

**MINUTES OF  
REGULAR MEETING/PUBLIC HEARING/  
ANNUAL VILLAGE ORGANIZATIONAL MEETING  
OF THE BOARD OF TRUSTEES  
April 1, 2019**

The regular monthly meeting, public hearing and organizational meeting of the Board of Trustees was held on April 1, 2019. The meeting was called to order at 7:30 PM by Mayor McNamara with the following in attendance:

Robert McNamara	Mayor
Brian Herrington	Deputy Mayor
Randall Rosenbaum	Trustee
Gary Lewandowski	Trustee
Jay Beber	Trustee
Frank Genese	Trustee
Kate Hirsch	Trustee
Jeffrey Blinkoff	Village Attorney
Ronnie Shatzkamer	Village Administrator
Suzanne Tangredi	Village Treasurer
Peter Albinski	Building Superintendent
Rich Falcones	Superintendent of Public Works
Steven Lawniczak	Village Engineer
Rhoda Becker	Village Historian

Ms. Becker led the assembly in the Pledge of Allegiance. There were six members of the public present.

**Annual Organizational Meeting**

**RESOLUTION NO. 019– April 1, 2019**

**Regular Meeting**

**Approval of Minutes**

The minutes of the February 4, 2019 regular meeting/public hearing were approved as submitted on motion of Deputy Mayor Herrington, seconded by Trustee Rosenbaum . . . . .

**Treasurer’s Report**

The claims were unanimously approved on motion of Trustee Rosenbaum, seconded by Mayor McNamara.

The Budget Committee set a meeting date of March 14, 2019 at 6 pm. On motion of Mayor McNamara, second by Trustee Genese, the Board set a date of March 25, 2019 for the presentation of the tentative budget to the Board.

**Architectural Review Committee Report**

Mr. Albinski reported on the February 26, 2019 meeting. The applications of 126 Boulder for driveway piers and 10 Brook Lane for a cabana, patio, pergola and gazebo were approved as presented. The applications of 115 Mason Drive for a one story addition & alterations, 14 Sunset

Road for additions and alterations, 268 Dogwood Lane for an in ground pool, 27 Bonnie Heights Road for driveway piers, 45 Drake Lane for additions and alterations and 60 Chestnut Road for façade alterations were all approved with conditions. The application of 30 Bonnie Heights Rd. for a pool and patio had no action taken. Modifications to previously approved applications were as follows: 115 Northwoods Road replace front foyer with a covered porch, approved with modifications; 10 Peachtree Lane, change to stucco details, approved; 80 Chestnut, project completed with a number of exterior details and materials changed, ordered owner to comply with approved design.

On motion of Trustee Beber, seconded by Trustee Lewandowski, the Board unanimously approved the recommendations of the Architectural Review Committee.

**Public Works Superintendent Report**

Mr. Falcones reported on the last few snow events. He informed the Board of the trucks he was looking into buying to replace the 2003 International dump truck which has exceeded its useful life. We are working with Gabrielli Trucks as they are the vendor through the NY State purchasing contract.

**RESOLUTION NO. 09– March 11, 2019  
RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT TO  
PURCHASE A TRUCK**

The following resolution was offered by Trustee Genese, second by Trustee Beber:

**WHEREAS**, the Incorporated Village of Flower Hill Board of Trustees having been advised by the Superintendent of Public Works is that the 2003 International Dump is at the end of its useful life, and **WHEREAS**, the Village having been made aware of the availability of a truck that would meet the needs of the Department of Public Works, and having been made further aware that such truck is available from Gabrielli Truck Sales, Hicksville, NY, a New York State Contract awardee and its purchase would therefore be exempt from further bidding requirements under the General Municipal Law, and

**WHEREAS**, the Village Board of Trustees having determined that the purchase of this truck and its use within the Village comports with the best interest of the Village,

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Trustees hereby authorizes the Mayor to enter into a contract for a new replacement vehicle.

The Board of Trustees was polled as follows:

Trustee Lewandowski	Aye
Trustee Genese	Aye
Trustee Rosenbaum	Aye
Trustee Beber	Aye
Trustee Hirsch	Aye
Deputy Mayor Herrington	Aye
Mayor McNamara	Aye

**Engineers Report**

Mr. Lawniczak asked for a road work budget of \$350,000 to \$400,000 for the 2019-2020 fiscal year.

**Administrator’s Report**

Ms. Shatzkamer thanked Mr. Lawniczak for his work toward the acquisition of Middle Neck Road. We have come to an agreement with the County as to what the Village requires in order to take title to the road. In order to start the process toward an inter-municipal agreement, the County requires a resolution from the Board stating we will accept the road.

**RESOLUTION NO. 010– March 11, 2019**

**RESOLUTION IN SUPPORT OF AN AGREEMENT PURSUANT TO GENERAL MUNICIPAL LAW  
ARTICLE 119 TRANSFERRING OWNERSHIP OF THAT PORTION OF MIDDLE NECK ROAD  
SITUATED WITHIN THE CONFINES OF THE INC. VILLAGE OF FLOWER HILL FROM THE  
COUNTY OF NASSAU TO THE VILLAGE OF FLOWER HILL**

The following resolution was offered by Mayor McNamara, second by Trustee Rosenbaum:

**WHEREAS**, Middle Neck Road (Road) is a road owned by the County of Nassau, and  
**WHEREAS**, the Road runs North-South and is situated between Port Washington Boulevard and Route 25A within the County of Nassau, and  
**WHEREAS**, the Incorporated Village of Flower Hill (Village) through its Board of Trustees (Board), has expressed to the County of Nassau (County) an interest in owning the portion of the Road situated within the Village, as doing so would further the health, safety and welfare of the residents of the Village, and  
**WHEREAS**, the County, through its designated representatives, has expressed interest in transferring ownership of said portion of the Road to the Village, and  
**WHEREAS**, the Village has considered necessary conditions precedent to such transfer:

**NOW THEREFORE BE IT RESOLVED:**

The Village hereby requests that the County transfer all property known as Middle Neck Road in Roslyn, Flower Hill to the Village subject to the conditions precedent identified below and subject to an approvable Inter-Municipal Agreement:

- 1) The County will provide the Village funding for a survey of the Road at a cost of \$45,000.00 (\$30,000.00 for the road and \$15,000.00 for underground utilities).
- 2) Prior to such transfer the County is to arrange for, and the Road is to undergo, a "full-width" mill and overlay of two (2) inches.
- 3) All locations upon the Road where the existing asphalt pavement is badly raveled and in disrepair will be locally excavated and the subgrade properly repaired by the County prior to overlaying the Road.
- 4) All existing storm drains will be cleaned out and thoroughly inspected for damage by the County and any drains/pipes/catch basins with damage will be repaired or replaced, as required, by the County.
- 5) The County is to remediate an existing drainage problem along the east side of the Road in front of the house identified as Number 63.
- 6) The Village Engineer and the Village Highway Superintendent are to be advised by the County of all pavement and drainage work described above and the Village Engineer or representative and the Village Highway Superintendent or representative shall be present during the course of such work.
- 7) The County shall provide the Village a twelve (12) month maintenance contract relative to any work performed under the Inter-Municipal Agreement. The maintenance contract period shall begin no earlier than when the dedication of the Road is legally finalized.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that upon the above conditions being met, and upon an approvable Inter-Municipal Agreement being prepared, it is the intention of the Board to approve said Inter-Municipal Agreement and to authorize the Mayor to execute said Agreement transferring ownership to the Village of Flower Hill all portions of Middle Neck Road located in Roslyn, Flower Hill.

The Board was polled as follows:

Trustee Lewandowski	Aye
Trustee Genese	Aye
Trustee Rosenbaum	Aye
Trustee Beber	Aye

Trustee Hirsch                      Aye  
Deputy Mayor Herrington      Aye  
Mayor McNamara                  Aye

Ms. Shatzkamer reviewed crisis handling in municipal settings and asked the Board to consider adopting the guidelines as a policy

**RESOLUTION NO. 011– March 11, 2019**  
**RESOLUTION SETTING A DATE FOR A SPECIAL MEETING FOR PRESENTATION OF THE TENTATIVE BUDGET TO THE BOARD OF TRUSTEES**

The following resolution was offered by Mayor McNamara, second by Trustee Genese:  
**BE IT RESOLVED** that the Village Administrator will present the 2019-2020 Tentative Budget to the Board of Trustees on Monday, March 25, 2019 commencing at 7:30 PM at the Village Hall, 1 Bonnie Heights Rd., Manhasset, NY; and

**BE IT FURTHER RESOLVED**, that the Village Administrator shall post notice of this meeting Village Hall and the Village newspaper of record

The Board was polled as follows:

Trustee Lewandowski            Aye  
Trustee Genese                    Aye  
Trustee Rosenbaum              Aye  
Trustee Beber                     Aye  
Trustee Hirsch                    Aye  
Deputy Mayor Herrington      Aye  
Mayor McNamara                  Aye

**RESOLUTION NO. 012– March 11, 2019**  
**RESOLUTION TO HOLD THE ANNUAL VILLAGE ORGANIZATIONAL MEETING AND 2019-2020 BUDGET PRESENTATION AND HEARING**

The following resolution was offered by Mayor McNamara,, seconded by Deputy Mayor Herrington:  
**BE IT RESOLVED**, that the Board of Trustees of the Inc. Village of Flower Hill shall conduct the annual Village Organizational Meeting and 2019-2020 Budget Hearing on April 1, 2019, commencing at 7:30 PM at the Village Hall, 1 Bonnie Heights Rd., Manhasset, NY; and

**BE IT FURTHER RESOLVED**, that the Village Administrator shall post notice of this meeting Village Hall and the Village newspaper of record.

The Board of Trustees was polled as follows:

Trustee Lewandowski            Aye  
Trustee Genese                    Aye  
Trustee Rosenbaum              Aye  
Trustee Beber                     Aye  
Trustee Hirsch                    Aye  
Deputy Mayor Herrington      Aye  
Mayor McNamara                  Aye

The Village received a request to install a memorial bench in the park from a resident. On motion of Trustee Hirsch, second by Trustee Lewandowski, the Board moved to accept a donation for the bench subject to a resolution accepting the donation at the time it is made..

**Attorney’s Report**

Mr. Blinkoff reported on the February 13, 2019 Board of Zoning Appeals hearing.

**Trustees Report**

Trustee Hirsch gave a report on the Nassau-Suffolk Village Officials meeting on the legalization of marijuana for recreational use. The consensus of the experts and officials there was that this is not favorable for our villages as there is no local control or revenue sharing.

Trustee Genese attended the Port Washington Fire Dept. meeting regarding separating their EMS services from the fire services into a separate money making entity to cover its costs.

**Mayor's Report**

The Mayor explained the difficulties we are having with Meadow Carting and went over some alternatives with the Board.

**Old Business**

Deputy Mayor Herrington will hold a committee meeting to review rocks in the right-of- way on Tuesday, March 19 at 7 pm.

On motion of Mayor McNamara, second by Deputy Mayor Herrington, the Board unanimously approved a contract with D&B Engineering for preparation of the 2019 DEC Stormwater Report, however they asked for a new RFP for stormwater services go out next year.

**New Business**

**RESOLUTION NO. 013– March 11, 2019**

**INTRODUCING LOCAL LAW F OF 2019 AND SCHEDULING A PUBLIC HEARING**

The following resolution was offered by Trustee Rosenbaum, second by Mayor McNamara:

**BE IT RESOLVED**, that Local Law “F” of the Year 2019, regarding a moratorium on prohibiting retail sales of recreational marijuana in the Village, has been introduced; and

**BE IT FURTHER RESOLVED**, that the Board of Trustees hold a public hearing on said proposed Local Law at the Village Hall in the Incorporated Village of Flower Hill at the address of One Bonnie Heights Road, Manhasset, New York at 7:30 p.m. on Monday, April 1, 2019 and

**BE IT FURTHER RESOLVED**, that the Village Administrator publish or cause to be published a public notice in the official newspaper of the Village of said public hearing at least three days prior thereto.

The Board of Trustees was polled as follows:

Trustee Lewandowski	Aye
Trustee Genese	Aye
Trustee Rosenbaum	Aye
Trustee Beber	Aye
Trustee Hirsch	Aye
Deputy Mayor Herrington	Aye
Mayor McNamara	Aye

The Board discussed transferring Planning Board powers to the Board of Zoning Appeals. They concluded that it would be best to give the planning functions to the Board of Trustees. Ms. Shatzkamer will reach out to NYCOM to determine if this is a possibility.

**RESOLUTION NO. 014– March 11, 2019**

**RESOLUTION ADOPTING AND RENEWING A FIRE PROTECTION CONTRACT WITH THE PORT WASHINGTON FIRE DEPARTMENT FOR THE YEAR 2019 - 2020**

The following resolution was offered Mayor McNamara, seconded by Trustee Genese:

**WHEREAS**, New York State Village Law § 4-412(3)(9) authorizes the Board of Trustees to enter into a contract for fire protection services with any city, village, fire district, or incorporated fire company having its headquarters outside such village and maintaining adequate and suitable apparatus and appliances for the furnishing of fire protection in such village; and

**THEREFORE**, be it **RESOLVED**, the Board of Trustees of the Incorporated Village of Flower Hill hereby adopts the fire services contract with the Port Washington Fire Department for the period June 1, 2019 through May 31, 2020; and

**BE IT FURTHER RESOLVED**, that the Mayor is hereby authorized to execute the fire services contract with the Port Washington Fire Department.

The Board of Trustees was polled as follows:

Trustee Lewandowski	Aye
Trustee Genese	Aye
Trustee Rosenbaum	Aye
Trustee Beber	Aye
Trustee Hirsch	Aye
Deputy Mayor Herrington	Aye
Mayor McNamara	Aye

### **Public Hearing.**

On motion of Deputy Mayor Herrington, second by Trustee Lewandowski, the public hearing portion of the meeting was called to order.

The first hearing was to consider Local Law B – 2019, Amend 30-7(D)(6) “Planning Board Application Procedure”. As the Village has adopted new rules relating to the method of mailing required notices, the portion of the this section of code relating to mailings must be removed.

### **Local Law B– 2019**

#### **Repeal or Amend 30-7(D)(6) Planning Board mailing requirements**

#### **§ 30-7Application procedure.**

**D.** Additional plat requirements for major subdivisions:

**(6)** The applicant shall file with the Planning Board, either the written consents of the owners of all properties situate within 200 feet of the applicant's property line or, in lieu thereof, written proof that notice has been sent to each such property owner by registered or certified mail, which notice shall include the date of the public hearing on the application, the identification of the subject property and a statement of the subdivision requested. The failure to provide such notice shall be sufficient grounds to adjourn the public hearing, and the additional costs incurred thereby shall be chargeable to the applicant, to be paid prior to the conduct of the adjourned date of the public hearing.

[Amended 11-6-2000 by L.L. No. 3-2000]

Replace § 30-7**Application procedure.**

with:

The applicant shall follow all procedures as set forth in the directions for an application to the Planning Board which may be amended from time to time by resolution of the Board of Trustees.

### **RESOLUTION NO. 015– March 11, 2019**

#### **RESOLUTION ENACTING LOCAL LAW 2 OF 2019**

The following resolution was offered by Trustee Genese, seconded by Trustee Beber:

**WHEREAS**, the Board of Trustees has determined that it is in the best interests of the Village to clarify the Code regarding required mailing procedures, the resolution hereby enacts proposed Local Law B– 2019 as Local Law 2- 2019; and

**WHEREAS**, the Board of Trustees has determined that it is the lead agency for the purposes of the State Environmental Quality Review Act, (“SEQRA”), and has further determined that the consideration of the within Local Law is a Type II Action requiring no further action under SEQRA; **NOW, THEREFORE BE IT RESOLVED**, that the Board of Trustee hereby adopts Local Law B - 2019 as Local Law 2– 2019; and

**BE IT FURTHER RESOLVED** that this law shall take effect immediately

The Board of Trustees was polled as follows:

Trustee Lewandowski	Aye
Trustee Genese	Aye
Trustee Rosenbaum	Aye
Trustee Beber	Aye
Trustee Hirsch	Aye
Deputy Mayor Herrington	Aye
Mayor McNamara	Aye

The second hearing was to consider proposed Local Law C-2019, Repeal Section 212-2, “Tennis Courts Require Special Exception Permit”.

After discussion the Board agreed that the requirement of a special exception permit for tennis courts was necessary as to the extensive lot coverage requirements of such courts.

On motion of Trustee Lewandowski, second by Trustee Rosenbaum, and unanimously approved by the Board, Local Law C – 2019 was withdrawn.

The third hearing was to consider proposed Local Law D – 2019, renaming Chapter 119 “Fences and Retaining Walls”.

**RESOLUTION NO. 016– March 11, 2019**  
**RESOLUTION ENACTING LOCAL LAW 3 OF 2019**

The following resolution was offered by Trustee Genese, seconded by Trustee Beber:

**WHEREAS**, the Board of Trustees has determined that it is in the best interests of the Village to clarify the Code regarding the title of Chapter 119 “Fences”, and

**WHEREAS**,said Chapter also includes regulations regarding retaining walls the resolution hereby enacts proposed Local Law B– 2019 as Local Law 2- 2019, changing the name of Chapter 110 to “Fences and Retaining Walls”; and

**WHEREAS**, the Board of Trustees has determined that it is the lead agency for the purposes of the State Environmental Quality Review Act, (“SEQRA”), and has further determined that the consideration of the within Local Law is a Type II Action requiring no further action under SEQRA; **NOW, THEREFORE BE IT RESOLVED**, that the Board of Trustee hereby adopts Local Law D - 2019 as Local Law 3– 2019; and

**BE IT FURTHER RESOLVED** that this law shall take effect immediately

The Board of Trustees was polled as follows:

Trustee Lewandowski	Aye
Trustee Genese	Aye
Trustee Rosenbaum	Aye
Trustee Beber	Aye
Trustee Hirsch	Aye
Deputy Mayor Herrington	Aye

The final hearing was to consider proposed Local Law E-2019, amendment of the Telecommunication Law.

Mr. Blinkoff reviewed the proposed law for the Board and noted that it aligns with Federal regulations.

**RESOLUTION NO. 017– March 11, 2019**  
**RESOLUTION ENACTING LOCAL LAW 4 OF 2019**

The following resolution was offered by Deputy Mayor Herrington, seconded by Mayor McNamara: **WHEREAS**, the Board of Trustees has determined that it is in the best interests of the Village to amend the Code regarding regulations related to small cell telecommunications devices, the resolution hereby enacts proposed Local Law E– 2019 as Local Law 4- 2019; and

**WHEREAS**, the Board of Trustees has determined that it is the lead agency for the purposes of the State Environmental Quality Review Act, (“SEQRA”), and has further determined that the consideration of the within Local Law is a Type II Action requiring no further action under SEQRA; **NOW, THEREFORE BE IT RESOLVED**, that the Board of Trustee hereby adopts Local Law E - 2019 as Local Law 4– 2019; and

**BE IT FURTHER RESOLVED** that this law shall take effect immediately

The Board of Trustees was polled as follows:

Trustee Lewandowski	Aye
Trustee Genese	Aye
Trustee Rosenbaum	Aye
Trustee Beber	Aye
Trustee Hirsch	Aye
Deputy Mayor Herrington	Aye
Mayor McNamara	Aye

(A copy of Local Law 4 – 2019 is attached to these minutes)

**RESOLUTION NO. 018– March 11, 2019**  
**SCHEDULING A PUBLIC HEARING FOR AN APPLICATION TO INSTALL SMALL CELL TELECOMMUNICATION DEVICES WITHIN THE VILLAGE**

The following resolution was offered by Deputy Mayor Herrington, seconded by Mayor McNamara: **BE IT RESOLVED**, that THE Village of Flower Hill has received an application from Black & Veatch, Site Acquisition Specialists, on behalf of ExteNet Systems Inc. regarding a proposal for a distributive antenna system within the Village consisting of 18 nodes, and

**BE IT FURTHER RESOLVED**, that the Board of Trustees hold a public hearing on said proposed Local Law at the Village Hall in the Incorporated Village of Flower Hill at the address of One Bonnie Heights Road, Manhasset, New York at 7:30 p.m. on Monday, May 6, 2019 and

**BE IT FURTHER RESOLVED**, that the Village Administrator publish or cause to be published a public notice in the official newspaper of the Village of said public hearing at least three days prior thereto.

The Board of Trustees was polled as follows:

Trustee Lewandowski	Aye
Trustee Genese	Aye
Trustee Rosenbaum	Aye
Trustee Beber	Aye
Trustee Hirsch	Aye
Deputy Mayor Herrington	Aye
Mayor McNamara	Aye

*See the stenographic record for further details.*

On motion of Mayor McNamara, second by Deputy Mayor Herrington, the meeting was adjourned at 9:10 pm.

Respectfully submitted  
Ronnie Shatzkamer  
Village Administrator

**LOCAL LAW 4 OF 2019**  
**A LOCAL LAW AMENDING CHAPTER 209 ENTITLED “TELECOMMUNICATIONS LICENSES AND FRANCHISES” TO INCLUDE A NEW ARTICLE VIII ENTITLED “SMALL CELL WIRELESS FACILITIES”**

BE IT ENACTED by the Board of Trustees as follows:

**Section 1.** Article VIII of Chapter 209 of the Code of the Village of Flower Hill (“Village”) entitled "Small Cell Wireless Telecommunications Facilities" is hereby created as follows:

- A. Purpose, recognition of federal regulations, and definitions. The purpose of this Section is to establish uniform policies and procedures for the deployment and installation of small cell wireless telecommunication facilities (small cell facility) in the Village, which will provide a public health, safety, and welfare benefit consistent with the preservation of the integrity, safe usage, and visual qualities in the Village. Any installation of a small cell facility shall require a special use permit from the Board of Trustees (“Board”), except as otherwise set forth within. The Board of Trustees recognizes that federal regulation has established parameters in this area. As such, notwithstanding the following, the Board may amend the application of the below article by Resolution from time to time as it deems necessary to comply with areas in which the Board determines that federal law, rule or regulation has preempted said application.

1. Definitions:

**ACCESSORY EQUIPMENT**

Any equipment servicing or being used in conjunction with a wireless telecommunications facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds.

**ANTENNA**

A system of electrical conductors that transmits or receives electromagnetic waves or radio frequencies signals. Such waves shall include but not be limited to radio, television, cellular, paging, personal telecommunications services (PCS) and microwave telecommunications.

**BASE STATION**

A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

- a. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- b. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
- c. The term includes any structure other than a tower that, at the time the relevant application is filed with the Village pursuant to this section, supports or houses equipment described in paragraphs (i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, even if the structure was not built for the sole or primary purpose of providing such support.
- d. The term does not include any structure that, at the time the relevant application is filed with the Village under this section, does not support or house equipment described in paragraphs (i)-(ii) of this section.

## **COLLOCATION**

The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

## **DISTRIBUTED ANTENNA SYSTEM (DAS)**

A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

## **ELIGIBLE FACILITIES REQUEST**

Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

## **ELIGIBLE SUPPORT STRUCTURE.**

Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the Village.

## **MONOPOLE**

A tower which consists of a single pole structure, designed and erected on the ground or on top of a structure, to support communications antennas and connect appurtenances.

## **SMALL CELL WIRELESS TELECOMMUNICATIONS FACILITY OR SMALL CELL FACILITY**

Small cells are low-powered wireless base stations that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces. A small cell facility meets both the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed element, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 17 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

### **SUBSTANTIAL CHANGE**

A modification substantially changes the physical dimensions of an eligible support structure (tower or base station) if it meets any of the following criteria:

- a. The mounting of the proposed antenna on existing towers, other than towers in the public rights-of-way, would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than 10 feet, whichever is greater.
- b. The mounting of the proposed antenna would involve the installation of more than the standards number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter;
- c. The mounting of the proposed antenna would involve adding an appurtenance to the body of existing towers, other than towers in the public rights-of-way, that would protrude from the edge of the towers more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet, except that the mounting of the proposed antenna may exceed the size limits herein if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable;
- d. The mounting of the proposed antenna would involve excavation outside the current existing structure site, defined as the current boundaries of the leased or owned property surrounding the existing structure and any access or utility easements currently related to the site;
- e. The modification defeats concealment and/or stealth elements of the support structure, or;

f. The modification does not comply with prior conditions of the approval for the existing structure and/or site; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified above.

## **TOWER**

Any structure built for the sole or primary purpose of supporting any licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services, including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

## **UTILITY POLE**

A pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function regardless of ownership, including Village-owned poles. Such term shall not include structures supporting only Wireless Telecommunication Service Facilities. Any pole in excess of 50 feet shall be deemed a tower.

## **WIRELESS TELECOMMUNICATION SERVICES FACILITY**

A structure, facility or location designed or intended to be used as, or used to support, antennas. It includes, without limit, freestanding towers, guyed towers, monopoles, small cell telecommunication facilities on utility poles in the public right-of-way or property of the Village of Beacon or of another municipal corporation within the Village of Beacon and similar structures that employ camouflage technology, including but not limited to structures such as a multistory building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, personal telecommunications services, commercial satellite services or microwave telecommunications, but excluding those used exclusively for dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.

## **WIRELESS TELECOMMUNICATIONS PROVIDER**

A wireless telecommunications infrastructure provider or a wireless telecommunications services provider.

B. Notwithstanding any other provision of this Code, special use permit approval by the Board of Trustees is also required under this Article for the following uses.

- (1) A substantial change to an existing tower or base station.
- (2) Any other application for placement, installation, collocation or construction of transmission equipment that does not constitute an Eligible Facilities Request.
- (3) Installation of a new tower over 50 feet in height.
- (4) Placement of new antenna on an existing tower or base station that results in a substantial change to the tower or base station.
- (5) Installation of equipment located on a sidewalk.

- (6) Installation of equipment on a pole located at an elevation less than 15 feet from the ground.
- (7) Installation of a small cell facility on a pole located within 20 feet of a dwelling unit.

C. Small Cell Permit from the Board of Trustees.

- (1) No person shall install a small cell facility without first filing a small cell facility application and obtaining a small cell permit in the form of a special use permit from the Board of Trustees (Board).
- (2) The Board shall approve a small cell permit application concerning any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure. An applicant shall assert in writing that its request is considered an eligible facilities request. The Board may require the applicant to provide documentation or information to the extent reasonably related to determine whether the request meets the requirements of an eligible facilities request.
- (3) The Board may issue a permit for the following:
  - (a) Collocation of a small cell facility or DAS facility on an existing tower, utility pole or streetlight not exceeding on public or private property.
  - (b) Collocation on existing buildings within the Village.
  - (c) Installation of a monopole or utility pole for small cell or DAS facility in the public right-of-way that does not exceed 50 feet in height.
- (4) Small cell permit application for Board approval.
  - (a) The small cell permit application shall be made by the wireless telecommunications provider or its duly authorized representative and shall contain the following:
    - (b) The applicant's name, address, telephone number, and e-mail address;
    - (c) The names, addresses, telephone numbers, and email address of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
    - (d) A general description of the proposed work and the purpose of the work proposed.
    - (e) The application shall identify and disclose the number and locations of any small cells that the applicant has installed or locations the applicant has considered in the past year for small cell infrastructure within the Village and those submitted or anticipated to be submitted within a one-year period.

- (f) A description of the anticipated maintenance needs, including frequency of service, personnel needs and equipment needs, and the potential traffic safety and noise impact of such maintenance.
- (g) Any amendment to information contained in a small cell permit application shall be submitted in writing to the Village within 30 days after the change necessitating the amendment.

(5) A wireless telecommunications provider shall pay to the Village an application fee and administrative fee as set forth in this section.

(6) A wireless telecommunications provider is authorized, after 30 days written notice to the Village Building Inspector, to remove its facility at any time from the rights-of-way and cease paying the Village administrative fee.

#### D. Location of small cell facility approved by the Board

(1) The following locational priorities shall apply in the order specified, consistent with the Village's obligation to create the least amount of adverse aesthetic impact and to preserve the scenic values of the Village.

(a) On the roof of any Village owned or federal, state or local government owned buildings or structures;

(b) Location on privately-owned buildings;

(c) Location on an existing Village owned utility poles

(d) Location on Village-owned infrastructure on private poles;

(e) Location on Village-owned property, where there is no existing pole;

(f) Location on privately owned utility poles.

(2) If the proposed site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of higher priority was not selected. The person seeking such an exemption must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site and the hardship that would be incurred by the applicant if the permit were not granted for the proposed use.

#### E. Small cell facility permittees

(1) In order to ensure that the limited private use of the public right of way authorized herein does not become an additional cost to the Village, it is hereby determined by the Board of Trustees that the following fees shall be charged to small cell permit applicants and small cell permit holders.

(2) Annual Small Cell Permit Fees:

a) \$500.00 for non-recurring fees, including a single application for up to five small wireless facilities, with an additional \$100.00 for each small wireless facility beyond five,

- b) \$1,000.00 or less for non-recurring fees for a new pole intended to support one or more small wireless facilities, and
- c) \$270.00 per small wireless facility per year for all recurring fees, including any right-of-way access and/or attachment to municipal infrastructure in the right of
- (d) Fee start date: The annual permit fee shall be payable January 2 of the year following installation. Failure to pay the annual permit fee shall result in the imposition of a 5% penalty fee, additional collection fees if necessary, and suspension or revocation of the permit.
- (e) The above fees may be changed by Resolution of the Board of Trustees as deemed necessary in accord with the Board's reasonable approximation of the Village's direct cost relative to the processing of a permit application for a small cell installation.

F. Board of Trustees' requirements as to aesthetics and neighborhood impact mitigation for small cell permits.

- (1) In order to preserve the character and integrity of Village neighborhoods the Village Board of Trustees finds that the following requirements are essential to protect the public health, safety and welfare, and scenic preservation.
  - (a) New small cell facilities shall not be located in settings and locations that have been designated as landmarks or as historic sites by a local, State or Federal agency unless the applicant demonstrates to the Board's satisfaction that the selected site is necessary to provide adequate service.
  - (b) New small cell facilities shall include stealth technology designs, unless the Board makes a written determination that such designs are not feasible
  - (c) The Board may consider alternative locations for equipment, whether pole mounted or ground mounted.
  - (d) All small cells placed on any roof shall be setback at least 15 feet from the edge of the roof along any street frontage, unless the Board makes a written determination waiving the setback requirement.
  - (e) The Board shall consider all impacts to site lines and aesthetic views.
  - (f) Except within the public right of way, all proposed poles, pole equipment and enclosures shall comply with the designated setback requirements.
  - (g) Up to three (3) small cells will be allowed per utility pole if technically feasible and if in the determination of the Board there are no safety or aesthetic concerns. Small cells must be designed and placed in an aesthetically pleasing manner to the reasonable satisfaction of the Board.

- (h) No small cell placement shall be allowed on ornamental street lighting poles unless permitted by the Board.
- (i) No small cell facilities shall obstruct pedestrian or vehicular traffic in any way.
- G) In no event shall any utility pole or wireless telecommunication support structure installed in the public right of way exceed 50 feet in height unless the Board waives this requirement during the consideration of the permit. A shorter pole may be required if the initial proposal is deemed out of character of with the neighborhood as determined by the Board.
- (k) Each new small cell facility, including antennas or other associated equipment, installed in the public right-of-way shall not exceed more than ten (10) feet above the existing utility pole or wireless telecommunications support structure on which it is being located, unless the Board waives this requirement during the consideration of the permit.

G. The Village Administrator shall maintain records of all Board decisions granting any applications under the within Chapter.

H. Duration. Construction pursuant to a small cell permit issued by the Board under this section must be commenced within twelve (12) months of issuance of the small cell permit and diligently pursued thereafter, or such small cell permit shall expire.

I. Routine Maintenance and Replacement. An application shall not be required for: (i) routine maintenance; and (ii) the replacement or upgrade of a small cell facility with another small cell facility that is same as or smaller in size and height at the same location.

J. Information Updates. Any amendment to information contained in a small cell building/work permit application shall be submitted in writing to the Village within thirty (30) days after the change necessitating the amendment. On an annual basis, the wireless telecommunication provider shall provide a list of existing small cell locations within the Village.

K. Removal, relocation or modification of small cell facility in the public right-of-way.

- (1) Notice. Within ninety (90) days following written notice from the Village, the wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small facilities within the public right-of-way whenever the Village has determined that such removal, relocation, change or alteration, is necessary for the construction, repair, maintenance, or

installation of any Village improvement in or upon, or the operations of the Village in or upon, the public right-of-way.

- (2) **Abandonment of Facilities.** Upon abandonment of a small cell facility within the public rights-of-way of the Village, the wireless provider shall notify the Village within ninety (90) days. Following receipt of such notice the Village may direct the wireless provider to remove all or any portion of the small cell facility if the Village, or any of its departments determines that such removal will be in the best interest of the public health, safety and welfare.

#### L. Public Hearing and Notification Requirements.

A) Prior to the approval of any Application for a Special Use Permit for Wireless Telecommunications Facilities and small cell installation, a Public Hearing shall be held by the Village, notice of which shall be published in the Village's official newspaper designated for publishing such notices and in a newspaper of general circulation in the Village no less than ten (10) calendar days prior to the scheduled date of the Public Hearing. In order that the Village may notify nearby landowners, the Application shall contain the names and address of all landowners whose property is located within fifteen hundred (1,500) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located.

B) There shall be no Public Hearing required for an Application to co-locate on an existing Tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the Tower or structure, including attachments thereto.

C) The Village shall schedule the Public Hearing referred to in Subsection (A) of this section once it finds the Application is complete, although the Village may at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary.

#### M. RECERTIFICATION OF SPECIAL PERMIT.

A) All special use permits approved pursuant to this article shall expire five years from the date of issuance, unless between 12 months and six months prior to the five-year anniversary date of the special use permit being issued, and all subsequent five-year anniversaries of the issuance of the original special use permit, the holder of a special use permit for such facility shall submit a signed, written request to the Board for recertification. In the written request for recertification, the holder of such special use permit shall include the following: (1) The name of the holder of the special use permit; (2) If applicable, the number or title of the special use permit; (3) The date of the original granting of the special use permit; (4) Whether the wireless facility (facility) or small cell installation (installation) has been moved, relocated, rebuilt, or otherwise modified since the issuance of the special use permit and if so, in what manner; (5) A representation that facility or installation is in compliance with the special use permit and compliance with all applicable laws, rules and regulations; (6) Recertification that the facility or installation and attachments are designed and constructed and continue to meet all local, Village, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be made by a

professional engineer, licensed in the State, the cost of which shall be borne by the applicant. (7) A representation that the facility or installation cannot be replaced by improved stealth technology which will reduce the visual impact of such existing facility.

B) After such review, if the Board determines that the permitted facility or installation is in compliance with the special use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations currently in effect, then the Board shall issue a recertification of the special use permit, which may include any new provisions or conditions that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review, it is determined that the facility or installation is not in compliance with the special use permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the Board may refuse to issue a recertification of the special use permit. The applicant for recertification shall be notified of the Board's refusal to recertify in writing. The facility or installation shall thereafter be brought into compliance within thirty (30) days. In the event the facility or installation is not brought into compliance within thirty (30) days from the date of the decision of the Board, it shall be subject to a new special use permit application, which shall be promptly filed, or the structure and/or facility shall be removed by the permittee in accordance with the provisions of this Article.

C) If the applicant represents that the facility or installation can be replaced by a facility of improved visual appearance through the use of stealth technology, the special use permit shall be renewed on the condition that the same is replaced with improved stealth technology as approved by the Board prior to the expiration of the conditional renewal.

D) If the applicant has submitted all of the information requested and required by this Article, and if the review is not completed, as noted in Subsection B of this section, prior to the five-year anniversary date of the special use permit, or subsequent five year anniversaries, then the applicant for the permitted facility or installation shall receive an extension of the special use permit for up to six months, in order to complete the recertification review.

E) If the holder of a special use permit does not submit a request for recertification of such special use permit within the timeframe noted in Subsection A of this section, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent five-year anniversaries.

#### N. Extent and Parameters of Special Use Permit.

A) Such Special Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the Village.

B) Such Special Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit, or for a material violation of this Ordinance after prior written notice to the holder of the Special Use Permit.

#### O. Liability Insurance.

A) A holder of a Special Use Permit shall maintain and provide proof of maintaining:

- 1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- 2) Automobile Coverage: \$1,000,000 per occurrence/ \$2,000,000 aggregate;
- 3) Workers Compensation and Disability: Statutory amounts

B) For a Wireless Telecommunications Facility on Village property, the Commercial General Liability insurance policy shall specifically include the Village and its officers, board members, employees, committee members, attorneys, agents and consultants as additional insureds.

C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.

D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Village with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.

E) Renewal or replacement policies or certificates shall be delivered to the Village at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

F) Before construction is initiated, but in no case later than fifteen (15) days after the granting of the Special Use Permit, the holder of the Special Use Permit shall deliver to the Village a copy of each of the policies or certificates representing the insurance in the required amounts.

P. Indemnification. A) Any application that is proposed for Village property, pursuant to this Article, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Village, and its officers, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Village, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Village. B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the Village itself applies for and secures a Special Use Permit.

Q. Fines. A) In the event of a violation of this Article or any Special Use Permit issued pursuant to this Article, the Village may impose and collect, and the holder of the Special Use

Permit for Wireless Telecommunications Facilities shall pay to the Village, fines or penalties as set forth below. B) In the event of a violation of this Article or any special use permit issued pursuant to this article, the Village may impose and collect, from the property owner and/or holder of a special use permit the fines or penalties as set forth below. C) The failure to comply with the provisions of this Article shall subject the applicant, property owner, or lessee to the code enforcement provisions and procedures set forth in Chapter 1, General Provisions, Article 1, of the Village Code. D) Notwithstanding anything in this Article, the holder of the Special Use Permit may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Article or any section of this Article. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit. The Village may also seek injunctive relief to prevent the continued violation of this Ordinance, without limiting other remedies available to the Village. (E) Default and/or Revocation. If a facility or installation is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Article or of the Special Use Permit, then the Village shall notify the holder of the Special Use Permit in writing of such violation. A holder of a Special Use Permit in violation may be considered in default and subject to fines as set forth above and if a violation is not corrected to the satisfaction of the Village in a reasonable period of time the Special Use Permit is subject to revocation.

R. Removal. A) Under the following circumstances, the Village may determine that the health, safety, and welfare interests of the Village warrant and require the removal of facilities or installations if the same have. 1) been abandoned (i.e. not used for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days; 2) fallen into such a state of disrepair that it creates a health or safety hazard; and/or 3) have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or any other necessary authorization and the Special Permit may be revoked. B) If the Village makes such a determination as noted in subsection (A) of this Section, then the Village shall notify the holder of the Special Use Permit within forty-eight (48) hours that said facility or installation is to be removed, the Village may approve an interim temporary use agreement/permit, such as to enable the sale of the same. C) The holder of the Special Use Permit, or its successors or assigns, shall dismantle and remove such facility or installation, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the Village. However, if the owner of the property upon which the facility or installation is located wishes to retain any access roadway to the, the owner may do so with the approval of the Village. D) If the facility or installation are not removed or substantial progress has not been made to remove it within ninety (90) days after the Permit holder has received notice, then the Village may order officials or representatives of the Village to remove the it at at the sole expense of the owner or Special Use Permit holder. E) If, the Village removes, or causes to be removed, a facility or installation, and the owner does not claim and remove it from the site to a lawful location within ten (10) days, then the Village may take steps to declare the it abandoned, and sell it and its components. F) Notwithstanding anything in this Section to the contrary, the Village may approve a

temporary use permit/agreement for a facility or installation, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected facility or installation shall be developed by the holder of the Special Use Permit, subject to the approval of the Village, and an agreement to such plan shall be executed by the holder of the Special Use Permit and the Village. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Village may take possession of and dispose of the affected facility or installation in the manner provided in this Section.

## **Section 2. Ratification, Re-adoption and Confirmation**

Except as specifically modified by the amendments contained herein, Chapter 209 is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

## **Section 3. Numbering for Codification**

It is the intention of the Village and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the Village; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

## **Section 4. Severability**

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

## **Section 5. Effective Date**

This local law shall take effect immediately upon filing with the Office of the Secretary of State.