

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 373

(Duly Adopted September 8, 1999)

AN ORDINANCE AMENDING THE BOROUGH OF ALBURTIS ZONING ORDINANCE BY ESTABLISHING STANDARDS FOR THE DEVELOPMENT AND INSTALLATION OF COMMERCIAL COMMUNICATIONS TOWERS AND COMMERCIAL COMMUNICATIONS ANTENNAS, INCLUDING DEFINITIONS, CLASSIFICATION OF COMMERCIAL COMMUNICATIONS ANTENNAS AS CONDITIONAL USES IN ALL ZONING DISTRICTS, CLASSIFICATION OF COMMERCIAL COMMUNICATIONS TOWERS AS CONDITIONAL USES IN THE COMMERCIAL AND LIGHT INDUSTRIAL-OFFICE RESEARCH DISTRICTS, AND REQUIREMENTS TO DEMONSTRATE NEED, CONSIDER ALTERNATE SITES, PLACE THE FACILITY ON NONRESIDENTIAL LOTS, RESTRICT HEIGHT, SETBACK THE FACILITY FROM OTHER PROPERTY AND STREET LINES, INSTALL FENCING AND LANDSCAPING, PROVIDE PARKING, SHELTER EQUIPMENT, DEMONSTRATE WIND RESISTANCE, PROVIDE A VISUAL IMPACT ANALYSIS AND REMEDIATE ADVERSE IMPACTS, SATISFY FEDERAL LAW REQUIREMENTS, NOTIFY NEARBY AIRPORTS, PAY FOR AN ANNUAL INSPECTION, PERMIT CO-LOCATION OF OTHER ANTENNAS, REMOVE THE FACILITY WHEN IT IS TAKEN OUT OF SERVICE, AND PROVIDE SECURITY FOR THE REMOVAL OF THE FACILITY.

WHEREAS, the Borough of Alburttis is empowered to enact, amend, and repeal zoning ordinances under Article VI of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10601 *et seq.*; and

WHEREAS, Borough Council has enacted a zoning ordinance, which has been codified as Chapter 137 of the Code of the Borough of Alburttis (1981), as amended; and

WHEREAS, Borough Council desires to amend the provisions of the Zoning Ordinance in order to regulate commercial communications towers and commercial communications antennae; and

WHEREAS, more than thirty (30) days prior to the date of the enactment of this Ordinance, the Borough submitted a copy of this Ordinance to the Alburttis Planning

Commission and the Lehigh Valley Planning Commission, to provide them with an opportunity to submit recommendations, in accordance with the provisions of 53 PA. STAT. ANN. § 10609(c) and (e); and

WHEREAS, the Alburdis Planning Commission recommended approval of this Ordinance by a unanimous vote at its meeting on August 17, 1999; and

WHEREAS, the Lehigh Valley Planning Commission voted at its meeting on August 26, 1999 to offer the following comment on this Ordinance: “The amendment is in accord with the LVPC Sample regulations regarding Commercial Communications Towers & Antennas”; and

WHEREAS, on August 25, 1999 and September 1, 1999, the Borough published a public notice in the *East Penn Press*, a newspaper of general circulation in the Borough of Alburdis, of its intention to conduct a hearing on this Ordinance on September 8, 1999 at 7:00 P.M. in the Borough Hall, 260 Franklin Street, Alburdis, Pennsylvania, and to consider the adoption of this Ordinance thereafter. The notice stated the particular nature of the matter to be considered at the hearing, as provided in the title of this Ordinance; and

WHEREAS, immediately prior to the vote of Borough Council enacting this Ordinance, Borough Council conducted a hearing on this Ordinance, pursuant to 53 PA. STAT. ANN. § 10609(b), and did not substantially change or revise this Ordinance as a result of the hearing or the comments of the Alburdis Planning Commission or the Lehigh Valley Planning Commission;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburdis, Lehigh County, Pennsylvania, as follows :

SECTION 1. Section 137-5 of Chapter 137 of the Code of the Borough of Alburdis (relating to Zoning Ordinance—Definitions and Usage—Definitions) shall be amended by adding the following new definitions thereto (inserted at the appropriate locations in the alphabetical list of definitions):

Alternate Site — With respect to a proposed Commercial Communications Tower or Commercial Communications Antenna at a particular location (the “**proposed site**”), an Alternate Site is a location where a Commercial Communications Antenna can be sited (either on an existing or proposed building or structure) such that, alone or in combination with other Alternate Sites:

(1) the proposed telecommunications services can be provided to the Essential Service Area at a commercially equivalent (or superior) level of quality to that which can be provided from the proposed site; and

(2) it is still economically feasible to provide the proposed telecommunications services to the Essential Service Area (recognizing that the costs of acquiring the right to use and of using the Alternate Site(s) may be considerably higher than the costs associated with the proposed site, yet low enough that it is still economically feasible to provide the services from the Alternate Site(s)).

Alternative Tower Structure — Includes, but is not limited to, man-made trees, clock towers, bell steeples, light poles, and similar alternative design mounting structures that camouflage or conceal the presence of Commercial Communications Towers and Commercial Communications Antennas.

Commercial Communications Antenna — Any device used for the transmission or reception of radio, television, wireless telephone, pager, commercial mobile radio service, or any other wireless communications signals or personal wireless service, including, without limitation, omnidirectional or whip antennas and directional or panel antennas, owned or operated by any person or entity which is required to be licensed by the FCC to operate such device. This definition shall not include:

(1) private residence mounted satellite dishes or television antennas or amateur radio equipment including, without limitation, ham or citizen band radio antennas; or

(2) devices attached to or located in motor vehicles.

Commercial Communications Tower — A structure other than a building, such as a monopole, self-supporting, or guyed tower, used or intended to be used to support Commercial Communications Antennas.

Emergency Communications Services — Transmission and/or reception of emergency communications by a police department, fire company, emergency medical service, and other similar public safety organizations.

Essential — With respect to an application to establish or modify a Commercial Communications Tower or Commercial Communications Antenna at a particular location, the facility is “Essential” if—

(1) it is to be used to provide Personal Wireless Services, and a failure by Borough Council to grant approval to the application (subject to any reasonable conditions imposed by Borough Council), coupled with a failure to grant conditional approval to *any* application for a Commercial Communications Tower(s) and/or Commercial Communications Antenna(s) at an Alternate Site(s) (if any Alternate Sites exist), would have the effect of—

(a) prohibiting the provision of Personal Wireless Services in a particular geographical area, *or*

(b) unreasonably discriminating among providers of functionally equivalent services;

(2) it is to be used to provide Emergency Communications Services; *or*

(3) it to be used to provide only services *other than* Personal Wireless Services or Emergency Communications Services (or to establish or modify a Commercial Communications Tower or Commercial Communications Antenna to be used to provide services in addition to Personal Wireless Services and/or Emergency Communications Services and which requires a more extensive facility to provide the additional services than would be required to provide only Personal Wireless Services and/or Emergency Communications Services), and a failure by Borough Council to grant approval to the application (subject to any

reasonable conditions imposed by Borough Council), coupled with a failure to grant conditional approval to *any* application for a Commercial Communications Tower(s) and/or Commercial Communications Antenna(s) at an Alternate Site(s) (if any Alternate Sites exist), would violate federal law.

Essential Service Area — That portion of the geographical area to be served by a Commercial Communications Antenna (or, with respect to a Commercial Communications Tower, the Commercial Communications Antennas located on the Tower) for which any such Antenna is Essential.

Fall Zone — The area on the ground within a prescribed radius from the base of a Commercial Communications Tower. The fall zone is the area within which there is a potential hazard from falling debris or the collapsing of the Commercial Communications Tower. The engineer of each person who proposes to install a Commercial Communications Tower shall submit an initial determination of the Fall Zone for that Tower, together with supporting documentation, as part of the application to establish the use, but the final determination of the Fall Zone shall be made by the Borough Council after considering all evidence presented at the hearing on the use.

FCC — The Federal Communications Commission.

Height of Commercial Communications Antenna — The distance from the highest point of the Antenna to the ground level.

Height of Commercial Communications Tower — The overall height of a Commercial Communications Tower from the base of the tower to the highest point of the tower, including, but not limited to, antennas, transmitters, satellite dishes, or any other structures affixed to or otherwise placed on the tower. If the base of the tower is not on ground level, the height of the tower shall include the base of the building or structure to which the tower is attached.

Personal Wireless Services — “Personal wireless services” within the meaning of the Communications Act of 1934, as amended, *inter alia*, by the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.*

SECTION 2. Articles IV, V, VI, VI, and VII of Chapter 137 of the Code of the Borough of Alburdis (relating to Zoning Ordinance—Regulations for the R-1, R-2, and R-3 Residential Zoning Districts, the C-1 Commercial Zoning District, and the L-1 Light Industrial–Office Research District) shall be amended as follows (with deletions indicated in ~~strike-outs~~ and insertions indicated by double underlining):

Article IV — Regulations for R-1 Low-Density Residential District

* * *

§ 137-13 Conditional uses.

G. Commercial Communications Antenna.

* * *

Article V — Regulations for R-2 Medium-Density Residential District

* * *

§ 137-21 Conditional uses.

K. Commercial Communications Antenna.

* * *

Article VI — Regulations for R-3 High-Density Residential District

* * *

§ 137-21 Conditional uses.

N. Commercial Communications Antenna.

* * *

Article VII — Regulations for C-1 Commercial District

* * *

§ 137-37 Conditional uses.

X. Commercial Communications Antenna.

Y. Commercial Communications Tower.

* * *

**Article VIII — Regulations for L-1
Light Industrial-Office Research District**

* * *

§ 137-45 Conditional uses.

FF. Commercial Communications Antenna.

GG. Commercial Communications Tower.

* * *

SECTION 3. Section 137-72 of Chapter 137 of the Code of the Borough of Al-
burtis (relating to Zoning Ordinance—Conditional Uses and Special Exception
Uses—Specific Requirements) shall be amended by adding the following new subsection
(FF):

**FF. Commercial Communications Towers and Commercial
Communications Antennas.** The following minimum requirements shall
be satisfied by a Commercial Communications Tower and, to the extent
applicable under this subsection, by a Commercial Communications An-
tenna:

(1) **Purpose.** The purpose of this subsection is to provide
a uniform and comprehensive set of standards for the development and in-
stallation of new Commercial Communications Towers and Commercial
Communications Antennas. The regulations contained herein are de-
signed to protect and promote public health, safety, and the general wel-
fare of the community while ensuring that new Commercial
Communications Towers will be safe and be placed in suitable locations
and at the same time not unduly restricting the development of needed
telecommunications facilities. These regulations will also help to ensure
that the Borough's land use regulations comply with the Federal Tele-
communications Act of 1996. The regulations shall be applied to accom-
plish the following objectives:

(a) Minimize adverse visual effects of Commercial
Communications Towers and Commercial Communications Antennas and
related facilities through design and siting standards.

(b) Maintain and ensure that a non-discriminatory,
competitive, and broad range of telecommunications services and high
quality telecommunications infrastructure consistent with the Federal
Telecommunications Act of 1996 are provided to serve the community, as

well as serve as an important and effective part of the Borough's emergency services network.

(c) Provide requirements necessary for obtaining approval to site and construct Commercial Communications Towers and Commercial Communications Antennas while at the same time protecting the legitimate interests of Borough residents.

(d) Protect environmentally sensitive areas of the Borough by regulating the location, design, and operations of telecommunications facilities.

(e) Encourage the use of alternative support structures, co-location of new antennas on existing commercial communications towers, camouflaged towers, monopoles, and construction of towers with the ability to locate three or more providers.

(2) Demonstration of Need. Each person applying to establish or modify a Commercial Communications Tower or Commercial Communications Antenna must prove that the facility is Essential.

(3) Consideration of Alternate Sites.

(a) **Identification.** Each person applying to establish or modify a Commercial Communications Tower or Commercial Communications Antenna must identify all Alternate Sites for the proposed location, and all other potential sites for a Commercial Communications Tower and/or Commercial Communications Antenna which the applicant believes do not qualify as Alternate Sites (together with the reasons for the applicant's conclusion).

(b) **Preferred Use of Existing Structures.** Borough Council shall deny an application to construct, enlarge, or extend a Commercial Communications Tower if its antennas and proposed antennas can be mounted on an existing structure(s) at an Alternate Site(s).

(c) **Lesser Adverse Impact at an Alternate Site.** Borough Council may deny an application to establish or modify a Commercial Communications Tower or Commercial Communications Antenna if it finds that there would be a lesser negative impact on the public health,

safety, and/or general welfare if a Commercial Communications Tower(s) and/or a Commercial Communications Antenna(s) were established at an Alternate Site(s).

(4) Nonresidential Placement. A Commercial Communications Antenna may not be placed on any residential structure or on any structure located on a lot which is used in whole or in part for residential purposes.

(5) Height. The height of a Commercial Communications Tower or a Commercial Communications Antenna may not exceed the *greater* of—

(a) the maximum height requirement for the zoning District in which the facility is located; or

(b) the height of the lowest Commercial Communications Tower or Commercial Communications Antenna, as the case may be, which can serve the Essential Service Area from that location.

(6) Setback. A Commercial Communications Tower shall be setback from the nearest property or lease lot lines and existing street right-of-way lines a minimum distance equal to the *greatest* of the height of the Commercial Communications Tower, the Fall Zone of the Commercial Communications Tower, or the applicable setback line for the zoning District.

(7) Fencing & Landscaping.

(a) In General. Except as otherwise provided in this paragraph (7), fencing and landscaping shall surround all ground-level features, including any Commercial Communications Tower and any buildings or structures associated with the operation or maintenance of a Commercial Communications Tower and/or Commercial Communications Antenna.

(b) Exemption. Borough Council may exempt a Commercial Communications Antenna from any of the requirements of this paragraph (7) if the Antenna is mounted on an existing structure, all equipment associated with the operation and maintenance of the Antenna

is housed inside an existing structure, and the applicant proves that a fence and landscaping are unnecessary in the particular situation because the safety and visual protections generally provided by a fence and landscaping are satisfied in some other manner.

(c) **Fence.** A fence under this paragraph shall be secure and at least eight (8) feet in height above ground level at all locations.

(d) **Landscaping—In General.** An evergreen screen shall surround the fence, unless the Commercial Communications Tower or Commercial Communications Antenna is located in the L-1 Light Industrial–Office Research District. (*But see* the buffer strip requirements for the L-1 District in Article XIV, which remain applicable.) The screen can be either a hedge (planted 3 feet on center maximum) or a row of evergreen trees (planted 10 feet on center maximum), shall be a minimum height of six (6) feet at planting, and shall grow to a minimum of fifteen (15) feet at maturity. In addition, existing vegetation on and around the site shall be preserved to the greatest extent possible.

(e) **Alternatives to Evergreen Screen.** Any combination of existing vegetation, topography, walls, decorative fences, or other features may be permitted *in lieu of* the landscaping required under this paragraph (7), if Borough Council determines that they achieve the same degree of visual screening.

(8) **Parking.** A minimum of two (2) off-street parking spaces shall be provided for a Commercial Communications Tower. Borough Council shall determine whether zero (0), one (1), or two (2) additional off-street parking spaces are necessary to service and maintain a Commercial Communications Antenna which is attached to a structure other than a Commercial Communications Tower.

(9) **Equipment Shelter.** All equipment, supplies, and materials which are to be kept on-site to service a Commercial Communications Tower or Commercial Communications Antenna shall be stored in an enclosed building or other structure. Each person applying to establish or modify a Commercial Communications Tower or Commercial Com-

munications Antenna Information shall provide detailed information about the contents of any equipment shelter or equipment room to service the facility. The information shall include, without limitation, the type and quantity of oil, gasoline, batteries, propane, natural gas, or any other fuel stored within the shelter. The applicant shall demonstrate that any hazardous materials stored on-site shall be housed so as to minimize the potential for any adverse impact on nearby land uses. Materials Safety Data Sheets for all hazardous materials stored or utilized in the equipment shelter or room shall be submitted to the Borough and the Alburdis Fire Company. The use of fuels and hazardous materials shall be subject to all applicable federal, state, and local laws and regulations.

(10) Wind Resistance. Each person applying to establish or modify a Commercial Communications Tower or Commercial Communications Antenna Information shall provide a certification from a registered professional engineer stating that the Commercial Communications Tower or Commercial Communications Antenna satisfies the wind resistance requirements provided in the Borough Building Code. The registered professional engineer shall also certify to the overall structural integrity of the facility.

(11) Visual Impact Analysis.

(a) Requirement. Each person applying to establish or modify a Commercial Communications Tower or Commercial Communications Antenna shall submit a visual impact analysis to the Borough.

(b) Contents. The visual impact analysis shall be in the form of a written report, and shall include, without limitation, the following:

(i) a photograph simulation of pre-development versus post-development views from key viewpoints, as established by the Borough, both inside and outside of the Borough.

(ii) an analysis of Alternative Tower Structure design and color schemes.

(iii) an analysis of the visual impact of the tower base, accessory buildings, and overhead utility lines from abutting properties and streets.

(iv) at the discretion of the Borough, an additional simulation of the facility's visual impact shall be provided by erecting a mechanical construction crane to the proposed height of the facility at the proposed project site. The applicant shall allow the viewing of the crane simulation by the appropriate Borough officials and interested parties at a reasonable day and time as established by the Borough.

(v) an assessment of the cumulative impacts of the proposed or modified facility and other existing and foreseeable Commercial Communications Towers and Commercial Communications Antennas in the area.

(vi) a description of all feasible measures necessary to mitigate any negative visual impact by the proposed or modified facility, consistent with the technological requirements of the applicant.

(vii) a similar analysis of the visual impact of a similar facility at each Alternate Site.

(c) **Costs.** All costs for the visual impact analysis, and applicable administrative costs, shall be borne by the applicant.

(d) **Remediation.** The applicant shall implement all reasonable measures necessary to mitigate any negative visual impact created by the proposed facility, as determined by Borough Council after the hearing.

(12) National Environmental Policy Act (NEPA). Each person applying to establish or modify a Commercial Communications Tower or Commercial Communications Antenna shall demonstrate that all NEPA requirements, where applicable, for the proposed facility have been satisfied. A copy of the NEPA-required Environmental Assessment (EA) report shall be submitted when the proposed facility falls into one or more of the following categories:

(a) Facilities that are to be located in an officially designated wilderness area.

(b) Facilities that are to be located in an official designated wildlife preserve.

(c) Facilities that may affect listed threatened or endangered species or designated critical habitats.

(d) Facilities that are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

(e) Facilities that may affect districts, sites, buildings, structures, or objects, significant in American History, architecture, archaeology, engineering, or culture, that are listed, or are eligible for listing, in the National Register of Historic Places.

(f) Facilities that may affect a Native American religious site.

(g) Facilities whose construction will involve significant change to surface features including, but not limited to, wetlands, deforestation or water diversion.

(h) Facilities located within a flood plain.

(i) Facilities that are to be equipped with high intensity white lights located in residential neighborhoods.

The applicant shall notify the Borough at least thirty (30) days prior to any hearing or consideration of the Environmental Assessment report by the FCC. The applicant shall provide the Borough with documentation demonstrating how any negative impact on the features noted above will be mitigated.

(13) Federal Communications Commission (FCC).

(a) In General. Each person applying to establish or modify a Commercial Communications Tower or Commercial Communications Antenna shall provide the Borough with documentation that the operator of the facility is appropriately licensed by the FCC and that the proposed facility has been approved by the FCC.

(b) EMF/RF Exposure. Except as provided in subparagraph (c), each person applying to establish or modify a Commercial Communications Tower or Commercial Communications Antenna shall provide the Borough with documentation demonstrating that the proposed facility complies with all applicable standards established by the FCC governing human exposure to electromagnetic or radio frequency radiation. The operator of the facility shall update this documentation annually thereafter, and shall provide additional reports in the interim if the operator becomes aware of any changes to the most recent information provided. The Borough may secure, at the operator's expense, the services of a qualified independent radio frequency engineer to review the documentation and conduct tests as necessary to verify said documentation and report whether the facility conforms to all FCC standards.

(c) Exceeding FCC EMF/RF Exposure Standards. Any person who applies to establish or modify a Commercial Communications Tower or Commercial Communications Antenna which exceeds FCC standards regarding human exposure to electromagnetic or radio frequency radiation shall submit to the Borough a copy of the Environmental Assessment report required under NEPA prior to submitting an application for the site to the FCC, so that the Borough may review the report and provide commentary to the FCC for its consideration.

(14) Federal Aviation Administration (FAA).

(a) Height. Each person applying to establish or modify a Commercial Communications Tower or Commercial Communications Antenna shall provide—

(i) documentation of FAA approval for Commercial Communications Towers or Commercial Communications

Antennas whose height is greater than or equal to two hundred (200) feet,
or

(ii) proof that any Commercial Communications Tower or Commercial Communications Antenna less than two hundred (200) feet in height satisfies the requirements of 14 CFR Part 77.13(a).

(b) **Lighting.** No Commercial Communications Tower or Commercial Communications Antenna shall be artificially lighted except when required and approved by the FAA.

(15) **Airport Coordination.** Each person applying to establish or modify a Commercial Communications Tower or Commercial Communications Antenna shall notify each airport located within a five (5) mile radius of the proposed facility of its application to establish or modify such facility, and the date of the hearing before the Borough Council, with a request to submit any comments to the Borough before the hearing.

(16) **Annual Inspection.** Each year, on or about the anniversary of the date that a given Commercial Communications Tower or Commercial Communications Antenna first became operational, the Borough shall perform an inspection of the facility to verify that it satisfies the requirements of this Chapter and the conditions of its approval. The costs of the inspection shall be paid by the operator of the facility or, in default thereof, the landowner of the property on which it is located.

(17) **Co-location.** Every person granted approval to establish or modify a Commercial Communications Tower or Commercial Communications Antenna shall grant any other person the right to co-locate a Commercial Communications Antenna on the same facility and/or extend the facility and co-locate a Commercial Communications Antenna on the facility as extended, *provided that* the co-location can be accomplished without adverse effect to any pre-existing Commercial Communications Antenna, and that the other person provide commercially reasonable compensation for the right so granted.

(18) Removal. If a Commercial Communications Tower or Commercial Communications Antenna remains unused for a period of at least eighteen (18) consecutive months, the owner or operator shall immediately dismantle and remove the facility.

(19) Security. Each person granted approval to establish or modify a Commercial Communications Tower or Commercial Communications Antenna shall post and maintain security with the Borough, in a form acceptable to the Borough, in an amount sufficient to cover the removal of the facility and site restoration. The Borough may draw against the security to remove the facility and restore the site if the owner or operator of the facility fails to do so within eighteen (18) months after the use of the facility ceased.

SECTION 4. The Secretary of the Borough shall send a certified copy of this Ordinance to the Lehigh Valley Planning Commission within thirty (30) days after the date of enactment, as required by 53 PA. STAT. ANN. § 10609(g).

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Alburtis, this 8th day of September, 1999, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF ALBURTIS

Steven R. Hill, President

Attest:

Louise Stahley, Secretary

AND NOW, this 8th day of September, 1999, the above Ordinance is hereby
APPROVED.

Ronald J. Delaco, Mayor