

**TOWN OF DRYDEN  
TOWN BOARD MEETING  
January 17, 2019**

Present: Supervisor Jason Leifer, CI Daniel Lamb, CI Linda Lavine,  
CI Kathrin Servoss

Absent: CI Alice Green

Elected Officials: Bambi L. Avery, Town Clerk  
Rick Young, Highway/DPW Superintendent

Other Town Staff: Ray Burger, Planning Director

Supv Leifer opened the meeting at 7:05 p.m. Board members and audience recited the pledge of allegiance.

**PUBLIC HEARING  
AMENDING THE TELECOMMUNICATIONS TOWER SITING  
LAW FOR THE TOWN OF DRYDEN**

Ray Burger explained that numerous parts of the current law are being amended in response to federal regulation that calls for a simplified, expedited procedure for approvals when there is colocations or simple equipment modifications on the tower. The local law is a redline document showing the various parts where there are language changes. A new application for a tower would still require the special use permit process.

**Joe Osmeloski**, 2180 Dryden Road, said he has reviewed the document and believes Ray did a good job. It looks like it lines up with the new regulations the Feds have put out. He asked the board to approve the new version.

**Dave Wickstrom**, 22 Goodband Road, said in 2011 the board said the tower outside his kitchen window would never change or have lights on it. If that still holds, he is fine with that. He recognizes this is an attempt to harmonize with the new Federal regulations. He wishes, because it is such a beautiful area, that the town would get in front of the lighting because the FAA permits the substitution of strobes for paint and he really doesn't want that. The common siting is fantastic, if in fact the tower owner/operator is a common carrier. It would be wonderful if there was a service level agreement and that agreement was consulted during the permit and renewal process.

R Burger said a SEQR document has been prepared and the County §239 review shows no negative inter-community or county-wide impact.

There were no further comments and the hearing was left open at 7:14 p.m.

**BROWN DOG LLC**

The board has received a request from Brown Dog, LLC asking for relief of penalties on their water/sewer bill. When VanGuard vacated the building Bolton Point was notified of a change of address that was not made, though the bill did catch up to them eventually. Total penalties assessed are \$1,065.84. After discussion the board passed the following resolution.

**RESOLUTION #33 – REMOVE PENALTIES FROM ACCT K4730**

RESOLVED, that this Town Board hereby directs that penalties assessed on water/sewer account K4730 in the amount of \$1,065.84 be removed.  
2<sup>nd</sup> Cl Lamb

Roll Call Vote	Cl Lavine	Yes
	Cl Servoss	No
	Cl Lamb	Yes
	Supv Leifer	Yes

Supv Leifer closed the public hearing on the telecommunications law amendment at 7:20 p.m. The board reviewed the SEQR form. It was noted that a change in lighting would be a modification to the tower and reviewed by the Planning Department. Equipment modifications would come under the new amendment and would not have to go through a special use permit amendment process at the town board level. R Burger doesn't expect a modification that is simply putting a light on a tower.

**RESOLUTION #34 (2019) - SEQR NEG DEC –Telecommunications Tower Siting Law (Local Law 2 of 2006) Amendments**

Supv Leifer offered the following resolution and asked for its adoption:

WHEREAS,

A. The proposed action involves amending the Town of Dryden Telecommunications Tower Siting Law to simplify the permitting process for modifying equipment or collocating equipment on existing towers that involves no increase in the height of the tower.

B. The Town Board of the Town of Dryden considers this an unlisted action pursuant to the New York State Environmental Quality Review Act ("SEQRA") and is the lead agency for the purposes of uncoordinated environmental review in connection with approval by the Town.

C. The Town Board of the Town of Dryden, in performing the lead agency function for its independent and uncoordinated environmental review in accordance with Article 8 of SEQRA, (i) thoroughly reviewed the Environmental Assessment Form ("EAF"), Parts I and 2, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, (ii) thoroughly analyzed the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR §617.7(c), and (iii) completed the EAF, Part 3;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Town Board of the Town of Dryden, based upon (i) its thorough review of the EAF, Parts 1 and 2, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, (ii) its thorough review of the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR §617.7(c), and (iii) its completion of the EAF, Part 3, including the findings noted thereon (which findings are incorporated herein as if set forth at length), hereby makes a negative determination of

environmental significance (“Negative Declaration”) in accordance with SEQR for the above referenced proposed action, and determines that an Environmental Impact Statement will not be required, and

2. The Responsible Officer of the Town Board of the Town of Dryden is hereby authorized and directed to complete and sign as required the determination of significance, confirming the foregoing Negative Declaration, which fully completed and signed EAF and determination of significance shall be incorporated by reference in this Resolution.

2<sup>nd</sup> Cl Servoss

Roll Call Vote	Cl Lavine	Yes
	Cl Servoss	Yes
	Cl Lamb	Yes
	Supv Leifer	Yes

**RESOLUTION #35 (2019) - Adopting Local Law No. 1 of 2019 to Amend the Town of Dryden Telecommunications Tower Siting Law –Local Law 2 of 2006 (“TTS”)**

Supv Leifer offered the following resolution and asked for its adoption:

WHEREAS, the Town has the authority to adopt the local law referred to above (hereafter “the Local Law”) pursuant to Article 9, §1 of the New York State Constitution and §10 of the New York State Municipal Home Rule Law; and

WHEREAS, the Town Board, after due deliberation, finds it in the best interest of the Town of Dryden to adopt said Local Law; and

WHEREAS, the Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C.A. Section 1455) calls for an expedited process for local review of equipment modifications and colocations on cell towers that do not increase the height of the tower; and

WHEREAS, the Town Board determined that the TTS should be amended to simplify the permitting process for modifying equipment or collocating equipment on existing towers that involves no increase in the height of the tower; and

WHEREAS, the Local Law was introduced at the Town Board meeting on January 2, 2019, and the Town Board of the Town of Dryden reviewed and discussed the Local Law and set a public hearing to be held by said Town Board on January 17, 2019 at 7:05 p.m. to hear all interested parties on the Local Law; and

WHEREAS, notice of said public hearing was duly advertised in the Ithaca Journal, and

WHEREAS, said public hearing was duly held on said date and time at the Town Hall of the Town of Dryden and all parties in attendance were permitted an opportunity to speak and comment on the Local Law, or any part thereof, and

WHEREAS, the adoption of the Local Law is an unlisted action pursuant to the New York State Environmental Quality Review Act (“SEQRA”) and its implementing regulations at 6 NYCRR Part 617, for which the Town Board of the Town of Dryden, acting as lead agency in an environmental review with respect to the adoption of this local law, made a negative determination of environmental significance on January 17, 2019, after having reviewed and

accepted as adequate a Short Environmental Assessment Form Parts 1, 2 and 3 prepared by the Town's Planning staff; and

Now, therefore, be it

RESOLVED, that the Town Board of the Town of Dryden hereby adopts said Local Law as Local Law No. 1 of 2019 entitled " Telecommunications Tower Siting Law," a copy of which is attached hereto and made a part hereof, and the Town Clerk is hereby directed to enter said Local Law in the minutes of this meeting and in the Local Law Book of the Town of Dryden, and to give timely notice of the adoption of said Local Law to the Secretary of State, as required by law.

2<sup>nd</sup> Cl Lamb

Roll Call Vote	Cl Lavine	Yes
	Cl Servoss	Yes
	Cl Lamb	Yes
	Supv Leifer	Yes

**TOWN CLERK**

**RESOLUTION #36 (2019) - APPROVE MINUTES**

Supv Leifer offered the following resolution and asked for its adoption:

RESOLVED, that this Town Board hereby approves the meeting minutes of December 13 and December 19, 2018.

2<sup>nd</sup> Cl Lamb

Roll Call Vote	Cl Lavine	Yes
	Cl Servoss	Yes
	Cl Lamb	Yes
	Supv Leifer	Yes

**BUDGET MODIFICATIONS/FINANCIAL**

Supv Leifer explained there is a need to authorize payments outside the Abstract for the Recreation Department for the DJ for the Father Dance for \$150.00 and the department's VISA bill for \$17.94.

**RESOLUTION #37 (2019) – AUTHORIZE PAYMENTS OUTSIDE THE ABSTRACT**

Supv Leifer offered the following resolution and asked for its adoption:

RESOLVED, that this Town Board hereby approves the following payments outside the abstract:

DJ Dale	\$150.00
VISA	17.94

2<sup>nd</sup> Cl Lamb

Roll Call Vote	Cl Lavine	Yes
	Cl Servoss	Yes
	Cl Lamb	Yes
	Supv Leifer	Yes

The Highway/DPW has asked for authorization to encumber \$14,050.73 from the 2018 budget for snow plow equipment for one of the new trucks.

**RESOLUTION #38 (2019) – ENCUMBER FUNDS**

Supv Leifer offered the following resolution and asked for its adoption:

RESOLVED, that this Town Board hereby authorizes the following encumbrance:  
The amount of \$14,050.73 from A1490.2 for the purchase of snow plow equipment for new trucks.  
2<sup>nd</sup> Cl Lamb

Roll Call Vote	Cl Lavine	Yes
	Cl Servoss	Yes
	Cl Lamb	Yes
	Supv Leifer	Yes

Supv Leifer explained that in order to make the first (of two) payments to Tompkins County for the Dodge Road bridge he proposed to use funds that were allocated for bond principal and interest for the Malloryville/Red Mill Road bridge rehab/replacement and some of the sales tax that was recently received. This payment was discussed and approved last week.

**RESOLUTION #39 (2019) – BUDGET MODIFICATION**

Supv Leifer offered the following resolution and asked for its adoption:

RESOLVED, that this Town Board hereby authorizes the following budget modification for the 2018 budget:

From		To		
DA9710.7	Bond Interest	DA5120.4	Bridges - Contractual	25,000.00
DA9710.6	Bond Principal	DA5120.4	Bridges - Contractual	25,000.00
To		To		
DA1120	Sales Tax	DA5120.4	Bridges - Contractual	6,710.50

2<sup>nd</sup> Cl Lamb

Roll Call Vote	Cl Lavine	Yes
	Cl Servoss	Yes
	Cl Lamb	Yes
	Supv Leifer	Yes

The Highway Superintendent has requested budget modifications to appropriate revenue from the county for snow and ice removal and from PaveNY and Winter Recovery.

**RESOLUTION #40 (2019) – BUDGET MODIFICATION**

Supv Leifer offered the following resolution and asked for its adoption:

RESOLVED, that this Town Board hereby authorizes the following budget modification for the 2019 and 2018 budgets:

2019	To		To	
	DA2302	Snow & Ice Revenue	DA5142.4	Winter 22,649.58

TO	To	
2018 DB3501 State Aid	DB5112.21 CHIPS	67,113.37
DB3501 State Aid	DB5112.21 CHIPS	57,171.67

2<sup>nd</sup> Cl Lamb

Roll Call Vote	Cl Lavine	Yes
	Cl Servoss	Yes
	Cl Lamb	Yes
	Supv Leifer	Yes

**RESOLUTION #41 (2019) – BUDGET MODIFICATION**

Supv Leifer offered the following resolution and asked for its adoption:

RESOLVED, that this Town Board hereby authorizes the following budget modification for the 2018 budget.

From	To	
A1490.4 Public Works-Contr.	A1490.1 Public Works-Personnel	7,000.00
A1490.4 Public Works-Contr.	A1490.111 Public Works-Benefit	5,000.00
A5020.4 Highway-Engineering	A1490.111 Public Works Benefit	4,500.00
A5020.4 Highway-Engineering	A1490.41 DPW fuel	2,000.00
DA5120.1 Bridges-Personnel	DA5130.1 Machinery-Personnel	9,000.00
DA5130.111 Machinery-Benefit	DA5130.1 Machinery-Personnel	8,000.00
DA5120.4 Bridges-Contractual	DA5130.1 Machinery-Personnel	23,000.00

2<sup>nd</sup> Cl Lamb

Roll Call Vote	Cl Lavine	Yes
	Cl Servoss	Yes
	Cl Lamb	Yes
	Supv Leifer	Yes

**RESOLUTION #42 (2019) – BUDGET MODIFICATION**

Supv Leifer offered the following resolution and asked for its adoption:

RESOLVED, that this Town Board hereby authorizes the following budget modification for the 2018 budget.

DA5120.110 Bridges-Personnel OT	DA5130.110 Machinery-Personnel OT	200.00
DA5142.1 Snow Removal-Personnel	DA5142.110 Snow Removal-Personnel OT	5,000.00
DA5140.1 Misc-Personnel	DA5142.110 Snow Removal-Personnel OT	3,000.00
DA5140.1 Misc-Personnel	DA5148.110 Serv/Other Govt-Pers OT	1,500.00
DB5112.1 Road Impr-Personnel	DB5110.1 Street Maint-Personnel	57,000.00
DB5112.1 Road Impr-Personnel	DB5110.111 Road Impr-Personnel-Benefit	1,000.00

2<sup>nd</sup> Cl Lamb

Roll Call Vote	Cl Lavine	Yes
	Cl Servoss	Yes
	Cl Lamb	Yes
	Supv Leifer	Yes

Supv Leifer announce town has received \$132,692.36 in November sales tax revenue. End of year balances are anticipated (not including encumbered monies) to be:

A Fund	\$477,000.00
B Fund	132,000.00
DA Fund	399,000.00
DB Fund	137,000.00

The board did not use any fund balance in crafting the 2019 budget. Aside from what was appropriated toward the Dodge Road bridge payment, he proposes putting \$50,000 in the B fund and the rest to the A fund. There was some discussion of putting some funds in the Recreation Reserve or other specific purposes. That will be discussed again later.

### **CITIZENS PRIVILEGE**

**Joe Osmeloski**, 2180 Dryden Road, said he is responding to something K Servoss said at the last meeting to the effect that she is sick and tired of people being NIMBYs. It seems to have a negative connotation, but you need to realize that people who have had their property a long time will do everything they can to protect it. Dodge Road, Turkey Hill Road, people in Varna, all are NIMBYs. When you change something radically you have to be prepared for people to come out and say they don't want change. It's just the way it is. He's proud to be a NIMBY. He has a problem with hypocritical NIMBYs, those who protect their place and advocate for it to happen some place else. Some people on our boards practice this. Those people should at least recuse themselves from decisions that affect them directly. It is an inherit conflict of interest and those people need to be careful.

**Sarah Osmeloski**, 2180 Dryden Road, said she is speaking on behalf of her parents at 1171 Ellis Hollow Road, Neil and Sally Norcross. They are feeling abused by what is happening with the solar construction on Dodge Road and Stevenson Road. She asked that the board enforce the conditions of the Special Use Permit. This company is doing construction at all hours of the day and night. The SUP says the hours are 7 am to 6 pm. On Tuesday, January 15 at 8:00 p.m. there was a big tractor trailer coming down Ellis Hollow Road that could not turn on to Dodge Road. He had to turn around on Ellis Hollow and back down Dodge Road. It is dangerous and disturbing the residents in the area. At approximately 9 pm that night there were 2 dump trucks gearing down and creating a lot of noise. It is one thing that the town has agreed to the solar installation against their wishes, but it's another thing when the peace of the residents is being disturbed. This is a residential area. People have to get up and go to work in the morning, and in the case of her parents, they are elderly and these sorts of things are very disturbing. The contractor has decided to ignore our 7 am to 6 pm restriction and are working during the evening and at night. Her parents have complained that they are woken at night by large truck traffic. The company wanted to put it in a residential area and now they need to accept the fact that it is a residential area and the rules and conditions of the SUP really do apply. They would also like to see the town request that the company clean up the mud and mess they've made on Dodge Road. This company has to be as respectable as the farmers are held to. She is requesting on behalf of her parents that this company be asked to clean up their act and follow the rules.

R Burger said his department has received two complaints and have contacted contractor. He encouraged the Osmeloskis to contact him directly with complaints in the future.

**Craig Schutt**, 69 Schutt Road, said he sat here through the public hearing on Lee Road last month. It was an embarrassment to think that the board let something get that out of hand. He doesn't live near Lee Road and it won't affect him one way or another, but he believes the people on Lee Road have a right to be listened to. They believed the SUP would protect

them and now suddenly learn that it can be changed. What does that say for any SUP? He doesn't like doing business that way. The residents worked hard to get this protection. Changing one word does make a difference. Who's to say another word or two can't be changed in a few years? This is setting a precedent. SUPs mean nothing if they can be changed that easily.

He agrees with Joe Osmeloski on when people should recuse themselves or step aside. They should not be voting on policy that affects a lot of people on an emotional level. If it's a personal emotional issue for someone, they should abstain or recuse themselves. People on the Conservation Board have abstained or recused themselves under those circumstances.

#### **HIGHWAY/DPW DEPARTMENT**

Highway Superintendent Rick Young said with the snow and ice it has been a significant winter so far. Equipment is repaired and ready to go for the next event. He found out today that we take care of the water main by the apple orchard when there was a break. It has been repaired. They have billed out to the County roughly \$42,000 for snow plowing this season.

#### **RECREATION DEPARTMENT**

Monthly report is on the website.

#### **PLANNING DEPARTMENT**

Monthly report has been distributed. Sixteen building permits were issued for the month and include the Turkey Hill/Stevenson Road solar project. That represents an investment of 16 million dollars in the town.

#### **COUNTY BRIEFING**

**Mike Lane** said each year the County Legislature reorganizes. Martha Robertson will serve as Chair again this year. Shawna Black is vice chair. They look forward to a good year. M Lane will chair the Budget and Personnel and Government Operations Committee. He will also serve on the Facilities and Infrastructure Committee.

Last night there was a public hearing at the Lansing town hall on the relocation of the DOT facility from the waterfront downtown to the airport area. Some folks in the Hillcrest Road area who are not pleased about it. They are trying to address issues with such things as a berm, large green space between the buildings and the property owners there. It was a well-conducted meeting. There will be about 10 trucks (dump trucks/snowplows) going in and out of that facility in total.

Airport construction is moving along well to lengthen and widen the existing building. They expect it will be done by the end of the year. They are also looking at the old jail and options for increasing office space.

**Martha Robertson** said there a couple of changes in the county's committees. Anna Kelles will chair a Housing & Economic Development Committee and Deborah Dawson will chair the Planning, Energy & Environmental Quality Committee. The Transportation Committee that Mike Lane chaired for three years has resulted in the County putting \$200,000 in the budget for a study of Route 13 from the Village of Dryden line to Warren Road. The Planning Department will organize a steering committee and hire a consultant after responses to the RFP are received. M Lane and D Dawson will be on the committee with stakeholders.

That study will proceed with a special focus on intersections where there have been recent accidents.

There has been a third flight added from Ithaca to Dulles. She recently used it when she travelled to DC to speak at a conference on science and the environment and how academics can talk to and work with public officials. She also visited seven congressional offices and two senator offices to lobby to establish relationships and bring the priorities of the NYS Association of Counties and to lobby for a grant they are seeking for work at the airport.

NYSAC will be looking in detail at the Governor's budget and how it affects counties. There is a proposal to make the tax cap permanent and it does not include mandate relief. There was a promise of mandate relief with the tax cap initially.

Supv Leifer noted that the AIM funds that towns receive has been reduced to zero. Cl Lamb added that 91% of the towns will lose their AIM funding.

## **ADVISORY BOARD UPDATES**

**Agriculture Advisory Committee** – they have just advertised the vacancy on that committee and they did not meet last week.

**Planning Board** – John Kiefer, Planning Board Chair, said the Planning Board's Building Energy Committee has been working on a general update to the Comprehensive Plan on climate change. The committee will eventually focus on building energy and greenhouse gas issues, but an update to the Comp Plan is needed first. The work is fairly general in nature and they have an outline together. He met with them to talk about next steps. The major next step is to put together a communication plan to begin getting feedback from the public, the board and other advisory boards. He asked whether the Town Board would like to take charge of that effort and/or see details before anything is implemented.

Cl Lamb said as long as the Town Board is in the loop on activities and kept updated that would be sufficient. This subcommittee is showing great initiative. The committee should come up with communication plan and run it by the Town Board.

The Building Energy Committee is focused on greenhouse gas emissions from all buildings. They recognize that the Comp Plan is silent on climate change and they need to fix that first. They also recognize that at some point the Town Board will authorize work on a new Comp Plan. They expect to update what we have in place and then begin working on the greenhouse gas emissions piece.

There will be an effort to post an agenda for this committee, make announcements and invite the public.

**Conservation Board** – Cl Lamb said they met informally in December.

**Recreation & Youth Commission** – New members have been appointed. There are still a few vacancies.

**Rail Trail Task Force** – Cl Lamb reported they had a meeting on December 17 and discussed the status of easements and applying for additional funding from the County's Parks & Trails initiative.

**Safety & Preparedness Committee** – Supv Leifer will be talking with DEC tomorrow about upgrades at the Borger Station. There will be a small group meeting on the 22<sup>nd</sup> at 6:00 pm at the Town Hall to discuss the upgrades to equipment with Dominion. It appears that all

emissions concerns are being addressed. Working with Dominion has produced pretty good results.

**NEW BUSINESS**

R Burger explained there was a recommendation from the Planning Board to amend Section 706 regarding the green development bonus specific to Varna. The amendment will change that section to keep with the current LEED protocol, not the 2009 protocol currently referenced in that section. The board set the public hearing for February 21 at 7:15 p.m.

There will be a public hearing on February 21 at 7:05 p.m. on the local law for the housing trust exemption.

**§284 Agreement** – R Young explained his proposed §284 agreement. After discussion, the board passed the following resolution and board members signed the agreement.

**RESOLUTION #43 (2019) – APPROVE §284 AGREEMENT**

Supv Leifer offered the following resolution and asked for its adoption:

RESOLVED, that this Town Board hereby approves the 2019 §284 Agreement.  
2<sup>nd</sup> Cl Servoss

Roll Call Vote	Cl Lavine	Yes
	Cl Servoss	Yes
	Cl Lamb	Yes
	Supv Leifer	Yes

On motion made, seconded and unanimously carried, at 8:21 p.m. the board moved into executive session to discuss current litigation, the employment history of a particular individual and labor contract negotiations. There was no action taken and the meeting was adjourned at 8:55 p.m.

Respectfully submitted,

Bambi L. Avery  
Town Clerk

## **LOCAL LAW \_\_\_\_ -2019**

### **A LOCAL LAW AMENDING THE TELECOMMUNICATIONS TOWER SITING LAW FOR THE TOWN DRYDEN, TOMPKINS COUNTY, NEW YORK (“TTS”).**

**Be it enacted by the Town Board of the Town of Dryden as follows:**

#### **LOCAL LAW SECTION 1. PURPOSE, LEGISLATIVE INTENT AND HISTORY.**

The Telecommunications Tower Siting Law (TTS) was first enacted by Local Law 2-2006 and amended by Local Law 1-2010. The Town is now amending TTS in response to federal legislation calling for an expedited process for local review of equipment modifications and colocations on cell towers that do not increase the height of the tower. The proposed changes simplify the permitting process for modifying equipment or collocating equipment on existing towers that involves no increase in the height of the tower. The Town is also making some additional revisions to simplify the process.

Except for the provisions of TTS specifically amended by this Local Law, the rest of the Town’s TTS remains in full force and effect.

#### **LOCAL LAW SECTION 2.**

The TTS is amended as follows<sup>1</sup>:

##### **Section 1. Purpose and Legislative Intent.**

The Telecommunications Act of 1996 affirmed the Town of Dryden’s authority concerning the placement, construction and modification of telecommunications towers. The Town Board of the Town of Dryden finds that telecommunications towers and related facilities may pose a unique hazard to the health, safety, public welfare and environment of the Town of Dryden and its inhabitants. In order to insure that the placement, construction or modification of telecommunications towers and related facilities is consistent with the Town’s land use policies, the Town is adopting a single, comprehensive telecommunications tower application and permit process. The intent of this law is to minimize the negative impact of the telecommunications towers, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of Town of Dryden and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its inhabitants.

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<sup>1</sup> Text that is being removed appears in ~~strike through~~. Text that is being added is underlined.

## Section 2. Title.

This Law may be known and cited as the Telecommunications Tower Siting Law for the Town of Dryden (or “TTS”).

## Section 3. Severability.

- A. If any word, phrase, sentence, part, Section, Subsection, or other portion of this Law or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, Section, Subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Law, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- B. Any special use permit issued under this law shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon election by the Town Board.

## Section 4. Definitions.

For purposes of this Law, and where not inconsistent with the context of a particular Section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural include words in the singular and words in the singular include the plural. The word “shall” is always mandatory, and not merely directory.

- A. **“Accessory Facility or Structure”** means an accessory facility or structure serving or being used in conjunction with a Telecommunications Tower, and located on the same property or lot as the Tower, including but not limited to utility or transmission equipment buildings or shelters, equipment cabinets, equipment platforms, or storage sheds.
- B. **“Applicant”** means and shall include any individual, partnership, limited liability company, corporation, estate, trust, or other entity or the equivalent of any of the foregoing submitting an Application to the Town of Dryden for a Special Use Permit for a Telecommunications Tower.
- C. **“Application”** means the form approved by the Board, together with all required and other documentation that an Applicant submits in order to receive a Special Use Permit for a Telecommunications Tower.
- D. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to radio, television, cellular, paging, personal Telecommunications services (PCS), and microwave Telecommunications.
- E. **“Board”** means the Town Board of the Town of Dryden, which is the officially designated body of the Town to whom applications for a Special Use Permit for a Telecommunications Tower must be made. The Board is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, ~~recertifying or not recertifying,~~ or revoking special use permits for Telecommunications Towers. The Board may at its discretion delegate or designate other boards of the Town to accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting, ~~recertifying or not recertifying~~ or revoking special use permits for Telecommunications Towers.

- F. **“Break point”** means the location on a Telecommunications Tower at which the initial failure of a structural element is expected to eventually occur as the wind loading increases beyond the design value, as a means of controlling the mechanism of collapse and minimizing the size of the collapse zone and any potential damage to the surrounding area.
- G. **“Camouflaged Tower”** means any Tower or supporting structure that, due to design, location, or appearance, partially or completely hides, obscures, conceals, or otherwise disguises the presence of the Tower and one or more Antennas or Antenna arrays affixed thereto.
- H. **“Collapse zone”** means the area in which any portion of a Telecommunications Tower could or would fall, collapse or plunge to the ground or into a river or other body of water. The collapse zone shall be no less than the lateral equivalent of the distance from the Break point to the top of the structure plus ten feet, such being not less than one-half (1/2) the height of the structure.
- I. **“Co-location”** means the use of the same telecommunications tower or structure to carry two or more antennae for the provision of wireless services by two or more persons or entities.
- J. **“Commercial Impracticability”** or **“Commercially Impracticable”** shall have the meaning in this Law and in Special Use Permits granted hereunder as defined and applied under Uniform Commercial Code §2-615.
- K. **“Complete Application”** means an Application that contains all information and/or data necessary to enable the Board or Zoning Officer to evaluate the merits of the Application, and to make an informed decision with respect to the effect and impact of the Telecommunications Tower on the Town in the context of the permitted land use for the particular location requested.
- L. **“County”** means Tompkins County, New York.
- M. **“Direct-to home satellite services”** or **“Direct Broadcast Service”** or **“DBS”** means only programming transmitted or broadcast by satellite directly to subscribers’ premises without the use of ground receiving equipment, except at the subscribers’ premises or in the uplink process to the satellite.
- N. **“EAF”** means the Full Environmental Assessment Form approved by the New York Department of Environmental Conservation (Appendix A to 6 NYCRR §617.20) ~~and includes a visual EAF Addendum (Appendix B).~~ For an application for co-location, a short EAF (Appendix C to NYCRR §617.20) ~~including a visual EAF~~ may be substituted for the Full Environmental Assessment Form.
- O. **“EPA”** means in the case of the State of New York, the Department of Environmental Conservation, and in the case of the United States, the Environmental Protection Agency or any successor agency.
- P. **“FAA”** means the Federal Aviation Administration, or a duly designated and authorized successor agency.
- Q. **“FCC”** means the Federal Communications Commission, or a duly designated and authorized successor agency.

- R. **“Free standing Tower”** means a Tower that is not supported by guy wires and ground anchors or other means of attached or external support.
- S. **“Height of Antenna”** means, when referring to a Tower or structure, the vertical distance from the highest adjacent finished grade to the top of the highest antenna mounted on, or proposed to be mounted on the Tower or structure.
- T. **“Height of Tower or Structure”** means, when referring to an existing Tower or structure, the vertical distance from the highest adjacent finished grade to the top of the Tower or structure. When referring to a proposed Tower or structure, it means the vertical distance from the preexisting grade level to the highest point of the proposed Tower or structure.
- U. **“NIER”** means Non-Ionizing Electromagnetic Radiation.
- V. **“Person”** means any individual, partnership, limited liability company, corporation, estate, trust, or other entity or the equivalent of any of the foregoing.
- W. **“Personal Wireless Facility”** - See definition for ‘Telecommunications Tower’.
- X. **“Personal Wireless Services”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PCS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
- Y. **“Site”** See definition for Telecommunications Tower.
- Z. **“Special Use Permit”** means the official document or permit by which an Applicant is allowed to construct and use a Telecommunications Tower as granted, authorized or issued by the Town.
- AA. **“State”** means the State of New York.

BB. **“Telecommunications”** means the transmission and reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

CC. **“Telecommunications Permit”** means the official document or permit by which an Applicant is allowed to add or modify equipment on a Telecommunications Tower as granted, authorized or issued by the Town.

~~BB-DD.~~ **“Telecommunications Tower”** or **“Tower”** or **“Site”** or **“Personal Wireless Facility”** means a structure or location designed, or intended to be used, or used to support Antennas. It includes Free standing Towers, guyed Towers, monopoles, and similar structures, as well as any Camouflaged Tower, including but not limited to a church steeple, silo, water tower, flagpole, sign or other structure intended to mitigate the visual impact of an Antenna. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, dispatch, PCS, microwave, broadband, or other commercial Telecommunications.

~~EEED.~~ **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Telecommunications Tower’.

~~EEFF.~~ **“Temporary”** means in relation to all aspects and components of this Law, something intended to, or that does, exist for fewer than ninety (90) days.

FFGG. “Town” means the Town of Dryden, New York.

HH. “Zoning Officer” means the Zoning Officer as appointed by the Town.

## **Section 5. Overall Policy and Desired Goals for Special Use Permits for Telecommunications Towers.**

In order to ensure that the placement, construction, and modification of Telecommunications Towers conforms to the Town’s purpose and intent of this Law, the Board creates a Special Use Permit for a Telecommunications Tower. As such, the Board adopts an overall policy with respect to a Special Use Permit for a Telecommunications Tower for the express purpose of achieving the following goals:

- 1) Implementing an Application process for person(s) seeking a Special Use Permit for a Telecommunications Tower;
- 2) Establishing a policy for examining an application for and issuing a Special Use Permit for a Telecommunications Tower that is both fair and consistent;
- 3) Establishing reasonable time frames for granting or not granting a Special Use Permit for a Telecommunications Tower, or re-certifying or not re-certifying, or amending or revoking the Special Use Permit granted under this Law.
- 4) Promoting and encouraging, wherever possible, the sharing and/or co-location of a Telecommunications Tower among service providers;
- 5) Promoting and encouraging, wherever possible, the placement of a Telecommunications Tower in such a manner as to cause minimal disruption to aesthetic considerations of the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such a Telecommunications Tower.
- 6) Promoting and encouraging the development and deployment of newer and better technology to provide improved Telecommunications services to the residents and businesses within the Town.

## **Section 6. Special Use Permit Application and Other Requirements**

- A. All Applicants for a Special Use Permit for a Telecommunications Tower shall comply with the requirements set forth in this Law.
- B. (1) An Application for a Special Use Permit for a Telecommunications Tower shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.
  - (2) The landowner, if different than the Applicant, shall also sign the Application.
  - (3) At the discretion of the Board, any false or misleading statement in the Application may subject the Applicant to denial of the Application without further consideration or opportunity for correction.
  - (4) At the discretion of the Board, any information contained in the Application that is discovered to be false after issuance of a Special Use Permit may subject the Applicant to revocation of such Special Use Permit.
- C. Applications not meeting the requirements herein or which are otherwise incomplete, may be rejected by the Board.
- D. The Application shall include a statement in writing:

- 1) that the applicant's proposed Telecommunications Tower will be maintained in a safe manner, in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the Board in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and United States laws, rules, and regulations;
  - 2) that the construction of the Telecommunications Tower is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
- E. All applications for the construction or installation of a new Telecommunications Tower shall be accompanied by a report containing the information herein required. The report shall be signed by a licensed professional engineer registered in the State. Where this Section calls for certification, such certification shall be by a qualified New York State licensed Professional Engineer acceptable to the Town, unless otherwise noted.
- F. No Telecommunications Tower shall be installed or constructed until a site plan required under this law is reviewed and approved by the Board. The site plan Application shall include, in addition to the other requirements for the Special Use Permit, the following additional information:
- 1) Name and address of person preparing the report;
  - 2) Name and address of the property owner, operator, and Applicant, to include the legal form of the Applicant;
  - 3) Postal address and tax map parcel number of the property;
  - 4) Zoning District or designation in which the property is situated;
  - 5) Size of the property stated both in square feet and lot line dimensions, and a diagram to scale showing the location of all lot lines;
  - 6) Location of nearest residential structure;
  - 7) Location of nearest habitable structure;
  - 8) Location of all structures on the property which is the subject of the Application;
  - 9) Location, size and height of all proposed and existing antennae and all appurtenant structures;
  - 10) Type, size and location of all proposed and existing landscaping;
  - 11) The type and design of the Telecommunications Tower, and the number, type, and size of the Antenna(s) proposed, and the basis for the calculations of the Telecommunications Tower's capacity to accommodate multiple users;
  - 12) The make, model and manufacturer of the Tower and Antenna(s);
  - 13) A description of the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
  - 14) The frequency, modulation and class of service of radio or other transmitting equipment;
  - 15) Transmission and maximum effective radiated power of the Antenna(s);
  - 16) Direction of maximum lobes and associated radiation pattern of the Antenna(s);
  - 17) Applicant's proposed Tower maintenance and inspection procedures and related system of records;
  - 18) Documentation that NIER levels at the proposed site are within the threshold levels adopted by the FCC;

- 19) A stipulation that if the proposed Antenna(s) cause interference with existing telecommunications devices, the Antenna(s) will be deactivated until such interference can be eliminated by the Applicant.
  - 20) A copy of the FCC license for the use of the Telecommunications Tower;
  - 21) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed Telecommunications Tower on the proposed site, (the certifying engineer need not be approved by the Town);
  - 22) Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites.
  - 23) Applicant shall disclose in writing any agreement in existence prior to submission of the Application that would limit or preclude the ability of the Applicant to share any new Telecommunications Tower that it constructs.
- G. In the case of a new Telecommunications Tower, the Applicant shall be required to submit a report demonstrating its efforts to obtain shared use of existing Telecommunications Tower(s). Copies of written requests and responses for shared use shall be provided to the Board.
- H. Certification that the Telecommunications Tower and attachments are both designed and constructed (“As Built”) to meet all County, State and United States structural requirements for loads, including wind and ice loads;
- I. Documentation that the Telecommunications Tower is designed with a break point that, in the event the design wind loading is exceeded, will result in the Tower falling or collapsing within the boundaries of the property on which the Tower is placed;
- J. After construction and prior to receiving a Certificate of Compliance, certification that the Telecommunications Tower and related facilities have been installed with appropriate surge protectors, and have been grounded and bonded so as to protect persons and property from lightning strikes.
- K. The Applicant shall submit a completed Full EAF ~~and a Visual EAF Addendum~~. The Board may require submission of a more detailed visual analysis based on the results of the ~~Visual Full EAF Addendum~~. Applicants are encouraged to have pre-application conferences with the Town to address the scope of the required visual assessment.
- L. A Visual Impact Assessment which shall at the Board’s request include:
- 1) A “Zone of Visibility Map” which shall be provided in order to determine locations from which the Tower may be seen.
  - 2) Pictorial representations of “before and after” views from key viewpoints both inside and outside of the Town, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors or travelers. If requested by the Applicant, the Town, acting in consultation with its consultants or experts, will provide guidance concerning the appropriate key sites at a preapplication conference.

- 3) An assessment of the visual impact of the Tower base, guy wires and accessory buildings from abutting and adjacent properties and streets.
- M. Any and all representations made to the Board, on the record, during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the Board.
- N. The Applicant shall, in a manner approved by the Board, provide vegetative or other approved screening around the base of the Telecommunications Tower and all accessory facilities and structures, to minimize its visibility from adjacent property.
- O. All utilities leading to and away from any Telecommunications Tower site shall be installed underground and in compliance with all laws, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate. The Board may waive or vary the requirements of underground installation of utilities whenever, in the opinion of the Board, such variance or waiver shall not be detrimental to the health, safety, general welfare or environment, including the visual and scenic characteristics of the area.
- P. All Telecommunications Towers and accessory facilities shall be sited so as to have the least practical adverse visual effect on the environment and its character, and the residences in the area of the Telecommunications Tower site.
- Q. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
- R. An access road and parking will be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation-cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- S. The Board intends to be the lead agency, pursuant to SEQRA. The Board shall conduct an integrated, comprehensive, coordinated environmental review of the proposed project in combination with its review of the Application under this Law.
- T. The Applicant shall submit no fewer than ~~eight-two (28)~~ copies of the entire Complete Application to the Town Board, an electronic copy and one (1) copy to the County Planning Board. For a proposed facility on property which abuts the Town boundary, a copy shall be submitted to the legislative body of the immediately adjacent municipality.
- U. The Applicant shall examine the feasibility of designing a proposed Telecommunications Tower to accommodate future demand for at least two (2) additional commercial applications, e.g. future co-locations. The scope of this examination shall be determined by the Board. The Tower shall be structurally designed to accommodate at least two (2) additional arrays of Antennas which are equal to or greater in both size and quantity that the installation proposed by the Applicant. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Telecommunications Tower is not technologically feasible, commercially impracticable or creates an unnecessary and unreasonable burden, based upon:

- 1) The number of FCC licenses foreseeably available for the area;

- 2) The kind of Telecommunications Tower site and structure proposed;
  - 3) The number of existing and potential licenses without Telecommunications Tower spaces/sites;
  - 4) Available space on existing and approved Telecommunications Towers;
- V. The Applicant shall provide physical space, structural capacity, and utility connections necessary for Town-owned Antennas and equipment, as directed by the Board.

## **Section 7. Location of Telecommunications Towers.**

- A. (1) Applicants for Telecommunications Towers shall locate, site and erect said Towers in accordance with the following priorities, (a) being the highest priority and (e) being the lowest priority.
- (a) On existing Telecommunications Towers or other tall structures;
  - (b) Co-location on a site with existing Telecommunications Towers or structures;
  - (c) On Town-owned property in non-residentially zoned areas of the Town;
  - (d) In other non-residentially zoned areas of the Town;
  - (e) On other property in the Town.
- (2) If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception 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 site.
- (3) An Applicant may not by-pass sites of higher priority by stating the site presented is the only site leased or selected. The Application shall address co-location as an option and if such option is not proposed, the applicant must demonstrate why colocation is Commercially, or otherwise, Impracticable. Agreements between providers limiting or prohibiting co-location, shall not be a valid basis for any claim of Commercial Impracticability or hardship.
- (4) Notwithstanding the above, the Board may approve any site located within an area in the above list of priorities, provided that the Board finds that the proposed site is in the best interests of the health, safety and welfare of the Town and its inhabitants.
- B. The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection.
- C. The Applicant shall, in writing, identify and disclose the number and locations of any additional sites that the Applicant has, is, or will be considering, reviewing or planning for Telecommunications Towers in the Town, and in all municipalities adjoining the Town, for a two year period next following the date of the Application.
- D. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Board may reject an Application for any of the following reasons:
- 1) Conflict with safety and safety-related codes and requirements;

- 2) Conflict with traffic needs or traffic laws, or definite plans for changes in traffic flow or traffic laws;
- 3) Conflict with the historic nature of a neighborhood or historical district;
- 4) The use or construction would be contrary to an already stated purpose of a specific zoning or land use designation; or
- 5) The placement and location would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers.
- 6) Conflicts with the provisions of this Law.

## **Section 8. Shared use of Telecommunications Tower(s).**

- A. Shared use of existing Telecommunications Towers shall be preferred by the Town, as opposed to the proposed construction of new Telecommunications Towers. Where such shared use is unavailable, location of Antennas on other pre-existing structures shall be considered and preferred. The Applicant shall submit a comprehensive report inventorying existing towers and other appropriate structures within four (4) miles of any proposed new tower site, unless the Applicant can show that some other distance is more reasonable, and outlining opportunities for shared use of existing facilities and the use of other pre-existing structures as a preferred alternative to new construction.
- B. An Applicant intending to share use of an existing Telecommunications Tower or other pre-existing structure shall be required to document the intent of the existing owner to share use.
- C. In the event of an Application to share the use of an existing Telecommunications Tower that does not increase the height of the Telecommunications Tower, ~~the Board may waive such requirements of this Local Law as may be for good cause shown. The Applicant is encouraged to seek a pre-Application conference with the Board to review such a proposed Application and settle the issue of waivers of such provisions which will help to expedite review and the issuance of a permit for such Applications. The purpose of waivers shall be to expedite for the Applicant and the Town the review and issuance of a permit for the shared use of an existing Telecommunications Tower. — or otherwise substantially change the physical dimensions of such tower, the Zoning Officer shall review the application. If the Zoning Officer determines that the shared use is in compliance with the Special Use Permit and all applicable codes, laws and rules then a Telecommunications Permit will be issued for this additional equipment.~~

## **Section 9. Height of a Telecommunications Tower**

- A. The Applicant must submit documentation justifying to the Board the total height of any Telecommunications Tower and/or Antenna and the basis therefor. Such justification shall be to provide service within the Town, to the extent practicable, unless good cause is shown.
- B. Telecommunications Towers shall be no higher than the minimum height necessary. Unless waived by the Board upon good cause shown, the presumed maximum height of the Tower shall be one hundred-forty (140) feet, based on three (3) co-located antenna arrays and ambient tree height of eighty (80) feet.
- C. Telecommunications Tower less than one hundred twenty (120) feet in height shall be designed to accommodate a future vertical extension of at least twenty (20) feet, to support the potential co-location of additional antennas for another entity.

## **Section 10. Visibility of a Telecommunications Tower**

- A. Telecommunications Towers shall not be artificially lighted or marked, except as required by law, or as specifically approved by the Board.
- B. Telecommunications Towers shall be of a galvanized finish, or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Board, and shall be maintained in accordance with the requirements of this Law.
- C. In the case of applications to co-locate on existing Telecommunications Towers, if lighting is required, Applicant shall provide a detailed plan for lighting which will be as unobtrusive and inoffensive as is permissible under state and United States regulations, together with an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within fifteen-hundred (1,500) feet of all property lines of the parcel on which the Telecommunications Tower is located.

## **Section 11. Security of Telecommunications Towers**

All Telecommunications Towers and Antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. Specifically:

- 1) All Antennas, Towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; and
- 2) Transmitters and Telecommunications control points must be installed such that they are readily accessible only to persons authorized to operate or service them.

## **Section 12. Signage**

Telecommunications Towers shall contain a sign no larger than four (4) square feet to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point of the site. Telecommunications Towers shall also contain a sign displaying the FCC registration number of the Tower as required by law. No other signage, including advertising shall be permitted on any Telecommunications Tower or Antenna, unless otherwise required by law.

## **Section 13. Lot Size and Setbacks**

- A. Telecommunications Towers and Accessory Facilities or Structures shall be set back from any property line a distance sufficient to preserve the privacy and sanctity of any adjoining parcels.
- B. Telecommunications Towers shall be located with a minimum setback from any property line a distance equal to one half (½) the height of the Tower or the existing setback requirement of the zoning district, whichever is greater. Further, any Accessory structure shall be located so as to comply with the minimum setback requirements for the zoning district in which it is situated.

## **Section 14. Retention of Expert Assistance and Reimbursement by Applicant**

- A. The ~~Board-Town~~ may hire any consultant and/or expert necessary to assist the ~~Board-Town~~ in reviewing and evaluating the Application and any requests for recertification.
- B. An Applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the ~~Board-Town~~ in connection with the review of any Application. The initial deposit shall be \$7,500.00. These funds shall accompany the filing of an Application and the Town will maintain an account for all such funds. The Town's consultants/experts shall bill or invoice the Town no less frequently than monthly for its services in reviewing the Application and performing its duties. If at any time during the review process this account is depleted, additional funds must be deposited with the Town before any further action or consideration is taken on the Application. If at the conclusion of the review process the cost of such consultant/expert services is more than the amount deposited pursuant hereto, the Applicant shall pay the difference to the Town prior to the issuance of any Special Use Permit. In the event that the amount held by the Town is more than the amount paid to the Town's consultants and experts, the difference shall be promptly refunded to the Applicant.

## **Section 15. Applicability of Special Use Permit to Telecommunications Towers.**

- A. No person shall be permitted to site, place, build, construct or modify, or prepare any site for the placement or use of, a Telecommunications Tower after the effective date of this Law without having first obtained a Special Use Permit for a Telecommunications Tower. Notwithstanding anything to the contrary in this Section, no Special Use Permit shall be required for the following:
  - 1) A Tower used or proposed to be used solely and exclusively for public safety and emergency services, including police, fire, ambulance, and rescue.
  - 2) A Tower used or proposed to be used solely and exclusively for such other municipal services as Highway Department vehicles or public school transportation vehicles.
  - 3) A Tower used or proposed to be used solely and exclusively for private reception of radio and television broadcast services, Direct-to-home satellite services, Citizen's Band, Amateur (Ham) radio, and other similar private, residential communications systems serving users on an individual property.
  - 4) A Tower proposed to be located on the property of a governmental agency, which facility has been found not to be subject to the jurisdiction of the Town, or for which a resolution has been adopted by the Town Board to waive the Special Use Permit.

Co-location of a commercial Antenna on any of the above Towers shall require issuance of a Special Use Permit.

- B. New construction on any existing Telecommunications Tower shall comply with the requirements of this Law.

## **Section 16. Public Hearing Required**

- A. Prior to the approval of any Application for a Special Use Permit for a Telecommunications Tower, a public hearing shall be held by the Town Board, notice of which shall be published in the official newspaper of the Town no less than two weeks prior to the scheduled date of the public hearing. The Applicant, at least three (3) weeks prior to the date of the public

hearing, shall provide to the Town the names and address of all landowners whose property is located within fifteen hundred (1500) feet of any property line of the parcel on which the proposed Telecommunications Tower is to be located. The Town Code Enforcement Officer shall mail to all such landowners notice of such public hearing. Such mailing shall be by first class mail at least two (2) weeks prior to such hearing.

- B. The Board shall schedule the public hearing referred to in Subsection (A) of this Section once it finds the Application is complete. The Board, at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary.

### **Section 17. Action on an Application for a Special Use Permit for a Telecommunications Tower.**

- A. The Board will undertake a review of an Application pursuant to this law in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
- B. The Board may refer any Application or part thereof to the Planning Board or any advisory committee for their recommendation.
- C. Except for necessary building permits, and subsequent Certificates of Compliance, no additional permits or approvals from the Town, e.g. special permit, site plan approval or zoning approvals under the Town of Dryden Zoning Ordinance, shall be required for Telecommunications Towers or facilities covered by this Law.
- D. After the public hearing and after formally considering the Application, the Board may approve and issue, or deny a Special Use Permit. Its decision shall be in writing and shall be based on substantial evidence upon a record. The burden of proof for the grant of the permit shall always be upon the Applicant.
- E. If the Board approves the Special Use Permit for a Telecommunications Tower, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the Board's action, and the Special Use Permit shall be issued within thirty (30) days after such approval.
- F. If the Board denies the Special Use Permit for a Telecommunications Tower, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the Board's action.
- G. The Town's decision on an Application for a Special Use Permit for a Telecommunications Tower shall be supported by substantial evidence contained in the written record.

### **Section 18. Re-certification and Amendment of a Special Use Permit for a Telecommunications Tower.**

- A. At any time between twelve (12) months and six (6) months prior to the first five (5) year anniversary date after the effective date of the permit and all subsequent fifth anniversaries of the original Special Use Permit for a Telecommunications Tower, the holder of a Special

Use Permit for such Tower shall submit a written request for recertification. In the written request for re-certification, the holder of such Special Use Permit shall provide the following:

- 1) The name of the holder of the Special Use Permit for the Telecommunications Tower.
- 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 Telecommunications Tower has been moved, re-located, rebuilt, repaired, or otherwise modified since the issuance of the Special Use Permit;
- 5) If the Telecommunications Tower has been moved, re-located, rebuilt, repaired, or otherwise modified, then whether the Board-Town approved such action, and under what terms and conditions, and whether those terms and conditions were complied with and abided by;
- 6) Any requests for waivers or relief of any kind whatsoever from the requirements of this Law and any requirements for a Special Use Permit;
- 7) That the Telecommunications Tower is in compliance with the Special Use Permit and compliance with all applicable codes, laws, rules and regulations;
- 7)8) A copy of the documentation of NIER levels for the site, and
- 8)9) A copy of the inspection and maintenance records for the Tower.

B. If, after such review, the Board-Zoning Officer determines that the Telecommunications Tower is in compliance with the Special Use Permit and all applicable codes, laws and rules, then the Board-Zoning Officer shall ~~issue a recertification~~recertify the Special Use Permit for the Telecommunications Tower, which may include new provisions or conditions that are mutually agreed upon, or required by codes, law or regulation.

C. If the Board-Zoning Officer does not complete its review, as required by Subsection (B) above, prior to the anniversary date of the Special Use Permit, then the ~~Applicant shall receive an extension of the Special Use Permit~~permit shall automatically be deemed extended for six (6) months, in order for the Board-Zoning Officer to complete its review.

D. If the holder of a Special Use Permit for a Telecommunications Tower does not submit a request for recertification of such Special Use Permit within the times required by Subsection A above, then such Special Use Permit and any authorization thereof shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit, or subsequent fifth anniversaries, unless the holder of the Special Use Permit adequately demonstrates to the Board-Zoning Officer that extenuating circumstances prevented a timely recertification request. If the Board-Zoning Officer finds extenuating circumstances, then the holder of the Special Use Permit may submit a late re-certification request.

E. The holder of a Special Use Permit may submit a written request for ~~amendment of the Special Use Permit for the purpose of~~ modifying ~~its~~ existing Antenna installations on a Telecommunications Tower, as may be necessary to improve coverage, capacity, deployment of new technology, or other upgraded service. This includes, but is not limited to:

- 1) Replacement of one or more of the existing Antennas and/or accessory equipment with a different model, type, or operating frequency;
- 2) Change in the quantity of Antennas and/or accessory equipment;
- 2)3) Change in power level, orientation, or radiation pattern.

- F. In the written request for ~~amendment~~modification, the holder of a Special Use Permit shall provide all of the information listed in subsection A above, as well as specific information and supporting documentation for the proposed modification.

~~—Requests for amendment of a Special Use Permit may be submitted no more than once annually for that permit.~~

- F. The ~~Board~~Zoning Officer will undertake a review of a request for amendment, and shall ~~endeavor to~~ act on such request within ~~ninety-sixty~~ (690) days of receiving sufficient information to perform such review. If, after such review, the Zoning Officer determines that the modification is in compliance with the Special Use Permit and all applicable codes, laws and rules, then the Zoning Officer shall issue a Telecommunications Permit for this modification.

## **Section 19. Extent and Parameters of Special Use Permit for a Telecommunications Tower.**

The extent and parameters of a Special Use Permit for a Telecommunications Tower shall be as follows:

- 1) Special Use Permits shall be non-exclusive;
- 2) Special Use Permits shall not be assignable or transferable without the express written consent of the Board, and such consent shall not be unreasonably withheld;
- 3) Special Use Permits may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit for a Telecommunications Tower, or for a material violation of this Law.
- 4) Special Use Permits may be revoked, canceled, or terminated in the event the required NIER certifications are not submitted ~~annually~~every 5 years.
- 5) If the holder of a Special Use Permit fails to construct the proposed Telecommunications Tower or the proposed co-location Antennas on an existing Tower within twelve (12) months after the effective date of the Special Use Permit, then such permit and any authorization thereof shall expire on the first anniversary of the effective date, unless an extension is granted by the Board.
- 6) Any request shall be submitted not less than ninety (90) days in advance of the above expiration date, along with justification for the request.

## **Section 20. Application Fee.**

- A. The Town Board by resolution may set and update application fees. At the time that a person submits an Application for a Special Use Permit for a new Telecommunications Tower, such person shall pay an application fee of \$5,000 to the Town of Dryden. If the Application is for a Special Use Permit for co-locating on an existing Telecommunications Tower, the fee shall be \$1,000. The fee for a Telecommunications Permit shall be \$300.

~~A. No Application fee is required in order to re-certify a Special Use Permit for a Telecommunications Tower, unless there has been a modification of the~~

~~Telecommunications Tower since the date of the issuance of the existing Special Use Permit. In the case of any such modification, the fees provided in subsection A shall apply.~~

- B. (1) At the time that a person submits an application for a Special Use Permit for a Telecommunications Tower, or for co-location on an existing Telecommunications Tower, the applicant may submit a written request for a waiver of a portion of the application fee called for in subsection A above, and/or for the initial deposit required by Section 14(B) above, and/or for the payment of the reasonable costs of the Town's consultant and expert evaluation of any such application as required by Section 14(B).

(2) No such request shall be considered unless it is in writing and submitted at the time the application is submitted.

(3) No application shall be considered complete until the town board has determined by resolution such request. The town board shall hold a public hearing at least ten (10) days prior notice. At such public hearing the applicant, or the applicant's authorized representative, shall present the case for such a waiver. In determining such request the town board shall consider only such materials that have been submitted in support of, and in opposition to, such request and the comments made at such public hearing. In submitting such request the applicant shall be deemed to have extended the time in which the town board must decide such application by sixty-two (62) days.

(4) In determining such request for a waiver the town board shall consider the following:

(a) Whether there is public funding involved for the proposed project, the source thereof and the amount in relation to the total project cost;

(b) Whether the proposed project would serve an existing under or un-served population of the town;

(c) Whether the proposed project would benefit public centers such as schools, community centers, fire stations, etc.;

(d) Whether a similar or the same designed tower is proposed on multiple sites;

(e) The completeness and sufficiency of the application and the supporting documentation submitted therewith as required by Local Law No. 2 of the year 2006;

(f) Whether it is in the overall public interest to waive a portion of the fees and/or deposit.

## **Section 21. Performance Security**

The Applicant and the owner of record of any proposed Telecommunications Tower property site shall be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount and with such sureties as are deemed sufficient by the Board to assure the faithful performance of the terms and conditions of any Special Use Permit issued pursuant to this Law. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until the removal of the Telecommunications Tower and any necessary site restoration is completed. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the Special Use Permit and shall entitle the Board to revoke the Special Use Permit after prior written notice to the Applicant and holder of the permit.

## **Section 22. Reservation of Authority to Inspect Telecommunications Towers**

- A. In order to verify that the holder of a Special Use Permit for a Telecommunications Tower and any and all lessees, renters, and/or licensees of a Telecommunications Tower place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.
- B. The Town shall pay for costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including Towers, Antennas, and appurtenant or associated facilities, or refusal to otherwise cooperate with the Town with respect to an inspection, or if violations of this Law are found to exist, in which case the holder, lessee or licensee shall reimburse the Town for the costs of such inspection.
- C. Payment of such costs shall be made to the Town within thirty (30) days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation(s) is/are appealed in accordance with the procedures set forth in this Law, said reimbursement payment must still be paid to the Town and the reimbursement shall be held in an account established by the Town specifically for this purpose, pending the final decision on appeal.

## **Section 23. Responsibilities of Special Use Permit Holders.**

- A. The holder of the Special Use Permit for a telecommunications Tower shall construct, maintain, repair, modify, or restore the permitted Tower in strict compliance with all current technical, safety and safety-related codes adopted by the Town, County, State, or United States, including but not limited to the most recent editions of the National Safety Code and the National Electronic Code, the rules and regulations of the FAA and the FCC, as well as accepted industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to include, but are not limited to construction, building, electrical, fire, safety, health, and land use.
- B. The holder of the Special Use Permit granted under this Law shall obtain, at its own expense, all permits and licenses required by any other applicable law, rule, regulation, or

code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the Applicant.

- C. The holder of the Special Use Permit shall periodically inspect and at all times maintain the permitted Tower in compliance with this Law and all conditions of the Special Use Permit, including but not limited to items of structural integrity, corrosion protection, visual appearance, lighting, RF emissions, security, and grounding.
- D. The holder of the Special ~~Use~~ Permit shall ~~annually~~ at the time of recertification provide documentation to the Town that NIER levels at the site are within the threshold levels adopted by the FCC.

## **Section 24. Liability Insurance.**

- A. A holder of a Special Use Permit for a Telecommunications Tower shall secure and at all times maintain insurance coverage for the duration of the Special Use Permit in amounts as set forth below:
  - 1) Commercial General Liability: \$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. When the Town is the owner, lessor or otherwise has a legal insurable interest in the site of the Tower, the Commercial General Liability insurance policy shall specifically include the Town and its officers and employees 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.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.
- F. Before construction or other work on a site or on a Telecommunications Tower is initiated, but in no case later than fifteen (15) days after the issuance of the Special Use Permit, the holder of the Special Use Permit shall deliver to the Town certificates of insurance representing the required coverage and amounts.

## **Section 25. Indemnification.**

When the Town is the owner, lessor or otherwise has a legal insurable interest in the site of the Tower, the Special Use Permit issued pursuant to this Law shall contain a provision with respect to indemnification. Such provision shall require the holder of the Special Use Permit, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, its officers, and employees, from any and all penalties, damage, or charges and including, but not limited to, reasonable attorney's fees and fees of consultants and expert witnesses arising out of any 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 construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a Telecommunications Tower within the Town.

## **Section 26. Penalties.**

- A. A violation of this Law or any provisions, term or condition of a Special Use Permit issued pursuant to this Law is an offense and upon conviction thereof the holder of the Special Use Permit shall pay to the Town a penalty as set forth in this Section.
- B. Each day that a violation exists beyond one (1) week following written notification by the Town of such violation shall constitute a separate violation, subject to a separate penalty without the requirement of further notification of violation.
- C. For situations where there is an imminent threat to the health or safety of the public, or the employees of any user or occupant of the Telecommunications Tower, there shall be no requirement for written notification by the Town to the holder of the Special Use Permit. In such situations verbal notification, delivered personally or by telephone, shall be deemed sufficient notice.
- D. Amounts of Penalty:
  - 1) For violation of any safety-related requirement, \$1,000 per day per occurrence;
  - 2) For failure to maintain the permitted site in a safe condition and as required, \$1000 per day per occurrence;
  - 3) For construction or beginning construction, including site preparation without a Special Use Permit or undertaking any change or modification in or to a Telecommunications Tower without a Special Use Permit, \$1,000 per day per occurrence;
  - 4) For failure to pay to the Town any moneys owed for any reason, \$200 per day per occurrence;
  - 5) For failure to comply with any applicable Town, County, State or United States laws, ordinances, rules, regulations or requirements, \$1,000 per day per occurrence.
- E. In addition to any penalty provided for herein the Town may also seek injunctive relief in a court of competent jurisdiction to prevent the continued violation of this Law.

## **Section 27. Default and/or Revocation.**

- A. If a Telecommunications Tower or Telecommunications structure is repaired, rebuilt, placed, moved, re-located, modified or maintained in a manner not in compliance with the provisions of this Law or the Special Use Permit, then the Board shall notify the holder of the Special Use Permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within seven (7) days of the date of the postmark of the Notice, or the date of personal service of the Notice, whichever is earlier. Notwithstanding anything to the contrary in this Subsection or any other Section of this Law, if the violation causes, creates or presents an imminent danger

or threat to the health or safety of lives or property, the Board may, in its sole discretion, order the violation remedied within twenty-four (24) hours.

- B. If within the period set forth in (A) above the Telecommunications Tower or Telecommunications structure is not brought into compliance with the provisions of this Law, or the Special Use Permit, or substantial steps are not taken in order to bring the Telecommunications Tower or Telecommunications structure into compliance, then the Board may, after a public hearing upon notice to the holder of the Special Use Permit, revoke such Special Use Permit and shall notify the holder of the Special Use Permit within forty-eight (48) hours of such action.

## **Section 28. Removal of a Telecommunications Tower.**

- A. Under the following circumstances, the Board may determine that the health, safety, and welfare interests of the Town warrant and require the removal of a Telecommunications Tower:
- 1) a Telecommunications Tower with a permit has been abandoned (i.e. not used as a Telecommunications Tower) for a period exceeding ninety consecutive (90) days or for 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;
  - 2) a permitted Telecommunications Tower falls into such a state of disrepair that it creates a health or safety hazard;
  - 3) a Telecommunications Tower has been located, constructed, or modified without first obtaining the required Special Use Permit, or any other necessary authorization;
- B. If the Board makes a determination as noted in subsection A above, then the Board shall notify, in writing within forty-eight (48) hours of such determination, the holder of the Special Use Permit that said Telecommunications Tower is to be removed. In the event that no Special Use Permit was issued for the Tower, such notification shall be provided to the property owner of record. The Board may approve a Temporary Use Agreement/Permit, to enable the sale of the Tower prior to its removal.
- C. The holder of the Special use Permit, or its successors or assigns, shall dismantle and remove such Telecommunications Tower, 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 Board. However, if the owner of the property upon which the Telecommunications Tower is located wishes to retain any access roadway to the Tower site, the owner may do so with the approval of the Board.
- D. If a Telecommunications Tower is not removed or substantial progress has not been made to remove the Telecommunications Tower within ninety (90) days after the permit holder has received notice, then the Board may order officials, representatives or contractors of the Town to remove the Telecommunications Tower at the sole expense of the landowner and permit holder.
- E. If the Town removes, or causes to be removed, a Telecommunications Tower, and the owner of the Telecommunications Tower does not claim the property and remove it from the site to a lawful location within ten (10) days, then the Town may take steps to declare the Telecommunications Tower abandoned, and sell it and its components.

- F. Notwithstanding anything in this Section to the contrary, the Board may approve a Temporary Use Agreement/Permit for the Telecommunications Tower, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the Telecommunications Tower shall be developed by the holder of the permit, subject to the approval of the Board, and an agreement to such plan shall be executed by the holder of the permit and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession of and dispose of the Telecommunications Tower in the manner provided in this Section.

### **Section 29. Relief**

Any Applicant desiring relief or exemption from any aspect or requirement of this Law may request such from the Board at a pre-Application conference, provided that the specific request for the relief or exemption is contained in the original Application for a Special Use Permit, or in the case of an existing or previously granted Special Use Permit in a request for modification of a Telecommunications Tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Board. However, the burden of proving the need for the requested relief or exemption is solely on the Applicant to prove to the satisfaction of the Board. The Applicant shall bear all costs of the Board or the Town in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the Tower or facilities without the specific written permission of the Board, and such permission shall not be unreasonably withheld. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant effect on the health, safety and welfare of the Town, its residents and other service providers.

### **Section 30. Conflict with Other Laws**

Where this Law differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by county, state or United States laws, rules or regulations, the more restrictive or protective of the Town and the public shall apply.

### **Section 31. Effective Date.**

This Law shall be effective immediately upon filing the same with the New York Secretary of State and shall apply to all applications pending or filed after the effective date.

### **Section 32. Authority.**

This Local Law is enacted pursuant to the Municipal Home Rule Law. This Local Law shall supersede the provisions of Town law to the extent it is inconsistent with the same, and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

## **LOCAL LAW SECTION 3. EFFECTIVE DATE.**

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.