

**Public Hearing & Special Meeting  
Of the Board of Trustees  
Of the Village of Bergen at  
6:30pm on April 15<sup>th</sup>, 2019**

The special meeting of the Board of Trustees was called to order by Mayor Barclay at 6:30pm with the following present:

Trustee Vickie Almquist  
Trustee Kevin Donovan  
Trustee Robert Fedele

Trustee Emily VanEenwyk was absent

Also present was Village Administrator Cortney Gale.

**Public Hearing**

Mayor Barclay opened the Public Hearing at 6:31pm with no one in attendance.

Mayor Barclay closed the Public Hearing at 6:46pm.

**New Business**

**Local Law #2 of 2019 – Small Wireless Facilities**

A motion was made to pass Local Law #2 of 2019 that regulates Small Wireless Facilities by Trustee Almquist and was seconded by Trustee Donovan. The Law passed by a unanimous vote.

**VILLAGE OF BERGEN BOARD OF TRUSTEES**

Local Law #2 of 2019

**A Local Law Amending the Village of Bergen Zoning Law Relating to the Placement and Erection of Small Wireless Facilities.**

Be it hereby enacted by the Board of Trustees of the Village of Bergen as follows:

**Section 1: The Village of Bergen Zoning Law is hereby amended to add policies and procedures relating to small wireless facilities to Section 417 of the Zoning Law as new section 417(Q), to read in its entirety as follows:**

**Section 417(Q). Small Cell Wireless Facilities**

**1. Conditions Applying to All Small Wireless Facilities**

a.) **Definitions.** As used in this section, the following terms shall have the meanings indicated.

**CAMOUFLAGE**

To use concealment techniques to blend the installation of the structure into the surrounding area by mimicking its surroundings or otherwise disguising it in the environment.

**COLLOCATE**

To install or mount a Small Wireless Facility on an existing Support Structure.

**CONCEALED INSTALLATION ON BUILDING**

Building-mounted Small Wireless Facilities that completely screen all associated equipment and facilities from public view by approved methods that are in keeping with the character of the building, surrounding area and any applicable design guidelines or standards as determined by the Village.

**GROUND-BASED EQUIPMENT or GROUND-BASED ENCLOSURES**

Any equipment associated with installation of a Small Wireless Facility and/or support structure that will be located on the surface of the ground with some or all of the facility located above grade.

**LICENSE**

The document granted to an individual under this Section, which permits its holder, the Licensee (see definition), to have all the rights, privileges, and obligations arising under this Local Law. Any license issued under this Section is non-exclusive and is subject to the limitations provided herein.

**LICENSEE**

Any person having applied for a License under this Section and holding such a License.

**PERMITTEE**

An Applicant that has received a Special Use Permit under this Local Law.

**POLE**

A legally constructed pole, such as a utility, lighting, traffic, or similar pole.

**RIGHT-OF-WAY or ROW**

The area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property, under the jurisdiction of the Village.

**RF**

Radio frequency.

**SMALL WIRELESS FACILITY or MICRO WIRELESS FACILITY, SMALL CELL, "SWF"**

A wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure measuring no more than six cubic feet 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 imaginary enclosure of no more than six (6) cubic feet; and (ii) all other wireless equipment associated with the facility measuring no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

**SUPPORT STRUCTURE**

A freestanding structure such as a utility pole, monopole, or other existing or proposed structure designed to support or be capable of supporting wireless facilities.

## UTILITY POLE

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

### b.) Purpose and Legislative Intent

- i. The Village desires to encourage small-cell wireless telecommunication infrastructure investment by providing a fair and predictable process for the deployment, while enabling the Village to promote the management of its public ROW in the overall interests of the public health, safety, and welfare. The Village recognizes that wireless facilities are critical to delivering wireless access to advanced technology, broadband, and 911 services to homes, businesses, and schools within the Village, and new technology has increased the need for towers and antennas to serve the Village. The Village further recognizes that SWF often may be deployed most effectively in the ROW. The Village desires to enact a legal framework which will permit the expedited review process for the deployment of such SWF when specified criteria are met and to permit placement of towers and antennas in locations which will allow telecommunications services to be rendered in conformity with both the Federal Telecommunications Act of 1996, and with the goals of local comprehensive plans and zoning ordinances.
- ii. In enacting this Section, the Village is establishing uniform standards to address issues presented by SWF, 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 reasonable efforts are made to preserve the character of neighborhoods in which facilities are installed;
  5. Protect community aesthetics and visual and historic resources.
  6. Protect against environmental damage, including damage to trees;
  7. Facilitate the installation of SWF to provide benefits of reliable access to wireless telecommunications technology, broadband, and 911 services to homes, business, and schools within the Village.

### c.) Applicability

This Section applies to all existing SWF and all Applications and requests for approval to construct, install,

modify, co-locate, relocate, or otherwise deploy SWF.

**d.) Application Requirements.**

- i. Special Use Permit Application. All persons wishing to construct, install, modify, co-locate, relocate, or otherwise deploy SWF must submit an application for a Special Use Permit for approval by the Village of Bergen Planning Board. The Planning Board shall follow the procedures set forth in New York Village Law § 7-725-b for consideration of the Special Use Permit Applications. The SWF Special Use Permit Application shall contain the following, to include 9 hard copies and 1 digital copy:
  1. Letter Application and Applicable Application Fee(s). The letter application must contain a detailed description of the proposal, the number of SWFs involved in the subject application, their proposed locations, and a description of the proposed locations, including the zoning districts and nearby land uses. The letter application must also contain the Applicant's name and contact information, as well as the names and contact information for all consultants acting on behalf of the Applicant, if any.
  2. Owner's Authorization and/or Evidence of Property Rights. The Applicant must demonstrate it has adequate real property rights for the installation and maintenance of the SWF. This would include, but not be limited to, owner authorization, an easement, a lease, and/or a License issued pursuant to this Section.
  3. Project Plans. The Applicant must provide a fully dimensioned site plan and elevation drawings prepared and sealed by a New York-licensed engineer showing any existing wireless facilities with all existing transmission equipment and other improvements, the proposed SWF with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed SWF and any associated access or utility easements.
  4. Site Photos and Photo Simulations. The Applicant must provide photographs and simulations that show the proposed SWF in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle. These simulations must indicate both location of the proposed SWF as well as design aesthetics that reflect compliance with this Section.
  5. RF Compliance Demonstration. The Applicant must provide an RF exposure compliance report prepared and certified by a New York-licensed engineer acceptable to the Village that certifies that the proposed SWF, as well as any co-located SWF, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radiated power ("ERPP")) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of the areas with RF exposures in excess of the controlled/occupations limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site in

accordance with FCC requirements, if applicable.

6. **Acoustic Analysis.** The Applicant must provide a written report that analyzes acoustic levels for the proposed SWF and all associated equipment. The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturer's specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.
7. **Project Purpose Statement/Need Demonstration.** The Applicant must provide a written statement that includes:
  - a. A description of the technical objectives to be achieved, including the services to be offered and/or improvement of existing services;
  - b. An annotated topographical map that identifies the targeted service area to be benefited;
  - c. The estimated number of potentially affected users in the targeted service area; and
  - d. Full-color signal propagation maps with objective units of signal strength measurements that show the Applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites (or a statement that the objectives are other than coverage related).
8. **Alternatives Analysis.** The Applicant must list all existing structures considered as alternatives to the proposed location, together with a general description of the site design considered at each location. The Applicant must also provide a written explanation for why the alternatives considered were unacceptable or not feasible, unavailable or not as consistent with the design standards. This explanation must include a comparative analysis and such technical information and other factual justification as are necessary to document the reasons why each alternative is unacceptable, not feasible, unavailable, or not as consistent with the design standards in this Local Law as the proposed location.
9. The Applicant shall provide manufacturer's information for the SWF and support structure, if applicable.
10. The Applicant shall provide technical specifications of the SWF and support structure, if applicable, and evidence that such structure is capable of handling the addition of SWF.
11. The Applicant shall provide a written maintenance and removal plan, made to and acceptable by the Village, to include an agreement by the Applicant and/or owner to remove all the components of the SWF in the event the facility becomes non-functional, ceases to be used for its originally intended purposes or is otherwise abandoned, as determined by the Village. The maintenance and removal plan shall remain in full force for the life of the SWF. An acceptable bond and/or surety, for the purposes of removing

the SWF, submitted to the Village for review, shall be purchased and remain in force for the life of the SWF.

12. The Applicant shall provide any other items that the Village shall deem necessary for a thorough and complete review of the proposal.

- ii. **One Application Required.** Although each SWF requires its own Special Use Permit, the Applicant need submit only one Application regardless of the number of proposed SWF or locations. The Planning Board may, in its sole discretion, deny the Application, grant the Application in full, or partially grant the Application by issuing Special Use Permits for only some of the SWF proposed in the Application.
- iii. **Maintenance.** Subject to the requirements for the initial application, an Application shall not be required for routine maintenance, unless otherwise specified within this Local Law. Replacement of any portion of a SWF shall require an amendment to the Special Use Permit, requiring compliance with all applicable requirements and procedures set forth in this Section.
- iv. **Application Fees.** The Applicant shall pay the Village a SWF Special Use Permit Application Fee in an amount to be determined by the Village Board of Trustees by resolution, which may be amended by the Board of Trustees as the Board deems appropriate.
- v. **Third-Party Professional Consultants.** The Village, in its sole discretion, may retain third-party consultant(s) to assist in the review of a proposed SWF. The cost of such third-party consulting services shall be reimbursed by the Applicant to the Village within thirty (30) days of the Village receiving an invoice for third party consulting services.

e.) **Site Location Guidelines.**

- i. **Preferred Locations.** The Village prefers co-location and siting in manufacturing and/or business districts over residential zoning districts.
- ii. **Discouraged Locations.** The Village discourages new support structures and the location in residential zoning districts. Where possible, efforts should be made to co-locate or to locate in manufacturing or business zoning districts. If location in a residential zoning district is necessary, techniques to minimize aesthetic impacts are mandatory, including Camouflage.
- iii. **Prohibited Locations.** The Village prohibits any structures or parts of structures associated with SWF placement from obstructing access to above- or underground traffic control infrastructure, public transportation vehicles, shelters, street furniture, or other improvements, above- or underground utility infrastructure, fire hydrants, doors, gates, or other ingress and egress points to any building appurtenant to the ROW, or any fire escape. Ground-mounted equipment shall not be closer than twelve (12) feet from any permanent object, existing lawful encroachment in the ROW, and driveway aprons.

f.) **Design Standards.**

- i. **Construction categories.** Each SWF shall comply with the standards set forth for each location type.

1. Existing support structure

- a. **Equipment.** All equipment must be installed as close to the Support Structure as technically feasible to minimize its visibility from public view to the greatest extent feasible. All conduits, conduit attachments, cables, wires, and other connectors shall be concealed from the public view to the greatest extent feasible. Ground-mounted equipment is not preferred and shall be minimized to the greatest extent feasible. Where used, ground-mounted equipment must incorporate concealment techniques in compliance with the requirements of subsection (iii) of this Subsection f.
- b. **Minimum Clear Height.** With the exception of any ground-mounted equipment, no part of the SWF shall be less than ten (10) feet above grade.
- c. **Maximum Height.** No part of the SWF shall exceed ten (10) feet above the existing Support Structure. Ground mounted cabinets shall be secured to a concrete slab and shall not exceed three feet in height.
- d. **Maximum Volume.** The maximum volume of each antenna shall not exceed six (6) cubic feet.
- e. **Maximum Equipment Volume.** The maximum equipment volume shall not exceed twenty-eight (28) cubic feet, or fifteen (15) cubic feet for ground-mounted equipment.
- f. **Reservation of Rights.** The Village reserves its right to request additional information, analysis, studies, including further expert opinion, at the Applicant's expense, pertaining to the Application and any issues of concern.
- g. Each SWF shall be on one support structure.
- h. Each SWF shall be at least 500 feet from another SWF.

2. New support structure

- a. **Basis.** The Village will consider new poles only if the Applicant can demonstrate that replacing or utilizing an existing pole is not possible or feasible. Any new poles must meet all Village and other applicable laws.
- b. **Support Structure Requirements.** All Applicants shall propose new Support Structures that complement the community character of the area, and any applicable design guidelines that may exist for the area. When existing utility poles exist, new support structures may feature a similar design and aesthetic. Where no existing utility poles exist, architecturally significant support structures shall be proposed, including, but not limited to, flag poles and decorative light standards.
- c. **Equipment.** All equipment must be installed as close to the support structure as technically feasible to minimize its visibility from public view. All conduits,

conduit attachments, cables, wires, and other connectors shall be concealed from the public view to the greatest extent feasible. Ground-mounted equipment is not preferred and shall be minimized to the greatest extent feasible. Where used, ground-mounted equipment must incorporate concealment techniques in compliance with the requirements of subsection (iii) of this Section g.

- d. **Minimum Clear Height.** With the exception of any ground-mounted equipment, no part of the SWF shall be less than ten (10) feet above grade.
- e. **Maximum Height.** No part of the SWF shall exceed forty (40) feet above ground level or ten (10) feet above the average height of all Utility Poles within a five hundred (500) foot radius, whichever is less. Ground mounted cabinets shall be secured to a concrete slab and shall not exceed three feet in height.
- f. **Maximum Diameter.** The maximum diameter of any new poles not intended for public distribution shall not exceed eighteen (18) inches at the base.
- g. **Maximum Volume.** The maximum volume of each antenna shall not exceed six (6) cubic feet.
- h. **Maximum Equipment Volume.** The maximum equipment volume shall not exceed twenty-eight (28) cubic feet, or fifteen (15) cubic feet for ground-mounted equipment.
- i. **Installation.** Any new poles not intended for public distribution shall:
  - i. Be installed as far as practicable off the traveled way;
  - ii. Not be taller than any existing poles adjacent to the proposed location;
  - iii. Not be installed in the ROW unless fixed objects exist at the same or closer distance from the roadway;
  - iv. Not be any closer to the roadway than any existing pole line;
  - v. Be buried with no foundation unless an exception is justified and approved by the Village; and
  - vi. To the extent practicable, be located outside of residentially-zoned neighborhoods.
- j. **Reservation of Rights.** The Village reserves its right to:
  - i. Reject new poles for any of the following reasons: traffic, safety, conflict with existing structure or utility, conflict with pedestrian or complete street features, or future planned activities. Any notice of denial must be in writing and explain the basis for the denial, and be sent to the Applicant and the authority controlling the ROW, if not controlled by the



Village of Bergen.

- ii. Request additional information, analysis, studies, including further expert opinion, at the Applicant's expense, pertaining to the Application and any issues of concern.
3. Concealed Installation on Building.
- a. Equipment. All equipment must be installed such that its visual appearance is consistent with other accessory mechanical and/or building service appurtenances. All conduits, conduit attachments, cables, wires, and other connectors shall match the color of existing building mechanicals or the adjacent building material color. Ground-mounted equipment is not preferred and shall be minimized to the greatest extent feasible. Where used, ground-mounted equipment must incorporate concealment techniques in compliance with the requirements of subsection (iii) of this Section g.
  - b. Minimum Clear Height. With the exception of any ground-mounted equipment, no part of the SWF shall be less than ten (10) feet above grade.
  - c. Maximum Height. No part of the SWF shall exceed ten (10) feet above the building roof or parapet wall. Ground-mounted cabinets shall be secured to a concrete slab and shall not exceed three feet in height.
  - d. Maximum Volume. The maximum volume of each antenna shall not exceed six (6) cubic feet.
  - e. Maximum Equipment Volume. The maximum equipment volume shall not exceed twenty-eight (28) cubic feet, or fifteen (15) cubic feet for ground-mounted equipment.
  - f. Applications. Applicants must secure an approved building permit from the Office of Building Inspections.
- ii. Engineering Requirements. The applicant must provide an installation design prepared by a professional engineer licensed in New York State that demonstrates the strength of the pole to be used.
  - iii. Aesthetic Requirements. The character of the neighborhood and the visual quality of the surroundings must be taken into account when installing SWF, whether to new or existing poles. In order to avoid unnecessary adverse visual impacts and to preserve the area in which the SWFs are being installed, and in addition to the conditions set forth above, all SWFs shall meet the following requirements:
    - 1. Poles and equipment shall be painted in a neutral color that is consistent with other new and existing poles in the general geographic area so as to reduce visual intrusiveness.

2. Poles shall be constructed of the same or similar material as other new and existing poles in the general geographic area.
3. Poles shall be constructed in the same or similar shape as other new and existing poles in the general geographic area.
4. Poles may be camouflaged or disguised as deemed appropriate.
5. No artificial lighting is permitted on the pole unless otherwise required by law or permitted *e.g.*, where no existing utility poles exist and a decorative light pole is used with express permission. Any permitted lighting must be consistent in design and bulb type with other lighting fixtures in the general geographic area.
6. Commercial signage is not permitted on any pole unless already existing at the time of the installation.
7. Equipment shall be affixed to the pole in a tight, neat, and orderly fashion. Where possible, equipment shall be flush mounted with the pole and in no case shall offset mounting exceed six (6) inches. No wires may be loose or dangling, with a preference that the wires be enclosed within the pole where possible.
8. Equipment shall be consistent in size with the pole of which it is being attached and minimally shall be consistent with the suggested designs shown in the Appendix to this Section.
  - a. Maximum Volume. The maximum volume of each antenna shall not exceed six (6) cubic feet.
  - b. Maximum Equipment Volume. The maximum equipment volume shall not exceed twenty-eight (28) cubic feet.
9. Ground mounted equipment shall be minimized to the greatest extent feasible. Where used, ground equipment shall incorporate concealment techniques matching color and materials of the wireless support structure, unless other materials or colors are approved by the Village. Applications shall include proposed concealment techniques for ground-mounted equipment, which may include, but are not limited to: strategic choice of color, paint, and/or materials, landscaping, placement in less visible locations, and placement within existing or replacement street furniture.

**g.) Standard Conditions of Approval.**

In addition to any other conditions imposed by the Planning Board, SWF Special Use Permits shall be automatically subject to the conditions set forth herein. The Planning Board shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to allow for the proper operation of the approved facility consistent with the goals of this Local Law.

- i. Approved Plans. Before the Permittee submits any applications to the Building Department, the Permittee must incorporate the Permit, all conditions associated with this Permit and the approved photo simulations into the project plans. The Permittee must construct, install and operate the

- SWF in strict compliance with the approved plans. Any alterations, modifications or other changes to the approved plans, whether requested by the permittee or required by other departments or public agencies with, must be submitted in a written request subject to the code enforcement officer's prior to review and approval, who may refer the request to the Planning Board if it is found that the requested alteration, modification or other change implicates a significant or substantial land use concern.
- ii. **Build-out Period.** The Permit will automatically expire one (1) year from the issuance date unless the Permittee obtains all other permits and approvals required to install, construct, and/or operate the approved SWFs and commences the installation and construction, which includes without limitation any permits or approvals required by any federal, state, or local public agencies with jurisdiction over the subject property, the SWF, or its use. The Planning Board may grant extensions to a date certain when the Permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.
  - iii. **Maintenance Obligations: Vandalism.** The Permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, and access routes, in a neat, clean, and safe condition in accordance with the approved plans and all conditions in the Permit. The Permittee shall keep the site area free from all litter and debris at all times. The Permittee, at no cost to the Village, shall remove and remediate any graffiti or other vandalism at the site within forty-eight (48) hours after the Permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
  - iv. **Compliance with Laws.** The Permittee shall maintain compliance at all times with all federal, state, and local statutes, regulations, orders or other rules that carry the force of law applicable to the Permittee, the subject property, the SWF or any use or activities in connection with the use authorized in the Permit. The Permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve, or otherwise lessen the Permittee's obligations to maintain compliance with all applicable laws, regulations, orders, and rules.
  - v. **Inspections.** The Permittee expressly acknowledges and agrees that the Village or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the Permittee; provided, however, that the Village may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable, or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The Permittee will be permitted to supervise the Village or its designee while such inspection or emergency access occurs.
  - vi. **Contact Information.** The Permittee shall furnish the Village with accurate and up-to-date contact information for a person responsible for the SWF, which includes, without limitation, such person's full name, title, direct telephone number, facsimile number, mailing address, and email address. The Permittee shall keep such contact information up-to-date at all times.
  - vii. **Rescission of Permit for Non-compliance.** The Planning Board may rescind any Permit issued under this Local Law for review at any time due to noncompliance with applicable law or any approval conditions. At a duly noticed hearing and in accordance with all applicable laws, the Planning Board may revoke any such Permit or amend these conditions as the approval authority

deems necessary or appropriate to correct any such noncompliance.

- viii. Record Retention. The Permittee shall retain full and complete copies of all licenses, permits, and other regulatory approvals issued in connection with the SWF, which includes, without limitation, all conditions of approval, approved plans, resolutions, and other documentation associated with the license, permit, or regulatory approval.

## 2. Conditions Applying to Small Wireless Facilities Located in the Village ROW

### a.) Applicability.

The contents of this Subsection (2) are applied in addition to the contents of Subsection (1) for Applicants proposing SWF located in the Village ROW and/or on Village-owned Support Structures and/or Utility Poles. .

### b.) License.

Where the proposed SWF is in the Village ROW and/or on Village-owned Support Structures and/or Utility Poles, before any Application may be submitted, a non-exclusive license to place the SWF is required. No SWF is allowed in the Village ROW and/or on Village-owned Support Structures and/or Utility Poles unless first a non-exclusive license is obtained from the Village by the Applicant.

- i. No exclusive, irrevocable property right or any other interest is created by the License. There is no right to convey, express or implied, with the License.
- ii. The License may not be assigned, except upon written consent of the Village, which shall not be unreasonably withheld, provided the assignee assumes all obligations of the License, agrees to abide by its terms in writing, and meets all other criteria as set forth in this Section.
- iii. A general License will be granted per Applicant for all Village ROWs and/or on Village-owned Support Structures and/or Utility Poles, provided that the Applicant meets the requirements for such a License. The Village, however, reserves the right to deny individual SWF locations and the issuance of a License does not require the Village to approve any specific location.
- iv. An Applicant shall demonstrate the entitlement to use the land for the designated purpose *e.g.*, through demonstration that the Village owns the fee of the highway and/or Support Structure at issue, through the grant of an easement or a pole attachment agreement, and, if requested, by a legal opinion of the Applicant's counsel for the benefit of the Village.
- v. The License agreement shall be in the general form as developed by the Village.
- vi. Each License agreement is subject to approval by the Village Board.
- vii. By issuance of a License, the Village does not represent or warrant title or ownership of the ROW and/or Support Structures.
- viii. Indemnification. To the fullest extent permitted by law, the Licensee, and, if applicable, the property owner upon which the wireless facility is installed or to be installed shall defend, indemnify, and hold harmless the Village, its agents, officers, officials, employees, and volunteers from any and all (1) damages, liabilities, injuries, losses, costs, and expenses, including reasonable attorneys', experts', and consultants' fees, and from any and all claims, demands, law

- suits, writs and other actions or proceedings (“Claims”) brought against the Village or its agents, officers, officials, employees, or volunteers to challenge, attach, seek to modify, set aside, void, or annul the Village’s approval of a License issued under this Local Law, and (2) other Claims of any kind or form, whether for personal injury, death, or property damage, that arise from or in connection with the Permittee’s or its agents’, directors’, officers’, employees’, contractors’, subcontractors, Licensee’s, or customers’ acts or omissions in connection with such a License or the wireless facility. Any further indemnification requirements will be further outlined in the License.
- ix. **Performance Bond.** Before the building official issues any construction permit in connection with the wireless facility, the Licensee shall post a performance bond from a surety and in a form acceptable to the Village Attorney in an amount equal to or greater than a written estimate from a New York Licensed Engineer with experience in SWF removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without imitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings, and foundations, whether above ground or below ground, constructed or installed, in connection with the SWF. In establishing or adjusting the bond amount required under this condition, and in accordance with New York Code, the Village shall take into consideration information provided by the Licensee regarding the cost to remove the wireless facility.
  - x. **Insurance.** Without limiting the indemnification provision herein, and in addition to the performance bond required herein, Licensee shall procure, at Licensee’s expense, insurance as required by the License and this Chapter.
  - xi. The License shall require compliance with this Local Law, as may be amended by the Board of Trustees.

**c.) Rates and Fees.**

In addition to the fees outlined in Subsection (1.) of this Local Law, the following fees apply for SWF to be located in the Village ROW:

- i. **License Review Fee.** The Applicant shall pay the Village applicable License Review Fee upon execution of the License, in an amount to be determined by the Village Board by resolution.
- ii. **ROW Authorization Fee.** A Wireless Provider authorized to place SWF in the ROW shall pay the Village a one-time authorization fee in an amount to be determined by the Village Board by resolution. SWF in the Village ROW and on a Village-owned Support Structure or Utility Pole will pay an additional charge. Construction of a new pole will include an additional charge.
- iii. **Annual License Fee.** A Wireless Provider authorized to place SWF in the Village ROW shall pay to the Village an annual license fee in an amount to be determined by the Village Board by resolution. SWF in the Village ROW and on a Village-owned Support Structure or Utility Pole will pay an additional charge. Construction of a new pole will include an additional charge.

**Section 2. Severability.** Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

**Section 3. Effective Date.** This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

### **Licensing Agreement for Small Wireless Facilities**

A motion was made by Trustee Donovan and seconded by Trustee Almquist to approve a Licensing agreement for Small Wireless Facilities. The motion was approved by a unanimous vote.

### **Resolution 5 of 2019**

A motion was made by Trustee Fedele and seconded by Trustee Donovan to approve a set of fees for Small Wireless Facilities. The motion was carried by a unanimous vote.

## **VILLAGE OF BERGEN BOARD OF TRUSTEES**

### **Resolution Setting Application and License Fees for Small Wireless Facilities in the Village of Bergen, pursuant to Local Law No. 5 of 2019**

**WHEREAS**, the Village adopted Local Law No. 5 of 2019 (the “Local Law”), which amended the Village Zoning Law relating to the placement and erection of small wireless facilities; and

**WHEREAS**, the Local Law provides for zoning and licensing fees to be charged to applicants and licensees, which shall be set by the Board of Trustees by resolution, which may be amended from time to time; and

**WHEREAS**, the Board of Trustees has evaluated the Local Law, the staffing demands of the Village, and the likely costs of administering the approvals and regulation of small wireless facilities, particularly those facilities located in the Village rights-of-way and/or on Village-owned infrastructure and has determined the reasonable fees for such administrative and regulatory programs;

**NOW THEREFORE BE IT RESOLVED** by the Board of Trustees of the Village of Bergen as follows:

1. Pursuant to Section 417(Q)(1)(d)(iv), the Small Wireless Facility (“SWF”) Special Use Permit Application Fee is hereby set as follows: \$600.00 for the first SWF and \$175.00 for each additional SWF that is part of the same SWF Special Use Permit Application. An additional charge of \$1,000.00 shall be charged for any new Support Structure that is proposed to be constructed.
2. Pursuant to Section 417(Q)(2)(c), the License Fees shall be set as follows:
  - i) License Review Fee: \$1,750.00
  - ii) ROW Authorization Fee. \$600.00 for the first SWF, plus \$175.00 for each additional SWF that is a part of the same SWF Special Use Permit Application. In addition, \$1,000.00 shall be due per Support Structure if the Licensee proposes new Support Structures.
  - iii) Annual License Fee. \$350.00 for each Small Wireless Facility located in the Village ROW, plus an additional \$650.00 for each Licensee-constructed Support Structure located in the Village ROW.
3. The Village’s fee schedule shall be updated with the above information.
4. This resolution shall take effect immediately.

### **Building Permit Fee Schedule Changes**

A motion was made by Trustee Almquist and seconded by Trustee Fedele to approve the changes to the Building Permit Fee Schedule. The motion was carried by a unanimous vote.

**Declaring Kubota RTV Surplus for Purpose of Sale**

A Motion was made by Trustee Donovan and seconded by Trustee Fedele to approve the sale of the Kubota RTV. The motion was carried by a unanimous vote.

**Old Business**

**None**

**Adjournment**

A motion was made by Trustee Donovan and seconded by Trustee Almquist to adjourn the meeting. The motion was carried by a unanimous vote:

The meeting was adjourned at 6:55pm

Respectfully submitted,

Cortney W. Gale  
Village Administrator