

WATERSHED PROTECTION**§ 152.110 AUTHORITY AND ENACTMENT.**

The legislature of the state has, in G.S. Ch. 160A, Ordinance 19, Planning and Regulation of Development; and in Chapter 143, Ordinance 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The town does hereby ordain and enact into law the following as the "Watershed Protection Ordinance of the Town of Rutherford College".
(Ord. passed 4-5-2010)

§ 152.111 JURISDICTION.

The provisions of this chapter shall apply within the overlay zones designated as a Public Water Supply Watershed as defined and established on the "Official Zoning Map of Rutherford College, North Carolina" ("the zoning map"), such overlay zones being adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this chapter. This chapter shall be permanently kept on file in the office of the Town Clerk.
(Ord. passed 4-5-2010)

§ 152.112 EXCEPTIONS TO APPLICABILITY.

(A) Development activities that do not require a Sedimentation/Erosion Control Plan are exempt from the requirements of this section.

(B) Existing development, as defined in this chapter, is not subject to the requirements of this chapter. Existing development is defined as those projects that are built or those projects that at a minimum have established a vested right under the state zoning law as of the effective date of this chapter based on at least one of the following criteria:

(1) Having expended substantial resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;

(2) Having an outstanding valid building permit as authorized by G.S. § 153A-344.1 and G.S. § 160A-385.1; and/or

(3) Having an approved site specific or phased development plan as authorized by G.S. § 153A-344.1 and G.S. § 160A-385.1.

(C) Expansions to structures classified as existing development must meet the requirements of this chapter; however, the built-upon area of the existing development is not required to be included in the density calculations.

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(D) Reconstruction of buildings or built-upon areas: any existing building or built-upon area not in conformance with the restrictions of this chapter that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single-family residential redevelopment, provided:

(1) Repair or reconstruction is initiated within 12 months and completed within two years of such damage; and

(2) The total amount of space devoted to built-upon area may not be increased unless storm water control that equals or exceeds the previous development is provided.

(E) If a nonconforming lot of record is not contiguous to any other lot owned by the same part, then that lot of record shall not be subject to the development restrictions of this chapter if it is developed for single-family purposes.

(Ord. passed 4-5-2010)

§ 152.113 CLUSTER OR PLANNED UNIT DEVELOPMENT.

Cluster or planned unit development is allowed in all watershed areas under the following conditions.

(A) Development activities shall comply with the requirements of §§ 152.078 and 152.079.

(B) All built-upon areas shall be designed and located to minimize storm water runoff impact to the receiving waters and minimize concentrated storm water flow.

(C) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the deeds. (Ord. passed 4-5-2010)

§ 152.114 BUFFER AREAS REQUIRED.

(A) A minimum 100-foot vegetative buffer is required for all new development activities that exceed the low density option; otherwise, a minimum 30 foot vegetative buffer for development activities is required along all perennial waters indicated in the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Artificial stream bank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increase in impervious area, and public projects such as road crossings and greenways where no practical alternative

exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of storm water best management practices, defined as a structural or nonstructural management-based practice used singularly or in combination to reduce non-point source inputs receiving waters in order to achieve water quality goals.
(Ord. passed 4-5-2010)

§ 152.115 WATERSHED ADMINISTRATOR AND DUTIES THEREOF.

(A) The Town Council shall appoint a Watershed Administrator, who shall be duly sworn in.

(B) It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this chapter as follows.

(1) The Watershed Administrator shall issue watershed protection permits and watershed protection occupancy permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

(2) The Watershed Administrator shall serve as staff to the Watershed Review Board.

(3) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Water Quality Section of the Division of Environmental Management.

(4) The Watershed Administrator is granted the authority to administer and enforce the provisions of this chapter, exercising in the fulfillment of his or her responsibility the full zoning and police power of the town. The Watershed Administrator, or his or her duly authorized representative, may enter any building, structure or premises, as provided by law, to perform any duty imposed upon him or her by this chapter.

(5) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted each calendar year to the Water Quality Section, of the Division of Environmental Management on or before January 1 of the following calendar year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

(Ord. passed 4-5-2010)

§ 152.116 APPEAL FROM THE WATERSHED ADMINISTRATOR.

(A) Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Board of Adjustment.

(B) An appeal from a decision of the Watershed Administrator must be submitted to the Board of Adjustment within 30 days from the date the order, interpretation, decision or determination is made.

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All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

(C) An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him or her, that by reason of facts stated in the certificate, a stay would in his or her opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

(D) The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.
(Ord. passed 4-5-2010)

§ 152.117 ESTABLISHMENT OF WATERSHED REVIEW BOARD.

(A) There shall be and hereby is created the Watershed Review Board consisting of the same membership as the Town Council.

(B) Terms for members of the Watershed Review Board shall coincide with the membership terms for Town Council.
(Ord. passed 4-5-2010)

§ 152.118 POWERS AND DUTIES OF THE WATERSHED REVIEW BOARD AND BOARD OF ADJUSTMENT.

(A) The Board of Adjustment shall be responsible for reviewing and hearing all minor and major watershed variance cases. When hearing minor variance cases, the Board shall proceed as provided in §§ 152.265 through 152.272 for zoning variances.

(B) When a variance is considered, the Board shall notify each municipality with jurisdiction in the area and the entity using the watershed for consumption ten days in advance.

(C) If the application calls for the granting of a major watershed variance, and if the Board of Adjustment decides in favor of granting the major watershed variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

- (1) The variance applications;
- (2) The hearing notices;

- (3) The evidence presented;
- (4) Motions, offers of proof, objections to evidence, and rulings on them;
- (5) Proposed findings and exceptions; and
- (6) The proposed decision, including all conditions proposed to be added to the permit.

(D) The preliminary record shall be sent to the Environmental Management Commission for its review as follows.

(1) (a) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that:

1. The property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted; and

2. The variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations.

(b) The Commission shall prepare a Commission decision and send it to the Board of Adjustment.

(c) If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance.

(d) If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

(2) (a) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that:

1. The property owner can secure a reasonable return from or make a practical use of the property without the variance; or

2. The variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed.

(b) The Commission shall prepare a Commission decision and send it to the Board of Adjustment.

(c) The Board shall prepare a final decision denying the variance as proposed.

(E) Approval of all development greater than the low density option shall be the authority of the Watershed Review Board subject to the requirements of § 152.120.
(Ord. passed 4-5-2010)

§ 152.119 APPEALS FROM THE WATERSHED REVIEW BOARD OR BOARD OF ADJUSTMENT.

Appeals from the Board of Adjustment must be filed with the Superior Court within 30 days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari.
(Ord. passed 4-5-2010)

§ 152.120 HIGH DENSITY DEVELOPMENT STANDARDS.

The Watershed Review Board may approve high density development proposals consistent with the following standards: where new development requires a Sedimentation/Erosion Control Plan and exceeds either two dwelling units per acre, 24% built-upon area (or three dwelling units per acre or 36% built-upon area for projects without curb and gutter street system in the WS-4-PA), engineered storm water controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 70% built-upon area in the WS-4-Protected Area and 50% in the WS-4-Critical Area.
(Ord. passed 4-5-2010)

§ 152.121 HIGH DENSITY DEVELOPMENT PERMIT APPLICATION.

(A) A high density development permit shall be required for new development exceeding the requirements of the low density option.

(B) Application for a high density development permit shall be addressed and submitted to the Town Council through the Watershed Administrator. Application for a high density development permit shall be made on the proper form and shall include the following information:

(1) A completed high density development permit application signed by the owner of the property. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization;

(2) Ten reproducible copies of the development plan within the drainage basin including the applicable information listed in Appendix A: Application Forms, Subdivision Plat Checklist and detailed information concerning built-upon area;

(3) Ten reproducible copies of the plans and specifications of the storm water control structure consistent with § 152.122;

(4) When required by law, written verification that a soil erosion and sedimentation control plan has been approved by the appropriate state or local agency; and

(5) Permit application fees consistent with § 152.125.

(C) Prior to taking final action on any application, the Board or the Watershed Administrator may provide an opportunity to public agencies affected by the development proposal to review and make recommendations on the application; however, failure of the agencies to submit their comments and recommendations shall not delay the Board's action within the prescribed time limit.

(D) Upon receipt of a completed application, the Town Council shall hold a public hearing. Notice of the hearing shall be published in a newspaper of general circulation at least seven days prior to the date of the hearing. The notice shall state the location of the building, lot or tract in question, the intended use of the property, the need for engineered stormwater controls and the time and place of the hearing. At the hearing, the applicant or designated representative thereof shall appear for the purposes of offering testimony and recommendations concerning the application. The Board shall also allot reasonable time for the expression of views by any member of the public attending the meeting in person or represented by an attorney provided the testimony bears on the findings the Board must make.

(E) (1) The Town Council shall issue a high density development permit within 65 days of its first consideration upon finding that the proposal is consistent with the applicable standards set forth in the Watershed Protection Ordinance, and the following conditions are met:

(a) The use will not endanger the public health or safety, if located where proposed and developed according to the plan as submitted and approved;

(b) The use minimizes impacts to water quality through the best management practices, cluster development and/or maximum setbacks from perennial waters;

(c) The use is vital to the continued growth and economic development of the town; and

(d) The use is consistent with the officially adopted land development plans for the town.

(2) If the Town Council finds that any one of the above conditions is not met, the Board shall deny the application.

(F) In addition to any other requirements provided by this chapter, the Board may designate additional permit conditions and requirements to assure that the use will be harmonious with the area in which it is proposed to be located and with the spirit of this chapter.

(1) All additional conditions shall be entered in the minutes of the meeting at which the permit is granted, on all plans and on the permit certificate.

(2) All conditions so imposed shall run with the land and shall be binding upon the applicant and the applicant's heirs, successors or assigns during the continuation of the permitted use.

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(G) The Board shall issue a written ruling and make copies available at the office of the Watershed Administrator and the Town Clerk.

(1) If the Board approves the application based on its findings, such approval shall be indicated on the permit and all copies of the site plan and all copies of the plans and specifications of the storm water control structure(s).

(2) A high density development permit shall be issued after the applicant posts a performance bond or other acceptable security as required in § 152.123(B)(1) and executes an operation and maintenance agreement as required in § 152.123(C).

(3) A copy of the permit and one copy of each set of plans shall be kept on file at the Watershed Administrator's office.

(4) The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested.
(Ord. passed 4-5-2010)

§ 152.122 STORM WATER CONTROL STRUCTURES.

(A) All storm water control structures shall be designed by a state registered professional engineer. Other storm water systems shall be designed by a state registered professional with qualifications appropriate for the type of system required; these registered professionals are defined as professional engineers or landscape architects, to the extent that the G.S. Ch. 89A allow and land surveyors, to the extent that the design represents incidental drainage within a subdivision, as provided in G.S. § 89(C)-3(7).

(B) All storm water controls shall use wet detention ponds as a primary treatment system, unless alternative storm water management measures, as outlined in division (C) below, are used. Wet detention ponds shall be designed for specific pollutant removal according to modeling techniques approved by the State Division of Environmental Management. Specific requirements for these systems shall be in accordance with the following design criteria:

(1) Wet detention ponds shall be designed to remove 85% of total suspended solids in the permanent pool and storage runoff from a one-inch rainfall from the site above the permanent pool;

(2) The designed runoff storage volume shall be above the permanent pool;

(3) The discharge rate from these systems following the one-inch rainfall design storm shall be such that the runoff does not draw down to the permanent pool level in less than two days and that the pond is drawn down to the permanent pool level within at least five days;

(4) The mean permanent pool depth shall be a minimum of three feet;

(5) The inlet structure shall be designed to minimize turbulence using baffles or other appropriate design features;

(6) Vegetative filters shall be constructed for the overflow and discharge of all storm water wet detention ponds and shall be at least 30 feet in length. The slope and width of the vegetative filter shall be determined so as to provide a non-erosive velocity of flow through the filter for a ten-year, 24-hour storm with a ten-year, one-hour intensity with a slope of 5% or less. Vegetation in the filter shall be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics; and

(7) All storm water control structures shall be enclosed by a fence with a minimum height of six feet.

(C) Alternative storm water management systems, consisting of one treatment option or a combination of treatment options, may be used. The design criteria for approval shall be 85% average annual removal of total suspended solids. Also, the discharge rate shall meet one of the following criteria:

(1) The discharge rate following the one-inch design storm shall be such that the runoff draws down to the pre-storm design stage within five days, but not less than two days; or

(2) The post development peak discharge rate shall equal the pre-development rate for the one-year, 24-hour storm.

(D) In addition to the vegetative filters required in division (B)(6) above, all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within 30 days after any land disturbance. Upon completion of the storm water control structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement described in § 152.123(C).

(E) A description of the area containing the storm water control structure shall be prepared and filed consistent with § 152.126(A) and (B), as a separate deed with the County Register of Deeds along with any easements necessary for general access to the storm water control structure. The deeded area shall include the storm water control structure, vegetative filters, all pipes and water control structures, berms, dikes and the like, and sufficient area to perform inspections, maintenance, repairs and reconstruction.

(F) Qualifying areas of the storm water control structure may be considered pervious when computing total built-upon area; however, if the structure is used to compute the percentage built-upon area for one site, it shall not be used to compute the built-upon area for any other site or area.
(Ord. passed 4-5-2010)

§ 152.123 POSTING OF FINANCIAL SECURITY REQUIRED.

(A) *Generally.* All new storm water control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, reconstruction or repairs necessary for adequate performance of the storm water control structures.

(B) *Financial assurance.* Financial assurance shall be in the form of the following.

(1) *Security performance bond or other security.* The permit applicant shall obtain either a performance bond from a surety bonding company authorized to do business in the state, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to the town or placed in escrow with a financial institution designated as an official depository of the town. The bond or other instrument shall be in an amount equal to 1.25 times the total cost of the storm water control structure, as estimated by the applicant and approved by the town. The total cost of the storm water control structure shall include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and, grading, excavation, fill and the like. The costs shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization.

(2) *Cash or equivalent security deposited after the release of the performance bond.* Consistent with § 152.126(C)(1), the permit applicant shall deposit with the town either cash or other instrument approved by the Town Attorney that is readily convertible into cash at face value. The cash or security shall be in an amount equal to 15% of the total cost of the storm water control structure or the estimated cost of maintaining the storm water control structure over a ten-year period, whichever is greater. The estimated cost of maintaining the storm water control structure shall be consistent with the approved operation and maintenance plan or manual provided by the developer under § 152.124(A). The amount shall be computed by estimating the maintenance cost for 25 years and multiplying this amount by two fifths or 0.4.

(C) *Operation and maintenance agreement.* Consistent with § 152.121(G), the permit applicant shall enter into a binding operation and maintenance agreement between the town and all interests in the development. Said agreement shall require the owning entity to maintain, repair and, if necessary, reconstruct the storm water control structure in accordance with the operation and management plan or manual provided by the developer. The operation and maintenance agreement shall be filed with the County Register of Deeds by the Watershed Administrator.

(D) *Default under the performance bond or other security.* Upon default of the permit applicant to complete and/or maintain the storm water control structure as specifically provided in the performance bond or other security, the town may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate. The town shall return any funds not spent in completing the improvements to the owning entity.

(E) *Default under the cash security.* Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the storm water control structure in accordance with the operation and maintenance agreement, the town shall obtain and use all or any portion of the cash security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made

after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the operation and maintenance agreement. The town shall not return any of the deposited cash funds.

(Ord. passed 4-5-2010)

§ 152.124 MAINTENANCE AND UPKEEP.

(A) An operation and maintenance plan or manual shall be provided by the developer for each storm water control structure, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and, consistent with the operation and maintenance agreement, who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a storm water control structure to design specifications if a failure occurs.

(B) Landscaping and grounds management shall be the responsibility of the owning entity; however, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is diminished or threatened, or to the extent of interfering with any easement to the storm water control structure.

(C) Except for general landscaping and grounds management, the owning entity shall notify the Watershed Administrator prior to any repair or reconstruction of the storm water control structure. All improvements shall be made consistent with the approved plans and specifications of the storm water control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Town Engineer shall inspect the completed improvements and shall inform the owning entity of any required additions, changes or modifications and of the time period to complete said improvements.

(D) Amendments to the plans and specifications of the storm water control structure and/or the operation and maintenance plan or manual shall be approved by the Town Council. Proposed changes shall be prepared by a state registered professional engineer and submitted to and reviewed by the Watershed Administrator prior to consideration by the Town Council.

(1) If the Town Council approves the proposed changes, the owning entity of the storm water control structure shall file sealed copies of the revisions with the Office of the Watershed Administrator.

(2) If the Town Council disapproves the changes, the proposal may be revised and resubmitted to the Town Council as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.

(E) If the Town Council finds that the operation and maintenance plan or manual is inadequate for any reason, the Board shall notify the owning entity of any required changes and shall prepare and file copies of the revised agreement with the County Register of Deeds, the Office of the Watershed Administrator and the owning entity.

(Ord. passed 4-5-2010)

§ 152.125 APPLICATION AND INSPECTION FEES.

(A) Processing and inspection fees shall be submitted in the form of a check or money order made payable to the town. Applications shall be returned if not accompanied by the required fee.

(B) A permit and inspection fee schedule, as approved by the town, shall be posted in the Office of the Watershed Administrator.

(C) Inspection fees shall be valid for 60 days. An inspection fee shall be required when improvements are made to the storm water control structure consistent with § 152.124(C), except in the case when a similar fee has been paid within the last 60 days.
(Ord. passed 4-5-2010)

§ 152.126 INSPECTIONS AND RELEASE OF THE PERFORMANCE BOND.

(A) The storm water control structure shall be inspected by the town, after the owning entity notifies the Watershed Administrator that all work has been completed. At this inspection, the owning entity shall provide:

(1) The signed deed, related easements and survey plat for the storm water control structure ready for filing with the Register of Deeds; and

(2) A certification sealed by an engineer or landscape architect (to the extent that the state Statutes allow) stating that the storm water control structure is complete and consistent with the approved plans and specifications.

(B) The Watershed Administrator shall present the materials submitted by the developer and the inspection report and recommendations to the Town Council at its next regularly scheduled meeting.

(1) If the Town Council approves the inspection report and accepts the certification, deed and easements, the town shall file the deed and easements with the County Register of Deeds, release up to 75% of the value of the performance bond or other security and issue and certificate of occupancy for the storm water control structure.

(2) If deficiencies are found, the town shall direct that improvements and inspections be made and documents corrected and submitted to the town.

(C) No sooner than one year after the filing date of the deed, easements and maintenance agreement, the developer may petition the town to release the remaining value of the performance bond or other security. Upon receipt of said petition, the town shall inspect the storm water control structure to determine whether the controls are performing as designed and intended. The Watershed Administrator shall present the petition and findings to the Town Council.

(1) If the Town Council approves the report and accepts the petition, the developer shall deposit with the town a cash amount equal to that described in § 152.123(B)(2), after which the Town Council shall release the performance bond or other security.

(2) If the Town Council does not accept the report and rejects the petition, the town shall provide the developer with instructions to correct any deficiencies and all steps necessary for the release of the performance bond or other security.

(D) A certificate of occupancy shall not be issued for any building within the permitted development until the Town Council has approved the storm water control structure, as provided in division (B) above.

(E) All storm water control structures shall be inspected at least on an annual basis to determine whether the controls are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the State Division of Environmental Management. Annual inspections shall begin within one year of filing date of the deed for the storm water control structure.

(F) In the event the Watershed Administrator discovers the need for corrective action or improvements, the Watershed Administrator shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed.

(1) All improvements shall be made consistent with the plans and specifications of the storm water control structure and the operation and maintenance plan or manual.

(2) After notification by the owning entity, the town shall inspect and approve the completed improvements.
(Ord. passed 4-5-2010)

§ 152.127 EFFECTIVE DATE OF SUBCHAPTER.

This subchapter shall take effect and be in force on October 1, 1993.
(Ord. passed 4-5-2010)

WIRELESS TELECOMMUNICATIONS

§ 152.140 PURPOSE AND LEGISLATIVE INTENT.

(A) The Telecommunications Act of 1996 affirmed the town's authority concerning the placement, construction and modification of wireless telecommunications facilities.