

REVISED 9/12/17

**AGENDA
OPERATIONS COMMITTEE
SEPTEMBER 22, 2017
SEAFORD CITY HALL - 414 HIGH STREET - SEAFORD, DE**

2:00 P.M. - Councilman Mulvaney calls the meeting to order

NEW BUSINESS:

1. Draft ordinance to amend Chapter 15, Division 4; to add a masonry finish requirements to R-3 development.
2. Draft ordinance to amend Chapter 15, adding article 9; Wireless Facilities.
3. Draft ordinance to amend CHAPTER 18 - Realty Transfer Tax; Article 1 - General Provisions; §18.1.7; Rate of tax; when payable; exception (D) of the Municipal Code of Seaford, Delaware relating to Zoning.
4. Berley Mears, Director of Public Works to discuss FY19 budget requests and a three year Capital Improvement Plan.

OLD BUSINESS:

1. None

Councilman Mulvaney calls for a motion to close the Operations Committee meeting.

Councilman Mulvaney closes the Operations Committee meeting.

NOTE: Agenda shall be subject to change to include or delete Additional items (including executive session) which arise at the time of the meeting. (29 Del. C. S1004 (e) (3))

Posted
Website - TNT
9/13/17 @ 4:07 p.m.

ORDINANCE #20??-0?

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SEAFORD, an ordinance to amend Chapter 15, Division 4; Design Standards – Commercial and Industrial Districts of the Municipal Code of Seaford, Delaware relating to Zoning, in the manner following, to wit:

Chapter 15 of the Municipal Code of Seaford, Delaware is hereby amended by adding a new language to Division 4 - Design Standards – Commercial and Industrial Districts to include R-3 High Density Residential Districts as shown on the following page.

	First Reading Date
	Second Reading Date & Adoption
	Advertisement Date
	Effective Date of Ordinance

CITY OF SEAFORD

By: _____
Mayor

Witness: _____

Attest: _____
City Manager

Division 4. Design Standards – Commercial, Industrial and R-3 High Density Residential Districts.

ORDINANCE #20??-0?

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SEAFORD, an ordinance to amend Chapter 15, adding Article 9; Wireless Facilities to the Municipal Code of Seaford, Delaware relating to Zoning, in the manner following, to wit:

Chapter 15 of the Municipal Code of Seaford, Delaware is hereby amended by adding Article 9; Wireless Facilities as shown on the following page.

	First Reading Date
	Second Reading Date & Adoption
	Advertisement Date
	Effective Date of Ordinance

CITY OF SEAFORD

By: _____
Mayor

Witness: _____

Attest: _____
City Manager

ARTICLE 9 - Wireless Facilities

Division 1 – Installations in the Right-of-Way

Sec. 15-138

Tower, broadcasting and telecommunications facilities, located inside the public rights-of-way, subject to the grant of a special use permit as provided in this Chapter, shall comply with the following standards and requirements. Towers less than thirty-five (35') feet in height shall not require a special use permit but are subject to administrative approval by the Building Official and shall comply with the following standards:

- (a) Timing of approval for applications. The City shall comply with all federal timing requirements for the consideration of applications for new towers and collocated antennas that fall under Section 6409(a) of the Spectrum Act, and/or any orders promulgated by the FCC or any other governing entity.
- (b) New tower applications shall be accompanied by a professional engineer's report containing the following:
 1. Certification that the proposed tower will fill a significant gap in wireless coverage or capacity that exists in the applicable area and that the type of wireless facility being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or non-existence of a gap in wireless coverage shall be a factor in the City's decision on an application for approval of tower.
 2. A technical evaluation of the feasibility of attaching the tower or antenna to an existing, or previously approved, structure or wireless support structure, or siting the tower or antenna on land owned and maintained by the City of Seaford. This technical evaluation shall consider all structures or lands located within a one eighth (1/8) of a mile radius of the proposed tower or antenna site. A list of approved, municipally-owned buildings and parcels appropriate for wireless facilities placement is kept on file at the Office of the Building Official. The City may deny an application to construct a new tower if the applicant has not made a good faith effort to mount an antenna on an existing structure.
 3. Evidence that the applicant cannot adequately extend or infill its communications system by the use of equipment such as repeaters, antennas, and other similar equipment installed on existing structures, such as utility poles or their appurtenances and other available tall structures. The applicant shall demonstrate that the proposed tower must be located where it is proposed in order to serve the applicant's service area and that no other viable alternative location exists.

4. The applicant shall demonstrate that he/she contacted the owners of tall structures, buildings, and towers on which it is technically feasible to mount a tower or antenna within a one eighth (1/8) of a mile radius of the site proposed for the tower, sought permission to install an antenna on those structures, buildings, and towers and was denied for one of the following reasons:

a. The proposed antenna and related equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.

b. The proposed antenna and related equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.

c. Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.

d. A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.

e. Failure by the owner of such building, structure, or tower to respond within thirty (30) days of notice by the applicant.

5. A signal coverage/propagation map of the area to be served by the proposed tower. The propagation shall show signal intensity in dBm, as well as major roads, residential developments, and commercial areas. The City reserves the right to request propagation maps for other sites or height alternatives.

6. Certifications that the proposed tower shall comply with all applicable state and federal regulations.

(c) Location and development standards.

1. Available infrastructure.

a. As part of its application for approval, the applicant must demonstrate that it cannot infill the capacity or coverage gap in its system by utilizing existing infrastructure (i.e., utility or light poles) in the rights-of-way as a support structure for an antenna, rather than constructing a new tower. Applicants that utilize existing infrastructure

for the siting of antennas may proceed with the siting of their facilities by obtaining administrative approval from the City.

b. To the extent permissible under state and federal law, antennas attached to existing infrastructure shall not exceed six (6) feet in height and shall employ stealth technology, if possible, in their design.

c. Applicants replacing an existing pole with a new pole to support a new antenna must bear all costs associated with such pole replacement.

2. Towers in the rights-of-way shall not exceed a height comparable to the average height of utility poles or electrical poles within a two (2) block radius of the proposed facility, unless the applicant can prove to the satisfaction of Council that a taller tower is the only method by the applicant can infill its gap in coverage or capacity.
3. Towers are prohibited within seventy-five (75) linear feet of areas in which all utilities are located underground.
4. Towers shall not to be located in the front façade area of any structure.
5. Towers are prohibited in the C-3 Riverfront Enterprise Zone without approval of the Economic Development Committee as outlined in item 7 (d) 4 below.
6. Tower(s) are prohibited in the 100-year flood zone, as determined by the City.
7. Applicants proposing the construction or siting of towers in state-owned rights-of-way shall demonstrate that it submitted all appropriate applications to the Delaware Department of Transportation and subsequently received permission for the siting or construction of said towers.

(d) Design regulations.

1. The tower shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact.
2. To the extent permissible under state and federal law, any height extensions to an existing tower shall require

prior approval of the City, and shall not violate the provisions described herein.

3. Towers shall be designed structurally, electrically, and in all respects to accommodate both the applicant's antennas and comparable antennas the maximum amount of future users based on the size of the proposed tower.
 4. The Economic Development Committee of the City of Seaford will review applications and make a recommendation to Staff for the placement of new antennas in the C-3 Riverfront Enterprise Zone in order to ensure that the character of such Districts is preserved.
- (e) Equipment location. Towers and related equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the rights-of-way as determined by the City. In addition:
1. Ground-mounted related equipment shall be located between the sidewalk and the curb. For reasons of safety and aesthetics, such equipment shall neither protrude onto the curb, nor obstruct the sidewalk.
 2. Required electrical meter cabinets shall be screened to blend in with the surrounding area.
 3. Any graffiti on the tower or on any related equipment shall be removed at the sole expense of the owner.
- (f) Time, place and manner. The City shall determine the time, place and manner of construction, maintenance, repair and/or removal of all towers in the rights-of-way based on public safety, traffic management, physical burden on the rights-of-way, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the City and the requirements of the Public Utility Code.
- (g) A structural engineer registered in The State of Delaware shall issue to the City a written certification of the proposed tower's

ability to meet the structural standards offered by either the Electronic Industries Association or the Telecommunication Industry Association, if applicable, and certify the proper construction of the foundation and the erection of the structure.

- (h) Towers and antennas shall employ stealth technology and shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible. Factors to be considered include whether the subject application will promote the harmonious and orderly development of the zoning district and/or surrounding area involved; encourage compatibility with the character and type of development existing in the area; benefit neighboring properties by preventing a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering and construction principles, practices and techniques.
- (i) Permit required for modifications. To the extent permissible under applicable state and federal law, the proposed modification of an existing tower, which substantially changes the dimensions of such wireless support structure, shall first obtain a building permit from the City. Non-routine modifications shall be prohibited without such permit.
- (j) No tower shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- (k) Towers shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair. Such maintenance shall be performed to ensure the upkeep of the Tower in order to promote the safety and security of the City's residents, and utilize the best available technology for preventing failures and accidents. Any maintenance or repair to antennas or towers located above high voltage power lines shall be performed by contractors who are OSHA-certified to work above high voltage power lines.
- (l) To the extent permissible under state and federal law, no tower or antenna may be located upon any property, or on a building, structure that is listed on either the National or Delaware

Registers of Historic Places. No tower in the public rights-of-way shall be located along a highway or other road that is considered by the City to be a scenic route.

- (m) All towers shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. The only other signage permitted on the tower shall be that required by the FCC, or any other federal or state agency.
- (n) Towers shall not be artificially lighted, except as required by law. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. The applicant shall promptly report any outage or malfunction of FAA-mandated lighting to the appropriate governmental authorities and to the City Manager. This requirement shall not apply to towers employing stealth technology in the rights-of-way that are designed to resemble street lights.
- (o) Towers shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the City Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only, but no more than twenty-four (24) hours.
- (p) Relocation or removal of facilities. Within sixty (60) days following written notice from the City, or such longer period as the City determines is reasonably necessary or such shorter period in the case of an emergency, the owner of a tower in the rights-of-way shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any tower when the City, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
 - 1. The construction, repair, maintenance or installation of any City or other public improvement in the Right-of-Way;
 - 2. The operations of the City or other governmental entity in the right-of-way;

3. Vacation of a street or road or the release of a utility easement; or

4. An emergency as determined by the City.

- (q) Permit Fees. The City may assess appropriate and reasonable permit fees directly related to the City's actual costs in reviewing and processing the application for approval of a new tower, as well as related inspection, monitoring, and related costs.
- (r) Nothing herein shall be construed to prohibit the City from leasing fiber that it owns and/or maintains to third parties.
- (s) All proposed tower applications shall be accompanied by proof that the telecommunications applicant has a contract with a wireless service provider to install, construct, modify, maintain or operate wireless communications facilities in the right-of-way in which such installation, construction, modification, maintenance or operation is to begin within one year of approval.

DIVISION 2 - Tower, Broadcasting and Telecommunications, located outside the public rights-of-way

Section 15-139

Tower, Broadcasting and Telecommunications, located outside the public rights-of-way require a special use permit and are subject to the following special requirements:

- (a) Timing of approval for applications. The City shall comply with all federal timing requirements for the consideration of applications for new towers, as well as collocated antennas that fall under the Spectrum Act and/or the October 2014 Report and Order promulgated by the FCC. Tower applications shall be accompanied by a professional engineer's report containing the following:
 - 1. A technical evaluation of the utilization of existing towers for telecommunications or other equipment intended for the installation on the proposed tower, as well as a propagation study evidencing the need for the proposed tower or other communication facilities and equipment, a description of the type and manufacturer of the proposed transmission/radio equipment, the frequency range (megahertz band) assigned to the applicant, the power in watts at which the applicant transmits, and any relevant related tests conducted by the

applicant in determining the need for the proposed site and installation.

2. A technical evaluation of the feasibility of attaching the tower or antenna to an existing, or previously approved, structure or wireless support structure, or sited on land owned and maintained by the City of Seaford. A list of approved, municipally-owned buildings and parcels appropriate for wireless facilities placement is kept on file at the Office of the City Building Official. Council may deny an application to construct a new tower if the applicant has not made a good faith effort to mount an antenna on an existing structure. The applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers on which it is technically feasible to mount a tower or antenna within a one eighth (1/8) of a mile radius of the site proposed for the tower, sought permission to install an antenna on those structures, buildings, and towers and was denied for one of the following reasons:

 - a. The proposed antenna and related equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.
 - b. The proposed antenna and related equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.
 - c. Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
 - d. A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.
 - e. Failure by the owner of such building, structure, or tower to respond within thirty (30) days of notice by the applicant.
3. Certification that the proposed tower will fill a significant gap in wireless coverage or capacity that exists in the applicable

area and that the type of wireless facility being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or non-existence of a gap in wireless coverage shall be a factor in the City's decision on an application for approval of a telecommunications tower.

4. Copies of all applicable state and federal permits.
5. An engineering analysis of the proposed tower, including a summary of the proposed tower's capacity to provide space for future collocation by others.
 - (b) Any principal part of the tower, excluding guy cables, shall be set back from the nearest property line of a church, library, school, nursing home, hospital, or lot zoned residential (R-1, R-2, R-3 and R-4) not less than three times the height of the tower or 200 feet, whichever is greater. The setback shall be measured from the nearest point of the base of the tower to the nearest point of the property line of the protected use. If the applicant uses self-collapsing technology in its tower design, the setback from the nearest property line shall be one and a half times the height of the tower or 150 feet, whichever is greater.
 - (c) No artificial light shall be installed upon any such tower unless required by the Federal Aviation Administration. If such light is required, it shall be screened so as not to project its light below the horizontal plane in which it is located.
 - (d) Towers shall not exceed 175 feet in height unless a variance is successfully obtained by the applicant. Towers over 200 feet in height shall be guyed and not self-supporting nor consisting of lattice type structures, unless the applicant demonstrates that a guyed tower shall have a greater negative visual impact than a self-supporting tower.
 - (e) To the extent permitted by applicable federal law and FCC regulations, towers located on existing buildings or structures shall not extend beyond 22 feet above the highest point of the building or structure. Accessory buildings or facilities for towers located on existing buildings or structures shall be located either in or on top of such buildings or structures.

- (f)** The applicant shall submit a soil report to the City complying with the standards of Appendix I: Geotechnical Investigations, ANSI/EIA-222, as amended, to document and verify the design specifications of the foundation of the tower, and anchors for guy wires, if used.
- (g)** Landscaping shall be provided around the base of the tower and adjacent to a required security fence that shall be at least 10 feet high. The landscaping shall consist of a minimum 25 foot wide planting strip with ground cover and/or grass, including at least one row of six foot high evergreen trees providing a solid screen adjacent or proximate to the fence, and 15 foot high, two inch caliper deciduous trees, interspersed within the buffer area and no more than 20 feet apart. Applicants may substitute alternative landscape plans that meet the purposes of this subsection to limit the visual impact of the lower portion of the tower and adjoining accessory facilities. Camouflaged towers designed to look like trees may be exempt from this subsection, subject to Council approval. Towers and telecommunication antennas located on top of existing buildings shall be exempt from this subsection. A ten foot high security fence and an adjoining six foot high solid evergreen screen adjacent or proximate to the fence shall be provided around the anchoring facilities for guy wires for guyed towers. Council may exempt any tower applicant from these landscaping and stealth technology requirements.
- (h)** No outdoor storage shall be permitted at the tower site.
- (i)** Unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, towers shall be light gray in color. Camouflaged towers designed to look like trees or employing other alternative methods of stealth technology may be exempt from this subsection, subject to Council approval. Telecommunication antennas with colors designed to match buildings or structures to which they are attached shall be exempt from this subsection. Towers shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible.

Council shall consider whether its decision upon the subject application will promote the harmonious and orderly development of the zoning district involved; encourage compatibility with the character and type of development existing in the area; benefit neighboring properties by preventing a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering design and construction principles, practices and techniques.

- (j) A tower shall be located so as not to encroach into any established public or private airport approach as established by the Federal Aviation Administration.
- (k) Towers higher than 100 feet must be a minimum of 2,000 feet from the nearest similar tower, measured from the base of the towers, unless the applicant provides evidence to the City that the nearest similar tower cannot structurally accommodate additional antenna or there is unacceptable radio interference and that the proposed tower is necessary to fill a significant gap in coverage or capacity.
- (l) New telecommunications facilities may be attached to an approved tower without applying for an additional special use permit so long as the new facility does not substantially change the dimensions of the wireless support structure, or trigger any other exemption outlined by federal or state regulation. Antennas being sited on structures that do not already act as wireless support structures may be approved administratively, so long as they do not exceed ten (10) feet in height and are constructed with a stealth design. To the extent permitted by state and federal law, as built drawings must be submitted to staff in advance of receiving such administrative approval, in order to determine whether the applicants proposed facility is eligible for administrative approval.
- (m) No interference with existing television, cable television, radio signals, emergency communications services, or other electronic devices shall be permitted from the tower. If interference occurs, it shall be immediately remedied by the operators of the tower.

- (n) If a tower is abandoned, unused for two years, or no longer operable, it shall be removed within six months of its abandonment. If a tower is not dismantled as specified in this subsection, the City shall arrange to have the facility dismantled and will assess the landowner all costs associated with the removal of the tower. If the full amount due the City is not paid by the owner, or person in control of the property, or his or her agent, within 90 days of receipt of a bill from the City, the City Director of Finance shall cause a special assessment to be recorded in the municipal lien docket. The recordation of such special assessment shall constitute a lien on the property and shall remain in full force and effect for the amount due in principal and interest until final payment has been made.
- (o) That the owner of such tower shall provide proof to the City that the tower has undergone a triennial inspection for structural integrity. Said inspection is to be performed by a certified engineer, or other qualified professional, at the expense of the owner of the tower. If structural deterioration is found to be present, and such deterioration affects the physical stability or aesthetic integrity of the tower, the owner shall be required to correct such deterioration within a time limit to be established by the Building Official.

In addition, the operator of such tower shall provide annual proof to the City that the tower has undergone field measurements to ensure compliance with all applicable Federal Communication Commission safety standards for exposure to nonionizing electromagnetic radiation. Such field measurements, and submission of the results to the City, shall be conducted upon start of the facility and annually thereafter, except that every third year, such proof of compliance shall be submitted on behalf of the operator by an independent nonionizing electromagnetic radiation evaluator. All such field measurements, and submission of the results, are to be performed by a certified engineer, or other qualified professional, at the expense of the operator. If such field measurements demonstrate noncompliance with Federal Communication Commission safety standards specified in this section, transmission at the facility shall be suspended until

such time as full Federal Communication Commission safety standards compliance is demonstrated to the satisfaction of the City.

- (p) The owner of such tower shall give proof to the City that any damages which may occur to surrounding properties or injury which may occur to persons, which damages or injuries are caused by a failure of the tower and/or its associated structural supports, regardless of whether such failure is a result of human error or an act of God, shall be paid by the owner of the tower and/or insurers of the tower.
- (q) Wireless telecommunications facilities shall not be located upon a property, and/or on a building or structure that is listed on the National or Delaware Registers of Historic Places.
- (r) Wireless telecommunications facilities shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the City Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only, but no more than twenty-four (24) hours.
- (s) The City may assess appropriate and reasonable permit fees directly related to the City's actual costs in reviewing and processing the application for approval of a tower or antenna, as well as related inspection, monitoring, and related costs.
- (t) City residents and amateur radio operators utilizing satellite dishes, towers and antennas for the purpose of maintaining television, phone, radio and/or internet connections at their respective residences shall be exempt from the regulations enumerated in this section of the Zoning Ordinance.
- (u) Notwithstanding the criteria set forth in this chapter, Council shall grant the application if all of the foregoing requirements are met.

ORDINANCE #20??-0?

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SEAFORD, an ordinance to amend CHAPTER 18 - REALTY TRANSFER TAX; ARTICLE 1 - GENERAL PROVISIONS; §18.1.7; Rate of tax; when payable; exception (D) of the Municipal Code of Seaford, Delaware relating to Zoning, by replacing the existing language with the proposed language as shown on the following page:

	First Reading Date
	Second Reading Date & Adoption
	Advertisement Date
	Effective Date of Ordinance

CITY OF SEAFORD

By: _____
Mayor

Witness: _____

Attest: _____
City Manager

D. On transfers where all grantees qualify as first-time home buyers, no transfer tax shall be imposed on the grantee's portion of any transfer tax as defined in § 18.1.7 A. hereof. For purposes of this article, "first-time home buyer" shall have that meaning given in § 18.1.6 A. The first-time home buyer exception shall apply only to the grantee's portion of the transfer tax as defined in § 18.1.7 A. hereof and shall not relieve the grantor from payment of grantor's portion of the transfer tax as defined in § 18.1.7 A. hereof. For purposes of the first-time home buyer exception, grantor and grantee shall be prohibited from contractually modifying the apportionment of the transfer tax as set forth in § 18.1.7 A. to decrease the grantor's portion of the transfer tax. This provision shall apply to all contracts entered into as of January 1, 2018, the effective date hereof.