subject. I own the property located at 90 Pittsfield Road in Lenox which is the current site for Lenox Fit, Inc. and SUMER, LLC, which is my real estate holdings company. I have owned this parcel since December 31, 2014, and I have worked at this location for 6 plus years prior to purchasing the property.

Neither I, nor my staff or my customers suffer or have suffered from any ill effects from the tower that exists on my property. We serve hundreds of people in our community daily in Physical Fitness, Physical Therapy & rehabilitation, Cryotherapy and Pilates. And, while I understand that people may have questions or even concerns about the placement of future towers or antennas, these concerns must be met with scientific data and not unproven theories or scare tactics.

According to the American Cancer Society "at ground level near typical cellular base stations, the amount of energy from RF waves is hundreds to thousands of times less than the limits for safe exposure set by the US Federal Communication Commission (FCC) and other regulatory authorities. It is very unlikely that a person could be exposed to RF levels more than these limits just by being near a cell phone tower." More recently, the **US Food and Drug Administration (FDA)** issued a technical report based on results of studies published between 2008 and 2018, as well as national trends in cancer rates. The report concluded: "Based on the studies that are described in detail in this report, there is insufficient evidence to support a causal association between radiofrequency radiation (RFR) exposure and [tumor formation]."

I do believe that great care needs to be taken in the placement of towers and antennas to coincide with our town's aesthetic, however, we must understand that we are severely lagging in cellular coverage in Lenox and in the Berkshires as a whole. At best, this poses an inconvenience for people but in more serious situations, the lack of coverage can pose a threat

to safety. Many people rely on their cell phones for all their calling and internet access as land lines are quickly becoming dinosaurs in communication.

Researchers at Cornell University mapped cell-phone signal strength across a large city, finding that low-income areas receive almost 15 percent less network coverage compared with their affluent counterparts. "Mobile access is *the* access," said [Aija Leiponen](#), associate professor in the Dyson School of Applied Economics and Management at Cornell University. "Our results reinforce the belief that there is a mobile divide between individuals and households in urban or affluent areas and those in rural or lower-income areas. Insufficient mobile coverage may further contribute to the decline or slower development of these areas." One reason poor service can depress the economy, Leiponen suggested, "is that small businesses may not want to move into an area where they will not be able to communicate with their customers or their employees. Individuals, meanwhile, may find it harder to get and keep jobs, and people will be deprived of information about goods and services and community issues. Affluent nations, the researchers point out, often have excellent mobile coverage."

Speaking strictly from my own personal experience, cellular coverage in Lenox AND in the greater Berkshire area is highly frustrating. As a business owner I am often traveling around the county and am doing business on my cell phone most of the day. Making and taking calls from my employees, customers and vendors often get dropped or won't go through, emails get stuck in transit, and internet searches and document retrieval become nearly impossible, especially in downtown Lenox.

Whether we like it or not, cellular technology is here to stay. According to the Executive Office of Public Safety in Massachusetts, if a mobile phone is more than several years old (e.g., older than an iPhone 6 or Samsung Galaxy S4), the phone may require an upgrade before mobile carriers eliminate 3G technology. For older phones and devices, the loss of 3G coverage will impact call and data service, including the ability to contact 911. These plans to phase out 3G coverage result from a decision made solely by the major cellular providers. Technology is advancing at a fast pace, and it is our job as a community to make sure that we keep up with these advancements to ensure that our residents and our businesses can function at optimal levels.

Thank you



Suzanne Merritt, President of Lenox Fit
(90 Pittsfield Road)
Resident (333 West Mountain Road)

Town of Lenox
Planning Board
Meeting Minutes
October 11, 2022

Present in-person: Tom Delasco (Chair), Pam Kueber, Kate McNulty-Vaughn, Jim Harwood, Susan Lyman, Gwen Miller (staff), Deanna Garner (staff), Francie Sorrentino, Don O'Neal, Chris Ciof, Veronica Colley Cunningham, Susan May, Ellen Jacobsen, Phil Gilardi

Present via Teams: David Maxson (consultant) Clarence Fanto, Scott Barrow, Courtney Gilardi, Diane Sheldon, Carol Ramsey, Debbie, Grace, Laura Turzo, Nan Sisselman, Sandy Panzella, Karne Beckwith, Elle

Documents provided in advance of meeting:

October 11 Meeting Packet (10/11 agenda, 10/3 meeting minutes, wireless mapping models, residential parcel buffer maps, draft wireless bylaw language)

1. Approval of 10/3 Minutes

The minutes were approved subject to PK's amendments; KMV also asked for each vote to be recorded.

- 2. Wireless:** Discuss mapping work conducted by the Town's consultant, Isotrope LLC; discuss location preferences and draft bylaw language to prepare for a Special Town Meeting in November (tentative date is 11/17); discuss wireless content.

TD laid out ground rules for the meeting. He said the Planning Board would be discussing work conducted by the consultant and bylaw language. He said he expected this to go on for about an hour and a half, and then would allow for comments and questions from the public.

TD began by reviewing the buffer maps provided by Town Planner Gwen Miller. He noted the buffers were from the property lines, not from the residential structures. GM said that was correct. There was some discussion about the significance of this difference; the proposed zoning bylaw language uses a setback from the structure, not property lines.

David Maxson explained the maps he provided, which depict proposed locations for a wireless tower and the distance and level of coverage they would provide. The group went through the maps, which included a proposed location at the Sawmill property where it could be sited in tandem with communications tower for a new public safety complex; the Wastewater Treatment Plant; Mountainview Cemetery; the Town's solar site, Town Hall and the old pump plant off of West Street. PK asked DM if the maps helped guide height limits and other siting considerations. David said they do help

in that way. PK also asked if from the mapping DM thought Lenox would be an attractive place to develop new wireless infrastructure—or if the topography and lack of population density makes it less desirable to carriers.

DM suggested carriers aren't necessarily looking for coverage, but for capacity—and so new infrastructure is possible because their users need more service to meet their different needs and how they use their devices.

DM suggested the Selectboard include warrant articles in the Special Town Meeting warrant that will authorize them to lease specific Town owned parcels.

He emphasized the goal of the mapping and the review of setbacks is to identify where the Towns' desires and physical characteristics coalesce—where does it make sense to allow or prohibit wireless infrastructure so the Zoning bylaw is clear and gives the Town the ability to say yes or no as needed.

JH asked if they could add Lenox Mountain to the mapping for next time. HE also suggested that David join the buffer maps and the coverage ("heat") maps to identify where wireless towers could go. He suggested that a carrier will determine what makes sense or not, and the Town needs a zoning bylaw that will allow them to site where suitable.

There was some discussion about the setback as a "fall zone" and whether or not the term "looming" was really technical enough.

PK thought they should dive into the zoning bylaw language. KMV and TD emphasized the importance of the mapping—it helps guide where they can allow things in the Zoning bylaw language itself. GM noted it was helpful, using Lenox Dale as an example. The maps from David Maxson show how limited the coverage is from site to site, and the setback buffer maps show how limited available area becomes in dense neighborhoods--i.e. leaving a limited area to site wireless in places where coverage is really lacking, like Lenox Dale.

PK clarified the setbacks are only for new towers, not antennae.

There was some discussion among the Board members about how specific they'd like to get—if they'd like to identify specific Town owned sites, or stick to broader areas or neighborhoods.

JH reiterated he would like to keep the setback buffer approach, since it treats every area in Town uniformly. He cautioned against picking specific locations since that will cause concern among neighborhoods.

SL said that the zoning bylaw language has a preference for Town owned properties; she wondered if that would expedite the entire process. PK suggested that David Maxson work with GM to flesh out the potential for Town owned properties.

TD observed that most towers are 100' tall, and that the setback needs to one-and-a-half times wider. DM noted the maps depicted lower frequency which can cut through vegetation, and notes carriers are seeking capacity, and looking for cell sites near density. PK suggested the 250' setback.

KMV questioned the setback language—concerned it would hamper flexibility. PK suggested they allow for a waiver request for height subject to three criteria. KMV thought this would allow greater flexibility for the Zoning Board of Appeals, which is one of the goals of this bylaw revision.

PB began to review the section of Zoning bylaw entitled "Location Preference". KMV thought the language could be more clear. PK said she would finalize the height and setback language. The group went on to discuss Administrative Approval on page 3; DM noted the FCC makes certain things impossible to deny, but allows for review. Eligible Facilities Requests (EFRs) have 60-90 days for review. His question was for Town Counsel—should this be a Special Permit or a SP amendment? GM said it sounded like Site Plan Review. DM noted these modifications can result in a tower up to 20' higher, 20' wider and entail excavation around the base of the tower.

DM suggested certain administrative topics—like the length of time the Town has to act on an Eligible Facilities Request, for example—could be in a manual in a binder at Town Hall instead of being right in the Zoning bylaw.

TD opened the floor to questions and comments.

From the members of the public attending via Teams, GM read their questions:

One asked about small cell wireless technology. DM and PK explained how this would be handled in ZBL language.

Another person asked why setbacks as wide as 1640 feet were not being considered.

Another person asked if health concerns were being factored into the decision making by the board.

Ellen Jacobson asked about how health was being incorporated into the Board's review.

Phil Gilardi had concerns about the information being used by David Maxson to conclude wireless infrastructure is safe.

DM and TD reiterated that health concerns cannot be used to decide for or against wireless infrastructure in siting review and approval.

Susan May suggested there was not enough time to inform the public and get voters to a Special TOWN Meeting scheduled for 11/17/2022

Francie Sorrentino said she was a parishioner of St. Vincent's in Lenox Dale. She said the Board is not rushing—she said this work has been on the back burner for far too long and the need for improved coverage in Lenox Dale is urgent. She has made emergency calls that have been dropped. She said she

elects the Planning Board to fix these problems, and she has faith in them. She said Father Bonzagni is a lawyer and will be happy to work with the Town to help solve the problem of coverage.

Veronica Cunningham asked if they thought a few high towers would solve the problem, or it seemed more like multiple smaller towers or antennae might be a better solution.

Chris Ciolfi is working with carriers interested in lenox, he mentioned adding town properties to list for selectment citing flexibility, he stressed the importance of making the town attractive to wireless carriers and making the process quicker. He discussed other towns and their sites and then discussed the rooftop vs. towers vs. concealed towers, and the carriers interest versus the legal ramifications including information about structure design.

Karen Beckwith wanted to bring her point of view about the historic village and the look of the wireless components on buildings in the village. She is concerned about the visual appeal of the town to its residents and tourists and the health impacts to the town's residents.

Courtney Gilardi wants residents to have a say in the bylaw would like the town to have a consultation with an independent telecom lawyer. She mentioned setbacks that other towns have used and that the board may consider as to avoid the issues seen in Pittsfield including issues related to health.

TD closed the public comment session of the meeting noting the board will take comments under consideration.

KMV asked if the board is still doing a design standard. PK asked to meet with DM to narrow in on key questions and recommendations including design standards and asked board to please send comments to Gwen to aggregate.

For next meeting PK will include information on height and setback points, the use table and allowed or disallowed zones, and benchmarking of other towns. SL asked for collocation and site sharing to be addressed. PK elaborated on the list of items to be included and said she will double check with attorney to see about design standards.

The board discussed of how to make the bylaw draft easier to review.

KMV made comment regarding the special town meeting and a citizen petition to hold off the vote she heard about and she just wanted to make the board aware of.

The meeting adjourned.

Lenox Planning Board

Meeting Minutes

October 18, 2022

Planning Board present: Tom Delasco, Pam Kueber, Kate McNulty-Vaughn

Others present in-person: Gwen Miller, Deanna Garner, Scott Barrow, George Bergen, Gerorgia Watrous, Daniel, O'Neal, Rebecca Walsh, Karen Nelson, Tribly Miller, Gary LeBeau, Matt Merrit, Sue Merritt, Robert Asplund, Amelia Asplund, Andrea Bruce, Robert Pellicciotti, Jane Kavanau, Amy C. Judd, Susan May, Liliana Bibic, Barbara Rubin, Jane Aiken, Suzanne Smith, Tammis Coffin, Edward Acker

Others via Teams: David Maxson, Ellen Jacobsen, Courtney Gilardi, Olga Weiss, Diane Sheldon, Karen Beckwith.

Absent w/ Notification: Jim Harwood, Sue Lyman

Documents available in advance of the meeting: October 18 Meeting Packet available on website (agenda, Form A plan for 279 Undermountain Road, 100', 250' and 500' buffer maps with wireless sites, draft wireless bylaw, wireless bylaw comparison document)

1. Approval Not Required (Form A): 279 Undermountain Road

Jonas Dovydenas presented his Approval Not Required plan for the property at 279 Undermountain Road. Lot A will have approximately over 1 acre with 156' frontage; Lot B will be left with 2.89 acres and 280' frontage. KMV moved to approve; PK, TD and KMV all approved.

2. Wireless: *Discuss mapping work conducted by the Town's consultant, Isotrope LLC; discuss location preferences and draft bylaw language to prepare for a Special Town Meeting in November (tentative date is 11/17); discuss wireless bylaw content.*

TD explained the Planning Board would discuss the wireless bylaw draft and maps with David Maxson of Isotrope, LLC in a working session for about 1.5 hours. He would then entertain questions or comments from members of the public.

PK explained the time she had spent with David Maxson and the changes they had made to the Zoning Bylaw. She said she was happy with the draft to date. She explained they were leaving the design specifications in the Zoning Bylaw to give greater flexibility. She was satisfied with the quantitative and qualitative assessments and said they had discussed setbacks further. They had included a "straw dog" for the proposed Table of Uses the group could go over.

The difference between the height limit on antennae versus poles was highlighted—PK noted an antenna could not be higher than 50' and suggested a setback 1x higher than the actual height. TD suggested they maintain the underlying property line setback in the Zoning Bylaw; KMV noted the largest setback in the Dimensional Requirements is 50' (in the R-3A zone).

PK explained further that a carrier will need to explicitly present the Determination of Need to the Zoning Board of Appeals. This will give the Zoning Bylaw more teeth. The applicant will have to demonstrate feasible alternatives. The Zoning Board will have to review both—the proposed site and alternative sites.

A clause in the draft bylaw will make the applicant state rules that apply to their application.

PK noted this would “armor” up the Town if it already had cell coverage everywhere, but in Lenox there is marginal service everywhere. DM reiterated the importance of having an alternatives analysis in the Zoning Bylaw—this would require the Zoning Board to look at another parcel in their review.

KMV suggested a conversation with the Zoning Board of Appeals to go over the “teeth” being included in the Zoning Bylaw. She felt the proposed language was much clearer.

PK asked about the new mapping—she asked if the new maps provided in the meeting packet supported a 250’ setback requirement. GM explained the points were hypothetical wireless locations. The points shown are related to potential setbacks.

Around 7:34 p.m., the microphone on the meeting Owl stopped working. The group tried to switch to GM’s phone. While using the phone, they tried to discuss co-location. But, the audio quality was so poor they paused. TD paused the meeting and the group decided to continue until October 25th.