

**TOWN BOARD  
TOWN OF SULLIVAN  
REGULAR MEETING  
FEBRUARY 19, 2020  
5:00 P.M.**

A regular meeting of the Town Board of the Town of Sullivan was convened at the Town Office Building by Supervisor Becker at 5:00 P.M. on February 19, 2020.

Those in attendance for this meeting were: Supervisor John M. Becker; Councilors: John Brzuszkiewicz; Jeff Martin; Kerry Ranger; and Tom Kopp; Attorney for the Town John R. Langey; Comptroller Beth Ellis; Highway Superintendent Andrew Busa; and Secretary to the Supervisor Elaine Morgan.

Also, in attendance: Members of the public.

The meeting opened at 5:00 P.M.

Pledge to the flag was led by Supervisor Becker.

**APPROVAL OF FEBRUARY 5, 2020 REGULAR MEETING MINUTES**

A motion was duly made by Councilor Kopp, seconded by Councilor Martin and unanimously approved by the Board to approve the minutes from the February 5, 2020 Town Board Meeting.

**PUBLIC HEARING: HAMILTON BROWN BUSHNELL SHORES WATER DISTRICT**

A motion was duly made by Councilor Brzuszkiewicz, seconded by Councilor Martin and unanimously approved by the Board to open the public hearing regarding the Hamilton Brown Bushnell Shores Water District. Supervisor Becker noted that there was an issue with the mailers that were sent to property owners within this water district and that the public hearing will remain open until the next regular board meeting to be held March 4, 2020 at 6 P.M. Supervisor Becker also noted that there are updated budget documents and a map and plan from 2018. He mentioned that \$480K through EFC (WIIA Grant) is available for this project, however; he believed additional funding may be helpful and plans to pursue additional grant opportunities through Rural Development.

Several residents from the above water district spoke in favor of the project.

A resident stated they will be away on vacation and asked if they need to do anything. Supervisor Becker affirmed that at this time, the engineer for this project will look into Rural Development Grant funding to assist with the financing. Supervisor Becker estimated that by Fall this project should be moving forward.

**PUBLIC HEARING: LOCAL LAW NO. A-2020**

**A LOCAL LAW TO AMEND THE CODE OF THE TOWN OF SULLIVAN  
TO CREATE A NEW CHAPTER 210 TITLED  
“SMALL CELL WIRELESS DEPLOYMENT REQUIREMENTS”**

Supervisor Becker and Attorney Langey outlined the proposed Local Law to regulate 5-G wireless installations in the Town's public rights-of-way. It is necessary to have a public hearing on the Local Law. A motion was made by Councilor Martin, seconded by Councilor Brzuszkiewicz and unanimously passed by the Board to open the public hearing. No one from the public spoke in favor or against said proposed Local Law. A motion was made by Councilor Martin, seconded by Councilor Brzuszkiewicz and unanimously passed by the Board to close the public hearing.

Supervisor Becker addressed the Board and asked for a motion to adopt Local Law No. A-2020. The following resolution was offered by Councilor Martin, who moved its adoption, seconded by Councilor Brzuszkiewicz, to wit:

**WHEREAS**, pursuant to the Municipal Home Rule Law, a proposed local law titled “A Local Law to Amend the Code of the Town of Sullivan to Create a New Chapter 210 titled ‘Small Cell Wireless Deployment Requirements’,” was presented and introduced at a regular meeting of the Town Board of the Town of Sullivan held on January 15, 2020, and

**WHEREAS**, a public hearing was held on such proposed local law on this 19<sup>th</sup> day of February, 2020, by the Town Board of the Town of Sullivan and proof of publication of notice of such public hearing, as required by law, having been submitted and filed, and all persons desiring to be heard in connection with said proposed local law having been heard, and said proposed local law having been in the possession of the members of the Town Board of the Town of Sullivan in its final form in the manner required by Section 20 of the Municipal Home Rule of the State of New York; and

**WHEREAS**, at its January 15, 202 meeting the Town Board determined that this proposed legislation is an unlisted action for purposes of SEQR, reviewed the Environmental Assessment Form and determined that the proposed local law, which will streamline and accelerate the wireless infrastructure siting review process while regulating aesthetics and addressing public safety concerns, would have no adverse environmental impacts and rendered a negative declaration, thus concluding the environmental review process; and

**WHEREAS**, the rights reserved by the Town of Sullivan, as set forth in the proposed local law, are consistent with rights recognized in the Declaratory Ruling and Third Report and Order, known as FCC 18-133 or “Order,” as issued by the Federal Communications Commission (“FCC”), which allow local governments to impose aesthetic requirements and safety considerations upon small cell wireless communications facilities; and

**WHEREAS**, proposed Local Law A-2020 is also consistent with the intent expressed by the Town of Sullivan Town Board in its Resolution dated April 3, 2019, wherein the Town Board noted its desire to preserve and maintain all of its legal rights and options to address

and reasonably regulate additional telecommunication technologies, which rights and options included the ability to establish standards and requirements relative to the siting, construction, operation, maintenance, and permitting of such small commercial wireless facilities; and

**WHEREAS**, it is in the public interest to enact said Proposed Local Law A-2020.

**NOW, THEREFORE**, it is

**RESOLVED AND DETERMINED**, that for the reasons set forth above the Town Board of the Town of Sullivan, Madison County, New York does hereby approve the enactment of proposed Local Law No. A-2020; be it further

**RESOLVED** that the Town Board of the Town of Sullivan, Madison County, New York, does hereby enact proposed Local Law No. A-2020 as Local Law No. 2-2020 as follows:

**“TOWN OF SULLIVAN  
LOCAL LAW NO. 2 OF 2020**

**A LOCAL LAW TO AMEND THE CODE OF THE TOWN OF SULLIVAN  
TO CREATE A NEW CHAPTER 210 TITLED  
“SMALL CELL WIRELESS DEPLOYMENT REQUIREMENTS”**

Be it enacted by the Town Board of the Town of Sullivan as follows:

**SECTION 1.      AUTHORITY**

This local law is enacted pursuant to the New York State Constitution and New York Municipal Home Rule Law §10.

**SECTION 2.**

The Code of the Town of Sullivan is hereby amended to include a new Chapter 210, titled “Small Cell Wireless Deployment Requirements”, which shall read in its entirety as follows:

**“Chapter 210.            Small Cell Wireless Deployment Requirements**

**ARTICLE I – PURPOSE AND DEFINITIONS**

**§210-1            Purpose and Intent.**

A. **Purpose.** The purpose of this Chapter is to regulate the placement of certain Wireless Communication Facilities in the Town. The standards set forth herein are created to provide objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all of the following, which the Town shall consider when reviewing an Application:

1.        The location of the ground-mounted Communication Facilities;

2. The location of a Wireless Facility on a Pole or other device;
3. The appearance and concealment of Communication Facilities, including those relating to materials used for arranging, screening and landscaping;
4. The design and appearance of a wireless Support Structure including any height requirements adopted in accordance with this Chapter.

This Chapter applies to the Public ROW but does not restrict the Town's right to regulate Communication Facilities on non-Town owned property or outside of the Public ROW under the same terms and conditions set forth herein.

- B. **Intent.** In enacting this Chapter, the Town is establishing uniform standards to address issues presented by certain small wireless facilities, including without limitation, to:

1. prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
2. prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
3. prevent interference with existing facilities and operations of facilities presently lawfully located in rights-of-way or public property;
4. ensure efforts are made to preserve the character of neighborhoods in which facilities are installed;
5. protect against environmental damage, including damage to trees, public and private property; and
6. facilitate the appropriate and reasonable deployment of small wireless facilities to provide the benefits of reliable access to wireless telecommunications technology, broadband and 9-1-1 services to homes, businesses and schools within the Town.

## §210-2 **Definitions.**

- A. "Administrative Review" means ministerial review of an Application by the Town relating to the review and issuance of a Permit, including review by the Code Enforcement Officer to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Chapter.
- B. "Antenna" means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of Wireless Services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.
- C. "Applicable Codes" means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted, or incorporated, by the Town.
- D. "Applicant" means any Person who submits an Application under this Chapter.
- E. "Application" means a written request, on a form provided by the Town, for a Permit.
- F. "Authority" or "Town" means the Town of Sullivan or any agency, subdivision or any instrumentality thereof.
- G. "Collocate" means to install or mount a Small Wireless Facility on an existing Support Structure, an existing Tower, or on an existing Pole to which a Small

Wireless Facility is attached at the time of the Application. "Collocation" has a corresponding meaning.

- H. "Communications Facility" means, collectively, the equipment at a fixed location(s) within the Public ROW or on public or private property that enables Communications Services, including: (i) radio transceivers, Antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A Communications Facility does not include the Pole, Tower or Support Structure to which the equipment is attached.
- I. "Communications Service" means cable service, as defined in 47 U.S.C. §522(6); information service or broadband, as defined in 47 U.S.C. §153(24); or telecommunications service, as defined in 47 U.S.C. §153(53).
- J. "Communications Service Provider" means a provider of Communications Services and includes a cable operator, as defined in 47 U.S.C. §522(5).
- K. "Decorative Pole" means a Pole that is specially designed and placed for aesthetic purposes.
- L. "Discretionary Review" means review of an Application by the Town Planning Board relating to the review and issuance of a Permit that is other than an Administrative Review.
- M. "Eligible Facilities Request" means an eligible facility request as set forth in 47 C.F.R. Section 1.40001(b)(3), as that section may be amended from time to time.
- N. "FCC" means the Federal Communications Commission of the United States.
- O. "Laws" means, collectively, any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- P. "Ordinary Maintenance and Repair" means inspections, testing and/or repair of existing Communication Facilities that maintain functional capacity, aesthetic and structural integrity of a Communications Facility and/or the associated Support Structure, Pole or Tower, that does not require blocking, damaging or disturbing any portion of the Public ROW.
- Q. "Permit" means a written authorization (in electronic or hard copy format) to install, at a specified location(s) in the Public ROW or at a specific location on public or private property, a Communications Facility, Tower or a Pole to support a Communications Facility.
- R. "Permittee" means an Applicant who has received a Permit under this Chapter.
- S. "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity.
- T. "Pole" means a legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within the Public Right-of-Way. A Pole does not include a Tower or Support Structure.
- U. "Provider" means a Communications Service Provider or a Wireless Services Provider and includes any Person who owns and/or operates within the Public ROW any Communications Facilities, Wireless Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers.

- V. "Public Right-of-Way" or "Public ROW" means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, and for purposes of this Chapter shall include Public Utility Easements, but only to the extent the Town has to permit use of the area or Public Utility Easement for Communications Facilities or Poles, Towers and Support Structures that support Communications Facilities. The term does not include a federal interstate highway or other areas that are not within the legal jurisdiction, ownership or control of the Town.
- W. "Public Utility Easement" means, unless otherwise specified or restricted by the terms of the easement, the area on, below, or above a property in which the property owner has dedicated an easement for use by utilities. Public Utility Easement does not include an easement dedicated solely for Town's use, or where the proposed use by the Provider is inconsistent with the terms of any easement granted to the Town.
- X. "Replace" or "Replacement" means, in connection with an existing Pole, Support Structure or Tower, to replace (or the replacement of) same with a new structure, substantially similar in design, size and scale to the existing structure and in conformance with this Chapter and any other applicable Town regulations, in order to address limitations of the existing structure to structurally support Collocation of a Communications Facility.
- Y. "Small Wireless Facility" means a Wireless Facility that meets both of the following qualifications: (i) each Antenna could fit within an enclosure of no more than three (3) cubic feet in volume; and (ii) all other wireless equipment associated with the Antenna, including the Provider's preexisting equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume. Other wireless facilities may require additional review and approval by the Town of Sullivan.
- Z. "State" means the State of New York.
- AA. "Support Structure" means a freestanding structure other than a Pole or a Tower to which a Wireless Facility is attached at the time of the Application.
- BB. "Tower" means any structure built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.
- CC. "Wireless Facility" means the equipment at a fixed location(s) that enables Wireless Services. The term does not include: (i) the Support Structure, Tower or Pole on, under, or within which the equipment is located or Collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. A Small Wireless Facility is one type of a Wireless Facility.
- DD. "Wireless Infrastructure Provider" means a Person, including a Person authorized to provide telecommunications service in the State, that builds or installs wireless communication transmission equipment, wireless telecommunications facilities or wireless telecommunications support structures, but that is not a Wireless Services Provider.
- EE. "Wireless Services" means any services provided using wireless telecommunications facilities.

- FF. "Wireless Services Provider" means a Person who provides Wireless Services and is authorized to provide such services pursuant to an FCC license.

## **ARTICLE II – GOVERNANCE OF DEPLOYMENT IN ROW**

### **§210-3 Access to Public ROW:**

- A. License Agreement. Prior to installing any Communications Facility in a Public ROW, or any Pole built for the sole or primary purpose of supporting a Communications Facility, or any Tower, a Person shall enter into a License Agreement ("License Agreement") with the Town, which shall be filed with the Madison County Clerk's Office, expressly authorizing use of the Public Right-of-Way for the Communications Facility, Pole or Tower proposed to be installed.
1. General Terms. The License Agreement shall include:
    - a. The term of the License Agreement shall be annual, which shall renew automatically unless terminated by the Town upon ninety (90) days' written notice.
    - b. The License Agreement authorizes the Provider's non-exclusive use of the Public ROW for the sole purpose of installing, maintaining and operating Communications Facilities, including any Pole built for the sole or primary purpose of supporting the Communications Facilities and any Tower, to provide the services expressly authorized in the License Agreement, subject to applicable Laws, this Chapter and the terms and conditions of the License Agreement. The License Agreement authorizes use only of the Public ROW in which the Town has an actual interest. It is not a warranty of title or interest in any Public ROW and it does not confer on the Provider any interest in any particular location within the Public ROW. No other right is granted except as expressly set forth in the License Agreement. Nothing herein shall authorize the use of the Town's Poles, Towers, Support Structures, or other structures in the Public ROW. All use of Town Poles, Towers, Support Structures, and other structures in the Public ROW shall require the execution of an "Attachment Agreement," and the payment of separate fees for such use.
    - c. The Provider shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, Support Structures and Towers in the Public ROW in a safe condition, and in good order and repair.
    - d. The Provider shall keep and maintain liability insurance in the amount of \$1,000,000 for each incident and an umbrella policy in the amount of \$5,000,000 for each Communication Facility in a Public ROW. The Town shall be named an additional insured on each policy on a primary, non-contributory basis. The Provider shall provide the Town with proof of such insurance in a form acceptable to legal counsel for the Town. Each insurance policy shall contain an endorsement obligating the insurance

company to furnish the Town with at least 30 days' written notice prior to the cancellation of the insurance policy. The insurance policies shall be issued by an insurance company licensed to do business in New York State and shall have a Best's rating of at least A.

- e. The License Agreement shall include the name and contact information for the Provider to be called in cases of emergencies.
  - f. Licensees using space in ducts, conduits and on Poles must comply with the terms of this License Agreement, unless expressly exempted by the Town.
  - g. The Town shall have the right to access books and records, including audit rights, of the Provider to determine that all applicable fees and payments have been made to the Town.
  - h. The Provider shall provide proof to the Town that it has a license or authority from the owner to use an existing Pole, Tower or Support Structure in the Public ROW for a Communications Facility.
  - i. The terms and conditions set forth herein are not exclusive and the Town reserves the right to require additional terms and conditions to the License Agreement.
2. Public ROW Construction and Installation Requirements.
- a. ROW Permit.
    - (1) Unless expressly authorized in this Chapter or in writing by the Town, no Person may construct, maintain or perform any other work in the Public ROW related to Communications Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers without first receiving a Permit to the extent required under this Chapter, and any other permit or authorization required by applicable Laws.
    - (2) The Town shall not issue a Permit unless the Applicant, or a Provider on whose behalf the Applicant is constructing Communications Facilities, Poles or Towers, has executed a License Agreement required by this Chapter, or otherwise has a current and valid franchise with the Town expressly authorizing use of the Public ROW for the Communications Facilities, Poles or Towers proposed in the Application, and all applicable fees have been paid.
  - b. Location of New Facilities.
    - (1) The Provider shall not locate or maintain its Communications Facilities, Poles and Towers so as to unreasonably interfere with the use of the Public ROW by the Town, by the general public or by other persons authorized to use or be present in or upon the Public ROW.

- (2) Aboveground placement of new poles and equipment cabinets shall meet the requirement set forth in §210-5(D) of this Chapter.
  - (3) Unless otherwise agreed to in writing by the Town or otherwise required by applicable Laws, whenever any existing electric utilities or Communications Facilities are located underground within a Public ROW, the Provider with permission to occupy the same portion of the Public ROW shall locate its Communications Facilities underground at its own expense. The Town may, in its sole discretion, approve aboveground placement of equipment cabinets, pedestals and similar equipment, pursuant to §210-5(D) of this Chapter. For facilities or equipment such as Wireless Facilities that cannot, by their nature, operate unless located above-ground, the Provider and Town shall work to find a suitable location for such facilities or equipment, which may be outside the Public ROW.
- c. Construction Standards. In performing any work in or affecting the Public ROW, the Provider, and any agent or contractor of the Provider, shall comply with the provisions of §210-7 of this Chapter and all other applicable Laws.
- d. Restoration Requirements.
  - (1) The Provider, or its agent or contractor, shall restore, repair and/or replace any portion of the Public ROW that is damaged or disturbed by the Provider's Communications Facilities, Poles, Towers or work in or adjacent to the Public ROW as required in §210-7 of this Chapter and all other applicable Laws.
  - (2) If the Provider fails to timely restore, repair or replace the Public ROW as required in this subsection, the Town or its contractor may do so and the Provider shall pay the Town's costs and expenses in completing the restoration, repair or replacement.
- e. Removal, Relocation and Abandonment.
  - (1) Within sixty (60) days following written notice from the Town, the Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its Communications Facilities, Poles, Support Structures or Towers within the Public ROW, including relocation of above-ground Communications Facilities underground (consistent with the provisions of this Chapter), whenever the Town has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance, or installation of any Town improvement, the operations of the Town in,

under or upon the Public ROW, or otherwise is in the public interest. The Provider shall be responsible to the Town for any damages or penalties it may incur as a result of the Provider's failure to remove or relocate Communications Facilities, Poles, Support Structures or Towers as required in this subsection.

- (2) The Town retains the right and privilege to cut or move any Communications Facility, Pole, Support Structure or Tower located within the Public ROW, as the Town may determine, in its sole discretion, to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the Town shall notify the Provider and give the Provider an opportunity to move its own facilities prior to cutting or removing the Communications Facility, Pole, Support Structure or Tower. In all cases the Town shall notify the Provider after cutting or removing the Communications Facility, Pole, Support Structure or Tower as promptly as reasonably possible.
- (3) A Provider shall notify the Town of abandonment of any Communications Facility, Pole, Support Structure or Tower at the time the decision to abandon is made, however, in no case shall such notification be made later than thirty (30) days prior to abandonment. Following receipt of such notice, the Provider shall remove its Communications Facility, Pole, Support Structure or Tower at the Provider's own expense, unless the Town determines, in its sole discretion, that the Communications Facility, Pole, Support Structure or Tower may be abandoned in place. The Provider shall remain solely responsible and liable for all of its Communications Facilities, Poles, Support Structures and Towers until they are removed from the Public ROW unless the Town agrees in writing to take ownership of the abandoned Communications Facilities, Poles, Support Structures or Towers. Upon the issuance of a Permit, the Provider shall provide a removal bond in the amount estimated for the removal of all of the Communication Facilities that are the subject of an Application, such estimated amount to be determined by the Code Enforcement Officer, after consultation with the Engineer for the Town.
- (4) If the Provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its Communications Facilities, Poles, Support Structures or Towers or remove any of its abandoned Communications Facilities, Poles, Support Structures or

Towers as required in this subsection, the Town or its contractor may do so and the Provider shall pay all costs and expenses related to such work, including any delay damages or other damages the Town incurs arising from the delay.

- f. As-builts and Maps - Maps showing the location of equipment in ROW and as-builts after construction shall be provided to the Town within thirty (30) days after completion of construction, in conformance to the requirements of the Engineer for the Town.

B. Fees and Charges.

1. Permit Application Fee. Every Applicant for a co-location shall pay a Permit application fee of \$500 for a single up-front Application, which Application may include up to five (5) Small Wireless Facilities, and \$100 per Application for each additional Small Wireless Facility thereafter. The fee shall be paid upon submission of the Application.
2. Every Application for a new pole in the Public ROW shall pay a Permit application fee of \$1,000. The fee shall be paid upon submission of the Application.
3. License Agreement Fee. Every Person requesting a License Agreement from the Town shall pay an administrative fee of \$340, which shall include the legal costs of drafting such License Agreement.
4. ROW Use Fee. In exchange for the privilege of non-exclusive occupancy of the Public ROW, the Provider shall pay the Town \$270 per Small Wireless Facility, per year, for as long as the License Agreement is effective. The ROW Use Fee shall be due and payable within thirty (30) days of issuance of the License Agreement.
5. Attachment Fees. The Provider shall be subject to an additional attachment fee of \$500 if the Small Wireless Facilities will be attached to property (either real or personal) owned by the Town. No attachment will be allowed except after issuance of a Permit pursuant to an Attachment Agreement.
6. Other Fees. The Applicant or Provider shall be subject to any other generally applicable fees of the Town or other government body, such as those required for electrical permits, building permits, or street opening permits, which the Applicant or Provider shall pay as required in the applicable Laws, as well as attachment fees for the use of Town owned Poles, Towers, Support Structures, ducts, conduits or other structures in the Public ROW, as set forth in Attachment Agreements authorizing such use.
7. No Refund. Except as otherwise provided in a License Agreement, the Provider may remove its Communications Facilities, Poles or Towers from the Public ROW at any time, upon not less than thirty (30) days prior written notice to the Town, and may cease paying to the Town any applicable recurring fees for such use, as of the date of actual removal of the facilities and complete restoration of the Public ROW. In no event shall a Provider be entitled to a refund of fees paid prior to removal of its Communications Facilities, Poles or Towers.

**§210-4 Permit Applications.**

- A. Permit Required. Unless expressly authorized in this Chapter or in writing by the Town, no Person may construct, install or maintain in the Public ROW any Communications Facilities or Poles built for the primary purpose of supporting Communications Facilities, or Towers, including the installation or Collocation of Communications Facilities on existing Poles, Towers, Support Structures or other structures within the Public ROW, without first receiving a Permit. Notwithstanding the foregoing, in the event of an Emergency, a Provider or its duly authorized representative may work in the Public ROW prior to obtaining a Permit, provided that the Provider shall attempt to contact the Town prior to commencing the work and shall apply for a Permit as soon as reasonably possible, but not later than twelve (12) hours after commencing the Emergency work. For purposes of this subsection, an "Emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.
- B. Permit Application Requirements. The Application shall be made by the Provider or its duly authorized representative and shall contain the following:
  - 1. The Applicant's name, address, telephone number, and e-mail address, including emergency contact information for the Applicant.
  - 2. The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.
  - 3. A description of the proposed work and the purposes and intent of the proposed facility sufficient to demonstrate compliance with the provisions of this Chapter. The Applicant shall state whether the Applicant believes the proposed work is subject to Administrative Review or Discretionary Review and if the Permit is an Eligible Facilities Request.
  - 4. If applicable, a copy of the authorization for use of the property from the Pole, Tower or Support Structure owner on or in which the Communications Facility will be placed or attached.
  - 5. Detailed construction drawings regarding the proposed Communication Facility.
  - 6. To the extent the proposed facility involves Collocation on a Pole, Tower or Support Structure, a structural report performed by a duly licensed engineer evidencing that the Pole, Tower or Support Structure will structurally support the Collocation (or that the Pole, Tower or Support Structure will be modified to meet structural requirements) in accordance with Applicable Codes.
  - 7. For any new aboveground facilities or structures, accurate visual depictions or representations, if not included in the construction drawings.
  - 8. If new construction, a plan demonstrating how co-locations on the new Pole, Tower or Support Structure would be possible for other Providers who may wish to deploy small cell technology in the geographic area of the subject Application.

- C. Proprietary or Confidential Information in Application. Applications are public records that may be made available pursuant to the New York State Freedom of Information Law. Notwithstanding the foregoing, Applicant may designate portions of its Application materials that it reasonably believes contains proprietary or confidential information as “proprietary” or “confidential” by clearly marking each portion of such materials accordingly, and the Town shall treat the information as proprietary and confidential, subject to the requirements of the New York State Freedom of Information Law and the Town’s determination that the Applicant’s request for confidential or proprietary treatment of Application materials is reasonable.
- D. Ordinary Maintenance and Repair. A Permit shall not be required for Ordinary Maintenance and Repair. The Provider or other Person performing the Ordinary Maintenance and Repair shall obtain any other permits required by applicable Laws and shall notify the Town in writing at least forty-eight (48) hours before performing the Ordinary Maintenance and Repair.
- E. Material Changes. The Town may require payment of an additional Permit application fee in the event the Town determines, in its sole discretion, that material changes to an Application after submission amount to a new Application and will materially increase the time and/or costs of the Permit review process. Unless otherwise agreed to in writing by the Town, any material changes to an Application, as determined by the Town in its sole discretion, shall be considered a new application for purposes of the time limits set forth in §210-5(B)(2), unless otherwise provided by applicable Laws.
- F. Application Fees. Unless otherwise provided by applicable Laws, all Applications pursuant to this Chapter shall be accompanied by the Fees required under §210-3(B).
- G. Effect of Permit. A Permit from the Town authorizes an Applicant to undertake only the activities in the Public ROW specified in the Application and Permit, and in accordance with this Chapter and any general conditions included in the Permit. A Permit does not authorize attachment to or use of existing Poles, Towers, Support Structures or other structures in the Public ROW; a Permittee or Provider must obtain all necessary approvals and pay all necessary fees from the owner of any Pole, Tower, Support Structure or other structure prior to any attachment or use. A Permit does not create a property right or grant authority to the Applicant to interfere with other existing uses of the Public ROW.
- H. Duration. Any Permit for construction issued under this Chapter shall be valid for a period of ninety (90) days after issuance and can be extended for an additional ninety (90) days upon written request of the Applicant, if the failure to complete construction is a result of circumstances beyond the reasonable control of the Applicant.
- I. An Applicant may simultaneously submit up to five (5) Applications for Communications Facilities, or may file a single, consolidated Application covering a batch of not more than twenty (20) such Communications Facilities, provided that the proposed Communications Facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the Town. If the Applicant files a consolidated

application, the Applicant shall pay the application fee calculated as though each Communication Facility were a separate Application. No Applicant shall submit more than one (1) consolidated application over a six (6) month period. The Code Enforcement Officer has the discretion to determine whether a Provider is submitting a consolidated Application through the submission of multiple single Small Wireless Facilities.

**§210-5 Administrative Review.**

- A. Permitted Use. The following uses within the Public ROW shall be permitted uses, subject to Administrative Review and issuance of a Permit as set forth in this §210-5. All such uses shall be in accordance with all other applicable provisions of this Chapter, including without limitation, those set forth in §210-5 below and the terms of any License Agreement. Administrative Review will not be available for consolidated Applications or simultaneous Applications for more than five (5) Communication Facilities.
1. Collocation of a Small Wireless Facility that does not exceed the maximum height set forth in §210-5(C) or a Collocation that qualifies as an Eligible Facilities Request.
  2. Modification of a Pole, Tower or Support Structure or Replacement of a Pole for Collocation of a Communications Facility where the modification or Replacement qualifies as an Eligible Facilities Request.
  3. Construction of a new Decorative Pole or a monopole Tower (but no other type of Tower) to be used for a Small Wireless Facility that does not exceed the maximum height set forth in §210-5(C), provided that there are existing poles of similar height within one hundred (100) feet of either side of the proposed new Pole or monopole Tower.
  4. Construction of a Communications Facility, other than those set forth in subsections (1), (2) or (3) in this §210-5(A), involving the installation of coaxial, fiber-optic or other cabling, that is installed underground or aboveground between two or more existing Poles or an existing Pole and an existing Tower and/or existing Support Structure, and related equipment and appurtenances.
- B. Application Review.
1. The Town shall review the Application either under the Administrative Review or Discretionary Review, as the case may be, and, if the Application conforms with applicable provisions of §210-4 and this Section, the Town shall issue the Permit, subject to the design standards set forth in §210-5(D) of this Chapter.
  2. Except as otherwise provided by applicable Laws, the Town shall:
    - a. Within ten (10) days of receiving an Application, notify the Applicant if the Application is incomplete and identify the missing information. The Applicant may resubmit the completed Application within thirty (30) days without additional charge, in which case the Town shall have ten (10) days from receipt of the resubmitted Application to verify the Application is complete, notify the Applicant that the Application remains incomplete or, in the Town's sole discretion, deny the Application; and

- b. Make its final decision to approve or deny the Application within sixty (60) days for a collocation, and ninety (90) days for any new structure, after the Application is complete (or deemed complete in the event the Town does not notify the Applicant that the Application or resubmitted Application is incomplete).
  - 3. The Town shall advise the Applicant in writing of its final decision.
- C. Maximum Height of Permitted Use. Small Wireless Facilities, and new, modified or Replacement Poles, Towers and Support Structures in the Public ROW may be approved through Administrative Review as provided in §210-5(A) only if the following requirements are met:
  - 1. Each new, modified or Replacement Pole, Tower or Support Structure installed in the Public ROW shall not exceed thirty-five (35) feet in height.
  - 2. New Small Wireless Facilities in the Public ROW shall not exceed thirty-five (35) feet in height.
- D. Design Standards. The Design Standards for Communication Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers shall be adopted by the Town Board and shall be published on the official Town Website and made available to all Applicants at their request or upon submission of an Application. The Design Standards shall be subject to change upon thirty (30) days' notice to an Applicant and upon a majority vote of the Town Board.

**§210-6 Discretionary Review and Approval.** All other uses within the Public ROW not expressly set forth or referenced in §210-5(A) shall require compliance with, and issuance of, a site plan approval issued by the Town of Sullivan Planning Board. In determining the deployment and placement of Communication Facilities, the Planning Board shall consider the following criteria and its impact on the surrounding neighborhood during the Site Plan review process: (i) the design standards set forth in §210-5(D) of this Chapter; (ii) the compatibility of further deployments and their potential impact on the surrounding neighborhood; (iii) the potential for Collocation of other Provider's Communication Facilities; and, (iv) the density fulfillment needs of the neighborhood.

**§210-7 General Public ROW Installation Requirements.**

- A. General Work Requirements.
  - 1. General safety and compliance with Laws. The Permittee shall employ due care during the installation, maintenance or any other work in the Public ROW, and shall comply with all safety and Public ROW protection requirements of applicable Laws, Applicable Codes, and any generally applicable Town guidelines, standards and practices, and any additional commonly accepted safety and Public ROW-protection standards, methods and devices (to the extent not inconsistent with applicable Laws).
  - 2. Traffic control. Unless otherwise specified in the Permit, the Permittee shall erect a barrier around the perimeter of any excavation and provide

appropriate traffic control devices, signs and lights to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the most recently published Uniform Manual of Traffic Control Devices, as amended. The Permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition or as otherwise directed by the Town.

3. Interference. The Permittee shall not interfere with any existing facilities or structures in the Public ROW, and shall locate its lines and equipment in such a manner as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any Public ROW.
4. Utility Locates. Before beginning any excavation in the Public ROW, the Permittee shall comply with DIG SAFELY NEW YORK, INC.
- B. Compliance with Permit.
  1. All construction practices and activities shall be in accordance with the Permit and approved final plans and specifications. The Town and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements. All work that does not comply with the Permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be removed at the sole expense of the Permittee. The Town may stop work in order to assure compliance with the provision of this Chapter.
  2. In addition to obtaining a Permit for installation of a Communications Facility, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers in the Public ROW, an Applicant must obtain all other required permits.
- C. Mapping Data. The Permittee shall provide to the Town as-builts, in a format designated by the Town or otherwise compatible with such format, showing the location of Communications Facilities, Poles, Support Structures and Towers upon completion of the permitted work.

- §210-8 Attachment to and Replacement of Decorative Poles.** Notwithstanding anything to the contrary in this Chapter, an Applicant may not install a Small Wireless Facility on a Decorative Pole, or replace a Decorative Pole with a new Decorative Pole unless the Town has determined, in its sole discretion as part of the Administrative Review process, that each of the following conditions has been met:
- A. The Application qualifies for issuance of a Permit under §210-5(A); and
  - B. The attachment and/or the replacement Pole is in keeping with the aesthetics of the Decorative Pole.

**§210-9 Violation of this Chapter.** Violation of any of the provisions of this Chapter shall be a violation punishable with a civil penalty of \$250.00 for each violation. Each day that a violation occurs or is permitted to exist by the Applicant or Provider constitutes a separate offense.”

**SECTION 3. THE EFFECTIVE DATE.**

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

The question of the adoption of the foregoing resolution was duly put to a vote and upon roll call, the vote was as follows:

<b>John E. Brzuszkiewicz</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Thomas J. Kopp Jr.</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Kerry Ranger</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Jeffrey Martin</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>John M. Becker</b>	<b>Supervisor</b>	<b>Voted</b>	<b>Yes</b>

The foregoing resolution was thereupon declared duly adopted.

**DATED: February 19, 2020**

**CERTIFICATE**

**STATE OF NEW YORK     )**  
**COUNTY OF MADISON    )**

I, the undersigned Deputy Town Clerk of the Town of Sullivan, Madison County, New York, **DO HEREBY CERTIFY:**

That I have compared the foregoing Resolution with the original thereof on file in the Office of the Town Clerk of the Town of Sullivan, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

**I FURTHER CERTIFY** that all members of said Board had due notice of said meeting and that, pursuant to Section 103 of the Public Officers Law, said meeting was open to the general public.

**IN WITNESS WHEREOF,** I have hereunto set my hand and affixed the seal of said Town on February 19, 2020.

**ROSEMARY CZERNIAK, Deputy Town Clerk**

**A RESOLUTION ADOPTING THE “TOWN OF SULLIVAN  
DESIGN STANDARDS AND GENERAL GUIDELINES FOR  
SMALL CELL WIRELESS TELECOMMUNICATION FACILITIES  
(Adopted February 19, 2020)”**

The following resolution was offered by Councilor Martin, who moved its adoption, seconded by Councilor Brzuszkiewicz, to wit:

**WHEREAS**, the Town of Sullivan Town Board has recently adopted a Local Law titled “A Local Law to Amend the Code of the Town of Sullivan to Create a New Chapter 210 titled ‘Small Cell Wireless Deployment Requirements’”; and

**WHEREAS**, the Town Board desires to regulate the deployment of small cell wireless communication facilities throughout the Town in conformance with the guidance and rules set forth in the Declaratory Ruling and Third Report and Order, known as FCC 18-133 or “Order,” as issued by the Federal Communications Commission (“FCC”), which allow local governments to impose aesthetic requirements and safety considerations upon small cell wireless communications facilities and, to accomplish this, desires to adopt the “Town of Sullivan Design Standards and General Guidelines for Small Cell Telecommunications Facilities,” as previously distributed and incorporated herein; and

**WHEREAS**, it is in the public interest to adopt the “Town of Sullivan Design Standards and General Guidelines for Small Cell Telecommunications Facilities;” ; and

**WHEREAS**, adoption of the “Town of Sullivan Design Standards and General Guidelines for Small Cell Telecommunications Facilities” has been determined to be a Type II action and will have no significant adverse effect on the environment, pursuant to 6 N.Y.C.R.R. Part 617.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Board of the Town of Sullivan hereby adopts the following:

**“TOWN OF SULLIVAN  
Design Standards and General Guidelines  
For Small Cell Wireless Telecommunication Facilities  
(Adopted February 19, 2020)**

These Standards and General Guidelines were adopted by the Town of Sullivan Town Board on February 19, 2020, pursuant to Chapter 210 of the Town of Sullivan Code, relating to the placement of small cell wireless facilities in the Town of Sullivan.

**A. General Design Guidelines**

1. Compliance. All Communications Facilities shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical

- Code, the Town of Sullivan Code, and any other applicable local, state, and federal rules and regulations.
2. Underground Utilities. All service lines to the proposed Communications Facility shall be underground if all other utilities in the immediate area are also underground.
  3. Power and Fiber Optic Supply.
    - a. Independent Power Source Required. Communications Facilities subject to a License Agreement may not use the same power source providing power for the existing facilities original to the purpose of the Support Structure, unless specifically authorized by the owner of the Support Structure and approved by the Town Engineer. An independent power source must be contained within a separate conduit on the existing Support Structure.
    - b. Providers shall coordinate, establish, maintain and pay for all power and communication connections with private utilities.
  4. Wiring, Cables and Conduit Requirements.
    - a. All wiring and cables must be housed and fully concealed within the steel or other metal Support Structure pole and extended vertically within a flexible conduit. In non-steel or solid Support Structures, all wiring and cables must be fully concealed and appropriately protected and covered with a material that matches the non-steel or solid Support Structure so as not to be visible from public view.
    - b. Above ground wires, cables, connections and conduits are prohibited, except as specified in this Design Guideline Manual based on the Support Structure.
    - c. Spools and/or coils of excess fiber optic or coaxial cables or any other wires shall not be stored on the Pole except completely within the approved enclosures or cabinets.
  5. Lighting. Lighting associated with Communications Facilities is prohibited, except when incorporated into new or existing approved decorative lighting poles and/or streetlights. Any internal lights associated with electronic equipment must be shielded from public view.
  6. Signage. Signage is prohibited on all Communications Facilities and Support Structures, including stickers, logos, and other non-essential graphics and information unless required by the FCC.
  7. Work Permits. All Providers must obtain a work permit from the Town for any activity described herein.
  8. Public Safety Communications. Small Wireless Facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by the occupants of nearby properties.
- B. Existing Support Structures
1. Collocation Encouraged. The collocation of Communications Facilities on existing Poles, Towers and Support Structures is strongly encouraged to minimize the extent of intrusion of redundant Support Structures within the Public ROW or on private property. An entity seeking to place facilities in the

Town shall demonstrate co-location is not commercially, structurally and/or practically feasible.

2. Structural Integrity of Existing Support Structures.

- a. The Town shall not authorize any attachments to Town-owned infrastructure, Pole, Tower or Support Structure that negatively impacts the structural integrity of said infrastructure, Pole, Tower or Support Structure.
- b. The Town may condition approval of the Collocation on replacement or modification of the Communications Facility at the Provider's cost if the Town determines that replacement or modification is necessary for compliance with the construction and/or safety standards of the Town. A replacement or modification of the Communications Facility shall conform to the applicable design guideline(s) and the Town's applicable specifications for the type of structure being replaced. The Town shall retain ownership of a replacement Support Structure.

3. Maximum Permitted Height. For an existing Communications Facility or support structure, the Antenna and any associated shroud or concealment material which are permitted to collocate at the top of the existing Support Structure shall not increase the height of the existing Support Structure by more than five feet (5') or a total of thirty-five feet (35') from grade.

4. Reserved Space. The Town may reserve space for future public safety or transportation uses in the Public ROW or on a Pole, Tower or Support Structure owned by the Town in accordance with an approved plan in place at the time an Application is filed.

- a. A reservation of space shall not preclude placement of a Pole or the Collocation of a Communications Facility.
- b. If replacement of the Town's Pole or Support Structure is necessary to accommodate the Collocation of the Communications Facility and the future use, the Provider shall pay for the replacement of the Pole or Support Structure and shall design and construct the replacement Pole or Support Structure in a manner that is able to accommodate the future use.

C. New Pole, Tower or Support Structures

1. Location.

a. Required Setbacks.

- (1) The centerline of a new Pole, Tower or Support Structure shall be installed in alignment with existing street trees and other poles along the same Public ROW whenever possible.
- (2) In no case shall a new Pole, Tower or Support Structure be located less than what is required in the License Agreement from any of the road-way/face of curb, sidewalk, or shared use path as measured to the nearest part of the Support Structure.
- (3) New Poles, Towers or Support Structures shall be located a minimum of six feet (6') from any permanent object, structure or existing lawful encroachment into the Public ROW, or as determined in the License Agreement.

- (4) Support Structures for Small Wireless Facilities located outside of the Public ROW shall be set back from the property line of the lot on which it is located a distance equal to not less than the total height of the facility, including the Support Structure, as measured from the highest point of such Support Structure to the finished grade elevation of the ground on which it is situated, plus 10% of such total height. The Planning Board may reduce such setback requirements based upon consideration of lot size, topographic conditions, adjoining land uses, landscaping, and other forms of screening and/or structural characteristics of the proposed Support Structure.
- b. Required Spacing. A minimum of three hundred linear feet (300 l.f.) between Poles, Towers, Support Structures or Communication Facilities is required. To the extent feasible, any new or replacement Pole, Tower or Support Structure constructed in the Public ROW shall be located at the property line between two (2) residentially zoned properties and not in the direct line of site from the front of a residential structure.
- c. Placement of Poles Between Property Lines. When feasible, all poles shall be installed as close to the adjoining property line as possible, unless not feasible, to curtail impacts on primary structures.
- 2. Maximum Permitted Height. For a new Poles, Towers and Support Structures in all districts, the overall height of the Pole, Tower and Support Structure and any collocated Antennas shall not be more than thirty-five (35') in height above established grade measured at the base of the Support Structure.
- 3. Design Requirements.
  - a. Shape and Dimensions. All new Poles, Towers or Support Structures shall be constructed of solid hot-dipped galvanized steel and shall be round with the Pole shaft tempered in diameter from the base to the top with a maximum of twelve inches (12") at the base.
  - b. Aesthetics. In appropriate locations and districts, decorative poles shall be utilized to complement the existing character of the applicable corridor of the Town.
  - c. Transformer Base. All new Poles, Towers or Support Structures shall include a one-piece cast aluminum alloy transformer base in a breakaway design, consistent with engineering standards subject to the Engineer for the Town's review and approval.
  - d. Foundation/Footer.
    - (1) All new Poles, Towers or Support Structures shall be supported with a reinforced concrete foundation or footer that is designed by a professional engineer, subject to the Engineer for the Town's review and approval.
    - (2) Anchor bolts must be constructed from steel (high strength) per ATSM A36, threaded (J-Type/L-Type), hot dip galvanized steel per ODOT CM Item No. 711.02, and in a strength and diameter recommended by a professional engineer, subject to the Engineer for the Town's review and approval.

- (3) All anchor bolts must be concealed from public view with an appropriate Pole boot or cover, powder coated to match the Pole, Tower or Support Structure.
    - e. Color. New Poles, Towers or Support Structures, including the breakaway transformer base, shall have a powder coated finish in dark earth tone colors such as dark green, dark brown, gray, or black, consistent with the color of other Poles, Towers or Support Structures in the immediate vicinity, unless other colors are approved by the Town. Decorative poles may be required when consistent within the proposed neighborhood's existing character.
  - 4. Multiple Requests. If multiple requests are received by the Town to install two (2) or more Poles, Towers or Support Structures that result in the violation of the applicable spacing requirements outlined herein, or to collocate two (2) or more Communications Facilities on the same Pole, Tower or Support Structure, the Town may resolve conflicting requests through whatever reasonable and nondiscriminatory manner it deems appropriate.
  - 5. Alternate Location. The Town reserves the right to propose an alternate location to any proposed location of a new Pole, Tower or Support Structure, that is within one hundred feet (100') of the proposed location or within a distance that is equivalent to the width of the Public ROW in or on which the new structure is proposed, whichever is greater, which the Provider shall use if it has the right to do so on reasonable terms and conditions and the alternate location does not impose technical limits or significant additional costs.
  - 6. Waiver.
    - a. A Provider may seek a waiver from the Planning Board of the undergrounding or alternative location requirements for the placement of a new Pole, Tower or Support Structure to support Communications Facilities if the Provider is unable to achieve its service objective using a Communications Facility under the following circumstances:
      - (1) From a location in the Public ROW where the prohibition does not apply;
      - (2) In a utility easement the Provider has the right to access; or
      - (3) In or on other suitable locations or structures made available by the Town subject to reasonable rates, fees, and terms.
    - b. The Town shall process waivers in a reasonable and nondiscriminatory manner that does not have the effect of prohibiting the provision of Wireless Services.
- D. Antenna
- 1. Location. All Antenna to be installed on new or existing Poles, Towers or Support Structures shall be mounted flush to the top of the Pole, Tower or Support Structure and aligned with the centerline of the Pole, Tower or Support Structure, unless otherwise agreed to by the Town based on the specific context and characteristics of the Communications Facility.
  - 2. Size. Each Antenna shall be located entirely within an enclosure of not more than three cubic feet (3 ft<sup>3</sup>) in volume or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an enclosure of not more than twelve cubic feet (12 ft<sup>3</sup>) in volume.

3. Design.
  - a. Shape. Antennas shall be cylindrical in shape or shall be located entirely within a cylindrical canister or shroud.
  - b. Color. Exposed Antennas and Antenna enclosures shall match the color specifications of the Pole, Tower or Support Structure, unless other colors are approved by the Town.
- E. Small Wireless Facilities Installed on Support Structures
  1. Size. Exclusive of the Antenna, all wireless equipment associated with the Communications Facility shall not cumulatively exceed twenty-eight cubic feet (28 ft<sup>3</sup>) in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.
  2. Equipment Enclosures. All Communications Facilities mounted to Poles, Towers or Support Structures or located on the ground shall be fully contained within enclosures or cabinets.
  3. Required Clear Height. All Communications Facilities mounted to a Pole, Tower or Support Structure shall provide a minimum of ten feet (10') of clear space on the Pole as measured from established grade to the lowest point of any facility/equipment cabinets or concealment apparatus mounted to the Pole, Tower or Support Structure.
  4. Maximum Horizontal Offset from Support Structure. Communications Facility equipment cabinets or enclosures shall not extend more than ten inches (10") beyond the Pole, Tower or Support Structure centerline in all directions.
  5. Design.
    - a. Cabinet or Enclosure Shape. Communications Facility equipment cabinets or enclosures shall be rectangular in shape, with the vertical dimensions being greater than the horizontal. Generally, the cabinet or enclosure shall be no wider than the maximum diameter of the Support Structure.
    - b. Installation. All Pole mounted equipment cabinets or enclosures must be installed as flush to the Pole as possible. Any installation brackets connecting the cabinets or enclosure to the Pole shall not extend more than two inches (2") from the Pole and shall include metal flaps (or wings) to fully conceal the gap between the cabinet and Pole.
    - c. Color. Cabinets or enclosures shall match the color specification of the Pole, Tower and/or Support Structure, unless other colors are approved by the Town.
- F. Ground Mounted Small Wireless Facilities
  1. Location.
    - a. Required Setbacks.
      - (1) In no case shall ground mounted Small Wireless Facilities be located no less than required in the License Agreement from the road-way/face of curb, sidewalk, or shared use path as measured to the nearest part of the cabinet or enclosure.
      - (2) Ground mounted Communications Facilities and associated required screening or shrouding shall be located a minimum of

six feet (6') from any permanent object or existing lawful encroachment into the Public ROW.

2. **Size.** All Communications Facility equipment shall not cumulatively exceed twenty-eight cubic feet (28 ft<sup>3</sup>) in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.
3. **Maximum Permitted Height.** The maximum height for ground mounted Communications Facilities shall not exceed two and one-half feet (2½') as measured from established grade at the base of the facility.
4. **Equipment Enclosures Required.** All ground mounted Communications Facilities shall be fully contained within enclosures or cabinets.
5. **Design Requirements.**
  - a. **Concealment.** Ground-mounted equipment shall incorporate concealment elements into the proposed design matching the materials of the Support Structure, unless other materials are approved by the Town. Concealment may include, but shall not be limited to, landscaping, strategic placement in less obtrusive locations. Landscaping concealing equipment enclosures shall be planted in such quantity and size such that 100% screening is achieved within two (2) years of installation. Landscaping shall be continuously maintained but shall not result in over-growth of the public right-of-way area and shall minimize its presence while achieving the goal of screening.
  - b. **Concrete Pad or Slab.** In accordance with state and local standards approved by the Code Enforcement Officer.
  - c. **Breakaway Design.** All objects placed within the Public ROW shall feature breakaway design.
  - d. **Color.** Ground mounted Communication Facility cabinets and enclosures shall have a powder coated finish in dark earth tone colors such as dark green, dark brown, gray, or black, unless other colors are approved by the Town.

G. **Construction and Safety Requirements**

1. Approval of the collocation, replacement or modification of a Pole, Tower or Support Structure is conditioned upon the Provider's assumption of costs if the Town determines such is necessary for compliance with its written construction or safety standards.
2. **Prevention of failures and accidents.** Any Provider who owns a Communications Facility sited in the Public ROW or upon Town-owned property shall at all times employ ordinary and reasonable care and shall install, maintain and use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
3. **Compliance with fire safety and FCC regulations.** Communications Facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the

- use of other property, public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
4. Wind and Ice. All Communications Facilities shall be designed to withstand the effects of wind gusts and ice to the standard designed by ANSI, as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/ EIA/ TIA-222, as amended).
  5. Surety bond or equivalent financial tool for cost of removal. All Providers shall procure and provide to the Town a renewable bond, or shall provide proof of an equivalent financial mechanism, which may include a funds set-aside and a letter of credit, to ensure compliance with all provisions of these Standards and Guidelines. The renewable bond or equivalent financial method shall cover the cost to remove unused or abandoned Small Wireless Facilities or damage to Town property caused by a Provider or its agent for each Communications Facility which the Provider installs in the Public ROW or upon Town-owned property.
- H. Indemnify and Hold Town Harmless. Any Provider who owns or operates a Communications Facility or a Pole, Tower or Support Structure in the Public ROW or upon Town-owned property shall, to the fullest extent permitted by law, indemnify, protect, defend, and hold the Town and its elected officials, officers, employees, agents, and volunteers harmless 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, product performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fee, consultants' fees and expert witness fees are included in those costs that are recoverable by the Town.
- I. Said Provider shall also hold the Town and/or its agent(s) harmless in the event any action by the Town and/or its agent(s) negligently or recklessly disrupts, destroys, and/or incapacitates the small cell facility or wireless support structure situated in the Public ROW or Town-owned property in accordance with these Design Guidelines and Standards.”; and it is further

**RESOLVED** that said “Town of Sullivan Design Standards and General Guidelines for Small Cell Wireless Telecommunication Facilities” may be amended from time-to-time by resolution of the Town Board.

The question of the adoption of the foregoing resolution was duly put to a vote and upon roll call, the vote was as follows:

<b>John E. Brzuszkiewicz</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Thomas J. Kopp Jr.</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Kerry Ranger</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Jeffrey Martin</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>John M. Becker</b>	<b>Supervisor</b>	<b>Voted</b>	<b>Yes</b>

The foregoing resolution was thereupon declared duly adopted.

**DATED: February 19, 2020**

**CERTIFICATE**

**STATE OF NEW YORK     )**  
**COUNTY OF MADISON    )**

I, the undersigned Deputy Town Clerk of the Town of Sullivan, Madison County, New York, **DO HEREBY CERTIFY:**

That I have compared the foregoing Resolution with the original thereof on file in the Office of the Town Clerk of the Town of Sullivan, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

**I FURTHER CERTIFY** that all members of said Board had due notice of said meeting and that, pursuant to Section 103 of the Public Officers Law, said meeting was open to the general public.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of said Town on February 19, 2020.

**ROSEMARY CZERNIAK, Deputy Town Clerk**

**PUBLIC HEARING: OMNI NAVITAS - USE VARIANCE REQUEST FROM MORATORIUM  
ON SOLAR FARMS (LOCAL LAW NO. 4-2019)**

A motion was made by Councilor Ranger and seconded by Councilor Martin to open the public hearing for a requested use variance on the Solar Farm Moratorium (Local Law No. 4-2019). The Board unanimously approved opening the public hearing.

Supervisor Becker asked the public if anyone attending is for or against the variance.

Attorney Langey explained, there is a proposal for a large solar farm made by Omni Navitas. A representative of the Company has attended past Town Board Meetings as well as Planning Board Meetings and has now applied for a use variance from the moratorium on

Solar Farms (Local Law No. 4-2019) to continue moving forward with the Planning Board. The Moratorium was put into place to allow the Town Board time to review laws on Solar Farms. No representative from Omni Navitas was in attendance for this Public Hearing or its approval for the variance.

Attorney Langey recommend not voting tonight and allowing time to listen to what the public has to say on this matter. It is unclear why Omni Navitas was not in attendance.

Supervisor Becker addressed the public and asked if anyone in attendance would like to speak for or against the requested variance.

Resident John Marko, Black Creek Road, stated that he is against the use variance. He questioned where animals will go and what will happen with stormwater. He expressed concerns for the environment.

Supervisor Becker explained that farms which are out of business or have extra land are looking to make agreements to rent or sell property which will be profitable. He agreed that the solar panels take up a large amount of land and do not absorb water, which is a concern. In Fenner, there is an application for a 1,400-acre solar farm, which is considered a power plant by NYS. There is a concern if Fenner installs these, the water will flow to the Town of Sullivan. He also noted that in Oswego, they are exploring installation of a 3,000-acre Solar Farm. He expressed that the Board is looking at all the pros and cons of Solar Farm installations in the Town of Sullivan.

An unnamed resident asked how much money could be made from Solar Panels being installed. Supervisor Becker explained that companies are usually enthusiastic, and they typically want a PILOT program. It was further explained that if companies would like to install Solar Farms, they would not be exempt from paying taxes, as the Town has opted out of the RPTL 487 Exemption. The resident agreed that businesses with Solar Farms should pay taxes.

Another unnamed resident asked where these would be installed. Attorney Langey stated that this particular project is intended to be located at 7677 Black Creek Road.

The unnamed resident stated that "this is Callahan's Farm, this would be right across the street from us".

Attorney Langey stated that this is to be a 5-Megawatt facility and is considered to be a large facility.

An unnamed resident noted their concern about the loss of farms and farmland. He expressed that farmers need land for their animals and solar farms would take away from these farmers. He also expressed concern about the impact Solar Farms would have on nearby land and nearby farms. He would like to understand the benefits of solar farms in the Town of Sullivan.

Supervisor Becker explained there are tax implications and all of the pros and cons need to be weighed against the impact of the land. Attorney Langey added that the Board also looks at the short term and long-term impacts of decisions like this. Supervisor Becker continued that there is a push from the State of NY to convert to Green Energy and there are directives from Gov. Cuomo to move forward with Green Energy options. Gov. Cuomo has a plan to make NY fossil fuel free by 2030.

An unnamed resident asked if the Board knew what the overall health impacts of Solar Farms for residents who live near these facilities would be.

Attorney Langey explained that if the use variance is approved, the Planning Board will evaluate the impacts of the proposed Solar Farm and noted that at previous Planning Board meetings, other residents had the same concern. He used examples of "what will the view be", "what will this do to my property value", etc. He continued to explain that the developer has responded that there will be no impact on health. If this goes back to the Planning Board additional review of questions and concerns will be evaluated and considered. It is unclear if there will be a second Public Hearing at the Planning Board level, if this goes back to the Planning Board, that will be something they will discuss.

An unnamed resident asked how much money has already been invested by Omni Navitas for this project. Attorney Langey stated that the appeal for a use variance is based around their alleged financial investments and he has questions for Omni Navitas regarding some of their financial notes on their appeal. He stated that Omni Navitas claim they have spent \$62,000 on engineering; however, there are no invoices or cancelled checks to support what was paid. He states they also claim to have paid for photo simulations (\$1,600) and while Attorney Langey has seen photo simulations, he has no idea what they cost. He continued that earlier in their appeal they stated that they had to invest \$10,100 CESIR Study payment to determine the interconnection to National Grid. However, there are no invoices or cancelled checks for this charge. It is unclear if this goes to National Grid or to NYS. They have continued to state that the interconnection cost associated with this project is \$806,000. The letter continues to say "by the mandate of the utility (National Grid), this sum must be paid in two installments; the first being 25% or \$201,000 by December 13, 2019". It is unclear if this first installment was paid. There is discussion of this date already passing. Attorney Langey continued to read that the balance of \$600,000 is due by May 29, 2020. The letter stated that this was not negotiable, and if the initial payment of 25% was not made by the scheduled date (December 13, 2019) the agreement would be forfeited. At this time, it is unclear if this initial payment was made. Attorney Langey is concerned that Omni Navitas is not present at the meeting to answer questions and this is unusual as up to this point, communications have been open. Therefore, the total amount invested in the project is unclear.

An unnamed resident asked if Omni Navitas is aware that there are no tax breaks. Attorney Langey responded that Omni Navitas is aware and they were present for the Board meeting in which the exemption opt out was discussed.

An unnamed resident asked when the Moratorium took effect. Attorney Langey responded that the Moratorium was put into place about a month ago and this was after they had applied

to the Planning Board and paid a small application fee. There was a brief discussion between Attorney Langey and the Town Board about how much has actually been paid by Omni Navitas to different departments and if Omni Navitas has potentially decided not to pursue their project.

Supervisor Becker added that Solar Panels were supposed to have a life span of 20 years; however, there needs to be a decommissioning plan in place as these are considered hazardous waste. The Town will need to consider that companies can change and there are a lot of loose ends at this stage of planning. Supervisor Becker continued that he has seen this happen with gas companies in southern parts of the County.

Fire Chief John Morgan added to the conversation that when companies go out of business, the property becomes overgrown and he asked what it would cost to clean up afterwards. Supervisor Becker added that the Town usually responsible for cleanup costs. Attorney Langey added that a similar agreement is being negotiated in Oneida County and the same concerns were brought up. Attorney Langey continued that the Solar Company is debating to not maintain areas on the opposite side of fencing of the solar panels.

Art Lelio, Waterbury Lane, asked if the Solar Company is putting up a Bond to ensure proper disposal and return of the land to its natural state. Attorney Langey responded that, yes that would be part of the decommissioning plan (agreement) between the Town and the Developer. Supervisor Becker asked "would it be enough?". Attorney Langey continued that it was beneficial to build language into the law that includes an inflation clause and a prevailing wage clause in the event that the Town needs to assume responsibility of clean up. Mr. Lelio stated he is against approving the variance as there are many unanswered questions.

The Board decided not to vote on this matter until they have had time to consider the available evidence and comments by the public.

A motion was made by Councilor Kopp to close the public hearing. This was seconded by Councilor Martin and was unanimously approved by the Board.

### **REGISTRATION AND POLLING LOCATIONS**

The Madison County Board of Elections sent a letter to the Town Board that there are no changes to Registration and Polling locations from previous years.

A motion was made by Councilor Martin, seconded by Councilor Brzuszkiewicz and unanimously approved by the board to accept the Registration and Polling locations.

### **BARTON AND LOGUIDICE: PINE RIDGE**

A proposal was submitted by Barton and Loguidice for the Pine Ridge Water District or the Whitelaw Water district. Barton and Loguidice is asking for \$16,000 to start on the project and establish district boundaries for the land to be considered. A motion was duly made by

Councilor Brzuszkiewicz, seconded by Councilor Martin, and unanimously approved by the board to accept the proposal.

### **BARTON AND LOGUIDICE: BRIDGEPORT SEWER PROJECT**

A proposal was submitted by Barton and Loguidice for the Bridgeport Sewer Project near Oneida Lake. There are an estimated 400 residents in this area and an interest survey has been conducted. Barton and Loguidice is requesting \$20,000 to further consider this project. A motion was duly made by Councilor Martin, seconded by Councilor Brzuszkiewicz, and unanimously approved by the board to accept the proposal.

### **HIGHWAY REQUEST FOR SPENDING: TREE AND SHRUB REMOVAL**

Highway Superintendent Busa submitted three (3) proposals for tree and shrub removal and requested that the Board review same. The Board would like additional time to research and discuss this topic.

### **LETTER FROM MIKE PATANE**

Mike Patane has submitted a letter to the Town Board stating Mr. Patane's position that his land in the Town of Lenox is to be used "by permission only" as a turn-around location for highway vehicles. A copy of this letter has been given to Highway Superintendent Busa for his review.

### **BUDGET MODIFICATIONS**

There were no budget modifications proposed or requested.

### **OTHER MATTERS DISCUSSED**

1. Art Lelio, Waterbury Lane, would like to know if there were results received from the internet survey
2. Supervisor Becker would like Highway Superintendent Busa to work with Madison County on a disaster plan and submit an inventory of items and equipment to the County.

### **EXECUTIVE SESSION**

A motion was duly made by Councilor Ranger, seconded by Councilor Kopp and unanimously approved by the Board to enter into executive session at 5:50 P.M. for purposes of receiving legal advice.

Supervisor Becker excused himself and left the meeting at 6:22 P.M.

A motion was duly made by Councilor Ranger, seconded by Councilor Martin and unanimously passed by the Board to close the executive session at 6:48 P.M.

### **ADJOURNMENT**

A motion was duly made by Councilor Martin seconded by Councilor Kopp and unanimously approved by the Board to adjourn the Town Board Meeting at 6:50 P.M.

Respectfully Submitted,  
Elaine Morgan, Secretary to the Supervisor