

PROTECTIVE ZONING BY-LAW

for the

TOWN OF WORTHINGTON,

MASSACHUSETTS

Adopted

June 3, 1970

As Amended

February 13, 1971

April 26, 1973

June 23, 1978

September 25, 1980

June 5, 1982

June 17, 1989

May 22, 1990

May 4, 1996

June 28, 1997

October 25, 1997

August 14, 2001

January 29, 2002

May 4, 2002

October 18, 2005

May 5, 2007

May 3, 2008

May 2, 2009

October 26, 2010

September 13, 2011

December 13, 2011

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HISTORY OF AMENDMENTS

SECTION I DEFINITIONS - Added 4/26/73: Family, Family Dwelling Unit, One Family Dwelling & Educational. Added 6/23/78: Agriculture, Cluster Development, Mobile Home & Special Permit Granting Authority. Added 6/5/82: Sideyard. Added 5/4/96: All others. Deleted 6/28/97: Cluster Development. Added 10/25/97: Wireless Communication Facility.. 5/5/2007 Changed "Mobile Homes" to "Manufactured Housing" & added 4 types of trailers:

SECTION II EXISTING USES - intent clarified 4/26/73

SECTION IV USE REGULATIONS:

 A. Permitted Uses - clarifications 4/26/73 & 6/23/78

 B. Uses Authorized on Special Permits- Modular Homes deleted from list 6/23/78. Added 10/25/97: Wireless Communication Facility. 5/5/2007 Changed "Mobile Homes" to "Manufactured Housing", Rev 10/26/10

 C. Uses Requiring Site Plan Review-added 10/18/05, Rev 10/26/10

 D. Special Permit Uses Requiring Site Plan Review-added 10/18/05, Rev 10/26/10

 E. Agricultural Uses Requiring Site Plan Review-added 10/18/05, Rev 10/26/10

SECTION V DIMENSIONAL REQUIREMENTS:

 6/3/70- 6/23/78 1 acre and 200 feet frontage

 6/23/78- 9/25/80 2 acres and 200 feet frontage

 9/25/80 to present 2 acres and 400 feet frontage

 Setback and Sideyard clarifications 4/26/73 & 6/23/78; Minimum 700 sq. ft. & Maximum 2.5 story from 6/3/70 to 4/26/73.

 5/5/2007 Clarified re: private roads 5/2/2009 Clarified frontage requirement

SECTION VI MANUFACTURED HOUSING - Modular Homes deleted 6/23/78; 5/5/07: Changed "Mobile Homes" to "Manufactured Housing" & added "accessible" basement.

SECTION VII	TRAILERS - Eliminated distances to boundary requirement 6/23/78; 5/5/07 Replaced general regulations with separate regulations for Construction Office, Residential, Storage & Travel Trailers.
SECTION VIII	GENERAL REGULATIONS AND ADMINISTRATION A. Non-conforming Uses - eliminated "abandoned" clause 6/23/78 B. Enforcement - altered 4/26/78 & 6/23/78. Part 5 replaced 1/29/2002 C. Bd. of Appeals- altered 2/13/71, 4/26/73, 6/23/78, 5/5/07, 5/3/2008
SECTION IX	FLOOD PLAIN ZONING - added 6/5/82, replaced 6/17/89
SECTION X	WESTFIELD RIVER PROTECTION - added 6/17/89
SECTION X	WORTHINGTON WATER SUPPLY PROTECTION DISTRICT - added 5/22/90, Rev 10/26/10
SECTION XI	WIRELESS COMMUNICATIONS STRUCTURES AND FACILITIES - added 10/25/97, replaced August 14, 2001. Renumbered 5/5/07, Rev 10/26/10 11.4.11 Temporary Moratorium, added May 4, 2002: removed January 1, 2003
SECTION XII	SITE PLAN REVIEW - added 10/18/05, Section C Rev 10/26/10, Section I Rev 12/13/11
SECTION XIII	FLEXIBLE DEVELOPMENT - added 9/13/11

PROTECTIVE ZONING BY-LAW FOR THE TOWN OF WORTHINGTON, MASSACHUSETTS

SECTION I - PURPOSE & DEFINITIONS

The purpose of this By-Law is to provide for the Town of Worthington all the protection authorized by the General Laws of the Commonwealth of Massachusetts Chapter 40A (MGL Ch40A), as amended.

For the purpose of this By-Law certain terms or words shall be as defined below. Words in the present tense include the future, the singular number includes the plural and vice versa. The word "person" includes a partnership, corporation, or other entity. The word "lot" includes the word "plot". The word "building" includes the word "structure".

Agriculture shall include but not be limited to farming, horticulture, floriculture, nursery, truck gardening, greenhouses, maple sugar productions and display and sale of natural products raised in the Town with the necessary structures needed for these uses.

Boarding House: An establishment with lodging for up to four (4) persons where meals are regularly prepared and served for compensation and where the food is placed upon the table without service or ordering of individual portions from a menu.

Educational use as permitted in the By-Laws is use of land or buildings for educational purposes which are for religious, sectarian, denominational or public use.

A family is any number of individuals related by blood, marriage or adoption, living together as a single housekeeping unit, provided that a group of not more than five (5) persons keeping house together, but not necessarily related by blood or marriage shall be considered a family.

A family dwelling unit is a dwelling or part of a building occupied or intended to be occupied by one family for residential purposes.

Filling Station: Any premises where gasoline and other petroleum products are sold. Filling stations shall not include premises where automobile maintenance activities such as engine overhauls, automobile painting and body work are conducted.

Garage: Any building, premises or land in which or upon which a business, service or industry involving the maintenance, servicing, repair, or painting of motor vehicles is conducted or rendered.

Inn: A facility offering transient lodging accommodations on a daily rate to the general public and providing additional services, such as restaurants and recreational facilities.

Light Industry: A use engaged in the manufacture of finished products or parts, predominately from previously prepared materials, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing.

Manufactured Housing: Manufactured Housing is factory-built housing, intended for permanent occupancy, that has been constructed and manufactured to be in compliance with U.S. Department of Housing and Urban Development (HUD) Construction and Safety Standards (24 CFR, Part 3280.2). Manufactured Housing is built on a chassis and shipped on wheels. To conform to highway regulations, HUD code regulates the length, width and height of Manufactured Housing. Single section widths are typically 14 or 16 feet wide. Two single sections placed side by side constitute a "double-wide".

Motel: A building or group of buildings containing apartments and/or rooming units each of which maintains a separate outside entrance. Such building or buildings is designed, intended or used primarily for the accommodation of motor vehicle travelers and provides motor vehicle parking conveniently located on the premises.

A one family dwelling is a detached building designed for or occupied by one family.

Private Club: Buildings or facilities owned or operated by a corporation, association, or persons for a social, educational or recreational purpose but not primarily for profit or to render a service that is customarily carried on as a business.

Recreational Camps: An area or tract of land on which accommodations for temporary occupancy are located or may be placed, including cabins, tents, and major recreational equipment and which is primarily used for recreational purposes and retains an open air and natural character.

Renting of Rooms: A residential structure that provides lodging with or without meals, is available for permanent occupancy only, and which makes no provision for cooking in any of the rooms occupied by the paying guests.

Restaurant: An establishment that serves food and beverages to persons seated within the building. This includes cafes, tea rooms and outdoor cafes.

Riding Stable: A building or buildings and the attendant land where horses are kept for commercial use including boarding, hire, sale and instruction.

Saw Mill: An establishment where logs are sawed into boards and the boards and the by-products are sold commercially.

Seasonal Dwellings: A dwelling not used for permanent residence and not occupied for more than six months of the year.

Sideyard: Sideyard requirements shall apply to all boundaries other than the front yard.

Ski Tow: A type of ski lift which is operated by a ski facility for recreational purposes which enables skiers to glide on their skis as they are towed by an endless cable.

Small Business: Any enterprise conducting sales from the premises, not deemed to be a tradesman or an artisan as referenced in Section IV, paragraph A(5b) of the Worthington By-Laws.

Special Permit Granting Authority shall be the Board of Appeals or the Planning Board as provided in Section W.B.1 and Section W.B.2 of this By-Law.

Store: A retail establishment offering for sale to the general public food products, household items, farm items, and other goods commonly associated with the same.

Trailer, Construction Office: A registered, vehicular, portable structure built on a chassis or a modified storage container designed to be used for temporary occupancy as an office for conducting business related to a commercial or infrastructure construction project.

Trailer, Residential Construction: A Travel Trailer or Manufactured Housing used for temporary occupancy by the owner-occupants of a one family dwelling being constructed, undergoing substantial renovation or being rebuilt due to fire or natural disaster.

Trailer, Storage: A manufactured container, with or without a chassis and wheels, typically of metal or fiberglass construction, intended for storing or shipping goods. Examples include, but are not limited to, modular shipping containers, semi-trailers and truck bodies.

Trailer, Travel: A registered, vehicular, portable structure built on a chassis and designed to be used for temporary occupancy for travel, recreational or vacation use. Affixed to a Travel Trailer is the manufacturer's permanent identification "Travel Trailer."

Wireless Communication Facility: A commercial or public utility operated equipment or infrastructure designed to facilitate wireless communication including cellular telephone service, enhanced specialized mobile radio service and similar uses through a tower, monopole, antenna, satellite dish or other transmitting and receiving equipment.

SECTION II - EXISTING USES

The Protective Zoning By-Law shall not apply to any existing buildings or structures, nor to the existing use of any building or structures, nor to the land or premises or part thereof to the extent of the use existing at the time of the adoption of this Zoning By-Law, but it shall apply to any change of use thereof and to any alteration of a building or structure to provide for its use to a purpose or in a manner substantially different from the use to which it was put before alteration, or its use for the same purpose to a substantially greater extent.

SECTION III - ESTABLISHMENT OF DISTRICTS

For the purpose of this By-Law the entire Town of Worthington is hereby designated as a Residential-Agricultural District.

SECTION IV- USE REGULATIONS

No structure or land shall hereafter be used or occupied and no structure shall hereafter be erected, maintained or altered unless in conformity with the regulations for a Residential-Agricultural District.

A. Permitted Uses:

1. Agricultural use, except as limited in Section IV.B.
2. One family dwellings.
3. Religious, educational or municipal use.
4. Renting of rooms or furnishing of board for not more than four (4) persons in a dwelling regularly occupied for residential purposes.
5. Accessory Use or Structure
All of the following types of accessory uses or structures shall be permitted where the use or building is subordinate to the main building or use, and is incidental to the main or permitted use:
 - a. Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking, millinery, or for the practice by a resident of a recognized profession.
 - b. Use of premises or building by a tradesman or artisan who resides therein in connection with his trade, art or craft, provided that no manufacturing or business requiring employment of persons other than said resident, tradesman, or artisan shall be carried on.
 - c. Display of one permanent sign on the premises pertaining to a permitted use, which sign shall have a total area of not more than 12 square feet and is non-flashing, non-rotating and non-neon. Temporary signs may be permitted by the Board of Selectmen.
 - d. Accessory buildings or structures shall be permissible on a lot provided they are incidental to the principal use of said premises and shall not be

located within the required front and/or sideyard areas. Excluded from this provision are roadside stands and accessory signs.

- e. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a Special Permit provided the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

B. Uses Authorized on Special Permits

- 1. Uses which are authorized after issuance of a Special Permit by the Zoning Board of Appeals in accordance with the regulations appearing in Section VIII C.2. of this By-Law:

Garage	Restaurant
Filling Station	Boarding House
Inn	Manufactured Housing
Motel	Riding Stable
Store	Private Club
Ski Tow	Recreational Camps
Light Industry	Seasonal Dwellings
Small Business	Camping Areas
Saw Mill	

Large scale raising of poultry, pigs, hogs, fur-bearing or other farm animals.

Conversion of a one-family dwelling existing at the time this By-Law was originally adopted into a two-family dwelling.

- 2. Uses which are authorized after issuance of a Special Permit by the Planning Board in accordance with the regulations appearing in Section VIII C.2. of this By-Law:

Wireless Communication Facility

Water Supply Protection District uses as follows

- a. Commercial and industrial uses which are allowed in the underlying District;
- b. Any enlargement, intensification or alteration of an existing commercial or industrial use;
- c. The rendering impervious of more than 20% of any single residential lot.
- d. Alterations to uses that pre-exist the Water Supply Protection District.

C By-right Uses Requiring Site Plan Review

- 1. The Planning Board shall be the Site Plan Review Authority for the following uses where no special permit is required:
 - a. Religious and Educational Uses;
 - b. Federal, State of Massachusetts, and Town of Worthington uses;
 - c. Public Service Corporations exempt from the Special Permit process;
 - d. Child Care Facilities;
 - e. Hazardous Waste, Refuse Treatment and Disposal Facilities;
 - f. Scientific Research Facilities;

2. These uses require a Site Plan Review determination if they meet one or more of the following criteria:
New construction, addition or change of use resulting in
 - a. more than two thousand (2,000) square feet of impervious surface;
 - b. more than two (2) new dwelling units;
 - c. coverage of fifty (50) percent of the lot area in impervious surface;
 - d. a structure with any part more than 35' tall; or
 - e. parking for more than 5 vehicles.
3. The review shall be conducted in accordance with the regulations in Section XII of this bylaw, to the extent permitted for the use by Massachusetts General Law Chapter 40A.

D. Special Permit Uses Requiring Site Plan Review

1. **Special Permit Uses:**
Uses which require a Special Permit or Variance require a Site Plan Review if they meet one or more of these conditions:

New construction, addition or change of use resulting in
 - a. more than ten thousand (10,000) square feet of impervious surface;
 - b. coverage of fifty (50) percent of the lot area in impervious surface; or
 - c. a structure with any part more than 35' tall.
2. The Special Permit Granting Authority shall be the Site Plan Review Authority. In case of a variance, the Zoning Board of Appeals shall be the Site Plan Review Authority.
3. The review shall be conducted in accordance with the regulations in Section XII of this bylaw.
4. If a business is conducted from the residence, any structure or part thereof used for business is considered to be separate from the residence, and if it meets the conditions above will be subject to this bylaw.
5. The period of review for a Special Permit requiring a Site Plan Review shall be the same as any for other Special Permits and shall conform to the requirements of M.G.L. Chapter 40A.
6. Conditions of the Site Plan approval shall also be conditions of the permit or variance, if one is granted.

E. Agricultural Uses Requiring Site Plan Review

1. Uses or structures defined as agricultural by Massachusetts General Law Chapter 40A Section 3 require Site Plan Review if they meet one or more of the following criteria:
New construction, addition or change of use resulting in:
 - a. more than ten thousand (10,000) square feet of impervious surface;
 - b. coverage of fifty (50) percent of the lot area in impervious surface; or
 - c. a structure with any part more than 35' tall.
2. When no special permit is required, the Planning Board shall be the Site Plan Review Authority.

3. The review shall be conducted in accordance with the regulations in Section XII of this bylaw, to the extent permitted by Massachusetts General Law Chapter 40A for this use.

SECTION V - DIMENSIONAL REGULATIONS

1. A dwelling, principal building or principal structure hereinafter erected shall be located on a lot having not less than a minimum area of two (2) acres and a minimum frontage of 400 feet measured contiguously along a single street, either public or private, which the lot abuts. If private, said private street must either have been in existence or have been laid out on a plan duly recorded in the Hampshire County Registry of Deeds at the time of the enactment of the Zoning By-Law. Frontage on more than one street or opposite sides of the same street cannot be added to meet the minimum frontage requirement. No more than one dwelling, principal building or principal structure shall be built upon any such lot. A lot or parcel of land having an area or frontage of lesser amounts than required above, may be considered as coming within the area and frontage requirements of this Section provided such lot or parcel of land was listed in the tax records, or shown on a plan or described in a deed duly recorded and registered at the time of adoption of the By-Law, and did not at the time of such adoption adjoin other land of the same owner available for use in connection with such lot or parcel.
2. The minimum setback and sideyard requirements for all buildings, dwellings and structures shall be forty (40) feet for the minimum setback or in conformity with the existing property, and thirty-five (35) feet for the sideyards. The minimum setback shall be determined by a line parallel to the street right of way line extending from one side lot line to the other. No part of any building shall be placed within or protrude within forty (40) foot area between the setback line and the street line. In the case of corner lots the setback line shall be observed for all bordering streets. No building or any part thereof shall protrude within the thirty-five (35) foot prohibited sideyard area.

SECTION VI - MANUFACTURED HOUSING

The following regulations shall apply in respect to all Manufactured Housing:

1. Manufactured Housing must meet the minimum lot setbacks and other requirements for a single family dwelling in the District in which it is located.
2. Manufactured Housing must be placed on a permanent foundation.
3. An accessory building for storage must be provided unless the Manufactured Housing has an accessible basement for storage.

SECTION VII - TRAILERS

A. Residential Construction Trailer:

A Residential Construction Trailer may be permitted within the town of Worthington with a special temporary permit issued by the Building Inspector -subject to, but not limited to, the following conditions:

1. The Residential Construction Trailer shall be used only as temporary living quarters on the subject lot for the owner-occupants of a one family dwelling being constructed, undergoing substantial renovation or being rebuilt due to fire or natural disaster.
2. The permit will be effective for a one hundred and eighty (180) day period, renewable at the discretion of the Building Inspector for consecutive periods only, but under no circumstances shall permits be issued for any one Residential Construction Trailer to exceed eighteen (18) months.
3. The Residential Construction Trailer shall conform to all use and dimensional regulations, as well as Board of Health and Conservation Commission regulations, as applicable. The Building Inspector may waive dimensional setbacks if circumstances warrant.

B. Travel Trailer:

A Travel Trailer may be used as temporary living quarters for recreational or vacation use within the Town of Worthington on private property and with the owner's permission subject to the following conditions:

1. The Travel Trailer shall have a current registration.
2. Temporary occupancy exceeding thirty (30) consecutive days requires a Temporary Housing Permit issued by the Board of Health in accordance with 105 CMR 410.430. Temporary Housing Permits require evidence of a permanent street address and shall be valid for a period not to exceed one hundred and twenty (120) days. Upon expiration of the Temporary Housing Permit, the Travel Trailer shall be vacated and no new Temporary Housing Permit shall be issued for said Travel Trailer for a period of at least thirty (30) days.
3. Travel Trailer Occupancy Permits are not required for Travel Trailers residing at Registered Campgrounds that provide utility and sanitary facilities and that are in full compliance with all Board of Health and Building Code regulations.

C. Construction Office Trailer:

Placement of a Construction Office Trailer to be used for temporary office space is permitted subject to the following conditions:

1. The Construction Office Trailer is required in the specifications of a commercial construction or infrastructure project.
2. The Construction Office Trailer is used solely for the conduct of business related to the project for which it is installed.

3. The Construction Office Trailer shall be removed from the construction site within thirty (30) days of completion of an approved project.

D. Storage Trailer:

Storage Trailers are not permitted as accessory structures under Section IV.B.5.d, whether or not the same may otherwise qualify as structures under the Building Code, 780 CMR.

Exception: A temporary Storage Trailer(s) may be permitted for the storage of building materials, equipment or personal effects only when explicitly provided for as a condition in a Building Permit. Such condition shall stipulate that the Storage Trailer(s) shall be removed from the site within thirty (30) days of satisfactory final inspection or within eighteen (18) months of installation, whichever period is shorter.

SECTION VIII - GENERAL REGULATIONS & ADMINISTRATION

A. Non-Conforming Uses.

Any lawful building or structure or lawful use of a building or structure on premises existing at the time this By-Law is adopted may be continued even if not in conformity with the provisions of the By-Law. Any non-conforming building or structure damaged hereafter by fire or explosion or by flood or other so-called act of God, may be rebuilt. Any non-conforming building or structure may be enlarged to a reasonable extent or replaced if authorized by the Board of Appeals, but any new use of the building, structure or premises shall conform with this By-Law.

B. Enforcement

1. The Board of Selectmen shall appoint an Inspector of Buildings who will be responsible for enforcement of this By-Law.
2. No new construction, structural alternation, or moving of a building shall take place in the Town of Worthington until a Building Permit has been issued by the Inspector of Buildings.
3. Each application for a Building Permit to alter the outside of an existing structure or to construct a new structure shall be accompanied by two copies of a site plan which clearly shows boundaries of the lot, location of the street, any required culverts, placement of building, buildings or other man-made permanent features and location of sewerage system and water supply.
4. Construction or operation under a Building or Special Permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of not more than six (6) months after the issuance of the Permit and in cases involving construction unless such construction is continued through to completion as continuously and expeditiously as is reasonable.
5. Pursuant to the non-criminal disposition Chapter Authority of Section 21D of Chapter 40, any person violating any provision of the Zoning By-Law **shall be fined \$20/day for the first five business days, \$40/day for the next five business days, and \$100/day for each subsequent business day until compliance is achieved**, for each offense. Notice of such offense **shall** be delivered by the Building Inspector in writing.

C. Board of Appeals

There is hereby established a Board of Appeals of five (5) members and two (2) associate members, to be appointed by the Board of Selectmen, as provided in MGL Ch40A. The Board of Appeals shall have the following powers:

1. **Appeals.** To hear and decide an appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of MGL Ch40A, or by any Officer or Board of the Town, or by any person aggrieved by any order or decision of the Building Inspector or any other administrative official in violation of any provision of MGL Ch40A or of this Protective Zoning By-Law for the Town of Worthington.
2. **Special Permits.** To issue a Special Permit under the following conditions:
 - a. The use:
 1. Is listed in Section IV.B.1. of this By-Law.
 2. Shall not adversely affect the capacity of existing or planned community facilities, the character of the neighborhood, traffic on roads and highways in the vicinity or general by-laws and regulations in effect, including this Zoning By-Law;
 3. Is declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.
 - b. Required Plan. A plan for the proposed development of a site for an exception shall be submitted with an application for a Special Permit and such plan shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information that may be necessary to determine if the proposed special use meets the requirements of this By-Law.
 - c. Expiration. A Special Permit shall be deemed to authorize only one particular special use and shall expire if the special use shall cease for more than one (1) year for any reasons, and a new Permit shall be required for continuance of an exception.
 - d. All Special Permits shall lapse within two (2) years from the date the Permit was granted, unless substantial use or construction has commenced, except for a good cause. Included in the two (2) years shall be the time required to pursue or await the determination of an appeal referred to in MGL Ch40As17, as amended.
 - e. The Board of Appeals shall submit one copy of said application and site plan to the Planning Board, Board of Health and Conservation Commission for their review. Said Boards and Commission shall make recommendations as they deem appropriate and shall send copies thereof to the Board of Appeals in accordance with MGL Ch40As11, as amended. Failure of said Boards or Commission to make recommendations within thirty-five (35) days of receipt by said Board or Commission of the petition shall be deemed lack of opposition thereto.
 - f. Special Permits shall only be issued after a public hearing held within sixty-five (65) days after an application for a Special Permit has been filed by the applicant with the Board of Appeals, a copy of which shall be immediately given to the Town Clerk by the applicant. Said public hearing shall be held in accordance with MGL Ch40As11, as amended.
 - g. Conditions Applicable to Exceptions. If deemed necessary to protect the best interests of the surrounding property, the neighborhood, or the

Town as a whole, the Board of Appeals shall impose additional conditions in granting an exception. These additional conditions may include the following:

1. Increasing the required lot size or yard dimensions in order to protect the adjacent properties.
 2. Limiting the coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent properties.
 3. Controlling the location and number of vehicular access points to the property.
 4. Increasing the street width.
 5. Increasing the number of off-street parking or loading spaces required.
 6. Limiting the number, location and size of signs.
 7. Requiring suitable landscaping and screening where necessary to reduce noise and glare and to maintain the property in character and keeping with the surrounding area.
 8. Specifying a specific time limit for construction, alteration or enlargement to begin for a structure to house an exception.
 9. If a commercial operation, restricting the hours of operation so as to make it in harmony with the rest of the neighborhood.
 10. Providing for special layout of facilities on the property such as location of the building, parking areas and access to the building so as to minimize effect on adjoining property.
 11. Requiring that any future enlargement or alteration of use be reviewed by the Board of Appeals to permit specifying of new conditions.
 12. Specifying standards for operation of this exception so that it will be no more objectionable to the neighborhood by reasons of noise, odors, vibrations or flashing lights than will be the operation of a permitted use at that site.
 13. Specifying that in case of the remodeling of existing structures into two-family or boarding house use that the remodeling of the structure would be done in such a manner that it will not substantially change the exterior appearance of the structure so as to affect the character of the area.
 14. Requiring special location for the necessary parking, including the possibility of off-lot parking where necessary to retain or provide the necessary landscaping so that the exception will not detract from the neighborhood.
 15. Requiring such additional, reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and to protect the best interest of the surrounding property and the neighborhood.
- h. Scientific Research. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a Special Permit provided the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

3. **Variiances.** Upon appeal or upon petition, to award or deny a variance from the terms of this Zoning By-Law with respect to particular land or structures. The prerequisites for and the limitations and conditions of awarding a variance are established by MGL Ch 40A sect. 10.
- D. **Amendment.** This Zoning By-Law may be amended from time to time at an Annual or Special Town Meeting as provided for by MGL Ch40A. Copies of the procedures for doing so are available at the office of the Town Clerk.
- E. **Validity.** The invalidity of any Section or provision of this Zoning By-Law shall not invalidate any other Section or provision thereof.

SECTION IX - FLOOD PLAIN AND WESTFIELD RIVER PROTECTION ZONING

- A. **Purposes.** The purposes of the Flood Plain and Westfield River Protection Districts are to:
 1. Protect life, public safety and property from flooding hazards;
 2. Preserve the natural flood control and flood storage characteristics of the floodplain;
 3. Promote the preservation of agricultural lands along the Westfield River;
 4. Prevent any alterations to the natural flow of the river;
 5. Protect fisheries and wildlife habitat within and along the Westfield River;
 6. Control erosion and siltation;
 7. Enhance and preserve existing scenic or environmentally sensitive areas along the shoreline;
 8. Conserve shore cover and encourage well-designed developments;
 9. Prevent water pollution caused by erosion, sedimentation, nutrient or pesticide run-off, and poorly sited waste disposal facilities.
 10. Preserve and maintain the groundwater table and water recharge areas within the floodplain.
- B. **District Delineation**
 1. The Flood Plain District is herein established as an overlay district and includes all special flood hazard areas designated as Zones A, A1-30 on the Worthington Flood Insurance Rate Maps (FIRM), dated June 19, 1989, on file with the Town Clerk, and hereby made a part of this By-Law.
 2. The Westfield River Protection District is herein established as an overlay District. The area subject to the By-Law shall be the entire length of the Middle Branch of the Westfield River within the Town of Worthington. The Westfield River Protection District shall encompass those floodplain areas designated as Zone A or Zones A 1-30 on the Town of Worthington Flood Insurance Rate Maps (FIRM) for the Westfield River, Middle Branch. Where the floodplain has not been delineated on the FIRM maps or where the delineation is less than 100 feet from the river bank (as defined by MGL Ch131s4O), the River Protection District shall be defined as that area within 100 feet, measured horizontally, of the river bank.
 3. The boundaries of the Flood Plain and Westfield River Protection Districts shall be determined by scaling distances on the Flood Insurance Rate Map. When interpretation is needed as to the exact location of the boundaries of a District, the Building Inspector shall make the necessary interpretation.

C. Use Regulations

All development, including structural and non-structural activities, whether permitted as a right or by Special Permit must be in compliance with the Massachusetts Wetlands Protection Act, MGL Ch131s40, and with the requirements of the Massachusetts State Building Code pertaining to construction in the Flood Plain (currently Section 744).

1. Permitted Uses

The following uses in the Flood Plain District of low flood-damage potential and causing no obstruction to flood flows shall be permitted provided they do not require structures, fill, or storage of material or equipment:

- a. Agricultural uses such as farming, grazing, and horticulture.
- b. Forestry uses.
- c. Outdoor recreational uses, including fishing, boating, play areas and foot, bicycle or horse paths.
- d. Conservation of water, plants, and wildlife.
- e. Wildlife management areas.
- f. Buildings lawfully existing prior to the adoption of these provisions.

2. Uses by Special Permit

- a. No structure or building in the Flood Plain District shall be erected, constructed, substantially improved, reconstructed, or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred, unless a Special Permit is granted by the Zoning Board of Appeals.
- b. The following uses may be allowed by Special Permit from the Zoning Board of Appeals in accordance with the Special Permit regulations of this Zoning By-Law, and additional restriction and criteria contained herein:
 1. Single family residences.
 2. Residential accessory uses including garages, driveways, private roads, utility rights-of-way and on-site waste-water disposal systems.
- c. The following Special Permit requirements apply in the Flood Plain District:
 1. With Zone A 1-30, where base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data. These data will be reviewed by the Building Inspector for their reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.
 2. No encroachments (including fill, new construction, substantial improvements to existing structures, or other development shall be allowed unless it is demonstrated by the applicant that the proposed development, as a result of compensating actions, will not result in any increase in flood levels during the occurrence of a 100-year flood in accordance with the Federal Emergency Management Agency's regulation for the National Flood Insurance Program.
 3. The proposed use shall comply in all respects to the provisions of the underlying District in which the land is located.

4. The Board may specify such additional requirements and conditions as it finds necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.
 5. Within 10 days of the receipt of the application the Board shall transmit one copy of the development plan to the Conservation Commission, Board of Health, Building Inspector, and the Planning Board. Final action shall not be taken until reports have been received from the above Boards or until thirty-five (35) days have elapsed.
- d. The following Special Permit requirements apply in the Westfield River Protection District, in addition to those requirements specified in Sections IX.III.B.3.:
1. A buffer strip extending at least one hundred (100) feet in depth, to be measured landward from each bank of the Westfield River shall be required for all lots within the River Protection District. If any lot, existing at the time of adoption of this By-Law, does not contain sufficient depth, measured landward from the river bank, to provide a one hundred (100) buffer strip, the buffer strip, may be reduced to 50% of the available lot depth, measured landward from the river bank. For purposes of this By-Law, the river bank shall be defined as the river's seasonal high water mark. The buffer strip shall include trees and shall be kept in a natural or scenic condition.
 2. No buildings or structures shall be erected, enlarged, or altered or moved within the buffer strip.
 3. On-site wastewater disposal systems shall be located as far from the Westfield River as is feasible.
- e. In addition to the provisions of Section VIII.C, the Zoning Board of Appeals may issue a Special Permit if it finds the proposed use is compliant with the following provisions:
1. In the Flood Plain District, proposed uses must:
 - i. Not create increased flood hazards which are detrimental to the public health, safety and welfare.
 - ii. Comply in all respects to the provisions of the underlying District or Districts within which the land is located.
 - iii. Comply with all applicable State and Federal laws, including the Massachusetts Wetlands Protection Act (MGL Ch131s4O).
 2. In the Westfield River Protection District, proposed uses must also:
 - i. Be situated in a portion of the site that will most likely conserve shoreland vegetation and the integrity of the buffer strip.
 - ii. Be integrated into the existing landscape through features such as vegetative buffers and through retention of the natural shorelines.
 - iii. Not result in erosion or sedimentation.
 - iv. Not result in water pollution.
3. Restricted Uses Within the Westfield River Protection District
- a. No altering, dumping, filling, or removal of river-line materials or dredging is permitted. Maintenance of the river may be done under

requirements of MGL Ch131s40, and any other applicable laws, by-laws, and regulations.

- b. All forest cutting shall require the filing of a Forest Cutting Plan in accordance with the Massachusetts Forest Cutting Practices Act (MGL Ch132s40-46). In addition, no cutting of forest or vegetation shall occur within fifty (50) feet of the river bank. In the area between fifty (50) and one hundred (100) feet from the river bank, no more than 50% of existing forest shall be cut.
 - c. No impoundments, dams, or other water obstructions may be located within the District.
 - d. All other uses not specifically permitted or allowed by site plan approval within the overlay zone are prohibited.
4. Nonconformable Uses
- a. Any lawful use, building, structures, premises, land or parts thereof existing at the effective date of this By-Law or amendments thereof and not in conformance with the provisions of this By-Law shall be considered to be a nonconforming use.
 - b. Any existing use or structure may continue and may be maintained, repaired, and improved, but in no event made larger.
 - c. Any nonconforming structure which is destroyed may be rebuilt on the same location but no larger than its overall original square footage.

SECTION X - WATER SUPPLY PROTECTION DISTRICT

A. Purpose of District

To promote the health, safety, and welfare of the community by protecting and preserving the surface and groundwater resources of the Town and the region from any use of land or buildings which may reduce the quality of its water sources.

B. Definitions

1. Aquifer: Geologic formation composed of rock or sand and gravel that contains significant amounts of potentially recoverable potable water.
2. Groundwater: All water found beneath the surface of the ground.
3. Hazardous Waste: A waste which is hazardous to human health or the environment. Hazardous wastes have been designated by the U.S. Environmental Protection Agency under 40 CFR 250 and the regulations of the Massachusetts Hazardous Waste Management Act (MGL Ch21C).
4. Impervious Surfaces: Materials or structures on or above the ground that do not allow precipitation to infiltrate the underlying soil.
5. Leachable Wastes: Waste materials including solid wastes, sludge and pesticide and fertilizer wastes capable of releasing waterborne contaminants to the environment.
6. Primary Aquifer Recharge Area: Areas which are underlain by surficial geologic deposits including glaciofluvial or lacustrine stratified drift deposits or alluvium or swamp deposits, and in which the prevailing direction of groundwater flow is toward the area of influence of public or private water supply wells.
7. Toxic or Hazardous Materials: Any material in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any other substance or substances, constitutes a present or potential threat to

human health or to water supplies or to the environment when improperly stored, treated, transported or improperly disposed into or on any land or water in this Town. "Toxic or hazardous materials" shall mean material including but not limited to any material or substance controlled as being toxic or hazardous by the provisions of MGL Ch21 C or defined as a hazardous substance by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C & 9605), as amended.

8. Trucking Terminal: Business which services or repairs commercial trucks which are not owned by the business.
9. Watershed: Land lying adjacent to water courses and surface water bodies which create the catchment or drainage areas of such water courses and bodies.

C. Scope of Authority

The Water Supply Protection District is an overlay district and shall be superimposed on the other Districts established by this By-Law. All regulations of the Town of Worthington Zoning By-Law applicable to such underlying Districts shall remain in effect, except that where the Water Supply Protection District imposes additional regulations, such regulations shall prevail.

D. District Delineation

1. The Water Supply Protection District is herein established to include all lands within the Town of Worthington lying within the primary recharge areas of groundwater aquifers and watershed area of the Worthington Fire District which now or may in the future provide public water supply. The map entitled "Water Supply Protection District", Town of Worthington, as most recently amended or drafted, on file with the Town Clerk, delineates the boundaries of the district.
2. Where the bounds delineated are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where they should properly be located. At the request of the owner(s), the Town may engage a professional hydrogeologist to determine more accurately the location and extent of an aquifer or primary recharge area, and may charge the owner(s) for all or part of the cost of the investigation.

E. Prohibited Uses

1. Business and industrial uses, not agricultural, which manufacture, use, process, store, or dispose of hazardous materials or wastes as a principal activity, including but not limited to metal plating, chemical manufacturing, wood preserving, furniture stripping, dry cleaning, and auto body repair, or which involve on-site disposal or process wastewaters.
2. Trucking terminals, bus terminals, car washes, motor vehicle gasoline sales, automotive service and repair shops.
3. Solid waste landfills, dumps, auto recycling, junk and salvage yards, with the exception of the disposal of brush or stumps.
4. Underground storage and/or transmission of petroleum products excluding liquified petroleum gas, unless tanks and piping are double-lined in accordance with the latest State regulations.
5. Outdoor storage of salt, de-icing materials, pesticides or herbicides.
6. Dumping or disposal on the ground, in water bodies, or in residential septic systems of any toxic or hazardous material, including but not limited to septic system cleaners which contain toxic chemicals such as methylene chloride, and 1-1-1 trichloroethane, or other household hazardous wastes.

F. Restricted Uses

1. Excavation for removal of earth, sand, gravel and other soils shall not extend closer than five (5) feet above the annual high groundwater table. A monitoring well shall be installed by the property owner to verify groundwater elevations. This section shall not apply to excavations incidental to permitted uses, including but not limited to providing for the installation or maintenance of structural foundations, freshwater ponds, utility conduits or on-site sewage disposal.
 - a. Access road(s) to extractive operation sites shall include a gate or other secure mechanism to restrict public access to the site.
2. The use of sodium chloride for ice control shall be minimized, consistent with the public highway safety requirements.
3. Salt storage areas shall be covered and be located on a paved surface, with berms to prevent run-off from leaving the site.
4. Commercial fertilizers, pesticides, herbicides, or other leachable materials shall be used with all necessary precautions to minimize adverse impacts on surface and groundwater, and shall not result in groundwater concentrations exceeding Massachusetts Drinking Water Standards.
5. Above-ground storage tanks for oil, gasoline, or other petroleum products shall be placed in a building, in a concrete basement, or on a diked, impermeable surface sufficient to contain the volume of the tank plus 10% to prevent spills or leaks from reaching groundwater.
6. To the extent feasible, all new permanent manure pits and animal feed lots shall be designed to restrict infiltration, run-off or other movement of animal wastes or manure to the aquifer or surface water.

G. Drainage

For commercial and industrial use, to the extent feasible, run-off from impervious surfaces shall be recharged on the site by being diverted toward areas covered with vegetation for surface infiltration. Dry wells shall be used only where other methods are infeasible, and shall be preceded by oil, grease and sediment traps to facilitate removal of contamination. All recharge areas shall be permanently maintained in full working order by the owner(s).

H. Special Permit Uses

1. Uses allowed by Special Permit
The following uses may be allowed by Special Permit obtained from the Planning Board:
 - a. Commercial and industrial uses which are allowed in the underlying District;
 - b. Any enlargement, intensification or alteration of an existing commercial or industrial use;
 - c. The rendering impervious of more than 20% of any single residential lot.
2. Requirements for Special Permit in the Water Supply Protection District
The applicant shall file six (6) copies of the site plan prepared by a qualified professional with the Planning Board. The site plan shall at a minimum include the following information where pertinent:
 - a. A complete list of chemicals, pesticides, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use.
 - b. Those businesses using or storing such hazardous materials shall file a hazardous materials management plan with the Planning Board,

Hazardous Materials Coordinator, Fire Chief, and Board of Health which shall include:

1. Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and clean-up procedures.
 2. Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces.
 3. Evidence of compliance with Regulation of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the MA Department of Environmental Quality Engineering.
- c. Drainage recharge features and provisions to minimize loss of recharge.
- d. Provisions to control soil erosion and sedimentation, soil compaction, and to prevent seepage from sewer pipes.
3. Additional Procedures for Special Permit in the Water Supply Protection District
- a. The Planning Board shall follow all Special Permit procedures contained in Section X and Section VIII.C.2.
 - b. The Planning Board may grant the required Special Permit only upon finding that the proposed use meets the following standards and those specified in Section X and Section VIII.C.2. of this By-Law. The proposed use must:
 1. In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Water Supply Protection District and;
 2. Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
 - c. The Planning Board shall not grant a Special Permit under this Section unless the petitioner's application materials include, in the Board's opinion, sufficiently detailed, definite and credible information to support positive findings in relation to the standards of Section VIII.C.2. and Section X.

I. Non-Conforming Use

Non-Conforming uses which were lawfully existing, begun or in receipt of a Building or Special Permit prior to the first publication of notice of public hearing for this By-Law may be continued. Such non-conforming uses may be extended or altered, as specified in MGL Ch40s6, provided that there is a finding by the Planning Board that such change does not increase the danger of surface or groundwater pollution from such use.

SECTION XI - WIRELESS COMMUNICATIONS STRUCTURES AND FACILITIES

A. Purpose

The purpose of this section is to outline the special permitting process to site wireless communication facilities in the Town of Worthington, while minimizing potential damage and adverse visual impacts of wireless communication facilities on adjacent properties, residential neighborhoods, and areas of historic or high scenic value; to allow the provision of wireless communication services in an orderly way; and to promote shared use of existing facilities to reduce the need for new facilities.

B. Definitions

For the purposes of Section XI of this bylaw, the following definitions apply:

Distance:	distance shall be measured on a horizontal plane.
FAA:	the Federal Aviation Administration.
FCC:	the Federal Communications Commission.
Height:	the distance measured from ground level to the highest point on the structure.
SPGA	Special Permit Granting Authority. The Planning Board shall be the SPGA for this Section.
Non-Residential Structure	such structures as, but not limited to, buildings, grain silos, and water towers, but does not include dwellings.
Wireless Communication Building	any building or shelter used to house equipment primarily for the installation and operation of equipment for generating and detecting electromagnetic radiation, and is an accessory to a wireless communication structure.
Wireless Device	any antenna, appurtenance, wiring or equipment used in connection with the communication, reception or transmission of electromagnetic radiation which is attached to a structure.
Wireless Communication Facility	a general term to include wireless communication building, wireless communication device, and wireless communication structure.
Wireless Communication Structure	a monopole tower intended to support equipment used for the transmission and reception of electromagnetic radiation, including the antennas, wiring or other devices attached to or mounted on a structure.
Personal Wireless Service Provider	An entity licensed by the FCC to provide Personal Wireless Services.

C. Exemptions

The following shall be exempt from this by law:

1. Wireless communication facilities used exclusively for Town or State emergency services.
2. Amateur radio towers used in compliance with the terms of any amateur radio service licensed by the Federal Communication Commission and used solely for that purpose.
3. Wireless communication structures and devices used expressly for home television reception.

D. General Requirements

1. No wireless communication facility shall be erected, constructed, or installed without a special permit and site plan review from the Planning Board acting as the Special Permit Granting Authority (SPGA).
2. Wireless communication facilities may be permitted in any zoning district.
3. Wherever feasible, wireless communications devices shall be located on existing towers or other non-residential structures, minimizing proliferation of new towers.
4. Applicants shall consider town owned properties as sites for wireless communications structures where such properties are in compliance with the requirements of this section.
5. Wireless communication structures shall be built so that the structural integrity of the facility is able to accommodate devices operated by another carrier with little or no modification. Any new tower constructed shall be of the monopole type, consisting of a single self-supporting vertical pole with below grade foundation. No other type of structure shall be permitted.
6. No wireless communication structure shall be constructed closer to any existing wireless communication structure than is necessary to provide the minimum adequate wireless communications coverage to the Town of Worthington, as determined by the Planning Board.
7. Wireless communication buildings shall be no larger than 500 square feet and 12 feet high, shall be designed to match other accessory buildings on the site, and shall be used only for the placement of equipment related to this particular site.
8. A special permit shall not be granted for a wireless communication structure to be built on speculation. If Applicant is not simultaneously installing a wireless communication device on the structure, it shall provide a copy of its existing lease/contract with a Personal Wireless Service Provider. Said Provider shall submit all data requested by SPGA to assure compliance with the terms of this section.

E. Siting and Height Requirements

1. Setbacks
 - a. The minimum distance from the base of the wireless communication structure to any property line or road right-of-way shall be at least 1.25 times the height of the structure.
 - b. The setbacks for the wireless communication building shall comply with the setback requirements for the zoning district.
 - c. The wireless communication structure shall be a minimum distance of three times the height from school buildings, playgrounds, athletics fields, and abutting residences to prevent the structure from appearing to "tower" over; and so as not to adversely affect property values.
2. The height shall be the minimum height necessary, as determined by the Independent Consultant, to accommodate anticipated and future use, but in no case shall exceed one hundred twenty (120) feet.
3. The wireless communication structure shall, when possible, be sited off ridge lines and where the visual impact is the least detrimental to historic and scenic areas.
4. No new wireless communication structure shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the SPGA that no existing wireless communication structure can accommodate the Applicant's proposed wireless

communication device. Evidence submitted to demonstrate that no existing structure can accommodate the applicant's proposed device may consist of any of the following:

- a. No existing wireless communication structures or non-residential structures are located within the geographic area required to meet the applicant's engineering requirements.
- b. Existing wireless communication structures or non-residential structures are not of sufficient height to meet the applicant's requirements.
- c. Existing wireless communication structures or non-residential structures do not have sufficient structural strength or cannot be brought up to appropriate strength to support the proposed wireless communication device.
- d. The proposed wireless communication device would cause electromagnetic interference with the existing devices on the site, or the existing devices would cause interference with the proposed wireless communication device.
- e. The fee, costs, or contractual provisions required by the owner in order to share an existing wireless communication structure or to adapt an existing structure for use are unreasonable.
- f. The applicant demonstrates that there are other limiting factors that render existing structures unreasonable.

F. Design Requirements

1. Wireless communication structures shall be designed to accommodate the maximum number of users as technologically possible.
2. There shall be no signs or advertisements, except for no trespassing signs, signs required by law, and a required sign giving a phone number where the responsible party can be reached on a 24-hour basis.
3. All wireless communication devices shall be colored, molded, and/or installed to blend into the structure and/or the landscape. The SPGA may require that all wireless communication structures be camouflaged sufficiently that they blend in as well as possible with surroundings.
4. The area around the wireless communication facility shall be completely fenced to control access within an area no greater than 2500 square feet at the base of the wireless communication structure. The 2500 square foot limitation can be waived if it adversely affects co-location.
5. Lighting shall be by motion-detection, unless otherwise required by the FAA.
6. There shall be a maximum of one parking space for each facility to be used in connection with maintenance of the site and not to be used for the storage of vehicles or other equipment.
7. Existing on-site vegetation shall be preserved to the maximum extent possible.
8. Vegetative screening shall be used to screen abutting residential properties and roadways. Plants that fit in with the surrounding natural vegetation shall be used.

G. Application Process

Application for a special permit for siting wireless communication facilities shall be filed in accordance with Section VIII.C.2.

1. Applications for a special permit to construct a new wireless communications structure shall include the following information:
 - a. Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 36" sheets at a scale of 1"=40' or 1"=200' where appropriate, on as many sheets as necessary which shows the following:
 - 1) North arrow, date, scale, seal(s) of the licensed professional(s) who prepared plans and space for reviewing licensed engineer's seal.
 - 2) Name and address of landowner and name and address of parties in interest as defined by MGL Chapter 40A Section 11.
 - 3) Property lines and location of permanent structures or buildings, within 500-foot radius of proposed wireless communication structure.
 - 4) From a topographical survey completed within 2 years of application submittal date by a professional surveyor licensed to practice in Massachusetts, existing and proposed contour lines at a maximum of 2-foot intervals and spot elevations at base of all the proposed and existing structures.
 - 5) Vegetation to be removed or altered.
 - 6) Plans for drainage of surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
 - 7) Delineation of wetlands, if any.
 - 8) Location of wireless communication structure.
 - 9) Plans for anchoring and supporting the structure, including specifications of hardware and all other building material.
 - 10) Plans for accessory buildings.
 - 11) Layout and details of surfacing for access road and parking.
 - 12) Amenities such as lighting, fencing, and landscaping.
 - 13) Four view lines at a one-mile radius of the site, beginning at True North and continuing clockwise at ninety-degree intervals, plus additional view lines at smaller intervals, and from any historic, scenic, or other areas of Town determined by the SPGA.
 - b. A map showing the areas covered/served by the proposed wireless communication structure and device of different signal strengths, and the interface with adjacent service areas.
 - c. A locus map at a scale 1"=1000' (or whatever is necessary to show where in town the proposed tower is sited) which shall show streets, and landscape features.
 - d. A description of the soil and surficial geology at the proposed site.
 - e. A narrative report written by the Personal Wireless Service Provider and licensed professional engineer which shall :
 - 1) Describe the justification of proposed site.
 - 2) List town-owned properties considered, and if rejected, the reasons for rejection.
 - 3) Describe the structure and the technical, economic, and other reasons for the facility design.

- 4) Describe the capacity of the structure, including the number and type of additional facilities it can accommodate.
 - 5) Describe actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
 - 6) Describe the projected future needs of the Personal Wireless Service Provider and how the proposed wireless communications facilities fit with future projections to serve the Town and adjacent towns.
 - 7) Describe leasing agreement should another carrier desire to co-locate.
 - 8) Describe special design features to minimize the visual impact of the proposed wireless communication facility
- f. Proof of approval of all other necessary permits needed for construction and operation.
- g. After the application is submitted and not more than 21 days before the public hearing, the applicant shall arrange to preview the visual impact of the installation by displaying at the site of the proposed wireless communication structure, some object of the approximate size and at the maximum height of the planned antenna array, for example by flying a balloon or erecting a crane. The Applicant shall inform the SPGA in writing of the date and time of the preview at least 21 days in advance. The balloon, crane, or other object shall be set up at the height of the proposed installation for at least eight consecutive daylight hours on the date chosen. The date and location of this preview shall be advertised twice in two separate weeks, in a newspaper with a general circulation in the town. The first advertisement shall be at least 14 days before the preview. This advertisement may be combined with the public hearing advertisement.
2. Applications for a special permit to construct a new wireless communication device on an existing wireless communication structure or non-residential structures such as buildings, grain silos, steeples, water towers or other non-residential structures, including co-location with another carrier, provided that the new use does not add to the height of the structure, shall include the following information:
- a. Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 36" sheets at a scale of 1"=40' or 1"=200' on as many sheets as necessary which shows the following:
 - 1) North arrow, date, scale, the seal(s) of the licensed professionals who prepared the plans and a space for the reviewing licensed engineer's seal.
 - 2) Plans for supporting and attaching the device including specifications of hardware and all other building material.
 - 3) Building plans for accessory buildings, if any.
 - 4) Layout and details of surfacing for access road and parking, if it is to be altered from existing condition.
 - b. A map showing the areas covered by proposed device(s) of different signal strengths and the interface with adjacent service areas.
 - c. A narrative report written by the Personal Wireless Service Provider and licensed professional engineer which shall:
 - 1) include a draft of the contract between the structure/building owner (whichever appropriate) and the Applicant.

- 2) demonstrate that the wireless communication structure or non-residential structure to which the device will be mounted has the structural integrity to support such device.
 - 3) describe actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
 - 4) describe the projected future needs of the carrier, and how the proposed facility fits with future projections.
- d. Proof of approval of all other necessary permits needed for construction and operation.
- e. If the proposed facility adds more than five feet to the height of the structure at the effective date of this by-law and will exceed zone height restrictions, the SPGA may require a preview of visual impact as described above in Section XI G.1.g.
3. The Applicant shall submit additional copies of the application for the following town boards, officials, and consultants. All materials submitted should also be submitted in an electronic version. Three full-sized copies of the plans are required for town officials, and one full-sized copy for each consultant(s) to the Planning Board. The remaining copies of the plans may be reduced size:
- Building Inspector (one full-sized required)
 - Planning Board Members (5 copies, one full-sized required)
 - Town Clerk (one full-sized required)
 - Consultant(s) to the Planning Board (one full sized copy each required)
 - Board of Health
 - Conservation Commission
 - Fire Chief
 - Highway Superintendent
 - Selectboard
 - Zoning Board of Appeals

H. Independent Consultant(s)

1. Upon submission of an application for a Special Permit under this Section, the Applicant shall pay a review fee determined by the SPGA, consisting of reasonable costs to be incurred by the SPGA for the employment of Independent Consultant(s). These Consultant(s) shall each be qualified professionals with a record of service to municipalities in one of the following fields:
 1. telecommunications engineering
 2. structural engineering
 3. monitoring of electromagnetic fields
 4. other relevant fields of experience as determined necessary by the SPGA
2. The Applicant shall provide a complete copy of the application for a Special Permit to any Independent Consultant(s) and shall further provide any additional information reasonably requested by the Independent Consultant(s) in order to properly advise the SPGA in their review of the application.
3. The Applicant shall grant permission for any Independent Consultant(s) to conduct any necessary site visits.

I. Approval

1. In granting a special permit for wireless communication facilities, in addition to the findings required by the Town's Zoning By-law for Special Permits, the SPGA shall find:

- a. That the Applicant has demonstrated to the satisfaction of the SPGA that the requirements of this section have been met.
 - b. That the size and height of the structure is the minimum necessary
 - c. That the proposed wireless communication facilities will not adversely impact historic structures or scenic views.
 - d. That there are no feasible alternatives to the location of the proposed wireless communication facilities, including co-location, that would minimize their impact, and the Applicant has exercised good faith in permitting future co-location of facilities at the site.
 - e. That the Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the wireless communication facilities.
 - f. That the proposal shall comply with all applicable FCC regulations regarding emissions of electromagnetic radiation. Copies of any monitoring reports required by state and federal government shall be supplied to the Zoning Enforcement Officer.
2. When considering an application for a wireless communication facility, the SPGA shall place great emphasis on the proximity of the facility to residential dwellings, its impact on these residences, and will encourage the use of existing structures.
 3. Any extension, or construction of new or replacement towers or transmitters shall be subject to an amendment to the Special Permit, following the same procedure as siting a new wireless communication device on an existing structure.
 4. Any decision by the SPGA to deny an application for a special permit under this bylaw shall be in conformance with the Telecommunications Act of 1996 , in that it shall be in writing and supported by substantial evidence contained in a written record.

J. Conditions of Use

- a. The Applicant shall post an initial bond with the Town Treasurer to cover the costs of remediation of any damage to public property and infrastructure that may occur during construction of the wireless communication facility. The bond shall be in an amount to be determined by the SPGA.
- b. All wireless communication facilities shall be insured by the owner(s) against damage to persons or property. The special permit holder shall provide a Certificate of Insurance to the Board of Selectmen on an annual basis.
- c. The Zoning Enforcement Officer may inspect the facility with adequate notice.
- d. Regulatory Compliance
 - a. If the FCC or the FAA regulations are changed, the owner or operator shall bring the facilities into compliance within six months or earlier if a more stringent compliance schedule is included in the regulation.
 - b. Failure to comply with any regulations shall be grounds for removal of non-complying structures, buildings, devices at the owner's expense.
- e. Any special permit for wireless communications facilities shall be subject to review for renewal at five-year intervals. Upon renewal, the SPGA may require replacement of facility with least obtrusive and/or minimum height facility available at the time of renewal. The topographical site survey shall be reviewed and any necessary adjustments shall be made to the bond as part of the renewal process.
- f. If the device is moved lower on the structure and the top of the structure is no longer needed, then the non-operational part of the structure shall be removed within 120 days

g. Removal and Repair

If a wireless communication structure ceases to operate for a period of one year the special permit expires by operation of law and the structure must be removed by the Special Permit Holder within 180 days. "Cease to operate" is defined as not performing the normal functions associated with any wireless communication structure on a continuous and ongoing basis for a period of one year, including the absence of a valid lease/contract with a Personal Wireless Service Provider. At the time of removal, the site of the wireless communication structure shall be remediated such that the site is restored to the same condition as existed prior to the structure being constructed. A cash bond shall be posted with the Town Treasurer in an amount determined by the SPGA to be used by the Town to remove any structure required to be removed and not removed within the time frame required by this Section.

Jane Christensen 11.13.10 12:48 PM
Comment: what can be required on private property?

K. Severability

The invalidity, unconstitutionality, or illegality of any provision of this section shall not have any effect upon the validity, constitutionality or legality of any other provision of this section.

SECTION XII - SITE PLAN REVIEW

A. Purpose

The purpose of Site Plan Review is to allow the town to review project plans with a developer at an early stage and, when appropriate, to negotiate alterations to the plans so as to lessen adverse impacts on neighbors and the town. The goals of this by-law are to:

1. Protect the rural character, aesthetic qualities, and natural and historic features of the Town of Worthington,
2. Insure safe and efficient traffic and pedestrian circulation within areas adjacent to the project site; and
3. Minimize disproportionate burdens on town services from new development.

B. Uses Requiring Site Plan Review

Site Plan Review is required for all uses listed in Section IV, Schedule of Uses, C.,D, and E, with the exception of the following:

1. A single-family or two-family dwelling and its surrounds, including but not limited to garages, outbuildings, and driveways which can reasonably be defined as for residential use ;
2. Construction completed more than 5 years prior to the construction, addition or change of use under consideration;
3. Construction which previously received Site Plan approval;
4. Construction which received Building Permit or Special Permit approval before this bylaw became effective.

C. Site Plan Reviewing Authority

When a Special Permit is required, the Site Plan Reviewing Authority shall be the Special Permit Granting Authority. When a Variance is required, the Site Plan Review Authority shall be the Zoning Board of Appeals. When no Special Permit or Variance is required, the Site Plan Reviewing Authority shall be the Planning Board.

D. Application Procedure

1. Application

- a. The current owner of record of property with a use or structure requiring Site Plan Review shall submit a Site Plan Review application to the Town Clerk together with the required fees set by the Site Plan Reviewing Authority's Regulations before applying for a Building Permit or Special Permit.
- b. Upon receipt of the application, the Site Plan Reviewing Authority shall check it for completeness. If it finds the application is incomplete, it shall return the application to the applicant with a list of missing information. In the event the applicant does not complete the application within 30 days the Site Plan Reviewing Authority may deny the application on the ground that it is incomplete. The Site Plan Reviewing Authority may grant a reasonable extension of time to complete the application.

2. Form and Contents of Site Plan Review Application

Every Site Plan Review application shall be on a form approved by the Site Plan Reviewing Authority and shall be accompanied by five sets of site plans, each bearing the project name, location, date, and plan scale. The Site Plan Reviewing Authority may require that one copy be in an electronic format specified by the Site Plan Reviewing Authority.

Dimensions and scales shall be adequate to determine that all requirements are

met and to make a complete analysis and evaluation of the proposal.

The contents of the Site Plan Review application shall include:

- a. All existing lot lines, easements and rights of way;
- b. Location of all proposed new lot lines;
- c. Location and use of all existing and proposed buildings and structures, including approximate height and floor area;
- d. Location and description of any existing and proposed open space or recreation areas;
- e. Location of proposed private and public ways on the site;
- f. Location and size of proposed parking areas;
- g. Location and use of buildings and structures within 300 feet of the site;
- h. Location of wetlands on site and within 300 feet of the site, according to the latest data from the National Wetlands Inventory;
- i. Location of proposed water supply well, if any;
- j. Location and date of all registered percolation tests;
- k. A runoff and drainage plan, showing the proposed snow storage areas, drainage facilities and storm water impacts on site and on adjacent downstream surface water bodies and flood plains;
- l. A plan for control of erosion and sedimentation, including both temporary and permanent measures.
- m. Existing and proposed changes in topography;
- n. Location of stone walls;
- o. Size and location of existing and proposed sign(s);
- p. Location of proposed outdoor lighting
- q. Method and location of waste disposal.;
- r. Location of fire protection measures;
- s. Proposed landscape features, including the location and description of buffers, screening, fencing, and plantings (specifying the size and type of plant materials);
- t. Traffic patterns at the site including entrances and egresses, loading and unloading areas, and curb cuts on site and within one hundred feet of the site;
- u. Information sufficient to assess the traffic safety impacts of the proposed project on the carrying capacity of any adjacent bridge, highway or road, to include the projected number of motor vehicle trips to enter or depart from the site estimated for daily hour and peak hour traffic levels;
- v. Projected need for public utilities and services, including schools, fire protection and security.

3. Waivers

If the applicant believes that any of the information required in any clause of subsection 2 is not relevant to the project, he or she may request a waiver of that requirement. The Site Plan Reviewing Authority may waive for good cause shown, any or all requirements of Site Plan Review where such waiver is in the public interest and consistent with the purpose and intent of this bylaw. Such waiver decisions must be documented in writing by the Site Plan Reviewing Authority.

4. Fees

The Site Plan Reviewing Authority shall set reasonable administrative fees to cover the expenses of its review of the Site Plan application. The applicant shall reimburse the Town for the full cost of all engineering and planning consultant services that the Site Plan Authority deems necessary for review purposes, and no Site Plan may be approved until the applicant has done so. The Site Plan Reviewing Authority may request the posting of adequate financial guarantees to cover consulting services expenses.

E. Review Procedure

1. Site Plan Review applications shall be reviewed and acted upon at a public meeting of the Site Plan Reviewing Authority.
2. The Site Plan Reviewing Authority shall provide copies of the application and the site plan to the Fire Chief, Police Chief, Conservation Commission, Board of Health, Building Inspector, Highway Superintendent, Board of Selectmen, and Zoning Board of Appeals or Planning Board. These boards and individuals shall have thirty-five (35) days to report to the Site Plan Reviewing Authority their findings and recommendations. The failure of a board or individual to report in the allotted time shall constitute approval by that board or individual.
3. The Site Plan Reviewing Authority shall post information about the application and how it can be reviewed at the place where other public notices are posted. The reviewing authority shall also provide this information to abutters and non-abutters within three hundred feet of the application property. Such information shall include a summary of the proposed project, including size, location, and proposed use. The Site Plan Reviewing Authority shall allow 14 days after such posting for receipt of written comments from the general public before making its decision.
4. The Site Plan Reviewing Authority shall render a decision on the application within sixty-five (65) days of the date the application was deemed complete and the Town has been reimbursed for all fees for engineering and consulting services referred to in Section D(4) of this bylaw. If the Site Plan Reviewing Authority does not act within this period, approval is granted by default.
5. **Site Plan Review Decision**
The decision of the Site Plan Review Authority shall be one of the following:
 - a. Approval of the Site Plan based on a determination that the proposed project complies with the criteria mentioned in section F of this bylaw;
 - b. Approval of the Site Plan, subject to such conditions, modifications and reasonable restrictions as the Site Plan Review Authority deems necessary to ensure compliance with the criteria mentioned in Section F of this bylaw.
 - c. Denial of the Site Plan application based on a determination that it was incomplete and insufficient information was submitted to review the proposal.

F. Site Plan Review Criteria

The Site Plan Reviewing Authority shall use the following criteria in evaluating site plans applications:

1. Whether the architectural design, scale, layout and landscaping of the proposed development is in harmony with the historic and rural character of the neighborhood and the Town of Worthington.
2. Whether the proposed project, to the extent feasible:
 - a. Protects Town amenities and abutting properties by minimizing detrimental or offensive actions and site characteristics such as lighting glare and noise;
 - b. Minimizes adverse environmental impacts on such features as wetlands, floodplains, steep slopes, and aquifer recharge areas;
 - c. Maximizes open space retention and minimizes fragmentation of contiguous undeveloped land;
 - d. Minimizes obstruction of scenic views from publicly accessible locations;
 - e. Preserves unique natural or historical features;
 - f. Minimizes tree, vegetation and soil removal and grade changes;
 - g. Provides adequate landscaping to screen storage areas, loading docks,

- dumpsters, rooftop equipment, utility buildings and similar features from view from adjacent residences and public roadways;
- h. Provides adequate measures to prevent pollution of surface and groundwater, erosion and sedimentation, and assures no increase in runoff or potential for flooding;
- i. Places electric lines, telecommunications lines and other such utilities, to the extent feasible, underground;
- j. Provides for the convenience and safety of vehicular and pedestrian movement both within the site and in relation to adjoining ways and properties; and
- k. Provides access to adjoining properties where needed.

G. Expiration

The approval of any Site Plan under this Section shall expire in two (2) years if substantial construction has not begun by that date.

H. Regulations

The Site Plan Reviewing Authority may adopt and from time to time amend reasonable regulations for the administration of this Site Plan bylaw.

I. Enforcement

The Site Plan Review Authority may require the posting of adequate financial guarantees to assure monitoring and compliance with the Site Plan approval and all conditions, modifications and restrictions contained therein. The Site Plan Review Authority may also require that an amount be included for land restoration not having to do directly with the construction of improvements. The town may use the secured funds for their stated purpose in the event that the applicant does not complete all improvements in a manner satisfactory to the Site Plan Review Authority within two years from the date of approval, or the final date of the last extension of such approval, if any. All funds shall be held in escrow, in an interest-bearing account, interest payable to applicant when conditions for release of funds are duly met. The Site Plan Review Authority may suspend any permit or license when work is not performed as required. The owner of record must accept all such conditions, modifications, and restrictions in writing prior to the issuance of a Building Permit. The Zoning Enforcement Agent shall monitor compliance and shall notify the Site Plan Review Authority of any material compliance-related issue.

1. Enforcement specific to Site Flexible Residential Developments

Before endorsement of the flexible development plan by the Site Plan Review Authority, the applicant shall agree to complete the required improvements as specified in the plans submitted to the Site Plan Review Authority for all lots in the site, such construction and installation to be secured in accordance with Chapter 41 § 81U of the Subdivision Control Law by covenant duly recorded, as to the parcels that can be built upon. The Site Plan Review Authority may require either the posting of adequate financial guarantees or recorded covenants, or both such forms of performance guarantees, to assure monitoring and compliance with the Site Plan Review and approval of the flexible development plan and all conditions, modifications and restrictions contained therein.

a. Financial Guarantees for Site Flexible Residential Developments

Adequate financial guarantees in the form of a cash escrow may be required by the Site Plan Review Authority to assure flexible development plan compliance. All funds shall be held in an interest-bearing account, interest payable to applicant when conditions for release of funds are duly met. It is within the discretion of the Site Plan Review Authority, as applicable to site flexible residential developments, to substitute form or to entirely waive requirements of a financial guarantee only where it is in the public interest to do so and not inconsistent with the intent and purpose of the subdivision control law, as per MGL Chapter 41 §81R. No such waiver is applicable to required covenants for Site Flexible Residential Developments.

b. Covenants for Site Flexible Residential Developments

All land within a flexible development shall be covered by duly recorded covenant to insure that all work, including legal work, is completed prior to transfer of title or sale of any parcel therein.

- i. The applicant shall fulfill a covenant (Form I within Subdivision Regulations of the Town of Worthington), executed and duly recorded concurrent with recording the flexible development approval by the owner of record, running with the land, that no lot in the flexible development shall be sold and no building erected thereon until such common driveways, services and, whenever applicable, turnarounds are constructed and installed, and until record plans and other required work are accepted by the Site Plan Review Authority, in accordance with governing Town bylaws, so as to adequately serve the lots.
 - ii. Such covenant shall be inscribed on the plan of the flexible development or on a separate document referred to on the plan and delivered to the Site Plan Review Authority. The Site Plan Review Authority shall turn over the covenant agreement to the town's legal counsel who shall review its contents at the applicant's expense and forward counsel's comments in writing to the Site Plan Review Authority. Upon approval of the covenant by the Site Plan Review Authority, the Site Plan Review Authority shall note its action on the plan of the flexible development and the applicant shall record the covenant, the endorsed plan of the flexible development, and other appropriate documents at the Hampshire County Registry of Deeds.
2. Section III.B.11.a and III.B.11.b of the Town of Worthington Subdivision Regulations specific to release of performance guarantees shall be the sole and applicable implementing regulations for Site Flexible Development until such time as the Planning Board will adopt other implementing regulations specific for Site Flexible Development in the Town of Worthington.

J. Appeals

Decisions of the Site Plan Reviewing Authority regarding Site Plan approval may be appealed as set forth in MGL, Chapter 40A, Section 17.

K. Violations

Any violations of the approved Site Plan or of any conditions, modifications, and restrictions of the approval by the Site Plan Review Authority shall be subject to the enforcement provisions of Section VIII B 5 of the Zoning Bylaw.

L. Severability

In the event any portion of this by-law is found to be illegal or unconstitutional, all remaining portions of this by-law shall remain in full force and effect.

SECTION XIII FLEXIBLE DEVELOPMENT

A. Purposes

The purposes of this section are to:

- (1) Promote flexible standards for residential development to encourage site designs that are compatible with the landscape;
- (2) Retain open space for use as farmland, forestry, recreation, or wildlife habitat;
- (3) Retain the town's natural resources, environmentally sensitive areas, or scenic views;
- (4) Increase use of alternative energy sources in residential development; and
- (5) Retain rural town character, including scenic roads and town centers.

B. Definitions

Flexible Development: A form of residential development allowed by right with Site Plan Review, whereby the options of common driveways and flexible area and frontage requirements are used to create permanent open space and as an alternative to current state and local development regulations.

Common Driveway: A vehicular access from a road to more than one (1) but no more than six (6) residential units, built in accordance with the common driveway standards stated in Section XIII H of this bylaw.

Existing Resources / Site Analysis Map: A map which identifies, locates, and describes noteworthy features to be designed around through sensitive subdivision layouts, such as vegetation, wetlands, steep slopes, farmland soils, historic or cultural features, threatened or endangered species, unusual geological formations, and scenic views or viewsheds.

Low Impact Development (LID): A land-planning and engineering design approach to managing stormwater runoff which emphasizes use of natural features to protect water quality. Low Impact Developments are designed to reflect natural hydrology, limit impervious surfaces, treat stormwater in small decentralized structures, preserve portions of the site in natural conditions, and use natural topography for drainage ways and storage as an alternative to conventional stormwater structures associated with traditional subdivision developments.

Site Context Map: A map that illustrates the proposed development in connection to its surrounding neighborhood and shows major natural resource areas or features that cross parcel lines.

C. Flexible Development Allowed By Right with Site Plan Review

Flexible Development in accordance with this bylaw shall be allowed by right with Site Plan Review in all zoning districts. Any person creating two or more lots available for residential use, whether or not by subdivision, may apply for Flexible Development under this section. Flexible Development shall be encouraged within the town and shall be the preferred method of development wherever the purposes in Section XIII (A) would be served.

D. Criteria for Site Plan Review

In reviewing applications for Flexible Development, the Planning Board may consider

whether the application complies substantially with the following Site Plan Review criteria. The Planning Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these criteria.

- (1) All dwellings shall, to the greatest extent possible, be located out of view from any road, unless valuable natural resources or farmland located to the rear of the property render building in view of the road more desirable.
- (2) Flexible Development shall create permanently protected conservation land. All land within a Flexible Development not in use for building lots shall be placed in permanent conservation.
- (3) The portion of a parcel placed in conservation shall, to the greatest extent possible, be that which is most valuable or productive as a natural resource, wildlife habitat, farmland, or forestry land.
- (4) Flexible Development shall result in the creation of fewer curb cuts and vehicular access points to a public way than would occur under standard Approval Not Required or Subdivision Development.
- (5) Flexible Development may result in a net increase in density of dwellings on the parcel, up to ten percent (10%) or one (1) lot over the density which could reasonably be expected to occur under standard Approval Not Required or Subdivision Development.
- (6) Stormwater runoff generated from land development and land use conversion activities shall not be discharged directly to a wetland, local water body, municipal drainage system, or abutting property, without adequate treatment.
- (7) Flexible Development shall employ Low Impact Development techniques and Renewable Energy techniques to the maximum extent practicable, as described in Section G.
- (8) In Flexible Development, each structure shall be integrated into the existing landscape on the property, to the extent feasible, so as to minimize its visual impact through use of vegetative and structural screening, landscaping, grading, and placement on or into the surface of the lot.

E. Application Procedure

- (1) Any application for Flexible Development shall include all contents and follow all procedures in the Site Plan Review section, Section XII of the Town of Worthington zoning bylaw.
- (2) Any application for Flexible Development shall clearly state the terms by which the development shall meet the criteria listed in Section XIII D of this zoning bylaw.
- (3) In addition to the Site Plan Review requirements listed in Section XII of the Town of Worthington zoning bylaw, a Site Context Map and Existing Resources / Site Analysis Map shall be submitted to the Planning Board. These maps shall be used by the applicant in the preparation of a preliminary design plan.
- (4) The applicant is very strongly encouraged to request a concept meeting at a regular business meeting of the Planning Board. If one is requested, the Planning Board may invite the Conservation Commission, Board of Health, Historical Commission, or other appropriate boards. The purpose of a concept meeting is to minimize the applicant's costs of engineering and other technical experts, and

to commence discussions with the Planning Board at the earliest possible stage in the development. At the meeting, the applicant may outline the proposed development, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application.

F. Flexible Dimensional Standards

Flexible Developments shall use the flexible area and frontage provisions of this section for the purpose of minimizing the destruction of natural resources while maximizing availability of open space, farmland, and rural character.

(1) Flexible Frontage in Flexible Developments

- (a) The frontage of the total parcel from which the lots of Flexible Development are created shall equal or exceed seventy percent (70%) the total frontage length otherwise required for the sum of all lots created under standard Subdivision Regulations. (For example, to create a four-lot Flexible Development in a zone where there is a 400 foot frontage requirement, the parcel must have a minimum of 1120 foot contiguous frontage along one road.)
- (b) Provided that all other requirements of this section are met, there shall be no frontage required for individual lots within Flexible Development, with the exception described in XIII F 1 (c) below.
- (c) Any building lot which fronts on an existing public road shall have 400 foot frontage. This provision shall not apply to permanent conservation land.

(2) Flexible Area in Flexible Developments

- (a) There is no minimum lot size for individual lots, provided the lot meets Title V standards. The average lot size for all lots created shall be at least two (2) acres.
- (b) The total number of building lots which can be created from any parcel shall be determined by subtracting the area of all wetlands (as defined by the Massachusetts Wetland Protection Act, M.G.L. Chapter 141 Section 40) and slopes of greater than fifteen percent (15%) from the total parcel area, and dividing the resulting area by the required average lot size of two acres.
- (c) All land not used for building lots shall be placed in permanent conservation in accordance with Section XIII J of this bylaw, but not less than fifty percent (50%) of the total land area.
- (d) To the extent feasible and practical, building lots shall be located out of view of town roads, while all protected open space shall be located along, or in view of, town roads.

(3) Flexible Setback Requirements

- (b) Building lots within the flexible development have no minimum setback requirements for front, rear or side yards unless a boundary abuts a public way or adjacent property not part of the development. Per Section H, the common driveway is not a public way.
- (c) Minimum front, side and rear setbacks from a public way and/or abutting properties not part of the flexible development shall conform to

the underlying requirements of the zoning district. If the abutting property is a separate flexible development, these setback requirements can be waived with the consent of the homeowners' associations of both developments.

G. Additional Development Standards

(1) Stormwater Management

The design and development of Flexible Development shall minimize off-site stormwater runoff, promote on-site infiltration, and minimize the discharge of pollutants to ground and surface water. Natural topography and existing land cover should be maintained and protected to the maximum extent practicable. Flexible Development shall meet the following requirements:

- (a) Untreated, direct stormwater discharges to wetlands and surface waters are not allowed;
- (b) Post-development peak discharge rates should not exceed pre-development peak rates;
- (c) Erosion and sediment controls must be implemented to remove eighty percent (80%) of the average annual load of total suspended solids;
- (d) All stormwater treatment systems or Best Management Practices must have operation and maintenance plans to ensure that systems function as designed.

(2) Low Impact Development

All Flexible Developments shall employ the following Low Impact Development techniques to the maximum extent practicable:

- (a) Vegetated Swales - shallow drainage channels with thick grasses or vegetation that slows runoff, filters it, trap pollutants and promote infiltration into the ground;
- (b) Cisterns and Rain Barrels – water tanks that store rainwater for landscaping and gardens;
- (c) Bioretention Areas or Rain Gardens – bioretention “cells” are shallow depressions filled with sandy soil, topped with mulch and planted with dense vegetation, that collect, treat and infiltrate rainwater;
- (d) Low Impact Roadways – narrow roadways to reduce impervious cover, which employ open-section layouts without curbs and gutters, flanked by grass filter strips and swales for stormwater infiltration;
- (e) Permeable Paving – paving surfaces used for driveways, parking, walkways and patios that allow rainwater to percolate into the ground, including porous asphalt or concrete, paving stones and manufactured “grass pavers” made of concrete or plastic.

H. Common Driveways

- (1) Common Driveways shall be allowed with Site Plan Review in accordance with the provisions of this section.
- (2) No more than six (6) lots shall be served by a Common Driveway.
- (3) Frontage along the length of any Common Driveway shall in no way be used to

satisfy frontage requirements as specified in the Zoning Bylaw; furthermore, no Common Driveway shall be accepted as a public road; nor shall the town under any circumstances be held liable for construction, reconstruction, maintenance, or snow removal on any Common Driveway.

- (4) The landowners of all residences served by a Common Driveway shall be granted a Right-of-Way for the use of the Common Driveway. Such Right-of-Way shall be recorded in the Hampshire County Registry of Deeds prior to the recording and the deeding out of any of the lots within the Flexible Development, together with a statement of covenants as follows:
- (a) The Common Driveway shall at no time be used to satisfy frontage requirements under the zoning bylaw;
 - (b) The Common Driveway shall at no time become the responsibility or liability of the town;
 - (c) Each landowner served by the Common Driveway shall be liable and responsible for the repair and maintenance of any portion of the Common Driveway to which they have the exclusive Right-of-Way (such as a spur serving solely one parcel); and
 - (d) Each landowner served by the Common Driveway shall be responsible and liable for the repair and maintenance of all portions of the Common Driveway to which more than one landowner holds a Right-of-Way.
 - (e) The applicant shall prepare Maintenance and Repair Agreement that will provide provisions for services, maintenance, and enforcement for the Common Driveway and shall be entered into by the affected property owners. Such Agreement shall be recorded in the Hampshire County Registry of Deeds prior to the recording and the deeding out of any of the lots within the Flexible Development
- (5) Common Driveway Standards
- (a) A common driveway shall have a maximum width of eighteen (18) feet, in addition to an easement of sufficient width to assure proper drainage and maintenance.
 - (b) A common driveway shall not be longer than twelve hundred (1200) feet in length. The length restriction may be waived where it would conflict with the purposes of this bylaw.
 - (c) The slope or grade of a Common Driveway shall be sufficient for a fire engine to negotiate, generally no more than fifteen percent (15%).
 - (d) The common drive shall intersect a public way at an angle of not less than eighty (80) degrees.
 - (e) The minimum curvature of a common driveway shall be sufficient for a fire engine to negotiate, generally no less than a radius of fifty (50) feet.
 - (f) There shall be a turnaround area at the end of the Common Driveway; such turnaround shall accommodate safe and convenient turning by fire trucks and other emergency vehicles. Design of the turnaround area shall also be approved by the town's Fire Department.
 - (g) Other standards may be set based on site configurations, including

requirements for drainage.

- (h) The common driveway shall be constructed of a minimum 15" gravel base, with a surface layer consisting of three successive layers of ¾" -size crushed traprock stone, ½" -size crushed traprock stone, and ¼" -size crushed traprock stone, with a crown sufficient for drainage. Further requirements may be added to meet the site's requirements.
 - (i) Drainage shall be adequate to dispose of surface runoff. Low Impact Development standards for stormwater management are required, but culverts shall be installed if deemed necessary by the Worthington Highway Department.
 - (j) These standards may be waived when, in the opinion of the Planning Board, such action is in the public interest and not inconsistent with the purpose and intent of the Worthington Zoning Bylaw.
- (6) No lot within the flexible development shall be sold before the common driveway is completed.

I. Utility Requirements

- (1) On-site Sewage Disposal
The following standards shall apply to developments requiring on-site sewage disposal:
- (a) The applicant shall submit a septic system design prepared by a certified engineer and approved by the Board of Health and a plan illustrating the location of water supply wells with the application.
 - (b) All Flexible Developments must meet the minimum state Environmental Code (Title V) requirements for minimum setbacks between private water supply wells and septic tanks or soil absorption systems (310 CMR 15.211).
 - (c) All Flexible Developments must meet the minimum state Environmental Code (Title V) requirements for nitrogen loading limitations (310 CMR 15.214-15.217). For Flexible Developments with individual lot sizes less than 40,000 square feet, applicants must meet the following standards:
 - (i) Applicants must designate, on a plan, specific areas of common open space as "nitrogen credit land" based on the following equation:
$$(40,000 \text{ square feet} \times \text{number of Flexible Development lots}) - (\text{total square feet in proposed Flexible Development lots}) = \text{square feet of required nitrogen credit land in common conservation lands}$$
 - (ii) Nitrogen credit land must meet DEP qualifications contained in "Guidelines for Title 5 Aggregation of Flows and Nitrogen Loading 310CMR15.216"
 - (iii) All designated nitrogen credit land must be permanently restricted from further development under a "Grant of Title 5 Nitrogen Loading Restriction and Easement on Nitrogen Credit Land".
- After approval of the Flexible Development Plan, applicants must apply to the Board of Health and the Mass. Department of Environmental Protection (DEP) for an aggregate determination of nitrogen loading under 310 CMR 15.216.

- (iv) Septic tanks must be installed on individually-owned lots. Nitrogen Credit Land must be at least 100 feet from all private wells.

(2) Water Supply

In order to meet state Title V requirements for separation distances between drinking water wells and septic systems, private drinking water supply wells may be located in the common open space for a Flexible Development, provided that the provisions of Section 1.12 for a homeowners' association are met.

J. Conservation Land

(1) Conservation Land Requirements

- (a) A minimum of fifty percent (50%) of the total development parcel must be permanently protected as conservation land. At least seventy percent (70%) of the conservation land shall be retained in contiguous areas, unless approved by the Planning Board.
- (b) Watercourses, lakes, ponds, wetlands, floodplains, and steep slopes over twenty-five percent (25%) may be included in conservation land calculations not to exceed twenty-five percent (25%) of the total protected conservation lands.
- (c) The Planning Board may permit up to three percent (3%) of the conservation land to be paved or built upon for structures accessory to the dedicated use of open space (i.e. pedestrian walks, bicycle paths, playgrounds, farm-related structures).
- (d) All recreational facilities, common areas, and conservation land shall be reasonably accessible to all residents of the development.

(2) Land Protection Methods for Conservation Land

- (a) All land not devoted to buildings, lots, roads and other development shall be permanently protected for open space, outdoor recreation, forestry or agricultural uses which preserve the land in its natural condition. A legal mechanism approved by the Planning Board shall permanently protect land from any inconsistent use or development. Permanent protection through a donation of the land, or of a conservation restriction, to the town or a non-profit conservation organization is preferred. Land may be donated to the Town or conservation organization duly recognized as such pursuant to M.G.L. c. 180 and IRC Section 170(h) for conservation purposes, or be placed under a permanent conservation restriction in accordance with the provisions of M.G.L. c.184 §§ 31-33, as amended. The conservation restriction must be held by the Town or a non-profit organization dedicated to conserving open space.
- (b) The final owner of the conservation land and /or the conservation restriction is strongly recommended to develop a conservation management plan that will address proper management and future maintenance of this natural resource.
- (c) Further subdivision of conservation land, except for easements for underground utilities or drinking water supply wells, shall be prohibited.

(3) Maintenance of Conservation Land

- (a) Prior to final approval of the Flexible Development, all required covenants, grants of easements, or conveyance for the conservation land must be submitted to the Planning Board and Town Council for review and approval prior to the recording and the deeding out of any of the lots within the Flexible Development.
- (b) Where applicable, if any portion of the conservation land is conveyed to a non-profit homeowners association or trust of the homeowners of the dwelling units in the Flexible Development, then the following shall be required. In order to ensure that the grantee will properly maintain the land deeded to it under this section, the applicant shall cause to be recorded in the appropriate Registry of Deeds, a Declaration of Covenants and Restrictions which shall, at a minimum, provide for:
 - (i) Mandatory membership in an established homeowners association or trust, as a requirement of ownership of any residential unit or lot in the Flexible Development;
 - (ii) Provisions for maintenance assessments of all owners of residential units or lots in order to ensure that the conservation land is maintained in a condition suitable for the approved uses; failure to pay such assessment shall create an automatic lien upon written notice to any property owner failing to pay the assessment on the property assessed, enforceable by the association or trust;
 - (iii) Provision which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the conservation land will not terminate by operation of law. The developer of the Flexible Development shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the grantee is capable of assuming said responsibility.
- (c) Prior to the issuance of a building permit for an approved Flexible Development, proposed conservation land shall be clearly marked, and all efforts shall be taken by the developer to prohibit any disturbance of the delineated conservation lands during the construction process.

K. Additional Considerations

- (1) Trails. Where there is an existing local or regional trail network on land adjacent to a proposed Flexible Development, the applicant may be required to preserve or enhance the existing trail network with trail corridors through the site.
- (2) Enhancing Conservation Land Connectivity
Where there is existing conservation land adjacent to a proposed Flexible Development, the applicant may be required to locate the development's conservation land so that it expands or enhances the connectivity of such lands, where feasible.
- (3) Renewable Energy
Flexible Developments must employ the following Renewable Energy techniques to the maximum extent practicable:
 - (a) Streets, roads and common driveways shall be laid out primarily on an east-west axis to maximize solar gain;
 - (b) Homes and buildings shall be oriented to maximize passive solar gain, by having the longest side of the structure facing south, while maximizing

windows facing south;

- (c) Solar access should be maintained for all buildings. New structures shall not cast shadows that reduce solar access for other structures;
- (d) Homes and buildings should use renewable energy sources as feasible.

L. Homeowners' Association

- (1) A qualified Homeowners' Association shall be created prior to the conveyance of any lot in Flexible Development for which such an association is required.
- (2) The Association shall be responsible for the permanent maintenance of all commonly-owned amenities, (e.g. common conservation lands, stormwater facilities, recreational facilities, utility easements), except where such responsibility is assumed by another owner of the amenities.
- (3) A Homeowners Association agreement or covenant shall be submitted with the Flexible Development application guaranteeing continuing maintenance of and the development of a capital expense fund for such commonly-owned amenities, and assessing each lot a share of maintenance expenses. The articles of formation of the qualified homeowners' association shall be prepared by a licensed attorney. Such agreement shall be subject to the review and approval of Town Counsel and the Planning Board, and shall be recorded in the Hampshire County Registry of Deeds. The Planning Board may commission further legal review of any documents submitted, the cost of which shall be borne by the applicant.
- (4) Such agreements or covenants shall provide that in the event that the Homeowners Association fails to maintain the commonly-owned amenities reasonable order and condition, in accordance with the agreements or covenants, the Town of Worthington may, after notice to the homeowners association enter upon such land and maintain it in order to preserve the taxable values of the properties within the development and to prevent the commonly-owned amenities from becoming a public nuisance. The costs of such maintenance by the Town of Worthington shall be assessing each lot a share of maintenance expenses within the Flexible Development.

M. Conflict with Other Laws

The provisions of this section shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this section and others, the more restrictive bylaw or provision thereof shall apply.

N. Severability

If any provision of this section is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity in whole or in part of any section or sections of this bylaw shall not affect the validity of the remainder of the town's bylaws.