

Tower Ordinance Polk County, North Carolina

ARTICLE I

Section 101. Title

This Ordinance shall be known as "The Tower Ordinance" of Polk County, North Carolina.

Section 102. Authority and Enactment

This Ordinance is adopted under the authority and provision of the General Statutes of the State of North Carolina Article 6, Chapter 153A-121.

Section 103. Purpose

The Board of Commissioners finds that the construction of towers may cause unusual problems and hazards to the residents and visitors of Polk County. The purpose of this Ordinance is to regulate the construction of towers to avoid potential damage to adjacent properties from tower failure, and falling ice or other such debris, to maximize the use of existing and new towers in order to reduce the number of towers needed, to minimize potential hazards to low flying law enforcement and medical helicopters, to restrict towers that adversely detract from the natural beauty of the county by discouraging visual eyesores and to minimize the negative economic impact on tourism.

Section 104. Jurisdiction

This Ordinance, the regulations, and the procedures contained herein shall apply to and govern each and every lot, parcel or tract of land within the County of Polk, outside of the jurisdiction of any incorporated municipality.

ARTICLE II

Section 201. Definitions

1. Antenna: A conductor by which electromagnetic waves are transmitted or received.
2. Construction: Any new construction, reconstruction, alteration or expansion of a new or existing tower.
3. Fall Area: A circle whose center is the base of a telecommunications tower and whose radius is equal to one and one-half the tower's height.
4. Tower Height: The vertical distance measured from ground to the upper most point of the tower and any antenna, structure, or appendage fixed thereto.
5. Person: Any individual, partnership, firm, association, joint venture, public or private institution, utility, cooperative, interstate body, the State of North Carolina, and its agencies and political subdivision, or other legal entity.
6. Resident: Any person residing, doing business or maintaining an office within Polk County.
7. Structure: Anything constructed or erected, including but not limited to buildings, that requires location on the land or attachment to something having permanent location on the land.
8. Telecommunications Tower: Any tower or structure erected for the purpose of supporting one or more antennas designed to transmit or receive signals (e.g., telephonic, radio, television or microwave).

ARTICLE III

Section 301. Permits Required

No tower over fifty feet (50') shall be constructed, altered, reconstructed or expanded until a Polk County tower permit is obtained as provided in this Article. No tower permit shall be issued that is not in compliance with this Ordinance. No building permit shall be issued for any tower subject to this ordinance that has not received a tower permit.

Section 302. Enforcement Officer

The Board of Commissioners shall appoint an Enforcement Officer. The Enforcement Officer or his appointee shall administer and enforce all provisions of this Ordinance.

Section 303. Permit Application

Tower Permit Applications are available from the Planning Department.

Section 304. Application Fee

A fee for reviewing tower permit applications shall be established by the Board of Commissioners.

Section 305. Issuance of Permit

Following the Planning Board's approval of any tower permit application not requesting a variance, the Enforcement Officer shall issue a tower permit. All tower permit conditions shall appear on the face of the Site Development Plan. The permittee shall acknowledge and agree to permit conditions approved by the Planning Board. If a building permit is not obtained within twelve (12) months after the tower permit is issued, the tower permit shall expire.

Section 306. Variances

1. Following the final decision by the Planning Board to deny a permit, a tower permit applicant may request that the Board of Commissioners grant a variance from the Tower Approval Standards listed in Section 403.
2. Before determining whether to, or not to, grant a variance, the Board of Commissioners shall hold a public hearing. The Board of Commissioner shall grant a variance if and only if it concludes that:
 - (A) adherence to the ordinance's development standards will cause extraordinary economic hardship to the applicant; and

- (B) if the variance is granted, the proposed use of the site will not substantially diminish the public health or safety or be detrimental to the general welfare of the county; and
 - (C) if the variance is granted, the proposed use of the site will not substantially detract from the natural beauty of the area and the county's future economic growth and development.
3. Should the Board of Commissioners grant the requested variance, the Enforcement Officer shall issue a tower permit. The permit applicant shall acknowledge and agree to permit conditions approved by the Board of Commissioners. If a building permit is not obtained within twelve (12) months after the tower permit issued, the tower permit shall expire.

Section 307. Criminal Sanctions

Any person violating this Ordinance shall be guilty of a misdemeanor. Each day's violation of any provision of this Ordinance shall constitute a separate and distinct offense. A violation begins from the date of first written notification by the Enforcement Officer or the County Attorney. Further violation shall be subject, upon conviction, to fine and/or imprisonment as provided by North Carolina General Statute 14-4.

Section 308. Remedies

If a tower is constructed, reconstructed, altered, expanded, or in violation of this Ordinance, the Enforcement Officer or County Attorney, in addition to other remedies, may institute any appropriate action or proceedings pursuant to G.S. 153A-123 to prevent the unlawful *use*, construction, reconstruction, alteration or expansion, and to restrain, correct or abate the violation. The Enforcement Officer or County Attorney may bring such action as to enjoin any such violations by action for injunction.

Section 309. Appeals

Appeals of the decision of the Enforcement Officer, Planning Board or the Board of Commissioners must be made to Superior Court within thirty (30) working days of their action.

Section 310. Severability

Should any section or provision of this Ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 311. Conflict with Other Laws

Whenever the regulations of this Ordinance conflict with the requirements of another North Carolina or federal statute, or Polk County Ordinance, the more restrictive standard shall govern.

Section 312. Effective Date

This Ordinance shall take effect and be in force on the _____ day of _____,
_____, Adopted on the _____ day of _____, _____.

Polk County Board of Commissioners

J. Alan Peoples, Chairman

Attest:

Pam Thomas, Clerk to the Board

ARTICLE IV

Section 401. Application Submission and Review Process

1. A completed tower permit application and five (5) copies of all supporting documentation identified in Section 402 shall be submitted to the Enforcement Officer for review at least fifteen (15) working days prior to a regularly scheduled Planning Board meeting.
2. The Enforcement Officer shall review the completed tower permit application for compliance with Section 402. Any application not containing all information required by Section 402 shall be returned to the applicant for correction and resubmission. If the Enforcement Officer deems it necessary, he may retain, at the permit applicant's expense, one or more professional engineers to assist him in reviewing any technical requirements.
3. The Enforcement Officer shall be responsible for submitting a notice to the local newspapers and to all known property owners abutting the property where the proposed tower is to be located. The notice shall state that the Planning Board will review and consider the tower permit application at their next meeting.
4. The Enforcement Officer shall recommend to the Planning Board either approval, approval with conditions or disapproval. In making his recommendation, the Enforcement Officer may include any appropriate conditions he deems should be placed on issuing the permit as identified in Section 403.
5. The Planning Board shall consider the tower permit application at their next regularly scheduled meeting after receiving the Enforcement Officer's recommendation.
6. The Planning Board shall take formal action to approve, approve with conditions or disapprove the tower permit application within ninety (90) working days. However, the Planning Board may take up to ninety (90) additional days if necessary. If the action is to disapprove the tower permit application, the reasons for such action shall be stated in the minutes and specific reference shall be made to the requirements not met. If the Planning Board fails to act within the specified time period, the application shall be considered approved or disapproved as recommended by the Enforcement Officer.
7. The permittee or his agent shall record the Site Development Plan in the Register of Deed's office before obtaining a building permit for the subject tower.

Section 402. Requirements for Site Development and Preliminary Tower Design Plans

The site development plan and preliminary design plan shall contain the following information and be part of the tower permit application:

1. The site development plan shall be prepared by a NC Registered Land Surveyor and contain the following:
 - (A) The tower applicant's name and property owner's name and their addresses, scale, north arrow, vicinity map, tax parcel identification number, and the tower's latitude and longitude coordinates.
 - (B) The name, address, signature and seal of the surveyor preparing the site development plan.
 - (C) The surveyed boundary lines of the parcel(s) that will contain the proposed tower and its fall area.
 - (D) The name, addresses and tax parcel identification numbers of all owners of property abutting the subject property.
 - (E) All identifiable structures located on the parcel, all private and public roads, highways, and underground and overhead utilities.
 - (F) All existing towers on the property or any towers whose fall area encroaches onto the property.
 - (G) The proposed tower's location, the proposed fall area and the location of all support structures and guy line anchors.
 - (H) The ground elevation of the proposed tower's base, all proposed support structures, property corners, and a permanent site bench mark. All elevations shall be determined using the National Geodetic Vertical Datum of 1929.
 - (I) All proposed access roads, easements or right-of-ways on or to the site, and any other improvements to the site.
2. The preliminary tower design plan shall be prepared by a NC Registered Professional Engineer and contain the following:
 - (A) The tower permit applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number.
 - (B) The name, address, signature and seal of the engineer preparing the preliminary tower design plan.
 - (C) A plan showing the base of the tower and the foundations for all guy line anchors and support structures, all proposed buildings and any other proposed improvements including access roads and utility connections within and to the proposed site.

- (D) A tower elevation showing the proposed lighting, all proposed antennas and other appendages.
 - (E) An elevation of each proposed set of guy line anchors.
 - (F) The proposed tower design loads.
3. A map and description showing the service area(s) for the proposed tower's antenna(s) and/or other devices.
 4. The applicant shall provide written statements from the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) showing that the proposed tower complies with all permit regulations administered by that agency or evidence that the proposed tower is exempt from those regulations.
 5. The applicant shall identify all other possible alternatives considered within the service area for the proposed tower's antenna(s) and/or other devices and explain why the proposed tower is necessary and why existing towers and structures (e.g., Duke Power transmission towers) can not accommodate the proposed antenna(s) and/or other devices.
 6. The applicant shall identify any variance(s) to the ordinance, the reason(s) for seeking the variance(s) and any measures that are proposed to mitigate possible adverse affects of the proposed variance(s).

Section 403. Tower Approval Standards

1. Any proposed tower shall provide a needed service or benefit to the residents of Polk County and the surrounding area that cannot otherwise be met.
2. Towers shall be sited to contain all ice-fall or debris from tower failure on-site. The minimum distance from the tower's base to the property line shall be one and one-half feet to each vertical foot.
3. A tower shall be set-back from other on-site and off-site towers and supporting structures, or other arrangements shall be made, such that one tower will not strike another tower or its support structure if it falls.
4. Tower lighting shall not exceed the minimum standards of the Federal Aviation Administration (FAA) for a red obstruction lighting system contained in Advisory Circular No. 70/7460-IF dated September 27, 1978, as amended.
5. To defeat unauthorized access, the base of the tower shall be surrounded by a fence or wall at least eight (8) feet in height unless the tower is constructed entirely on a building over eight (8) feet in height.

6. Any telecommunications tower shall be engineered and constructed to accommodate two (2) additional antenna that is at least as large as the largest proposed antenna identified in Section 402-2(D).
7. Tower permit approval is conditional subject to the owner(s) agreeing to allow future collocation of other antenna(s) or transmitting devices. This agreement shall be submitted in writing and recorded in the Register of Deeds office.
8. No tower shall exceed two hundred feet (200') in height.
9. Towers shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable Federal or State regulations.
10. The tower and equipment shall be located, designed, and/or screened to blend with the existing natural, or built surroundings to reduce the visual impacts as much a possible, and to be compatible with neighboring land uses and the character of the community.
11. Any tower not in use for two (2) continuous years shall be removed within 120 days after the tower owner and the current property owner have received written notice by the Enforcement Officer or the County Attorney. The written notice, mailed return receipt requested, shall be delivered to both the tower owner identified on the tower permit application and the current property owner.
12. Property located within the tower's fall area shall not be subdivided as long as the tower is standing.
13. A sign identifying the owner(s) and/or operator(s) of the tower and an emergency telephone number shall be displayed in a clearly visible location on the towers premises.