Article 46. Shall an ordinance entitled "2016 Amendments to the Land Use Ordinance and Development Review Ordinance Regarding Communications Towers" be enacted?

[The proposed ordinance amendments are available for review and inspection at the Town Clerk's Office and will be available at the Town Meeting.]

2016 AMENDMENTS TO THE TOWN OF WEST BATH LAND USE ORDINANCE AND DEVELOPMENT REVIEW ORDINANCE REGARDING COMMUNICATIONS TOWERS

The Town of West Bath Land Use Ordinance and Development Review Ordinance shall be amended as follows (additions are underlined and deletions are struck out):

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1. Amend Article III of the Land Use Ordinance, regarding Land Use Standards, as set forth below:

ARTICLE III

LAND USE STANDARDS

All land use activities shall conform to the following applicable land use standards:

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N. ESSENTIAL SERVICES IN THE SHORELAND OVERLAY ZONE

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3. Essential services shall be defined to include the following: gas, electrical or communications facilities; steam, fuel, electric power or water transmission of distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or BUILDINGS which are necessary for the furnishing of such services or Communications Towers.

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AA. COMMUNICATIONS TOWERS

1. Purpose

The purpose of this Section AA is to provide standards for the construction, maintenance and removal of Communications Towers such as cellular, radio, television, pager services, and other wireless telecommunication facilities.

2. Definitions

a) Communications Tower: Any tower, wireless telecommunication facility, structure, antenna, or other device or facility that provides cellular, radio, mobile radio, television, pager services, or other wireless communications.

b) Tower height: The vertical distance from the lowest point on the base of the tower at finished grade to the highest point of the tower, including the antenna and ground rod.

c) FCC: The Federal Communications Commission.

d) FAA: The Federal Aviation Administration.

e) Co-location: The use of a Communications Tower by more than one wireless telecommunications provider.

3. Applicability

This Section AA applies to the construction, expansion, removal of, and/or the co-location on any Communications Tower except:

a) An antenna that is an accessory use to a residential dwelling unit.

b) An amateur (ham) radio station licensed by the FCC.

c) A parabolic antenna less than seven (7) feet in diameter that is an accessory use of a residential dwelling unit.

d) The maintenance, repair, or reconstruction of a Communications Tower and related equipment, provided that there is no change in the tower height or other dimension of the facility.

e) A temporary Communications Tower erected for emergency communications by public officials that is in operation for less than 90 days and then promptly removed.

4. Approval Required

No Communications Tower may be sited, constructed, or operated without approval of the Planning Board in accordance with the provisions of this Ordinance and the Town of West Bath Development Review Ordinance.

Notwithstanding the foregoing provision, the Code Enforcement Officer shall approve, approve with conditions, or deny any eligible facilities request under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a), for modification of an existing Communications Tower that does not substantially change the physical dimensions of such tower or base station, as those terms are defined under the Spectrum Act.

5. Notification of Abutters and Public Hearing

The Planning Board shall hold a public hearing within thirty (30) days of the filing of a completed application for a new Communications Tower. The Planning Board shall publish the time, date and place of hearing at least twice in a newspaper of area-wide circulation, the date of the first publication to be at least seven days prior to the public hearing. The abutting landowners within 1,000 feet of the proposed Communications Tower shall be notified by the Planning Board of the hearing at least fourteen (14) days prior to the public hearing. Public hearings by the Planning Board shall be conducted according to the procedures outlined in Title 30-A, M.R.S.A. § 2691(3)(a)-(e). The cost of publication and notification of abutters shall be borne by the applicant.

Notwithstanding any other provision of this Ordinance to the contrary, the Planning Board may expedite the application review process set forth in this Section in order to comply with the federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7), and its accompanying rules and regulations, as may be amended from time to time, or any other federal or State law that imposes specific time periods for completion of review of completed Planning Board applications.

6. Application for Proposed Communications Tower

In addition to the requirements set forth in Article XII, Sec. 13.1(C) of the Development Review Ordinance, an application for a Communications Tower shall include the following:

a) A survey plan delineating fall zones, setbacks, proposed structures, and all other details of the proposed Communications Tower as are required herein.

b) A proposed landscaping and driveway access plan showing size and type of plantings in order to create an adequate vegetative buffer to reduce the impact of the Communications Tower and associated facilities on adjacent properties to the greatest extent possible.

c) At least three (3) simulated depictions of the Communications Tower from locations as requested by the Planning Board, including views from nearby roadways and elevations within a two (2) mile radius of the proposed site.

7. Co-location; Speculative Towers

As a prerequisite for obtaining approval for the construction of a new Communications Tower, the applicant shall demonstrate to the Planning Board that co-location or shared use of an existing tower or structure within 1.5 miles of the proposed site is impossible or unfeasible. The application for a new Communications Tower must include evidence of an existing contract with a carrier for the future use of the tower. The applicant shall further demonstrate that the Communications Tower would be suitable and available for co-location of other future wireless providers.

8. Location

Communications Towers are permitted in the following land use districts:

a) Business & Commercial District.

b) Rural Residential District, provided that the tower is a camouflaged monopine tower or is co-located on an allowed building or structure, such as a church steeple. All tower setback and height restrictions apply.

c) Urban Development Park District, provided that the tower is a camouflaged monopine tower or is co-located on an allowed building or structure, such as a church steeple. All tower setback and height restrictions apply.

9. Safety and conformance with existing standards

A Communications Tower and all appurtenant facilities shall conform with and be constructed to all applicable American National Standards Institute (ANSI) technical and structural codes and shall comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

10. Height limits

A Communications Tower may not exceed a tower height of 150 feet.

11. Fall Zone, Setbacks

A Communications Tower shall have a "fall zone" setback from all property boundary lines equal to a distance of 125% of the tower height, or two times the applicable setback requirement for the land use district, whichever is greater. Accessory buildings, guy wires, and other facilities must meet all applicable setback requirements for the land use district.

12. Access, noise, and lights

The Communications Tower and associated building(s) and facilities shall be enclosed with an eight-foot-high fence and locked gate in order to discourage trespassing on the property and climbing on the tower or other structures. The property shall have signage warning of the dangers at the facility including "Keep Out" and "No Trespassing" signs.

Noise levels shall not exceed 45 dBA Sound Pressure Level, measured at the property boundary line of the proposed site, except that noise associated with an emergency backup generator is exempt from this standard if running during an emergency. In addition, the emergency backup generator may be tested for short durations sufficient to test reliability and for maintenance between the hours of 9:00 a.m. and 5:00 p.m. local time, Monday through Friday.

No lights or security lights are allowed which will illuminate an abutting property. Any lighting that is required by FCC or FAA regulations are exempt from this standard.

13. No inference with existing towers, antennas, and microwave paths

The applicant shall demonstrate through an engineering study that the Communications Tower will not create any interference with any existing towers, antennas, wireless signals, microwave paths and/or existing wind generation facilities, and shall provide proof of all required FCC and FAA approvals for the Communications Tower.

14. No applicability to small wind energy conversion systems

This Section AA applies only to Communications Towers as defined herein and not to towers related to small wind energy conversion systems regulated under Article III, Section X of this Ordinance.

15. Abandonment

A Communications Tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of the owner's receipt of the CEO's written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned. If the owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the Town may remove the facility at the owner's

expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads and reestablishment of vegetation.

16. Removal Bond

Prior to the commencement of the construction of any Communications Tower, the applicant shall provide the Town with a performance bond or letter of credit in an amount sufficient to cover the cost of removal of the facility if it is abandoned as set forth above, including all site reclamation costs deemed necessary to return the site to its pre-construction condition, such as the removal of any road and reestablishment of vegetation. In order to determine the initial cost of removal of the facility and site reclamation costs, the applicant shall provide an estimate from an independent professional engineer. The applicant shall maintain such bond or replacement bond/letter of credit in place throughout the time period that the Communications Tower is in existence, and for three (3) years thereafter. The performance bond or letter of credit or any replacement performance bond/letter of credit shall be subject to the prior approval of the Town Attorney. The amount of the performance bond or letter of credit or any replacement performance bond/letter of credit shall be increased by 15% on the first of January every five years. The owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

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2. Amend Article IV of the Land Use Ordinance, regarding Board of Appeals, as set forth below:

ARTICLE IV

BOARD OF APPEALS

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D. POWERS AND DUTIES

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2. Administrative Appeals – The Board shall hear and decide administrative appeals that are referred to it regarding decisions of the PLANNING BOARD, or the Building Inspector/Codes Enforcement Officer, with regard to the provisions of this Ordinance or the Town of West Bath Development Review Ordinance. The Board's role in these matters is strictly appellate review and in no case will the Board conduct a de novo review. Enforcement decisions by the Codes Enforcement Officer may not be appealed to the Board. Application for an administrative appeal shall be

made to the Board of Appeals on a form provided for that purpose. The application shall be accompanied by the filing fee, which will be determined by the Selectmen on an annual basis. The applicant shall also pay all advertising fees that are required to meet legal notice requirements. Notwithstanding any other provision of this Ordinance to the contrary, the Board may expedite the application/appeal review process set forth in this Section in order to comply with the federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7), and its accompanying rules and regulations, as may be amended from time to time, or any other federal or State law that imposes specific time periods for completion of review of completed Board of Appeals applications/appeals

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3. Amend Article II of the Development Review Ordinance, regarding authority and administration, as set forth below:

ARTICLE II – AUTHORITY AND ADMINISTRATION

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2.2 AUTHORITY AND ADMINISTRATIVE BODIES

A. This Ordinance is adopted pursuant to the Home Rule Powers as provided for in Title 30-A, chapter 111, section 2101 thru 2109, and the Constitution of Maine, Article VIII, part 2nd, and Title 30-A, section 4403 of the Maine Revised Statutes Annotated.

B. 1. PLANNING BOARD - The PLANNING BOARD shall administer the Land Use Ordinance and the Development Review Ordinance

a. for all business and commercial uses;

b. for all home occupations;

c. for all SUBDIVISION plans and amendments thereto;

d. for all uses in the Shoreland Overlay Zone except conforming residential and associated accessory uses including DRIVEWAYS and residential docks;

e. for all uses in the Resource Protection Overlay Zones; and

f. for all Communications Towers.

2. BUILDING Inspector/Codes Enforcement Officer - The BI/CEO shall administer the Land Use Ordinance for all uses not administered by the PLANNING BOARD, unless the BI/CEO requests PLANNING BOARD Review. In addition, the Code Enforcement Officer shall approve, approve with conditions or deny any eligible facilities request under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a), for modification of an existing Communications Tower that does not substantially change the physical dimensions of such tower or base station, as those terms are defined under the Spectrum Act.

Attest: A true copy of an ordinance entitled '2016 Amendments to the Land Use Ordinance and Development Review Ordinance Regarding Communications Towers' as certified to me by the municipal officers of West Bath on the 9th day of May, 2016

Signature _____
Brandi Lohr, Town Clerk of West Bath