

CITY OF RYE

NOTICE

There will be a regular meeting of the City Council of the City of Rye on Wednesday, June 8, 2016, at 7:30 p.m. in Council Chambers at City Hall. *The Council will convene at 6:30 p.m. and it is expected they will adjourn into Executive Session at 6:31 p.m. to discuss attorney client matters.*

AGENDA

1. Pledge of Allegiance.
2. Roll Call.
3. Recognition of the Rye City School District Girls High School Varsity Basketball Team.
4. General Announcements.
5. Draft unapproved minutes of the regular meeting of the City Council held May 25, 2016.
6. Issues Update/Old Business.
7. Presentation and discussion on deer population management.
8. Public Hearing regarding the request submitted by Crown Castle to amend their agreement with the City and for the installation of additional locations to their existing wireless telecommunications located in the City of Rye.
9. Public Hearing on the proposed revision to the Rye City Charter to rescind Article 12 "Police Department" and Article 13 "Fire Department" and create a new Article 12 "Department of Public Safety" and to create a new position of "Commissioner of Public Safety" which position shall have charge and supervision of the Police and Fire Departments.
10. Authorization for City Manager to sign the proposed amendment to the existing License Agreement for 88 Davis LLC.
11. Presentation of the City of Rye Stormwater Management Program 2015 Annual Report.
12. Discussion and timeline of items to be included in a November, 2016 Referendum.
13. Authorization for the City Manager to enter into an agreement with the Rye Country Day School regarding reimbursement for costs associated with Phase I, Phase II, Environmental and Geotechnical assessment of the NYS Thruway property.
Roll Call.

14. Discussion to amend Local Law Chapter §197, “Zoning”, of the Rye City Code, Section §197-86, “Tables of Regulations”, to allow accessory seasonal outdoor customer seating in the B-1 Neighborhood Business District.
15. Residents may be heard on matters for Council consideration that do not appear on the agenda.
16. Resolution to amend the Nominations, Elections and Voting Eligibility procedures for the Rye Golf Club Commission regarding voting procedures.
17. Resolution to amend the Boat Basin Commission procedures regarding voting procedures and the Commission level of members.
18. Resolution to transfer \$100,000 from the Contingency account to the Legal Department to fund legal services.
Roll Call.
19. Bid Award for 2016 Rye Recreation Summer Camp Bus Services (Contract #2016-04).
Roll Call.
20. Miscellaneous communications and reports.
21. New Business.
22. Adjournment.

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The next regular meeting of the City Council will be held on Wednesday, July 13, 2016 at 7:30 p.m.

** City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at www.ryeny.gov under “RyeTV Live”.

* Office Hours of the Mayor by appointment by emailing jsack@ryeny.gov or contacting the City Manager’s Office at (914) 967-7404.



CITY COUNCIL AGENDA

NO. 3

DEPT.: City Manager

DATE: June 8, 2016

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Recognition of the Rye City School District Boys High School Golf Team.

FOR THE MEETING OF:

June 8, 2016

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Council recognize the achievements of the Rye City School District Boys High School Golf Team as Section 1 Champions.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND:

The City Council congratulates the Rye High School's Boys Golf Team on winning the Section 1 Championship Golf Title. The team began their season in March with home matches played at the Rye Golf Club. The league teams consist of Harrison, Fox lane, Byram Hills, Horace Greeley, Blind Brook and Keio as well as non-league rivals of Mamaroneck, Scarsdale, Bronxville and Rye Country Day School. The Section 1 Tournament includes all schools located in Westchester, Rockland and Putnam Counties.

Rye claimed the Section 1 team championship on Tuesday, May 31, 2016 at the Apawamis Club in Rye on a sixth-score tiebreaker against defending champ Bronxville. Both schools totaled a 204 on their five best scores, but Rye's sixth score of 44 was five strokes better than Bronxville's 49. Team Captain James McHugh also won the Section 1 Individual Championship and will be competing at the NY State High School Golf Championships at Cornell University. The City Council congratulates the team on a successful season and the Section 1 Championship Title.

RYE HIGH SCHOOL BOYS VARSITY GOLF TEAM
Section 1 Team Champions

Coach Patrick Romano

Team Members: James McHugh (C)

Matthew Shainberg (C)

William Gladstone (C)

Nick Berger

Theo Berner

Will Colwell

Zac Bunder

Kyle Gardner

Tiernan Gough

Spencer Hunt

Max Kenney

Dillon Lahey

Brian Latkany

Nick LePore

Rocco Macri

Jack Tartaglia

Thomas Tartaglia

Chaim Yi



CITY COUNCIL AGENDA

NO. 5

DEPT.: City Clerk

DATE: June 8, 2016

CONTACT: Carolyn D'Andrea, City Clerk

AGENDA ITEM Draft unapproved minutes of the regular meeting of the City Council held May 25, 2016.

FOR THE MEETING OF:

June 8, 2016

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: That the Council approve the draft minutes.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: Approve the minutes of the Regular Meeting of the City Council held May 25, 2016, as attached.

DRAFT UNAPPROVED MINUTES of the
Regular Meeting of the City Council of the City of
Rye held in City Hall on May 25, 2016 at 7:30 P.M.

PRESENT:

JOSEPH A. SACK Mayor
KIRSTIN BUCCI
EMILY HURD
JULIE KILLIAN
TERRENCE McCARTNEY
DANIELLE TAGGER-EPSTEIN
Councilmembers

ABSENT: RICHARD MECCA, Councilmember

The Council convened at 6:30 P.M. Councilman McCartney made a motion, seconded by Councilwoman Bucci and unanimously carried to immediately adjourn into Executive Session to discuss litigation and personnel matters. Councilman McCartney made a motion, seconded by Councilwoman Bucci and unanimously carried, to adjourn the Executive Session at 7:30 P.M. The regular meeting convened at 7:35 P.M.

1. Pledge of Allegiance.

Mayor Sack called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call.

Mayor Sack asked the City Clerk to call the roll; a quorum was present to conduct official City business.

3. General Announcements.

Mayor Sack invited Acting City Manager Eleanor Militana to address the Council. Assistant City Manager Militana stated that she was very happy to announce that George Hogben will fill the role of Municipal Boat Basin Supervisor. She stated that Mr. Hogben was the best candidate for the position, and is extremely knowledgeable and very well versed in the area of moorings. Mr. Hogben has very strong ties to the Rye community, as he grew up in the City. He has also been a member of the Rye Fire Department for 25 years and was a past Fire Chief. He is committed to making the Boat Basin great and implementing improvements. On behalf of the City and the Recreation Department, Assistant City Manager Militana thanked Mr. Hogben for his service to the City.

Mr. Hogben introduced himself to the Council and community and stated he was very excited to start his position with the City of Rye.

Mayor Sack expressed his enthusiasm about Mr. Hogben's experience within the City of Rye and looks forward to Mr. Hogben's tenure with the Boat Basin.

Councilman McCartney announced that as promised, he wrote an article for the Rye City Review concerning real issues surrounding the consumption of alcohol. Councilman McCartney stressed the importance of the subject matter and stated that the City needs to get a handle on the underage drinking and drug issues that have hit Rye. He expressed urgency with this issue, as kids are dying of drug use within the community, and it is imperative to talk to our children.

Councilman McCartney then announced that there are still a few camp spots open and fees will increase on June 1, 2016. Also, with regard to Recreation there will be a Food Truck Festival on June 25, 2016. Councilman McCartney then stated that the Rye Golf Club tournament season is in full swing. He commented that the course is in great shape and fully recovered from the greens issues last year. The Rye Golf Club pool opens Saturday, May 28, 2016. There have been improvements made to the pool area in response to members' comments. Councilman McCartney also announced that the City of Rye will be holding a Memorial Day Parade and ceremony from 8:30 to 11:30. He encouraged all residents and their families to attend. Lastly, he announced that on Sunday, May 29, 2016, there will be a Veterans Appreciation Day event held at Rye Playland from 11:30 A.M. to 4:00 P.M. Everyone is welcome at the event.

Councilwoman Killian congratulated the Rye High School Rowers who won the New York State Championship. They will be in the U.S. Rowing Youth National Championship and National Scholastic Championship. Councilwoman Killian further stated that on May 24, 2016, there was a Rye ACT (Drug and Alcohol Coalition) meeting which explained the focus of Rye ACT and also discussed of the results of the survey given to children between grades 7-12 concerning drugs and alcohol. This event was taped and will be shared on Rye City TV. The Rye Youth Council is having a forum on June 1, 2016 from 7 to 9 at Rye Rec about addiction. There will be some powerful speakers and issues presented.

Councilwoman Bucci stated that the Rye Fire Department had a good showing at the Bailout Training that was recently held.

Councilwoman Hurd announced that the Chamber of Commerce is having a Gala on June 22, 2016 from 6:00 to 8:00 P.M. at American Yacht Club. Councilwoman Hurd further announced that on behalf of the Landmarks Committee, the mile marker in City Hall has been moved to an alcove on the main floor, which the committee is happy with. In June, the Rye Landmarks Committee will be moving "Mile Marker 25" to a more prominent spot on Boston Post Road. She explained that Benjamin Franklin put out mile markers between Boston and New York, which determined postage in his day. She then discussed that the Rye Free Reading Room is a landmark, but will be undergoing some renovations. They have been working with the Landmarks Committee to renovate the building, but keep it preserved. She then stated that there have been coyote sightings throughout the City lately and the police are aware of the issue. Councilwoman Hurd also encouraged residents to attend the Memorial Day celebration in the City. She lastly stated that she attended the Public Hearing on the proposed development at the

United Hospital site on May 24, 2016. She complimented Mayor Sack on his comments at the hearing.

Mayor Sack announced that he is wearing a Mayors Against Illegal Guns pin as a part of the group's "Wear Orange Campaign" with a National Gun Violence Awareness Day to be held on June 2, 2016. Gun violence is a serious issue and should be focused a little bit more. It can come into Rye at any time, even if an unusual occurrence.

4. Draft unapproved minutes of the regular meeting of the City Council held May 11, 2016.

Councilman McCartney made a motion, seconded by Councilwoman Hurd and unanimously carried, to adopt the minutes of the regular meeting of the City Council held May 11, 2016.

5. Issues Update/Old Business.

Mayor Sack mentioned that the City may be taking action to acquire the Thruway property across from Rye Country Day School. The logistics need to be worked out, but it is important that the community is aware of this intention. There will be a status report at a future meeting.

Councilwoman Hurd stated that the City has been working with the County on how to address the new oversized Playland sign. She expressed concern over the County's proposal for filling in the existing swimming pool, as there is a possibility that replacing that area with a restaurant setting could negatively affect residents in the adjacent neighborhood.

Mayor Sack commented that to date, there has been no proposal for a restaurant setting in that area.

Councilwoman Killian commented that there will likely be a request for proposal for a restaurant in Rye Town Park this year, so if the County is also proposing a restaurant, it could negatively impact the neighborhood.

Councilwoman Tagger-Epstein inquired as to the status of the RFP for the Rye Town Park management position and Mayor Sack responded the Council would be updated in the future as to any progress.

6. Authorization for City Manager to sign the proposed amendment to the existing License Agreement for 88 Davis LLC.

Mayor Sack stated that this is the second time this item is on the agenda and the Council has had a chance to consider it. Since the last meeting, many Council members have visited the site and the applicant was able to stake the property lines to make the boundaries of the proposed license area more visible. Mayor Sack further stated that the Councilmembers noticed that

improvements had already been implemented and so there was concern that there was bad faith involved.

Leo Napior, attorney for the applicant, stated that this has been a long process. There were meetings with city staff and it was the applicant's understanding that Davis Avenue was a private street. It was discovered that the City had an interest in Davis Avenue, which is why the applicant is before the City Council, asking for permission to have a license over this area.

Councilwoman Tagger-Epstein stated that her concern was that the work had already been completed. There was then general discussion among the Council and Mr. Napior about what had transpired and how the project came to be.

Councilwoman Bucci stated that she would feel comfortable if all neighbors gave support, as the applicant has only showed the support of two neighbors.

Councilwoman Tagger-Epstein stated that the City has several options in deciding how to act in this situation. The City needs to explore precedents on this issue.

Mr. Napior and Mayor Sack discussed the history of the fact that Davis Avenue was once a paper street, and became improved at some point. It was noted that the subject area of Davis Avenue was not maintained by the City.

Corporation Counsel Wilson stated that the portion in question of Davis Avenue is a mapped, private street. The main difference between a public and private street is whether the street has been dedicated and accepted. Here, there was an offer of dedication, but this portion was never accepted by the City and so it is privately maintained.

Councilwoman Hurd stated that she has opposes unnecessary development. She suggested that a license agreement not be considered, but rather consider a de-mapping part of the paper street. There was discussion on this topic among the Council.

Councilwoman Killian asked about the previous license agreement of the subject property. Corporation Council Wilson explained that the prior owner had a retaining wall within the right-of-way that required a license agreement.

Councilwoman Tagger-Epstein stated that she thinks the Council should wait to act until they explore precedent, possible violations, and any other relevant actions in this case.

Councilwoman Bucci stated that what she wants most is for all of the people's voices to be heard that may be affected. She stressed the importance of the Council operating in a manner than considers everyone's perspective.

Councilwoman Hurd stated that the lack of clarity about the property lines and license area until recently was frustrating. However, she is looking forward to reaching a resolution.

Mayor Sack stated that it is such a large piece of property that a ten dollars yearly license fee may not be appropriate compensation to the City, as the applicant has exclusive use of this license. Mayor Sack suggested that the issue be adjourned to gather additional information.

Councilwoman Hurd asked that the applicant give notice to each neighbor so that they may have an opportunity to be heard on the issue.

Mr. Napior agreed to provide notice to all neighbors on Davis Avenue and submit proof to the Council.

Mr. Peter Morrow, the resident applicant in this case, made a statement to the Council. He apologized for any confusion that has occurred over the past three weeks. He stated that impressed with the diligence of the Council and staff on this issue, and that he was trying to make improvements that enrich the entire community. He stated he will respect whatever decision that Council makes regarding this issue.

Mayor Sack stated that the issue will be adjourned to June 8, 2016 to gather further information.

7. Discussion on the proposed revision to the Rye City Charter to rescind Article 12 "Police Department" and Article 13 "Fire Department" and create a new Article 12 "Department of Public Safety" and to create a new position of "Commissioner of Public Safety" which position shall have charge and supervision of the Police and Fire Departments.

Councilwoman Bucci stated that this issue has evolved over many months. She recognized Councilman Mecca's hard work and involvement in this project, as he is so knowledgeable on the issue. She stated that in the last budget season, the Council approved a position for fire administrator. Since then, a Public Safety Commissioner has been proposed, which would oversee both the police and fire department. This would eliminate the Board of Wardens and the Police Commissioner role. This role would need to be approved by the Council and then

Assistant City Manager Militana expressed her thanks to the Fire Department and Councilmembers Bucci and Mecca for their diligence during this effort.

Fire Chief Michael Billington made a statement to the Council. He stated that he has been in Rye for many years. Growing up, it was a huge honor to volunteer for the Fire Department, but demographics have changed over the years. He then stated that Rye needs more paid firefighters, and that the City has an opportunity to make something great with a Public Safety Commissioner. Mr. Billington further stated that it is important for everyone to understand this change. He said that he is in a position right now to make the department better. Mr. Billington stated that his goal is to create a cohesive relationship between paid and volunteer members of the Fire Department. He wants to make the Rye Fire Department great again.

Mayor Sack commended Mr. Billington's service and statement to the City. He stated that the City is at a time when a Public Safety Commissioner makes sense.

Assistant City Manager Militana stated that the issue would go to public referendum in November if approved by the Council.

Councilwoman Hurd stated that her only concern is that at the outset, this position will require a lot of rethinking and organization and there is a need to find someone with experience with both Police and Fire backgrounds.

Mayor Sack announced that the issue will be up for Council approval and Public Hearing on the June 8, 2016 meeting.

There was discussion among the Council concerning the volunteers and paid members of the department and officers and the language of the draft law.

Councilwoman Tagger-Epstein inquired as to the organization of the Fire Department.

Councilwoman Bucci made a motion, seconded by Councilwoman Hurd and unanimously carried, to set a public hearing for June 8, 2016 on the proposed revision to the Rye City Charter to rescind Article 12 "Police Department" and Article 13 "Fire Department" and create a new Article 12 "Department of Public Safety" and to create a new position of "Commissioner of Public Safety" which position shall have charge and supervision of the Police and Fire Departments.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, McCartney and Tagger-Epstein
NAYS: None
ABSENT: Councilman Mecca

7A. Discussion to amend Local Law Chapter §197, "Zoning", of the Rye City Code, Section §197-86, "Tables of Regulations", to allow accessory seasonal outdoor customer seating in the B-1 Neighborhood Business District.

Mayor Sack stated that there has been interest in expanding this law to include the entire B-1 Neighborhood Business District. Applicants who are covered by this local law must apply to the Planning Commission for approval.

Councilwoman Hurd stated that she is generally in support of outdoor dining. She expressed that her one concern with this proposal is that it might be too broad. She explained that with outdoor seating at venues that are not restaurants there may lack the ability to control loitering.

Councilwoman Tagger-Epstein was concerned about traffic and pedestrian safety in relation to those dining outdoors.

Councilman McCartney was supportive of the amendment to the law.

Mayor Sack commented that the Planning Commission would use proper discretion with each approval.

Douglas Kooluris, owner and operator of G. Griffin Wine & Spirits, addressed the Council. He stated that he made a complaint to the City against Playland Market and the store's outdoor dining that was not previously approved, nor covered under the law. He said that he shares a parking lot with Playland Market. He expressed concern over the site parking and the possible negative impacts the proposed amendment would have on turnover.

Councilwoman Hurd stated that she felt the amendment was too broad. There was general discussion of the legislation among the Council.

Councilwoman Killian thanked Commissioner Corcoran for enforcing the City's laws. He has been dedicated to many issues, first and foremost the substance abuse problem with our children. She stated that enforcement under Mr. Corcoran has been wonderful, especially considering that he has only been here since February 1, 2016.

Mr. Kooluris stated that he is doing his part as a liquor store owner to prevent underage drinking. He encouraged the City to enforce the laws.

8. Resolution to amend the Nominations, Elections and Voting Eligibility procedures for the Rye Golf Club Commission regarding voting procedures and the Commission level of members.

Councilman McCartney introduced Pat Geoghegan. Ms. Geoghegan, current Chair of the Rye Golf Club Commission, stated that the goal is to change the election procedures. She stated that after Labor Day, voting members decrease. The goal is for Rye Golf Club elections to take place when the season is busy, which was the thought process behind the changes proposed.

Councilman McCartney agreed that these changes would be positive. Councilwoman Bucci also agreed that seven (7) Commission members would be more efficient and agreed with the suggestion regarding the timing of voting.

Councilman McCartney made a motion, seconded by Councilwoman Bucci and unanimously carried, to approve the proposed changes regarding voting procedures and Commission level for the Rye Golf Club Commission.

**Rye Golf Club
Nominations, Elections and Voting Eligibility**

1) Commission

- a) The Rye Golf Club Commission will consist of seven adult Club members in good standing elected by the eligible voting Club members. The Commission shall at no time have more than one non-resident member.
- b) The term of each Commission member shall be three years, commencing January 1 of the year following a regular election year. There is no limit to the number of terms a Commission member may serve.
- c) A Commission member-elect shall be allowed to attend Commission meetings from their date of election but may not participate in voting until they are sworn in.
- d) The Commission members will select a chairperson from their group for a one-year term (the "Chairperson") at the first regular Commission meeting in an applicable calendar year. A Chairperson may serve as Chairperson for an unlimited number of terms. The Chairperson will appoint a Vice Chairperson who will act as Chairperson in his/her absence.
- e) Commission vacancies shall be filled at the next regular election following the vacancy for the remainder of the vacant term. In the event the Commission falls below seven members, the person(s) with the next number of highest votes from the previous election shall, if such person is otherwise eligible and willing to fill such vacancy, be appointed to the Commission to maintain seven Commission members until the next regular election. In the event there is no one to fill the vacancy a special election will be held to fill the vacancy and maintain seven Commission members until the next regular election.
- f) A quorum of the Commission is established by four members present at a meeting.

2) Nominating Committee and Nominations

- a) For each election, a Nominating Committee shall be formed and comprised of three adult Club members in good standing, comprised as follows:
 - i) One club member appointed by the Commission (this member shall not be a current Commission member); and
 - ii) One current Commission member who is not standing for re-election shall be appointed by the Commission Chairperson. This member will serve as chairperson of the Nominating Committee; and
 - iii) One club member elected by the membership in the previous regular election.
- b) The Nominating Committee will review all submissions for Commission candidacy and Nominating Committee candidacy as described in Paragraph 2(e). The Nominating Committee shall provide a ballot with at least one more candidate than the number of members being elected. If the Nominating Committee receives fewer submissions by the submission deadline date than the number of members that will be elected, the

Nominating Committee shall provide a ballot with at least as many candidates as the number of Commission members to be elected.

- c) No member of the Nominating Committee shall be eligible for election as a candidate for the Commission for the regular election for which the Nominating Committee member is providing nominations.
- d) The term of each Nominating Committee member shall be for one year, commencing January 1 of the year following the regular election. There is no limit to the number of terms a Nominating Committee member may serve.
- e) Nominations
 - i) The Nominating Committee shall not be required to include more than the minimum number of candidates as provided in Paragraph 2(b);
 - ii) A proposed candidate for election to the Commission or Nominating Committee shall be an adult member in good standing. The Golf Club Member Handbook shall indicate membership categories and members entitled to be considered for candidacy.
 - iii) A Club member may request to be considered as a candidate for election to the Commission or the Nominating Committee in the next regular election by submitting a written request to the Nominating Committee chairperson on or after January 1 and prior to May 15 of such year. Any such request must be submitted by email to nomination@ryegolfclub.com or in person to the membership office during regular business hours in a sealed envelope addressed to the "Nominating Committee Chairperson" indicating whether such person wishes to be considered as a candidate for the Commission or the Nominating Committee and such other information as a member may wish to provide the Nominating Committee for its consideration. The Nominating Committee may in its sole discretion select or reject any such submissions or select one or more other eligible Club members, subject to the minimum candidate requirements set forth in Paragraph 2(b). The proposed slate of candidates shall be posted on the Club website by July 5.
 - iv) Any eligible member submitting a valid request for consideration as a candidate that is not selected by the Nominating Committee may be included as a candidate on the ballot by fulfilling each of the following requirements:
 - (1) Completing a petition for candidacy form available from the Club Manager for the period June 15 to July 5 of such year;
 - (2) Receiving and submitting signatures of fifty (50) eligible voting members in support of the petition for candidacy (see Golf Club Member Handbook for eligible voting members).
 - (3) Submitting a complete petition form in accordance with the instructions supplied therewith to the Club Manager prior to July 5.

The Club Manager shall verify the status of members signing in support of such petition. Any submitted petition form not complying with the foregoing requirements shall not be considered and such member shall not be included on the ballot.

- v) The final ballot form will be posted on the Club website at least one week prior to the start of the annual election.

3) Election

- a) Voting will take place over a two-week period online through a secure online service approved by the Nominating Committee and/or Commission that suits our needs.
- b) An invitation email will be sent to all eligible voters with instructions on how to cast your vote online.
- c) For those members wishing to cast their vote onsite, a computer kiosk will be available at the club during normal business hours throughout the voting time period.
- d) Votes will be tallied in accordance with the instructions provided therewith and will not be counted as a result of any of the following:

- i) Vote is not cast within the specified time period; or
- ii) Vote is not cast in accordance with specified instructions; or
- iii) Vote is rejected for any reason by the online service being used.

- e) Valid ballots shall be tallied for each Commission candidate and Nominating Committee candidate by the online service. The results will be forwarded to the City Clerk who shall submit a list of election results to the City Council for approval no later than November.

4) Voting eligibility

- a) An invitation email shall be sent (to the email on file) to each eligible voting member. The Golf Club Member Handbook shall indicate the membership categories and members entitled to voting privileges.
- b) To receive an invitation email and vote in an election, the voting member must have an email on file and have a member logon account established prior to the election.
- c) No Club member shall be entitled to vote more than once in an election.

Rye Golf Club

Commission Responsibilities

1) The Commission.

- a) Role. The Commission shall serve in an advisory capacity on behalf of the members of the Golf Club and shall have the responsibilities set forth in Section 1(c) below. Neither the Commission, any Committee of the Commission nor any member of the Commission or member of any Committee thereof, shall have any direct authority or responsibility for execution, implementation or management of any activity, program, employment matter,

or contract involving the Golf Club. The Golf Club Manager (who reports to the City Manager) shall be responsible for the execution, implementation and management of the authorized operation of the Golf Club.

- b) **Advisory Recommendations.** The Commission shall make such recommendations as it deems proper in respect of the current and proposed activities, programs, policies and other matters related to the Golf Club, the Commission shall also make recommendations concerning the duties and responsibilities of independent contractors (e.g., Golf Professional), including recommendations concerning employment of prospective individuals to fill those positions, and any other areas the Commission deems appropriate; such recommendations shall be made directly to the Golf Club Manager. The Commission shall also make recommendations concerning the duties and responsibilities of the Golf Club Manager, including recommendations concerning employment of prospective individuals to fill the position, and any other areas the Commission deems appropriate; such recommendations shall be made directly to the Rye City Manager.

- c) **Responsibilities.** The Commission shall:
 - i) Adopt, interpret, apply and enforce such rules and regulations relating to the use of the Golf Club as it deems appropriate, which rules and regulations shall not be inconsistent or conflict with any agreement of the City of Rye or any published policy of the Rye City Council;
 - ii) review, advise on and approve an annual budget for the Golf Club provided and prepared by Golf Club staff and finance committee. Annual budgets shall include proposed annual membership categories and fees and proposed charges for other services provided by the Golf Club, prior to timely submission of such annual budget to the Rye City Manager;
 - iii) select a Commission Chairperson; and
 - iv) decide such matters as may be properly brought before the Commission for a decision.

- d) **Commission Chairperson.** The responsibilities of the Commission Chairperson shall be:
 - i) to appoint a chairperson to each Standing Committee of the Commission;
 - ii) to organize limited duration Ad Hoc Committees of the Commission as may be necessary from time to time for the purpose of making recommendations to the Commission in respect of matters not properly within the scope of the usual and customary advisory role of a Standing Committee of the Commission;
 - iii) to appoint a chairperson to each Ad Hoc Committee of the Commission;
 - iv) to serve as an ex-officio member on each Committee of the Commission;
 - v) to appoint a Vice-Chairperson of the Commission who shall serve as Chairperson during the absence of the Chairperson; and

- vi) to direct such matters as the Chairperson deems necessary and appropriate to a Committee of the Commission for the advice and recommendation of such Committee.

2) Committees of the Commission.

- a) **Standing Committees.** The Commission shall have Standing Committees to advise and make recommendations to the Commission on such matters that properly come before a Standing Committee or as may be directed to such Committee by the Commission or the Commission Chairperson. The Standing Committees of the Commission initially shall include Committees relating to Golf, Pool, House and Finance.
- b) **Ad Hoc Committees.** The Commission shall have such Ad Hoc Committees as may be constituted from time to time pursuant to Section 1(d)(ii) above.
- c) **Nominating Committee.** The Nominating Committee shall not be considered a Standing Committee or Ad Hoc Committee and shall be subject solely to the rules set forth in the Rye Golf Club Nominations, Elections and Voting Eligibility Section 2 concerning Nominating Committee and Nominations.
- d) **Committee Members and Chairpersons.**
 - i) Each Standing Committee and Ad Hoc Committee of the Commission shall be constituted with no fewer than three members and no more than seven members; provided that a Committee may be constituted with two members and up to nine members in appropriate circumstances with the approval, by majority vote, of the Commission.
 - ii) A Committee member shall be a member of the Golf Club holding a valid current membership entitling such member to voting privileges.
 - iii) The Chairperson appointed to each Standing Committee shall be a Member of the Commission, other than the Chairperson of the Commission.
 - iv) The Chairperson of an Ad Hoc Committee may be a Member of the Commission.
 - v) The Chairperson of a Committee shall make efforts to seek out qualified members to serve as members of such Committee. The Committee Chairperson will then make recommendations to the Commission of any such qualified members it believes should serve on such Committee. Such nominees shall serve as Committee members upon approval by majority vote of the Commission. Such nominees will serve as Committee members at the convenience of the Commission and can be removed from such Committee service at any time and for any reason at the sole discretion of the Commission. A Committee member shall serve until the earlier of the end of the Golf Club year for which he or she serves as a member or the date a Committee terminates, or the date on which such member is removed by the Commission.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, McCartney and Tagger-Epstein
NAYS: None
ABSENT: Councilman Mecca

9. Residents may be heard on matters for Council consideration that do not appear on the agenda.

Joseph Murphy, 57 Franklin Avenue, congratulated the City Council on addressing the issues of alcohol and drug abuse. He specifically commended Councilman McCartney for his sincere and honest article on alcoholism and the issues surrounding abuse.

Mayor Sack addressed Mr. Philip Cicchiello, 203 Purchase Street, and reviewed Mr. Cicchiello's previous concerns that expressed to the Council concerning a fence between his property and his neighbor's property. Mayor Sack asked if Mr. Cicchiello had anything new to offer.

Philip Cicchiello, 203 Purchase Street, spoke at length about his issues with the fence disputes between his property and his neighbor's property.

10. Consideration of Resolution establishing a new policy for filing Small Claims Assessment Review Petitions and for reviewing the assessment of properties when building permits are issued for property owned by City Department Heads and Rye City Council Members.

Mayor Sack stated that the basis for this resolution is to avoid a potential conflict of interest. This new policy would apply to City Manager and Assistant City manager position. The Corporation Counsel would work with an independent Appraiser to resolve any challenges made with regarding to Small Claims Assessment Review should a situation arise. The policy would also include Department heads and members of the City Council.

Councilwoman Tagger-Epstein stated that she researched the information provided on the Office of the State Comptroller website to help define the term "conflict of interest." She stated that according to New York State, no other municipality has such a policy in place. In state law, the Board of Assessment Review (BAR) is the only municipal body that is provided for. Councilwoman Tagger-Epstein stated that in the past, if there was a conflict of interest, the City Assessor has worked with an independent body. She also defined the term "conflict of interest" as defined by the New York State Comptroller and stated after applying the definition, no conflict of interest would exist here. Councilwoman Tagger-Epstein lastly stated that RPTL § 572 requires the assessor to assess property within her municipality.

Councilwoman Bucci stated that her concern is that the added costs associated with an outside appraiser.

Corporation Counsel Wilson explained that in the proposed policy, an appraisal would be done if any prior work that had completed on a property within the past year.

Councilwoman Hurd stated that while she appreciates the resolution, the City has seen that the Assessor in the past has acted accordingly if a potential conflict presented itself. She added that the City is so lucky to have Noreen Whitty as the City Assessor.

Councilman McCartney stated that the City should try to avoid the appearance of impropriety at every opportunity. However, this proposal would be more responsible if it was easier and less expensive for the City. The Council at this point is deciding where to draw the line.

Mayor Sack made a motion to adopt the following resolution:

**A RESOLUTION ESTABLISHING A NEW POLICY FOR FILING SMALL CLAIMS
ASSESSMENT REVIEW PETITIONS AND FOR REVIEWING THE ASSESSMENT OF
PROPERTIES WHEN BUILDING PERMITS ARE ISSUED FOR PROPERTY OWNED
BY CITY DEPARTMENT HEADS AND RYE CITY COUNCIL MEMBERS**

WHEREAS, every year numerous City of Rye property owners avail themselves of the opportunity under the law to file grievances and small claims assessment review petitions in New York State Supreme Court (SCAR petitions) seeking reductions to their property tax assessments; and

WHEREAS, City of Rye property owners also apply for and receive building permits to make certain improvements to their properties within the City, which prompt a review of the assessed value; and

WHEREAS, the City of Rye has an interest in avoiding any possible conflict of interest issues with regard to such SCAR petitions and in the review of building improvements for purposes of assessment of value; now therefore

BE IT RESOLVED, that it is now and hereafter the policy of the City of Rye to have the City Corporation Counsel upon consultation with an independent appraiser, review and resolve, whether by hearing or settlement, any SCAR petition filed by a City Council Member, City Manager, Assistant City Manager or other Department Head; and

BE IT FURTHER RESOLVED, that it is now and hereafter the policy of the City of Rye that when a property is owned by a City Council Member, the City Manager, Assistant City Manager or other Department Head, the assessor shall engage an independent appraiser to review any property improvements made as the result of a building permit and the assessor shall consult with such independent appraiser for purposes of assessing the value of such improvement(s); and

BE IT FURTHER RESOLVED, that this policy applies to any residential or commercial property interest within the boundaries of the City of Rye.

As there was no second to the motion, the motion failed.

11. Resolution to amend the 2016 Adopted Fees and Charges for the Rye Boat Basin Enterprise Fund.
Roll Call.

Assistant City Manager Militana stated that the fee schedule adopted for 2016 states that the boats must be put into the water by June 15, 2016. The Boat Basin asked that the Council approve moving the required date to July 8, 2016 so that anyone within dry storage should not be charged the \$20/\$25 resident/non-resident day fee during the month of June.

Councilwoman Killian stated that if the Boat Basin Commission felt that this change was necessary, the Council should defer to their judgment and support this proposal.

Councilwoman Hurd stated that her understanding was that there is a shortage of mechanics to get the boats ready for the water and people are desperate to get in line for these services. Because of this wait, approximately 2/3 of the boats were still not in the water.

Councilman McCartney stated that in his experience, July 8 is a reasonable date for this request.

Councilwoman Hurd made a motion, seconded by Councilman McCartney, to amend the 2016 Adopted Fees and Charges for the Rye Boat Basin Enterprise Fund.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, McCartney and Tagger-Epstein
NAYS: None
ABSENT: Councilman Mecca

12. Consideration of Bid for 2016 Rye Recreation Summer Camp Bus Services (Contract #2016-04).
Roll Call.

Assistant City Manager Militana explained that the bus bids for the upcoming summer camp recreation season had been opened by the City Clerk on May 17, 2016. Unfortunately, two of the bids were incomplete, and the third bid could only provide one type of busing, when the City's needs were for both coach and school buses.

Councilman McCartney made a motion, seconded by Councilwoman Killian, to reject all bids for Contract 2016-04, "2016 Rye Recreation Summer Camp Bus Services."

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, McCartney and Tagger-Epstein
NAYS: None
ABSENT: Councilman Mecca

13. Consideration of a request by the Rye Chamber of Commerce for the use of City Car Park #2 on Sundays from May 24, 2016 through December 6, 2016 from 8:30 a.m. to 2:00 p.m. for the Rye Farmers Market.

Councilwoman Hurd made a motion, seconded by Councilwoman Tagger-Epstein and unanimously carried, to approve the request of the Rye Chamber of Commerce for the use of City Car Park #2 on Sundays from May 24, 2016 through December 6, 2016 from 8:30 a.m. to 2:00 p.m. for the Rye Farmers Market.

14. Miscellaneous communications and reports.

There were no comments made under this agenda item.

15. New Business.

There were no comments made under this agenda item.

16. Adjournment.

At 10:05 P.M., Councilwoman Tagger-Epstein made a motion, seconded by Councilwoman Killian to adjourn the regular meeting of the City Council. Councilwoman Tagger-Epstein made a motion, seconded by Councilwoman Killian, to reopen the public meeting of the City Council. Councilman McCartney made a motion, seconded by Councilwoman Bucci, to adjourn into Executive Session to discuss litigation matters. At 10:50 P.M., Councilman McCartney made a motion, seconded by Councilwoman Bucci, to adjourn Executive Session.

Respectfully submitted,

Carolyn E. D'Andrea
City Clerk



CITY COUNCIL AGENDA

NO. 6

DEPT.: City Council

DATE: June 8, 2016

CONTACT: Mayor Joseph A. Sack

AGENDA ITEM: Issues Update/Old Business

FOR THE MEETING OF:

June 8, 2016

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That an update be provided on outstanding issues or Old Business.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND:



CITY COUNCIL AGENDA

NO. 7

DEPT.: City Council

DATE: June 8, 2016

CONTACT: Mayor Joseph A. Sack

ACTION: Presentation and discussion on deer population management.

FOR THE MEETING OF:

June 8, 2016

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND: The Deer Study Group made a recommendation to the City Council that an expert in deer tracking methods be engaged to gather baseline data and set up a procedure to address the deer population. Hank Birdsall, a biologist with extensive experience in deer management, has been collecting baseline data in the area of the Rye Golf Club, Marshlands Conservancy, Jay Heritage Center and the Greenhaven area.

See attached.

White-tailed Deer Population Status and Management Recommendations for the City of

Rye, New York

Abstract: *White-tailed deer (Odocoileus virginianus) have returned from local extirpation in Rye, NY in the late 19th century to unprecedented population levels in the early 21st century. The overabundant deer population is having a profound impact on Rye residents in the form of deer/motor-vehicle collisions, damage to landscaped plantings and vegetable gardens, and tick-borne illnesses. Deer have also prevented forest regeneration in Rye's forested parks, ensuring that no seedlings grow into saplings that will eventually replace mature trees that fall or die. Walking censuses in Rye greenspace as well as pellet surveys at Marshlands Conservancy and Rye Golf Club were conducted during the winter and early spring of 2015-2016. In addition, data on deer/motor-vehicle collisions were collected via the Rye Police Department between 2008 and 2015. Walking deer population censuses have estimated Rye's deer population at no fewer than 159 individuals, 93 of which reside in District 1, including Marshlands Conservancy, Greenhaven, and Rye Golf Club. The local overwinter deer density in this region was estimated via pellet surveys at 50.1 deer/square mile, nearly 3 times the density required to ensure forest regeneration and over 5 times the deer density required to reduce the density of deer ticks and associated Lyme disease. In 26 forested plots surveyed at Marshlands Conservancy, 0 plots showed native tree seedlings over 6" in height, meaning no forest regeneration is occurring.*

Nonlethal and lethal management options were analyzed and considered. In order to reduce the deer density in an efficient, cost-effective, local, and sustainable manner, I propose creating a peer-to-peer network connecting skilled, local volunteer archers to Rye landowners with suitable property for bowhunting. Hunters will be rigorously tested to ensure a high level of skill and ethics. Hunters selected for the program will be required to abide by New York State bowhunting regulations and hunt from an elevated tree stand with a compound bow, a proven and safe method of harvesting deer in the suburbs. Twenty-five percent of the venison harvested will be donated to the Food Bank for Westchester for families in need.

Report prepared and research conducted by Hank C. Birdsall, M.S.

INTRODUCTION

White-tailed deer (*Odocoileus virginianus*) have gone from the brink of extinction at the turn of the 20th century to unprecedented population levels by the turn of the 21st. It is estimated there are currently 30 million white-tailed deer in the United States. The white-tailed deer is a highly adaptable, medium-sized ungulate (hoofed mammal) that ranges from the boreal forests of northern Canada through the prairies, deciduous forests, swamps, and semi-arid rangelands of the United States, into Mexico and Central America to as far south as the rainforests of Bolivia and Peru in South America (Heffelfinger 2011). The natural adaptability demonstrated from their vast range has enabled white-tailed deer to become established and flourish in suburban and even urban areas with high human population densities.

White-tailed deer have made a noticeable return to Rye, New York in the second half of the 20th century, and particularly during the last 2 decades after local extirpation in Westchester around 1861 (R. Christie pers. comm.). The matrix of wooded parks, greenspace, and spacious lawns featuring nutritious supplemental food has fueled the growth of Rye's white-tailed deer population. Female white-tailed deer (hereafter, "does") are capable of breeding within their first year if nutrition is abundant and conditions are right. Does give birth to 2 fawns per year with the quality and quantity of nutrition available in Rye. In addition, deer populations in Rye are not kept in check by their natural predators, gray wolves (*Canis lupus*) and cougars (*Puma concolor*), which have long since been locally extirpated. Eastern coyotes (*Canis latrans*) likely have an impact on fawn survival in Rye, however this impact is limited and difficult to quantify. Without natural predators and with abundant food resources, white-tailed deer populations will continue to grow in the City of Rye unless management action is taken.

METHODS

Walking Censuses

In order to census Rye's deer population, walking counts were performed on public greenspace and adjacent private property from December 2015 – March 2016. Deer counts focused on Marshlands Conservancy/Jay Heritage Center/Rye Golf Club/Greenhaven, Edith Read Sanctuary, Rye Nature Center, and Greenwood Union Cemetery. Counts were performed at both dawn and dusk at each location. In addition, backyard reports via email or the Rye Deer Hotline assisted in determining the number of deer on private property in the Kirby Lane North area and Milton Point. In those backyard reports, particular care was taken not to double-count deer and reports generated from those areas represent the highest number of deer seen by a resident at one particular time. Male deer (hereafter, "bucks") lose their antlers annually in January and February after the conclusion of the breeding season and begin growing new sets of antlers every spring. Because most counts were conducted during the period after which bucks shed their antlers, census results were not grouped by sex.

I conducted 8 walking censuses at Marshlands Conservancy, occasionally accompanied by one volunteer while another volunteer concurrently counted at Rye Golf Club. Greenhaven residents were encouraged to report deer seen in their backyards during the same time window when I was counting at Marshlands. Participation levels were high, indicating interest in the research by the community. Again, extreme care was taken not to double-count deer (i.e. if a resident reported 7 deer in their backyard at 6:40pm and another resident 3 houses down reported 9 deer in their backyard at 7pm, I disregarded the initial report assuming the residents were seeing the same group of deer, plus the 2 individuals that remained out of sight). Care was also

taken not to make eye contact or approach deer and push them in the same direction of the walking loop. I conducted 7 counts at Edith Read Sanctuary, sometimes assisted by a volunteer, 2 counts at Greenwood Union Cemetery and the adjacent private property via public roads, and 2 counts at Rye Nature Center, however the highest report from RNC came from a trusted volunteer.

Pellet Surveys

Pellet counts were conducted on April 5th and April 11th across portions of Marshlands Conservancy and Rye Golf Club, the only tract in Rye large enough where plots could be counted in straight transect-lines close to 1 mile in length. Pellet count surveys were conducted according to the methods of Dr. David deCalesta in order to assess the relative density of the overwintering deer population in a given area. Deer pellets were counted within 4' radius plots every 100' along 3 1-mile long transects spanning portions of Rye Golf Club and Marshlands Conservancy before Spring green-up. Pellet groups were counted if more than half of the pellets in 1 group lay within the 4' radius plot. A "group" consisted of at least 10 pellets. Deer densities from the pellet counts were calculated from the following formula :

Deer per square mile =

$$\frac{\text{number pellet groups counted}}{(\text{pellet groups/deer/day}) \times (\text{days since leaf-off}) \times (\text{plot area in square miles})}$$

Deer deposit ~25 pellet groups per day and leaf-off at Marshlands Conservancy was determined to be 11/24/15.

Deer/Motor-vehicle Collisions

Deer/motor-vehicle collisions (hereafter, “D/MV collisions”) reported to the Rye Police Department were entered into a Microsoft Excel spreadsheet and graphed to demonstrate annual and monthly trends. Locations of D/MV collisions were also noted.

RESULTS

Walking Censuses

Investigation of Rye’s deer populations through walking censuses of public greenspace and adjacent private property has revealed that Rye has no fewer than 159 individual deer (Table 1). I am purposely abstaining from reporting a deer density (deer/square mile) for the entire City of Rye because of the patchiness of the suburban landscape and because much of the land area in Rye is unusable space for deer (i.e. roads, parking lots, downtown Purchase St.).

Table 1 – Visual censuses of Rye greenspace and adjacent private property

Visual Deer Counts			
<i>(only high counts reported)</i>			
<u>Location</u>	<u>Date</u>	<u># Deer</u>	
Marshlands/Jay/District 1	23-Feb	93	
Edith Read	27-Mar	25	
Rye Nature Center	16-Feb	17	Volunteer report
Greenwood Union	6-Mar	13	
Kirby Lane N	5-Feb	6	Backyard report
Milton Point	25-Jan	5	Backyard report
	Minimum total	159	

Pellet Surveys

33, 33, and 38 plots were counted on 3 straight-line transects 500-750' apart spanning Rye Golf Club and Marshlands Conservancy moving Southwest at 230° to encompass all habitat types within those transects. The overwinter deer density in this area was calculated to be 50.1 deer/square mile. In 26 plots within the Marshlands forest (excluding manipulated or mowed areas like Rye Golf Course and the Marshlands meadow), I observed no forest regeneration of native tree species over 6".

Deer/Motor-vehicle Collisions

128 deer/motor-vehicle collisions have been reported by the Rye Police Department between 2008 and 2015. Many D/MV collisions go unreported. Below are graphs displaying annual D/MV collisions as well as monthly trends in D/MV collisions.

Figure 1 – Annual Deer/Motor-vehicle Collisions reported to Rye Police (2008-2015)

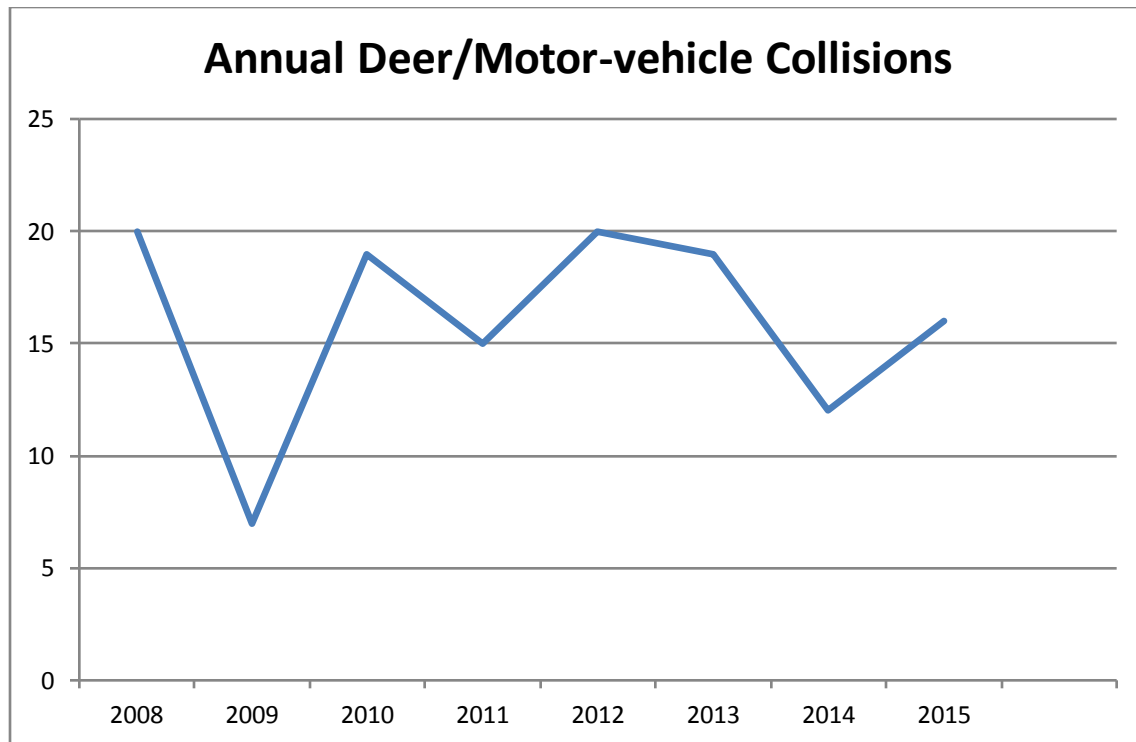
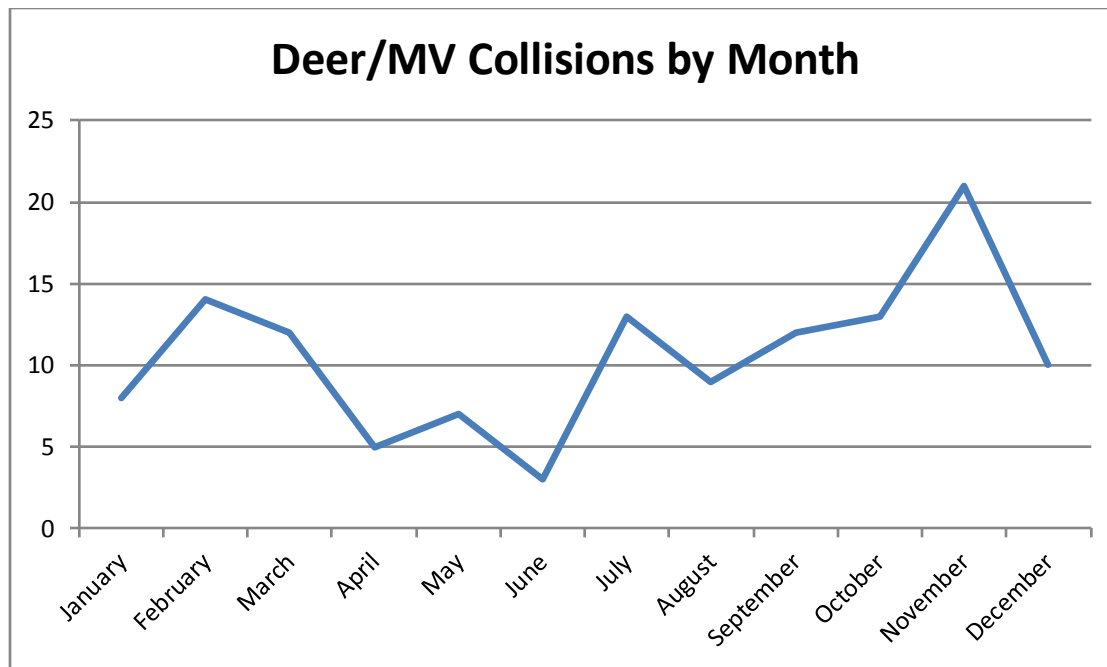


Figure 2 – Deer/Motor-vehicle Collisions by Month (2008-2015)



DISCUSSION

Walking Censuses

I believe that the walking censuses (Table 1) represent the minimum number of deer in Rye (159 individuals). Because of their natural camouflage and ability to remain undetected by predators, there are always more deer on these surveys than are estimated within the count area. In addition, deer are abundant on private property throughout Rye and remained outside of count areas while censuses were being performed. This was evidenced by the higher census numbers in District 1 when Greenhaven residents were involved in the backyard counts.

There appear to be 2 major concentrations of deer in Rye, with several other pockets of deer activity occurring throughout the city. Bucks are known to travel far and wide in search of

does during the mating season; however, a doe spends most of her time on ~100 acres (Blossey, unpublished data). While I'm sure there is some local movement of does throughout Rye, for the most part I believe the does are sticking close to their natal areas. Does sighted at Marshlands Conservancy are not the same does sighted at Edith Read Sanctuary. However, because of the proximity of Kirby Lane N and Edith Read Sanctuary, it is possible, but unlikely, the does seen on Kirby Lane N may be the same does sighted at Edith Read Sanctuary.

The highest concentration of deer appears to be in District 1 around Rye Golf Club/Marshlands Conservancy/Jay Heritage Center/Greenhaven/The Preserve. A majority of D/MV collisions, complaints from residents, and visible deer activity has been noted in this area.

The second highest concentration of deer occurs in the Manursing Way/Kirby Ln/Kirby Ln N/Edith Read Sanctuary area. Because of the small size of Read Sanctuary, which represents only a portion of a deer's home range, count variation was greater. There are certainly deer on private property that aren't sighted during my counts at Read. The properties in this area have large backyards and adjacent woodlots with abundant bedding sites and forage opportunities.

Two other pockets of deer activity occur around Rye Nature Center/Blind Brook Watershed in central Rye and across I-95 around Greenwood Union Cemetery/North Street/Locust Ave/Apawamis Club. Because of the small size of Rye Nature Center, which represents only a portion of a deer's home range, sometimes deer are not present at RNC, but are on nearby private property. The same concept applies to the deer around Greenwood Union Cemetery and the wetland across North Street adjacent to The Ives.

Other portions of Rye where deer are known to bed include: Milton Point; the wetland adjacent to the intersection of Playland Parkway and Blind Brook (including portions of Disbrow

Park); the woodlot on the corner of Midland Ave. and Playland Parkway; and the parcel of land around Beaver Swamp Brook adjacent to the Con Edison Building and the Osborn Cemetery.

Areas like Milton Point, which currently harbors at least 5 deer, can expect a significant increase in the local deer population within the next year or two if no management action is taken.

Pellet Surveys

The results of the pellet surveys (50.1 deer/square mile) indicate that the overwinter deer density in District 1 is nearly 3 times the deer density (18 deer/square mile) below which forest regeneration would occur (Tilghman 1989) and over 5 times the density (10 deer/square mile) required to reduce deer tick (*Ixodes scapularis*) populations and associated Lyme disease risk (Boulanger et al. 2014).

White-tailed deer are considered “ecosystem engineers.” Deer affect the plants through their browsing and, in turn, the animals and the habitat. Overabundant white-tailed deer have decimated the understory at Marshlands and the lack of ground cover has impacted the successful breeding of woodland bird species that rely on the forest understory. The Marshlands Conservancy was specifically set aside to preserve habitat for future generations. There is no forest regeneration occurring at Marshlands because of the size of the local deer population, as the overabundant deer browse even the least preferred tree seedlings like American beech (0 beech seedlings above 6” in 26 forested plots) before they have a chance to grow into saplings. The habitat at Marshlands will appear drastically different 100 years from now after the mature trees fall and there are no saplings to replace them. In addition, plant biodiversity is threatened as native vegetation is reduced and invasive species increase. This scenario is not unique to

Marshlands, and the same trend is occurring in forests throughout Rye, including Rye Nature Center and Edith Read Sanctuary.

Deer/Motor-vehicle Collisions

The highest number of D/MV collisions is predictably in November, around the peak of mating season. A spike in February is likely due to increased movements to meet nutritional demands during winter and a spike in July may be due to increased use of city roads and Playland Parkway by non-resident drivers during Playland's busiest month. Nearly all the D/MV collisions occurred between dusk and dawn, and rarely during daylight hours. This is partially due to decreased driver visibility during these hours, but also because deer are more active at dawn, dusk, and night. Over 1/3 of the D/MV collisions occurred on Boston Post Road between Oakland Beach Avenue and the Mamaroneck border. Playland Parkway has the second highest occurrence of D/MV collisions. Both of these roads are frequented by out-of-town drivers and drivers who tend to drive over the speed limit. In addition, prime deer habitat abounds adjacent to both of these roads. Although some D/MV collisions are unavoidable, the traditional yellow and black "deer crossing" sign seems to be having no effect on drivers. Perhaps a new design to indicate "deer crossing" should be developed to better catch the driver's eye. In addition, perhaps public announcements should be made prior to and during the deer breeding season (September – December) to alert drivers to the increased chance of colliding with a deer. The average claim for a D/MV collision is \$3,305 (State Farm, 2012) and an average of 16 D/MV collisions occur annually in Rye. This costs Rye drivers a minimum of \$52,880 annually, not including associated medical costs. It is important to note that this number does not include the number of D/MV collisions that go unreported. There have already been 8 D/MV collisions in 2016 and 2 instances where deer were impaled on fences.

MANAGEMENT RECOMMENDATIONS

3 different deer management solutions were considered for the City of Rye

- 1) nonlethal immunocontraceptives
- 2) cull via hired sharpshooters
- 3) volunteer program featuring skilled, local archers

Immunocontraceptives

The application of immunocontraceptives on female white-tailed deer has never been proven to work in an open population and has seen only mixed results in “closed” populations on islands and in fenced areas. Hastings-on-Hudson is currently in the third year of a 5-year study to determine the effectiveness of an immunocontraceptive program in an open population. I believe this program will fail. Every female deer in the local area must be accounted for, captured, immobilized, and given unique ear tags in addition to the original dose of immunocontraceptives. The immunocontraceptives must be re-applied to each individual doe every 2-3 years via dart. If does naturally move in from an adjacent population, they would also have to be captured, given ear tags, and have the immunocontraceptive applied. This method is highly expensive (~\$1000 per deer annually), time-intensive, and not guaranteed to work. In addition, the deer are still active on the landscape consuming native tree seedlings, wildflowers, vegetable gardens, and ornamental plantings, colliding with vehicles, and spreading tick-borne disease. New York City is currently initiating a deer management program concentrating on sterilizing the bucks on Staten Island. I expect this solution to be equally ineffective, wasteful, and potentially dangerous

as it may result in increased deer/motor-vehicle collisions as unbred does will go into estrous for several months, resulting in increased doe-chasing and rutting activity by bucks.

Sharpshooters

Hired sharpshooters, such as the USDA-Wildlife Services and White Buffalo Inc., are highly effective at reducing local deer populations dramatically. However, these services are also expensive and would be an annual cost. Having grown up in Rye, I do not feel that the community (both hunters and non-hunters) would support a deer management solution featuring firearms. Even culls on public property using crossbows or compound bows accompanied by baiting would generate controversy. Sharpshooters would need to have their services retained on an annual basis and I feel that there are more affordable options that are also effective and would generate less controversy within the community.

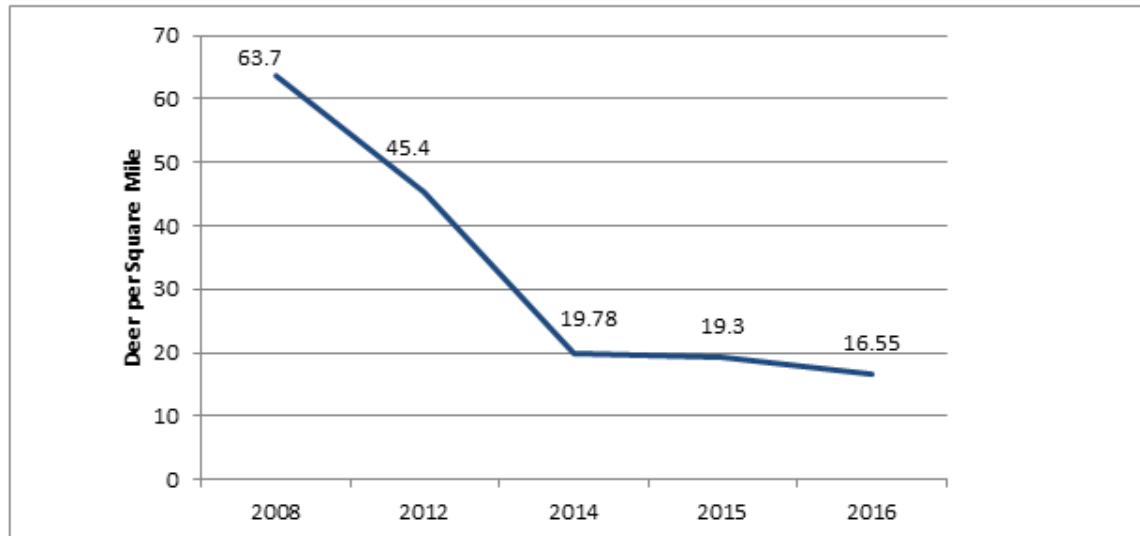
“Host-a-Hunter” – Skilled, Local Volunteer Archery Program - RECOMMENDED OPTION

I am proposing a peer-to-peer network connecting skilled, local volunteer archers with Rye homeowners who would like to host a hunter on their property following New York State Department of Environmental Conservation (NYSDEC) regulations. NYSDEC regulations are conducive to bowhunting in a suburban community like Rye. The “setback distance” for bowhunting in New York State is 150’, which is the distance between the hunter’s tree stand and the nearest residence (house, occupied structure or dwelling, not the property-line) that does *not* allow bowhunting (i.e. if a hunter’s tree stand is 50’ from a neighbor’s house that *does* verbally permit bowhunting, the setback distance does not apply). The bowhunting season in Westchester County is October 1 – December 31. Due to the high density of deer in Westchester, Deer Management Program (DMP) tags are readily available via NYSDEC to hunters who wish to

harvest more does in an attempt to control deer populations. Bowhunting with compound bows from elevated tree stands is a proven and safe method for harvesting deer in the suburbs. Due to the elevated position of the hunter, the trajectory of the arrow ensures it will stick directly into the ground after hitting a deer and not continue beyond its intended target. Bowhunting is unique in that the hunter has to be very close to the deer (less than 30 yards) and must wait until the deer is in range before drawing their bow and shooting.

In 2009, the findings of the Westchester Citizens' Task Force on White-tailed Deer and Forest Regeneration led to the implementation of a white-tailed deer management program featuring skilled volunteer archers in 6 County Parks in northern Westchester. Hunters who qualified for entry into the Westchester Adaptive Deer Management Program (ADMP) were given a proficiency test that currently requires hitting 3/4 arrows in a 9" diameter plate at 30 yards. The skilled volunteer archers were highly successful at reducing deer densities at the county parks where bow hunting is permitted. At Ward Pound Ridge Reservation, a 4315 acre county park in Northern Westchester, deer densities in the western block were estimated via pellet counts at 63.7 deer/square mile in 2008 prior to implementation of a volunteer bowhunting program. In 2016 deer densities in this same area were estimated at 16.6 deer/square mile (Figure 3).

Figure 3 – Deer Densities in the Western Block of Ward Pound Ridge Reservation (2008 – 2016)



(graph adapted from Westchester County Parks 2016 ADMP report)

Local archers eligible for the Rye Host-a-Hunter program will be subjected to a more difficult proficiency test than the county test as well as an interview process to determine not only a high level of skill, but also ethical hunting conduct conducive to hunting in our community. Hunters will also be required to sign a waiver exempting the landowner from fault should the hunter become injured while on the landowner's property. The landowner will set the terms for the hunter regarding hunting hours, days of the week, stand location, and type of elevated stand (ladder stands and hang-on stands are mounted to a tree and will generally remain up for the hunting season to allow easy access for the hunter, while climbing stands are portable and are taken down after each hunt). Hunters will be required to "text-in" before each hunt and "text-out" at the conclusion of each hunt. They will also be required to report any deer harvested to myself and the state as well as submit jaw bones for aging. Hunters will be individually responsible for their actions while hunting as part of this program; if program participants do not

adhere to the guidelines set forth, they will be subsequently removed from the program. It is important to note that bowhunting is legal in Rye via NYSDEC laws, and not all hunters operating in Rye will be part of this program. This program will not accept responsibility for non-program hunters, however the hunters participating in this program will be held to the highest skill level and ethical standards. I will offer to volunteer my time and expertise in testing hunters, connecting them to landowners, and ensuring the anonymity of all parties involved. I will also offer to scout the properties for suitability for the Host-a-Hunter program.

Twenty-five percent of the venison harvested as part of the Host-a-Hunter program will be donated to needy families via the Food Bank for Westchester and their participating meat processors. Local venison is a healthy, tasty, lean meat with a low carbon footprint and associated benefits for wild forest health. By comparison, 1 lb of ground beef costs 22 lbs in greenhouse gas emissions (Johnson et al. 2003) and promotes the clearing of wild lands for monoculture grass production to finish cattle on feed lots.

CONCLUSION

The overabundant white-tailed deer population in the City of Rye is having a profound impact on Rye residents as well as the forested lands that were set aside to preserve habitat for future generations.

Deer/motor-vehicle collisions cost Rye drivers upwards of \$50,000 annually. In addition, deer damage to ornamental plants and vegetable gardens cost Rye homeowners thousands of dollars annually and countless hours wasted planting trees, shrubs, wildflowers, and vegetables that deer ultimately consume. While it's difficult to quantify, Rye residents have also suffered from the effects of Lyme disease associated with high deer populations. Furthermore, there is no

forest regeneration occurring at Marshlands Conservancy, Edith Read Sanctuary, and Rye Nature Center. These beautiful pieces of forested land that were designed for public enjoyment of nature will undoubtedly change over time as no trees grow to replace those that fall and native plant biodiversity is threatened.

The Host-a-Hunter program is sustainable, efficient, local, private, and cost-effective. The goals of this program are to reduce deer densities to a level at which the community feels is acceptable, to reduce the number of deer/motor-vehicle collisions, to reduce the damage to landscaped plantings and vegetable gardens, and to promote forest regeneration in our parks. The goal is not to eradicate deer, but to reduce the population and thus, their negative impact on the community and the forests.

Tracking harvests and collecting data on the age and nutrition of the deer harvested is paramount to determining the effectiveness of the Host-a-Hunter program. Annual deer population censuses should continue over the course of a 5-year period, in addition to measuring the resulting change in vegetation on nearby forested lands. I recently met with Dr. Thomas Rawinski of the USDA – Forest Service to discuss his new method that determines the effectiveness of a deer management program by measuring the height of tree seedlings in established plots over time. I will set up plots and collect baseline data for this method, which he calls the “10-tallest Method,” at Marshlands Conservancy in collaboration with park staff. I also plan on setting up plots at Edith Read Sanctuary and Rye Nature Center in conjunction with their staff. If a deer management program is effective, the height of the seedlings should increase over time. Annual pellet surveys at Marshlands/Rye Golf Club should also continue to monitor overwinter deer density, as well as the collection of data on deer/motor-vehicle collisions in Rye.

Deer population censuses and the collection of data for Dr. Rawinski's vegetative index will be the only annual deer-associated costs for the City of Rye, estimated at ~\$2000 annually.

LITERATURE CITED

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ACKNOWLEDGMENTS

I'd like to acknowledge the following individuals and groups for their assistance with this research project:

Lt. Scott Craig and the Rye Police Department; Scott Williamson and Marshlands Conservancy; Michael Gambino and Edith Read Sanctuary; Taro Ietaka and Rye Nature Center; Chip Lafferty and Rye Golf Club; Anne Dooley and Jana Seitz of the Rye Deer Study Group; Kerry Donahue and the City of Rye IT department; Rye residents who reported deer sightings via the Rye Deer Hotline and email; Greenhaven residents for participating in the backyard deer counts; volunteers who assisted with deer counts; Rye City Council, Mayor Joseph Sack, City Manager Marcus Serrano and Assistant City Manager Eleanor Militana for initiating research on Rye's deer population and funding this project.



CITY COUNCIL AGENDA

NO. 8

DEPT.: City Manager

DATE: June 8, 2016

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Public Hearing regarding the request by Crown Castle to amend their agreement with the City regarding existing wireless telecommunications specifications and referral to the Board of Architectural Review for additional attachment locations.

FOR THE MEETING OF:

June 8, 2016

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: That the City Council hold a Public Hearing regarding Crown Castle's request regarding an agreement amendment and the placement of additional attachments.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND: The City Council approved an agreement with NextG Networks, Inc. at their January 12, 2011 City Council Meeting to conduct business as a telecommunications company operating with infrastructure located in the City's public ways. Crown Castle purchased NextG in December 2011. Crown Castle is seeking an amendment to the agreement with the City to change the language to "Con Edison approved shroud," as Con Edison is the local utility who owns most of the poles in the right-of-way in the City.

Crown Castle currently has nine (9) facilities in the City of Rye. They are seeking to add approximately fifty (50) additional locations within the City's right-of-way.

The City Council referred the application for additional locations to the Board of Architectural Review (BAR) at their April 13, 2016 meeting. The BAR approved the application at their May 9, 2016 meeting.

See attached documentation from Crown Castle:

Regarding Requested Changes to the Agreement with the City of Rye

- Letter from Esme A. Lombard, Crown Castle National Real Estate – Contractor
- Existing Right-of-Way (RUA) Use Agreement with the City of Rye
- Amendment to Right-of-Way (RUA) Use Agreement
- State Level Regulatory Overview information

Regarding the Request for additional locations in the City of Rye

- Table of Proposed locations
- Map of Proposed locations
- Table of existing locations
- Photos of existing attachments in the City of Rye



Crown Castle
131-05 14th Avenue
College Point, NY 11356

VIA EMAIL AND US MAIL

April 8, 2016

Mayor Sack and Rye City Council
Rye City Hall
1051 Boston Post Road
Rye, New York 10580

RE: City of Rye Crown Castle Right of Way Use Agreement Amendment and Expansion Project

Dear Mayor Sack and Rye City Council:

I am Esmé Lombard for Crown Castle NG East LLC ("Crown Castle"). On Tuesday, March 15th, I and other members of the Crown Castle team, met with Corporation Counsel, Kristen Wilson, City Manager, Marcus Serrano, Assistant City Manager, Eleanor Militana and City Engineer, Ryan Coyne to: (a) initiate a minor amendment to an existing Right of Way Use Agreement ("RUA") that the City of Rye ("City") has had in place with Crown Castle since February 17, 2001; and (b) discuss Crown Castle's plans to expand its existing equipment in the City in the upcoming months.

As you may know, Crown Castle provides telecommunications services to its customers, specifically, radio frequency ("RF") transport services. It does so via telecommunications networks installed in the public rights-of-way ("Networks"), which integrates elements including fiber optic cables as well as personal wireless services facilities, such as antennas and related equipment (collectively, "Equipment"). Crown Castle's Networks are sometimes referred to as Small Cell Networks, or more specifically, Distributed Antenna Systems ("DAS").

Background: Existing RUA Between the City & Crown Castle

By way of background, the City and Crown Castle executed an RUA, dated February 17, 2011, that is still in effect. The term of the RUA is ten (10) years with three (3) successive terms of five (5) years.

The RUA enables Crown Castle to locate Equipment for its Networks on the existing incumbent infrastructure located within the public right-of-way for the purposes of a Distributed Antenna System for our clients – in this case Verizon Wireless.

For use of the public right-of-way the City receives five percent (5%) of Crown Castle's adjusted gross revenues

from services provided in the City for each Equipment location, regardless of the ownership of the infrastructure (utility poles are typically owned by the telephone or electric provider). In addition, Crown Castle compensates the City five hundred dollars (\$500.00) annually for each City-owned pole upon which equipment is attached to, with annual increases. This is the same rate structure that Crown Castle has in place with other municipalities throughout the region.

Crown Castle is seeking a minor amendment to Exhibit A of the existing RUA. Exhibit A provides specs of the proposed Equipment. Throughout Exhibit A, certain Equipment is referred to as “DoITT approved shroud.” Crown Castle would like to change the language throughout the RUA to “Con Edison approved shroud,” as Con Edison is in fact the local utility who owns most of the poles in the right-of-way in the City. It should be noted that the Con Edison approved shroud is slightly larger than the DoITT approved shroud. However, it is the relevant shroud, as DoITT does not own or control any of the poles contemplated in the RUA, or, to my knowledge, any poles within the City.

The existing RUA, including the original Exhibit A, as well as the proposed draft amendment to Exhibit A, are enclosed for your review as Attachment 1. Photos of the existing Equipment types and a location map were provided in a package sent to you, dated April 1, 2016, enabling you to visit the subject sites prior to the April 13, 2016 Board Meeting.

Existing & Proposed Location of Crown Castle’s Equipment

In addition to the existing nine (9) Equipment locations that have been operational in the City since February 2011, Crown Castle has been commissioned by our client to attach its Equipment to approximately seventy-three (73) additional locations within the City’s right-of-way. All but two (2) of those locations are on existing wooden poles. Two (2) locations will require the placement of a new pole.

The existing RUA authorizes the installation and operation of Crown Castle’s Equipment and Network in, under, and over the public ways of the City on standard-design prefabricated steel poles, wooden distribution poles, newly installed poles and other available structures throughout the City. Crown Castle has complied with and will continue to do so for the new installations with all relevant provisions of the City Code as such provisions are applied to the incumbent telecommunications provider (the “ILEC”).

For the two (2) new poles that will be placed within the right-of-way the RUA covers this in Section 3.2, “Where third-party property is not available for attachment of Equipment, NextG (Crown) may install its own utility poles in the Public Way, consistent with the requirements that the City imposes on similar installations made by other utilities that use and occupy the Public Way.”

A map identifying the location of the existing and proposed locations within the City is enclosed as Attachment 2.

Crown Castle's Public Utility Status

Pursuant to the laws of the State of New York, Crown Castle is a public utility and, as such, has been granted a Certificate of Public Convenience and Necessity ("CPCN") (Case No. 03-C-0027, April 4, 2003) by the Public Service Commission of the State of New York ("PSC"). [1] As a result, Crown Castle must be granted access to the public rights of way in the same manner and on the same terms applicable to other certificated telecommunications providers and utilities, as had been the case with the existing RUA.

A copy of Crown's CPCN granted by New York State is enclosed as Attachment 3.

Should you require any additional information prior to the April 13th meeting, please do not hesitate to reach out to me at 914-935-1235 or via email – Esmé.Lombard@crowncastle.com. We look forward to presenting this project to you on the 13th and answering any questions you may have.

Kind Regards,

Esmé Lombard

Esmé A. Lombard
National Real Estate – Contractor
Crown Castle

Cc: City Manager – Marcus Serrano
Assistant City Manager – Eleanor Militana
City Attorney – Kristen Wilson
City Engineer – Ryan Coyne
Peter Heimdahl – Regional Director, Government Relations, Crown Castle
Eli Elbaum – Government Relations Council, Crown Castle
John Cavaliere – Government Relations Manager, Crown Castle
Joseph Klem – Government Relations Specialist, Crown Castle

City of Rye

RIGHT-OF-WAY USE AGREEMENT

T HIS RIGHT-OF-WAY USE AGREEMENT (this "Use Agreement") is dated as of February 17 2011 (the "Effective Date"), and entered into by and between the CITY OF RYE, a New York municipal corporation (the "City"), and NEXTG NETWORKS OF NY, INC. a Delaware corporation ("NextG").

RECITALS

A. NextG owns, maintains, operates and controls, in accordance with regulations promulgated by the Federal Communications Commission and the New York State Public Service Commission, a fiber-based telecommunications Network or Networks (as defined below) serving NextG's wireless carrier customers and utilizing microcellular optical repeater Equipment (as defined below) certified by the Federal Communications Commission.

B. For purpose of operating the Network, NextG wishes to locate, place, attach, install, operate, control, and maintain Equipment in the Public Way (as defined below) on facilities owned by the City, as well as on facilities owned by third parties therein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1 DEFINITIONS. The following definitions shall apply generally to the provisions of this Use Agreement:

1.1 City. ("City") shall mean the City of Rye, New York.

1.2 Decorative Streetlight Pole. "Decorative Streetlight Pole" shall mean any streetlight pole that incorporates artistic design elements not typically found in standard steel or aluminum streetlight poles.

1.3 Equipment. "Equipment" means the optical repeaters, DWDM and CWDM multiplexers, antennas, fiber optic cables, wires, and related equipment, whether referred to singly or collectively, to be installed and operated by NextG hereunder. Examples of typical Equipment types and installation configurations are shown in the drawings and photographs attached hereto as Exhibit A and incorporated herein by reference.

1.4 Fee. "Fee" means any assessment, license, charge, fee, imposition, tax, or levy of general application to entities doing business in the City lawfully imposed by any governmental body (but excluding any utility users' tax, franchise fees, communications tax, or similar tax or fee).

1.5 Gross Revenue. "Gross Revenue" shall mean and include any and all income and other consideration collected, received, or in any manner gained or derived by NextG from or in connection with, the provision of RF telecommunication transport services, either directly by NextG or indirectly through a reseller, if any, to customers of such services wholly consummated within the

City, including any imputed revenue derived from commercial trades and barter equivalent to the full retail value of goods and services provided by NextG. "Adjusted Gross Revenue" shall include offset for: (a) sales, ad valorem, or other types of "add-on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid to or collected for federal, state, or local government (exclusive of the Municipal Facilities Annual Fee paid to the City provided herein); (b) retail discounts or other promotions; (c) non-collectable amounts due NextG or its customers; (d) refunds or rebates; and (e) non-operating revenues such as interest income or gain from the sale of an asset.

1.6 ILEC. "ILEC" means the Incumbent Local Exchange Carrier that provides basic telephone services, among other telecommunications services, to the residents of the City.

1.7 Installation Date. "Installation Date" shall mean the date that the first Equipment is installed by NextG pursuant to this Use Agreement.

1.8 Laws. "Laws" means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement.

1.9 Municipal Facilities. "Municipal Facilities" means City-owned Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, electroliers, or other City-owned structures located within the Public Way and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

1.10 Network. "Network" or collectively "Networks" means one or more of the neutral-host, protocol-agnostic, fiber-based optical repeater networks operated by NextG to serve its wireless carrier customers in the City.

1.11 NextG. "NextG" means NextG Networks of NY, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and its lawful successors, assigns, and transferees.

1.12 Public Way. "Public Way" means the space in, upon, above, along, across, and over the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the City. This term shall not include county, state, or federal rights of way or any property owned by any person or entity other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such person or entity.

1.13 PSC. "PSC" means the New York State Public Service Commission.

1.14 Services. "Services" means the RF transport and other telecommunications services provided through the Network by NextG to its wireless carrier customers pursuant to one or more tariffs filed with and regulated by the PSC.

1.15 Streetlight Pole. "Streetlight Pole" shall mean any standard-design concrete, fiberglass, metal, or wooden pole used for streetlighting purposes.

2 TERM. This Use Agreement shall be effective as of the Effective Date and shall extend for a term of ten (10) years commencing on the Installation Date, unless it is earlier terminated by either party in accordance with the provisions herein. The term of this Use Agreement shall be renewed automatically

for three (3) successive terms of five (5) years each on the same terms and conditions as set forth herein, unless NextG notifies the City of its intention not to renew not less than thirty (30) calendar days prior to commencement of the relevant renewal term.

3 SCOPE OF USE AGREEMENT. Any and all rights expressly granted to NextG under this Use Agreement, which shall be exercised at NextG's sole cost and expense, shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the Public Way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in NextG a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Use Agreement shall be subject to the reasonable prior review and approval of the City except that it is agreed that no zoning or planning board permit, variance, conditional use permit or site plan permit, or the equivalent under the City's ordinances, codes or laws, shall be required for the installation of NextG's Equipment installed in the Public Way and/or on Municipal Facilities, unless such a process has been required for the placement of all communications facilities and equipment in the Public Way by all other telecommunications providers, including but not limited to the ILEC and local cable provider(s).

3.1 Attachment to Municipal Facilities. The City hereby authorizes and permits NextG to enter upon the Public Way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on Municipal Facilities for the purposes of operating the Network and providing Services. In addition, subject to the provisions of § 4.5 below, NextG shall have the right to draw electricity for the operation of the Equipment from the power source associated with each such attachment to Municipal Facilities. A denial of an application for the attachment of Equipment to Municipal Facilities shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of NextG's Equipment if the Equipment proposed for such application substantially conforms to one of the approved configurations and the Equipment specifications set forth in Exhibit A.

3.2 Attachment to Third-Party Property. Subject to obtaining the permission of the owner(s) of the affected property, the City hereby authorizes and permits NextG to enter upon the Public Way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Equipment in or on poles or other structures owned by public utility companies or other property owners located within the Public Way as may be permitted by the public utility company or property owner, as the case may be. Upon request, NextG shall furnish to the City evidence that NextG has entered into the appropriate pole-attachment agreement required pursuant to N.Y. C.L.S. Pub. Ser. § 119-a. A denial of an application for the attachment of Equipment to third-party-owned poles or structures in the Public Way shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of NextG's Equipment if the Equipment proposed for such application substantially conforms to one of the approved configurations and the Equipment specifications set forth in Exhibit A. Where third-party property is not available for attachment of Equipment, NextG may install its own utility poles in the Public Way, consistent with the requirements that the City imposes on similar installations made by other utilities that use and occupy the Public Way.

3.3 Preference for Municipal Facilities. In any situation where NextG has a choice of attaching its Equipment to either Municipal Facilities or third-party-owned property in the Public Way, NextG agrees to attach to the Municipal Facilities, provided that (i) such Municipal Facilities are at least equally suitable functionally for the operation of the Network and (ii) the rental fee and installation

costs associated with such attachment over the length of the term are equal to or less than the fee or cost to NextG of attaching to the alternative third-party-owned property.

3.4 No Interference. NextG in the performance and exercise of its rights and obligations under this Use Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliners, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Use Agreement. The City agrees to require the inclusion of the same or a similar prohibition on interference as that stated above in all agreements and franchises the City may enter into after the Effective Date with other information or communications providers and carriers.

3.5 Compliance with Laws. NextG shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement.

4 COMPENSATION; UTILITY CHARGES. NextG shall be solely responsible for the payment of all lawful Fees in connection with NextG's performance under this Use Agreement, including those set forth below.

4.1 Annual Fee. In order to compensate the City for NextG's entry upon and deployment within the Public Way and as compensation for the use of Municipal Facilities, NextG shall pay to the City an annual fee (the "Annual Fee") in the amount of Five Hundred Dollars (\$500.00) for the use of each Municipal Facility, if any, upon which a Equipment has been installed pursuant to this Use Agreement. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to the number of Equipment installed on Municipal Facilities during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate, and shall be due and payable not later than forty-five (45) days after each anniversary of the Installation Date. The City represents and covenants that the City owns all Municipal Facilities for the use of which it is collecting from NextG the Annual Fee pursuant to this § 4.1.

4.1.1 CPI Adjustment. Effective commencing on the fifth (5th) anniversary of the Installation Date and continuing on each fifth (5th) anniversary thereafter during the term, the Annual Fee with respect to the ensuing five-year period shall be adjusted by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Items, All Urban Consumers, 1982-1984=100) which occurred during the previous five-year period for the New York-Northern New Jersey-Long Island, NY-NJ-PA Metropolitan Statistical Area (MSA).

4.2 Right-of-Way Use Fee. In order to compensate the City for NextG's entry upon and deployment of Equipment within the Public Way, NextG shall pay to the City, on an annual basis, an amount equal to five percent (5%) of Adjusted Gross Revenues (the "Right-of-Way Fee") payable within thirty (30) days of the Effective Date and on each anniversary thereafter. The Right-of-Way Fee shall be payable for the period commencing with the Effective Date and ending on the date of termination of this Use Agreement. NextG shall make any payment of the Right-of-Way Fee that may be due and owing within forty-five (45) days after the first anniversary of the Effective Date and within the same period after each subsequent anniversary of the Effective Date. Within forty-five (45) days after the termination of this Use Agreement, the Right-of-Way Fee shall be paid for the period elapsing since the end of the last calendar year for which the Right-of-Way Fee has been paid. NextG shall furnish to the City with each payment of the Right-of-Way Fee a statement, executed by an authorized officer of NextG or his or her designee, showing the amount of Adjusted Gross Revenues for the

period covered by the payment. If NextG discovers any error in the amount of compensation due, the City shall be paid within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be refunded or offset against the next payment due. Acceptance by the City of any payment of the Right-of-Way Fee shall not be deemed to be a waiver by the City of any breach of this Use Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.

4.3 Accounting Matters. NextG shall keep accurate books of account at its principal office in San Jose, CA or such other location of its choosing for the purpose of determining the amounts due to the City under §§ 4.1 and 4.2 above. The City may inspect NextG's books of account relative to the City at any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under § 4.1 above. The City agrees to hold in confidence any non-public information it learns from NextG to the fullest extent permitted by Law.

4.4 Most-Favored Municipality. Should NextG after the parties' execution and delivery of this Agreement enter into an attachment or franchise agreement with another municipality of the same size or smaller than the City in the same County (excluding New York City), which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City's opinion substantially superior to those in this Agreement, the City shall have the right to require that NextG modify this Use Agreement to incorporate the same or substantially similar superior benefits and such other terms and burdens by substitution, *mutatis mutandis*, of such other agreement or otherwise.

4.5 Electricity Charges. NextG shall be solely responsible for the payment of all electrical utility charges to the applicable utility company based upon the Equipment' usage of electricity and applicable tariffs.

5 CONSTRUCTION. NextG shall comply with all applicable federal, State, and City codes, specifications, and requirements, if any, related to the construction, installation, operation, maintenance, and control of NextG's Equipment installed in the Public Way and on Municipal Facilities in the City. NextG shall not attach, install, maintain, or operate any Equipment in or on the Public Way and/or on Municipal Facilities without the prior approval of the City for each location.

5.1 Obtaining Required Permits. If the attachment, installation, operation, maintenance, or location of the Equipment in the Public Way shall require any permits, NextG shall, if required under applicable City ordinances, apply for the appropriate permits and pay any standard and customary permit fees, so long as the permit fees and process that the City requests of NextG are functionally equivalent to the fees and the process that are applied to the ILEC and/or the cable provider(s). In the case of Third Party attachments (to existing utility infrastructure), NextG agrees to provide the City with a list of proposed attachments in advance of its deployment to the City and, the City agrees to use reasonable efforts to review and approve NextG's list of proposed attachments to Third Party utility infrastructure within thirty (30) days of submission, and if no comment is received within thirty (30) days, the application will be presumed to be acceptable and no further action will be required prior to NextG's installation.

5.2 Location of Equipment. The proposed locations of NextG's planned initial installation of Equipment shall be provided to the City promptly after NextG's review of available street light maps (if applicable) and prior to deployment of the Equipment. Upon the completion of installation,

NextG promptly shall furnish to the City a pole list showing the exact location of the Equipment in the Public Way.

5.3 Relocation and Displacement of Equipment. NextG understands and acknowledges that the City may require NextG to relocate one or more of its Equipment installations. NextG shall at City's direction relocate such Equipment at NextG's sole cost and expense, whenever the City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City project; (b) because the Equipment is interfering with or adversely affecting proper operation of City-owned light poles, traffic signals, or other Municipal Facilities; or (c) to protect or preserve the public health or safety. In any such case, the City shall use its best efforts to afford NextG a reasonably equivalent alternate location. If NextG shall fail to relocate any Equipment as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, the City shall be entitled to relocate the Equipment at NextG's sole cost and expense, without further notice to NextG. To the extent the City has actual knowledge thereof, the City will attempt promptly to inform NextG of the displacement or removal of any pole on which any Equipment is located.

5.4 Relocations at NextG's Request. In the event NextG desires to relocate any Equipment from one Municipal Facility to another, NextG shall so advise the City. The City will use its best efforts to accommodate NextG by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Use Agreement.

5.5 Damage to Public Way. Whenever the removal or relocation of Equipment is required or permitted under this Use Agreement, and such removal or relocation shall cause the Public Way to be damaged, NextG, at its sole cost and expense, shall promptly repair and return the Public Way in which the Equipment are located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If NextG does not repair the site as just described, then the City shall have the option, upon fifteen (15) days' prior written notice to NextG, to perform or cause to be performed such reasonable and necessary work on behalf of NextG and to charge NextG for the proposed costs to be incurred or the actual costs incurred by the City at the City's standard rates. Upon the receipt of a demand for payment by the City, NextG shall promptly reimburse the City for such costs.

6 INDEMNIFICATION AND WAIVER. NextG agrees to indemnify, defend, protect, and hold harmless the City, its council members, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from NextG's activities undertaken pursuant to this Use Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the City, its council or board members, officers, elected trustees, employees, agents, or contractors.

6.1 Waiver of Claims. NextG waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the reasonable control of the City.

6.2 Limitation of City's Liability. The City shall be liable only for the cost of repair to damaged Equipment arising from the negligence or willful misconduct of the City, its employees, agents, or contractors and shall in no event be liable to indirect or consequential damages.

7 INSURANCE. NextG shall obtain and maintain at all times during the term of this Use Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting NextG in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the City, its elected officials, officers, and employees as additional insureds as respects any covered liability arising out of NextG's performance of work under this Use Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. NextG shall be responsible for notifying the City of such change or cancellation.

7.1 Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Use Agreement, NextG shall file with the City the required original certificate(s) of insurance with endorsements, which shall state the following:

(a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

(b) that the City shall receive thirty (30) days' prior notice of cancellation;

(c) that NextG's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(d) that NextG's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City.

The certificate(s) of insurance with endorsements and notices shall be mailed to the City at the address specified in § 8 below.

7.2 Workers' Compensation Insurance. NextG shall obtain and maintain at all times during the term of this Use Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the City with a certificate showing proof of such coverage.

7.3 Insurer Criteria. Any insurance provider of NextG shall be admitted and authorized to do business in the State of New York and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

7.4 Severability of Interest. Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the City. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

8 NOTICES. All notices which shall or may be given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U. S. mail or by overnight delivery service as just described, addressed as follows:

if to the City:

CITY OF RYE
Attn: Mayor
Rye City Hall
1051 Boston Post Road
Rye, New York 10580

if to NextG:

NEXTG NETWORKS OF NY, INC.
Attn: Contracts Administration
890 Tasman Drive
Milpitas, CA 95035-7439

8.1 Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

9 TERMINATION. This Use Agreement may be terminated by either party upon forty five (45) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice. Except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term.

10 ASSIGNMENT. This Use Agreement shall not be assigned by NextG without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of NextG to a parent, subsidiary, or other affiliate of NextG or to any successor in interest or entity acquiring fifty-one percent (51%) or more of NextG's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment for the purposes of this Agreement and therefore shall not require the consent of the City, provided that NextG reasonably demonstrates to the City's lawfully empowered designee the following criteria (collectively the "Exempted Transfer Criteria"): (i) such transferee will have a financial strength after the proposed transfer at least equal to that of NextG immediately prior to the transfer; (ii) any such transferee assumes all of NextG's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with NextG's management team, in the provision of telecommunications or similar services, evidences an ability to operate the NextG Network. NextG shall give at least thirty (30) days' prior written notice (the "Exempted Transfer Notice") to the City of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why NextG believes the Exempted Transfer Criteria have been satisfied. The City Council of City shall have a period of thirty (30) days (the "Exempted Transfer Evaluation Period") from the date that

NextG gives the City its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until the City has received from NextG any and all additional information the City may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the City gives NextG notice in writing of the additional information the City requires within fifteen (15) days after the City's receipt of the original Exempted Transfer Notice. If the Council of the City fails to act upon NextG's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the City Council that NextG has in fact established compliance with the Exempted Transfer Criteria to the City's satisfaction.

11 MISCELLANEOUS PROVISIONS. The provisions which follow shall apply generally to the obligations of the parties under this Use Agreement.

11.1 Environmental Review. NextG's facilities are "unlisted" but functionally equivalent to Type II actions under 6 N.Y.C.R.R. 617.5(c)(11). NextG agrees to comply with any rules pertaining to State Environmental Quality Review and to submit any required environmental forms for the City's review and approval, so long as the review that the City requires is the same that the City requires of all other telecommunications providers, including but not limited to the ILEC and the cable provider(s), for their installation of any facilities or equipment in the Public Way.

11.2 Nonexclusive Use. NextG understands that this Use Agreement does not provide NextG with exclusive use of the Public Way or any Municipal Facility and that the City shall have the right to permit other providers of communications services to install equipment or devices in the Public Way and on Municipal Facilities. The City agrees promptly to notify NextG of the receipt of a proposal for the installation of communications equipment or devices in the Public Way or on Municipal Facilities. In addition, the City agrees to advise other providers of communications services of the presence or planned deployment of the Equipment in the Public Way and/or on Municipal Facilities.

11.3 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Use Agreement.

11.4 Severability of Provisions. If any one or more of the provisions of this Use Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Use Agreement. Each party hereby declares that it would have entered into this Use Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

11.5 Contacting NextG. NextG shall be available to the staff employees of any City department having jurisdiction over NextG's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The City may contact by telephone the network control center operator at telephone number 1-866-44-NEXTG (446-3984) regarding such problems or complaints.

11.6 Governing Law; Jurisdiction. This Use Agreement shall be governed and construed by and in accordance with the laws of the State of New York, without reference to its conflicts of law

principles. If suit is brought by a party to this Use Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of New York, in the County where the City is incorporated or in the United States District Court for the Eastern District of New York.

11.7 Consent Criteria. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

11.8 Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in § 3.2 above.

11.9 Amendment of Use Agreement. This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

11.10 Entire Agreement. This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Use Agreement which are not fully expressed herein.

In witness whereof, and in order to bind themselves legally to the terms and conditions of this Use Agreement, the duly authorized representatives of the parties have executed this Use Agreement as of the Effective Date.

City: CITY OF RYE, a New York municipal corporation

By: Scott Pickup
(name typed)

Its: City Manager

Date: February 8, 2011

NextG: NEXTG NETWORKS OF NY, INC., a Delaware Corporation

By: Robert L. Delsman
(name typed)

Its: SVP & General Counsel

Date: February 17, 2011

I HEREBY APPROVE the form and legality of the foregoing Use Agreement this 7th day of February, 2011.

Kristen Wilson, Corporation Counsel

By Kristen Wilson, Deputy City Attorney

Exhibits:

Exhibit A -- Equipment

Approved as to Form
and Legal Sufficiency:

[Signature]

Signature/Initials

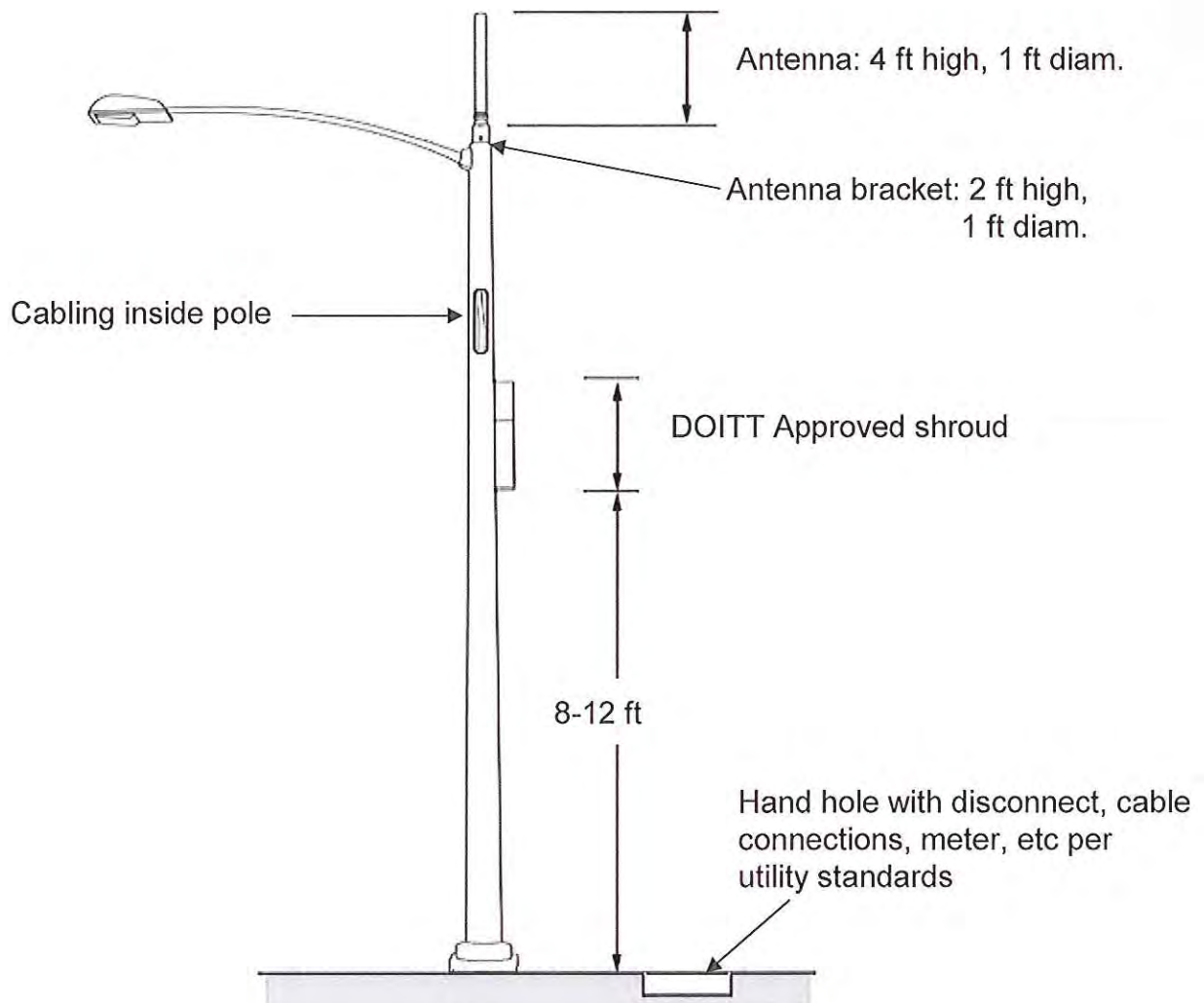
Date: 2/11/2011

Exhibit A

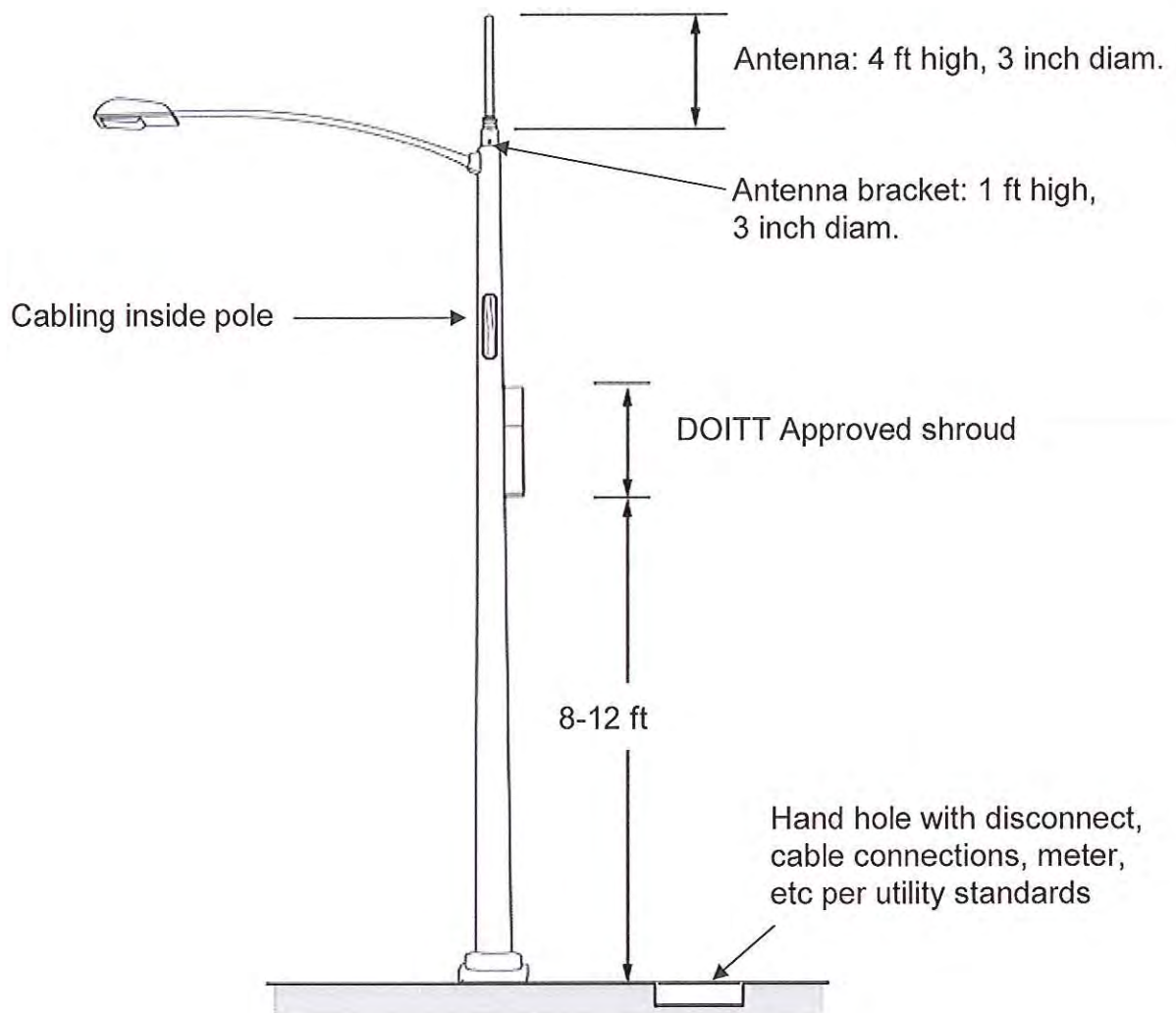
Westchester, NY
Rev 01-19-2010



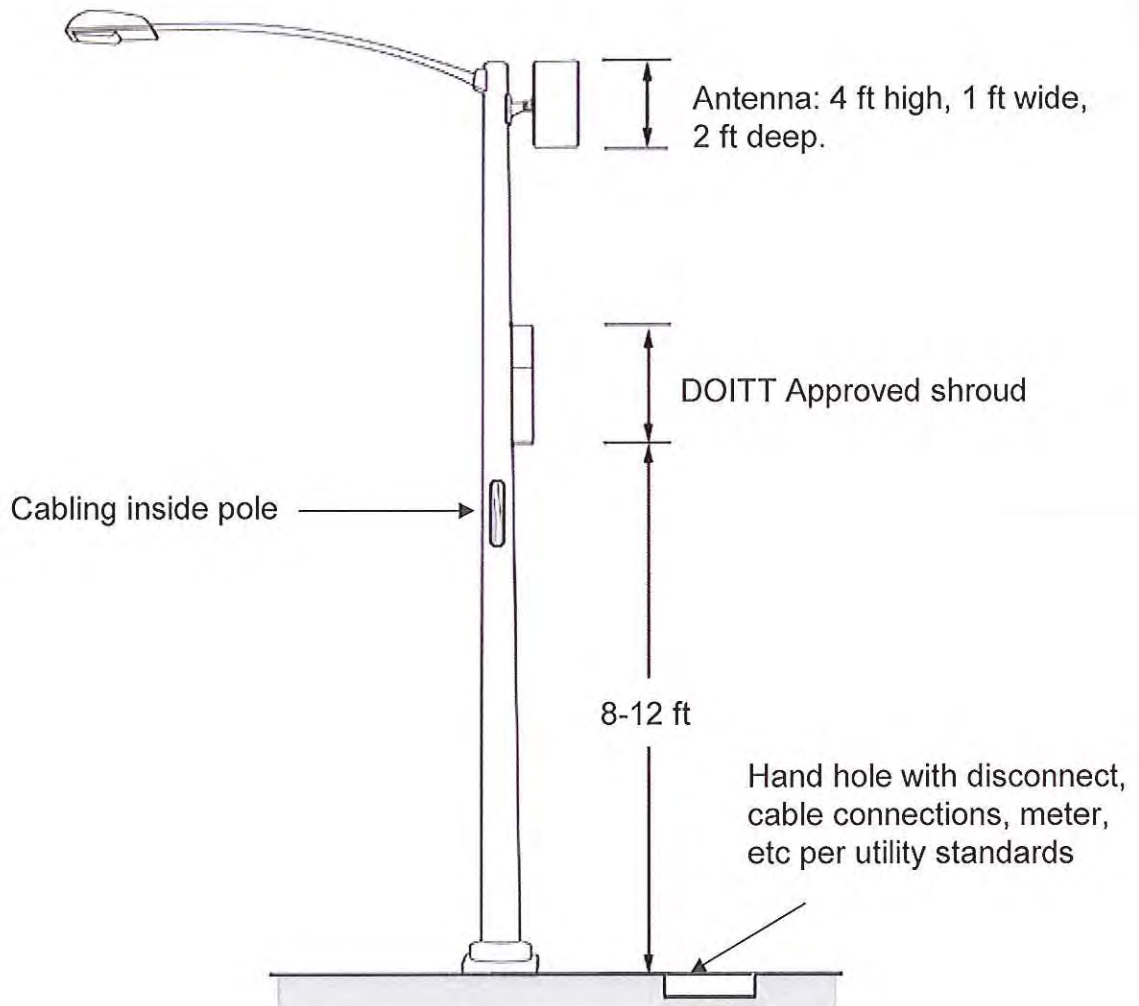
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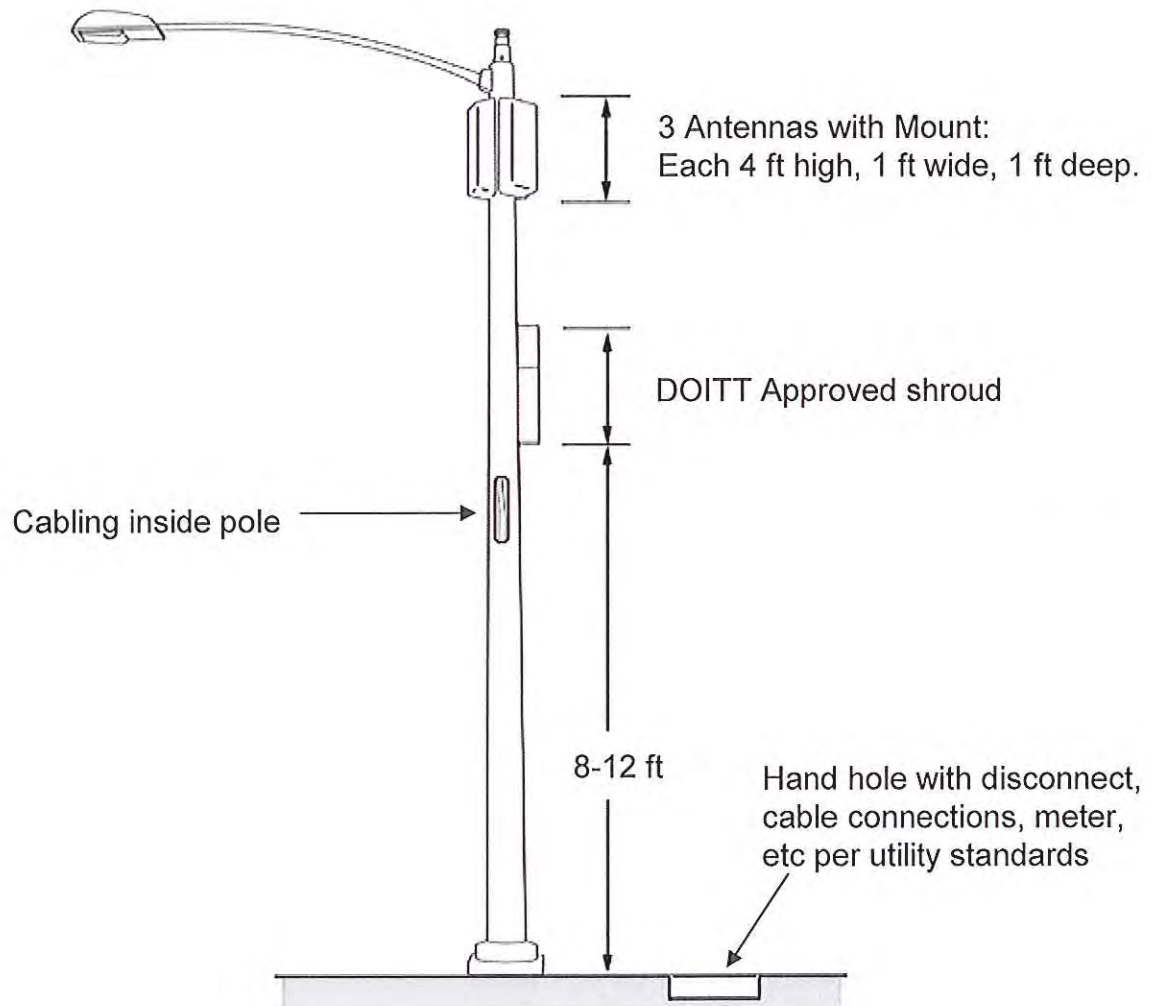
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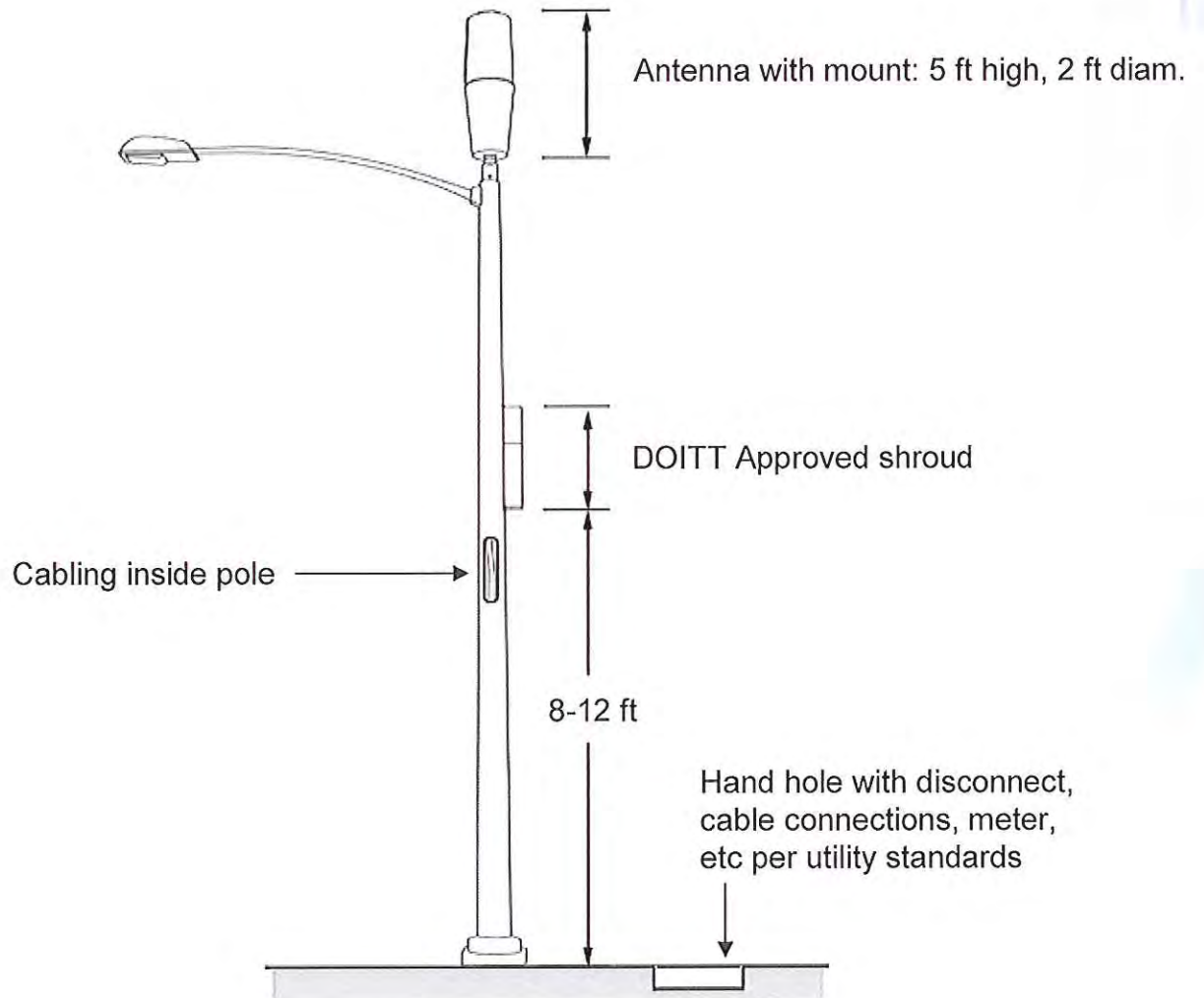
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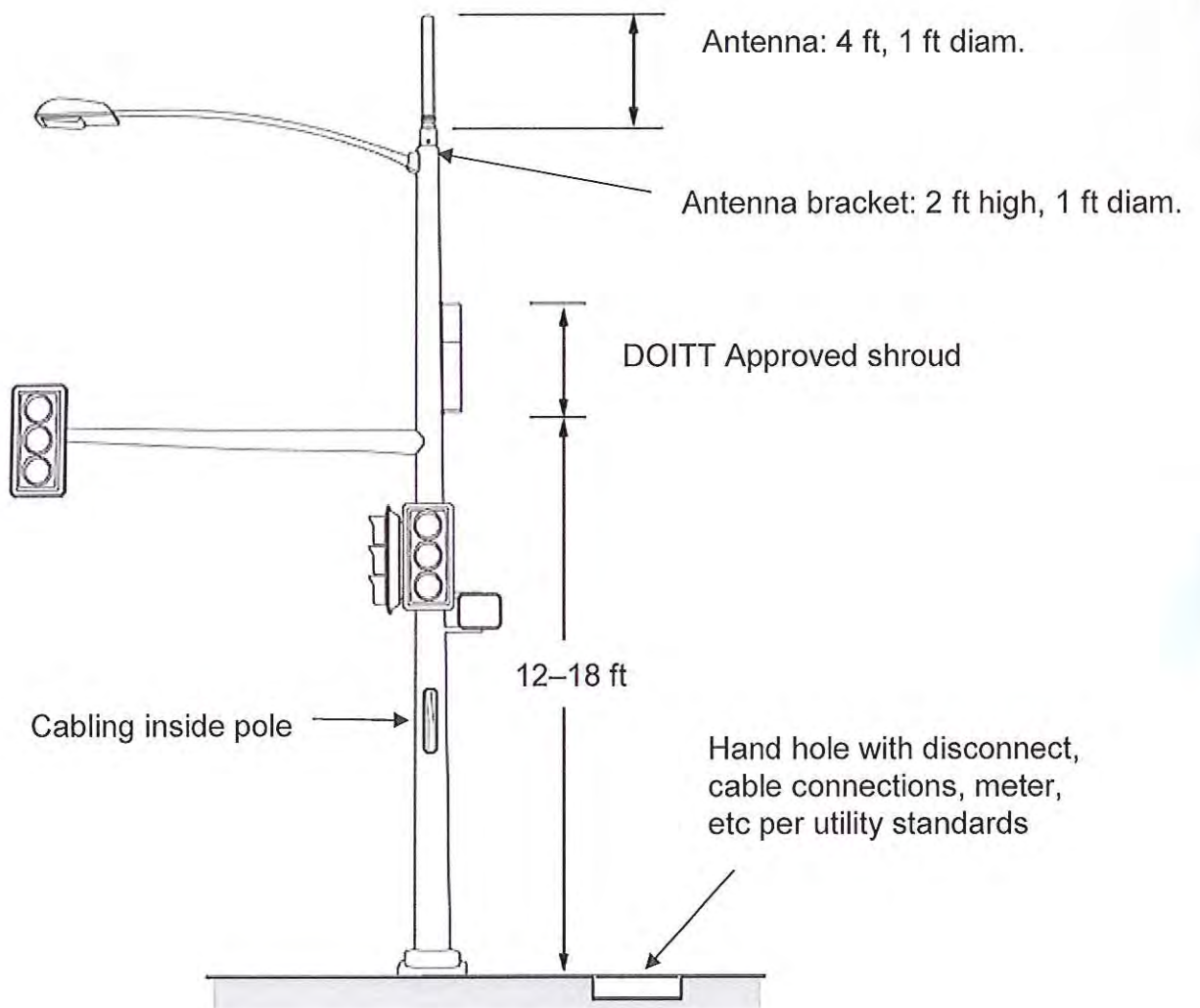
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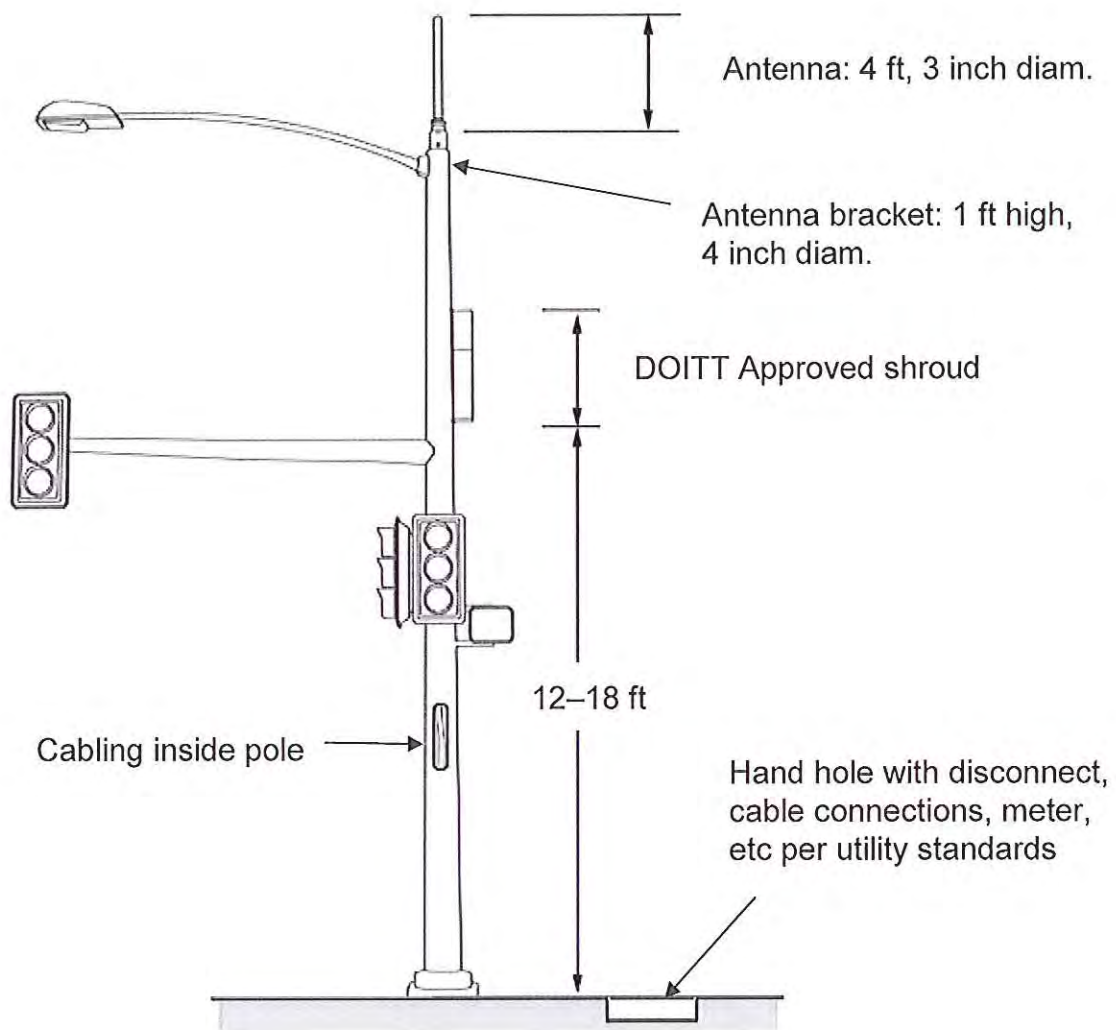
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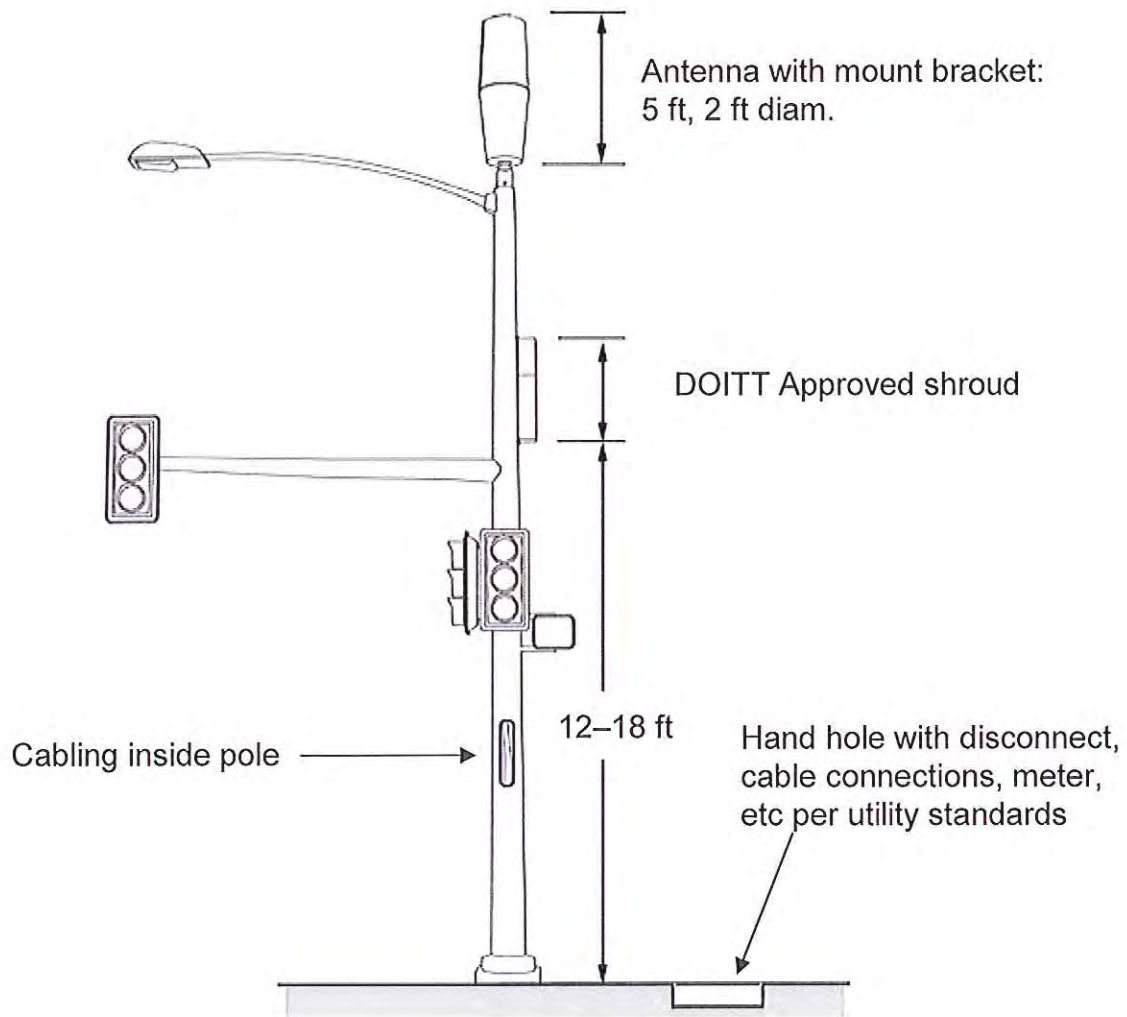
Traffic Light Pole



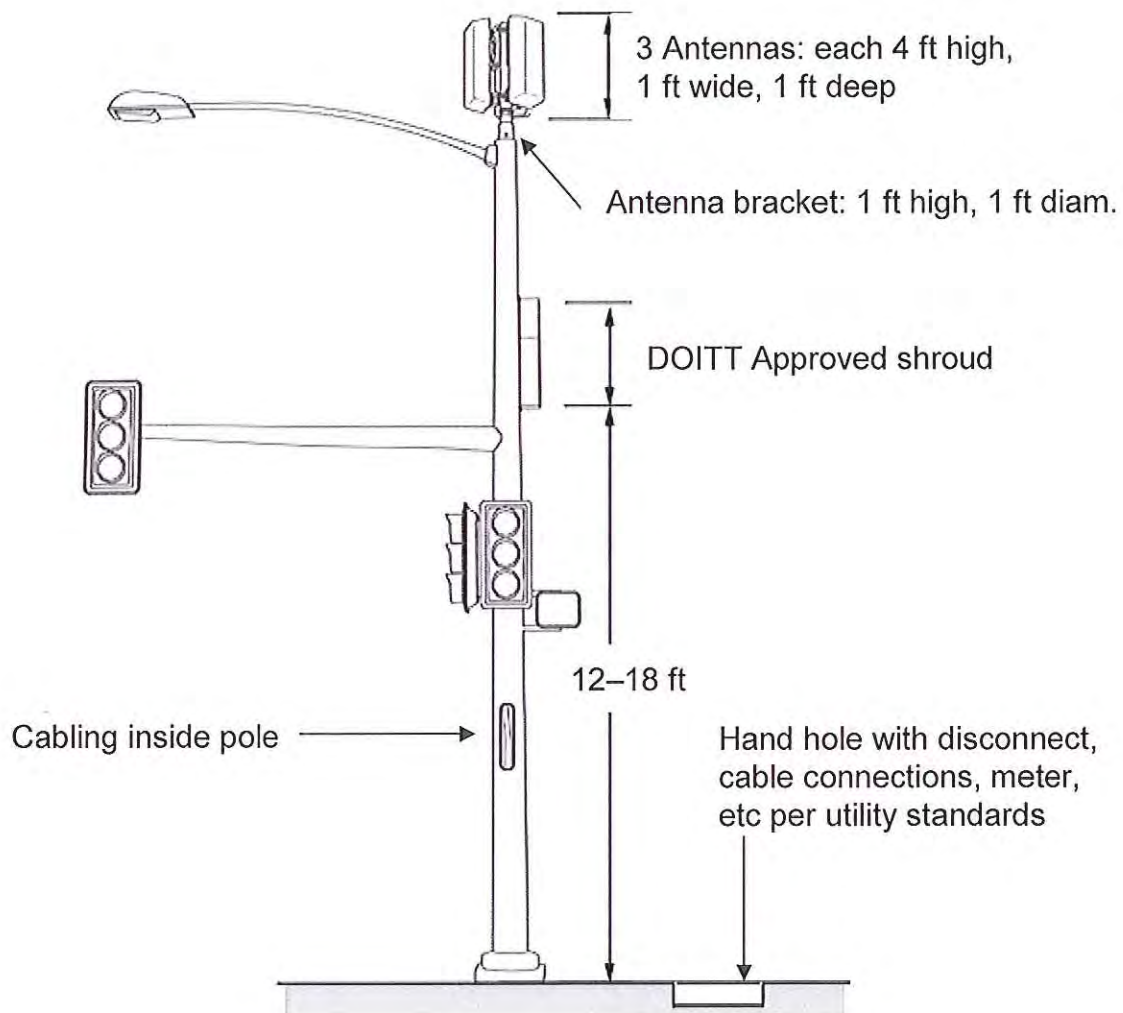
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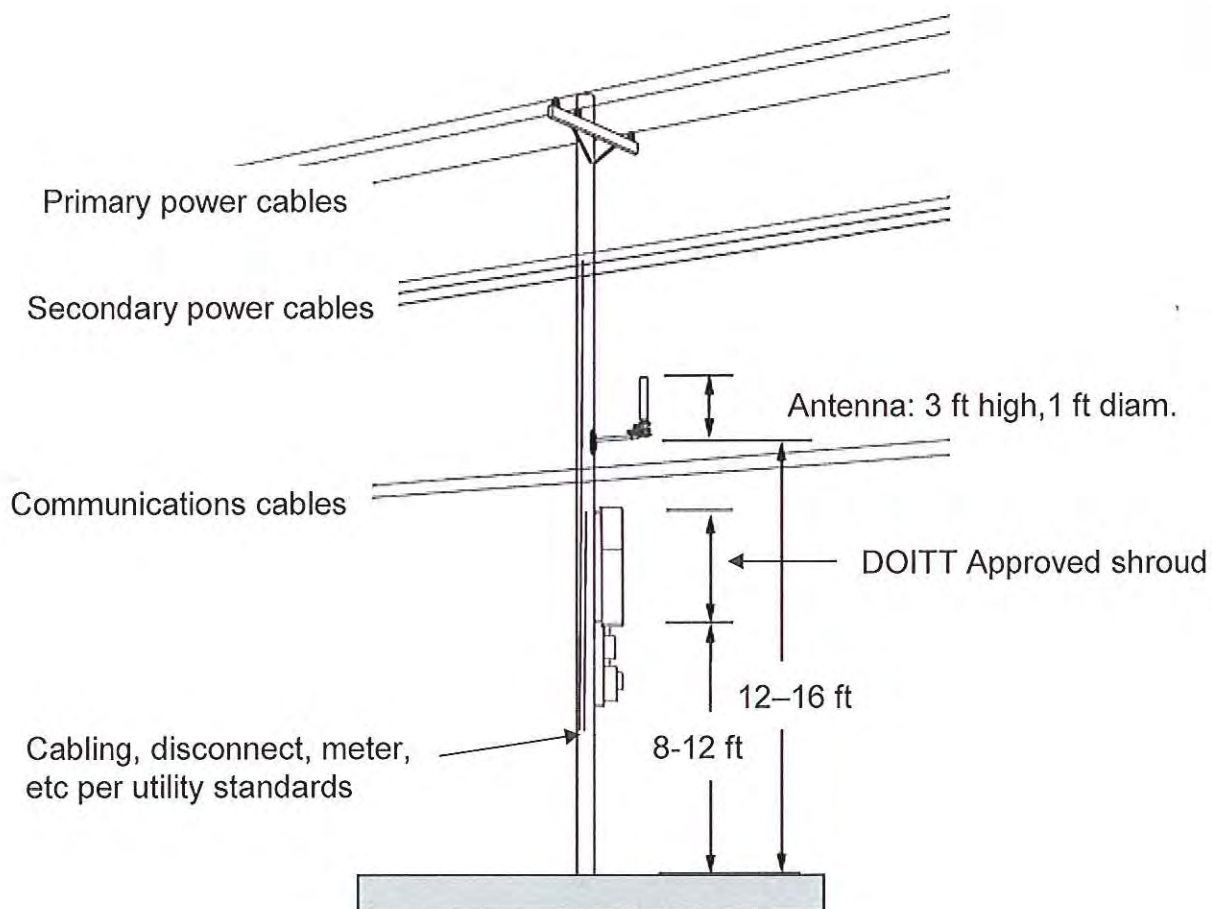
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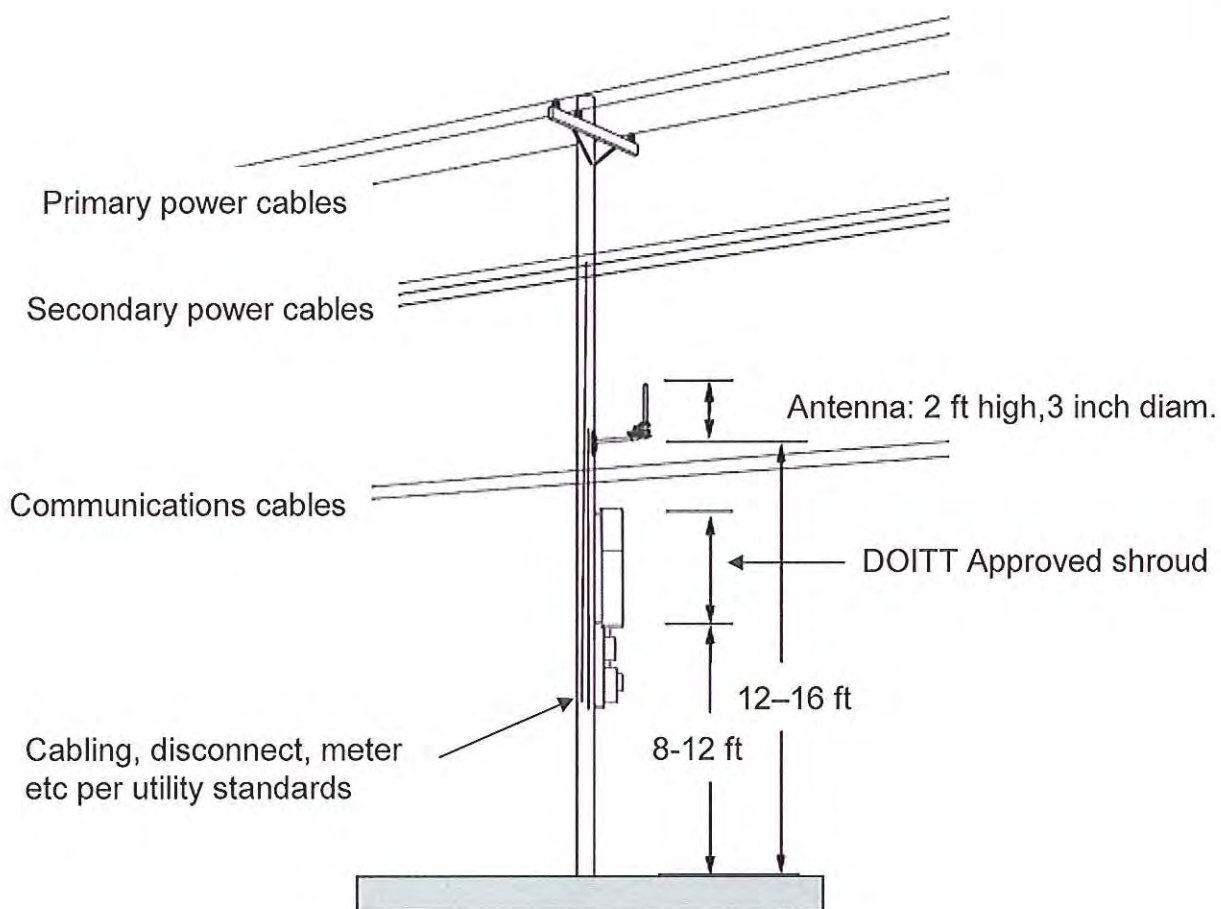
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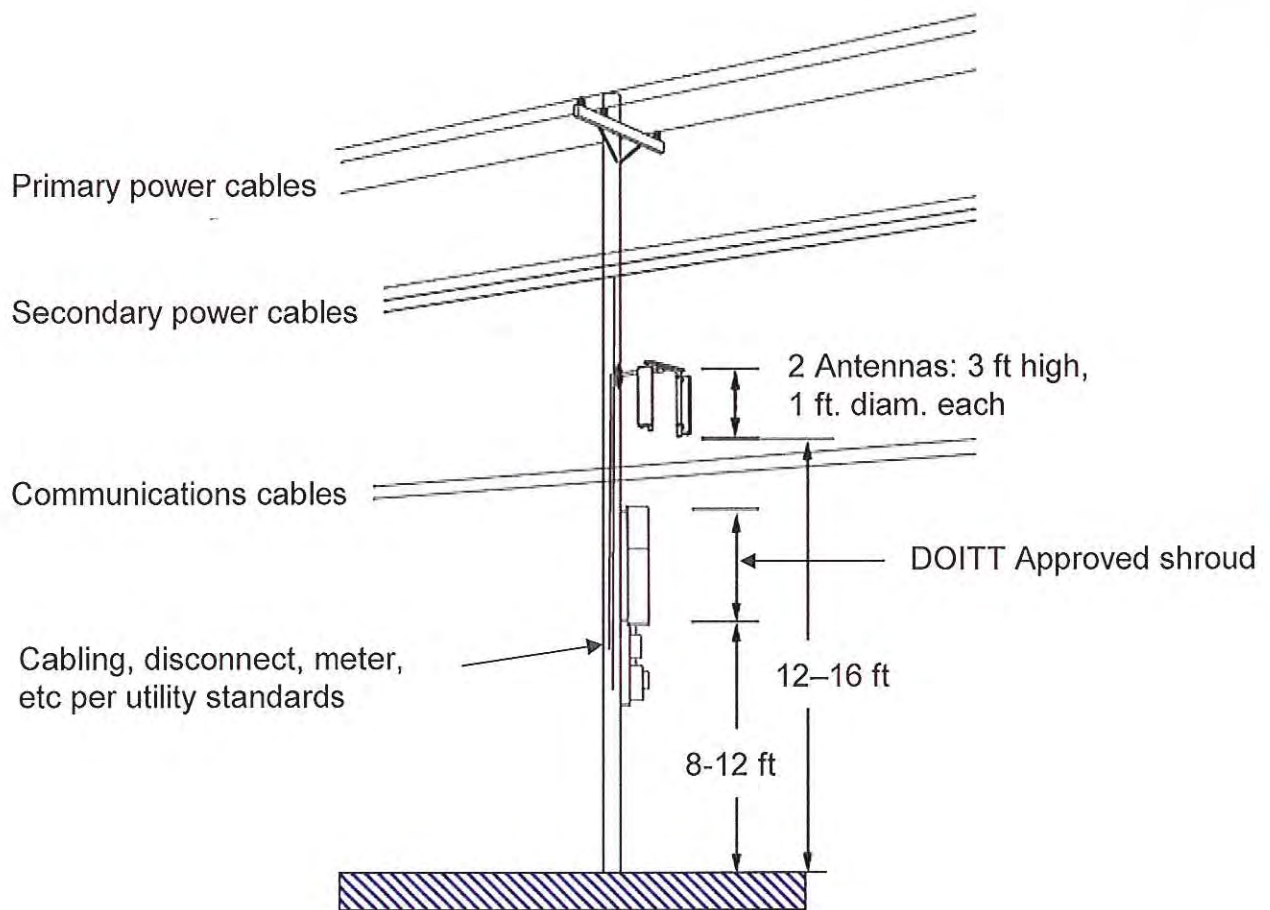
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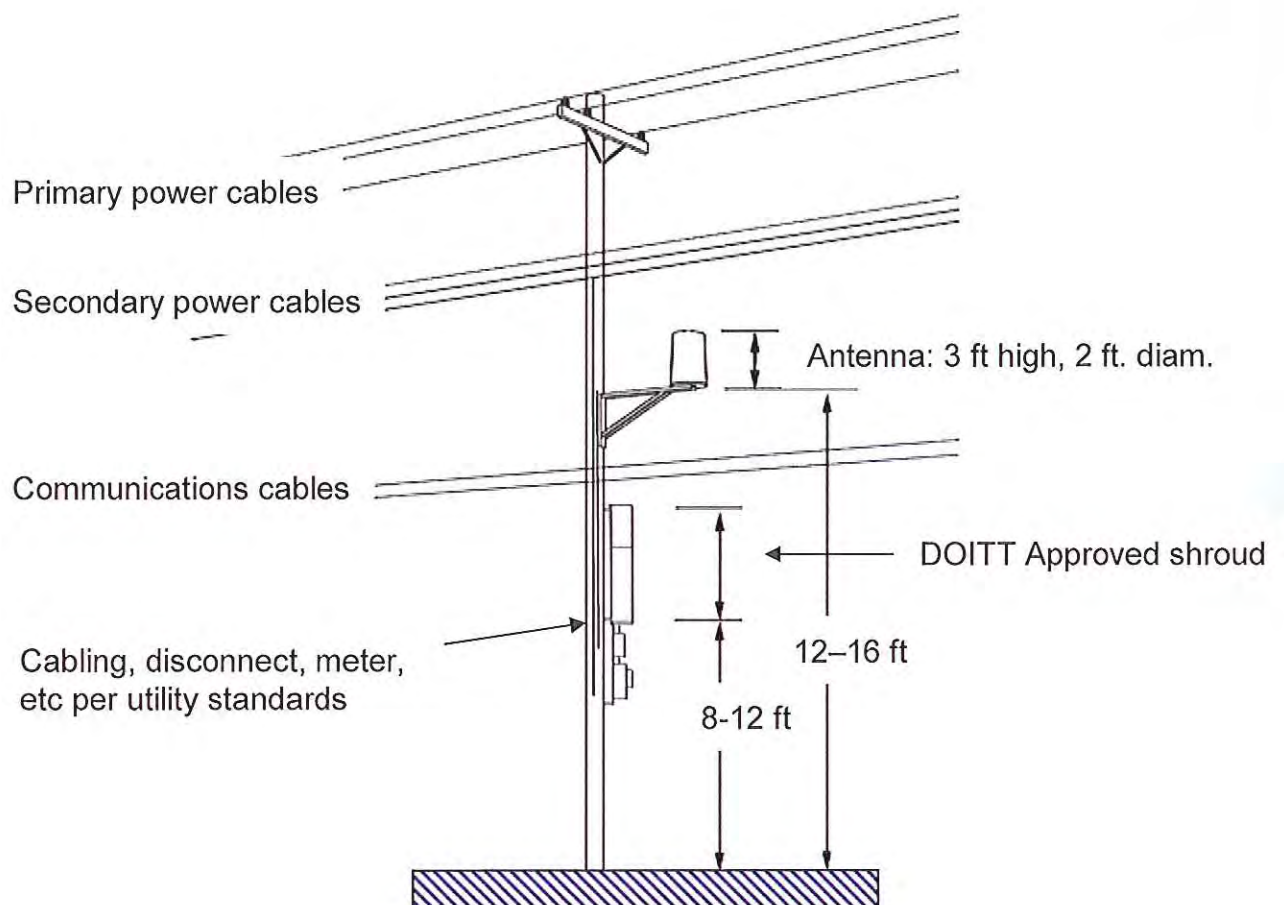
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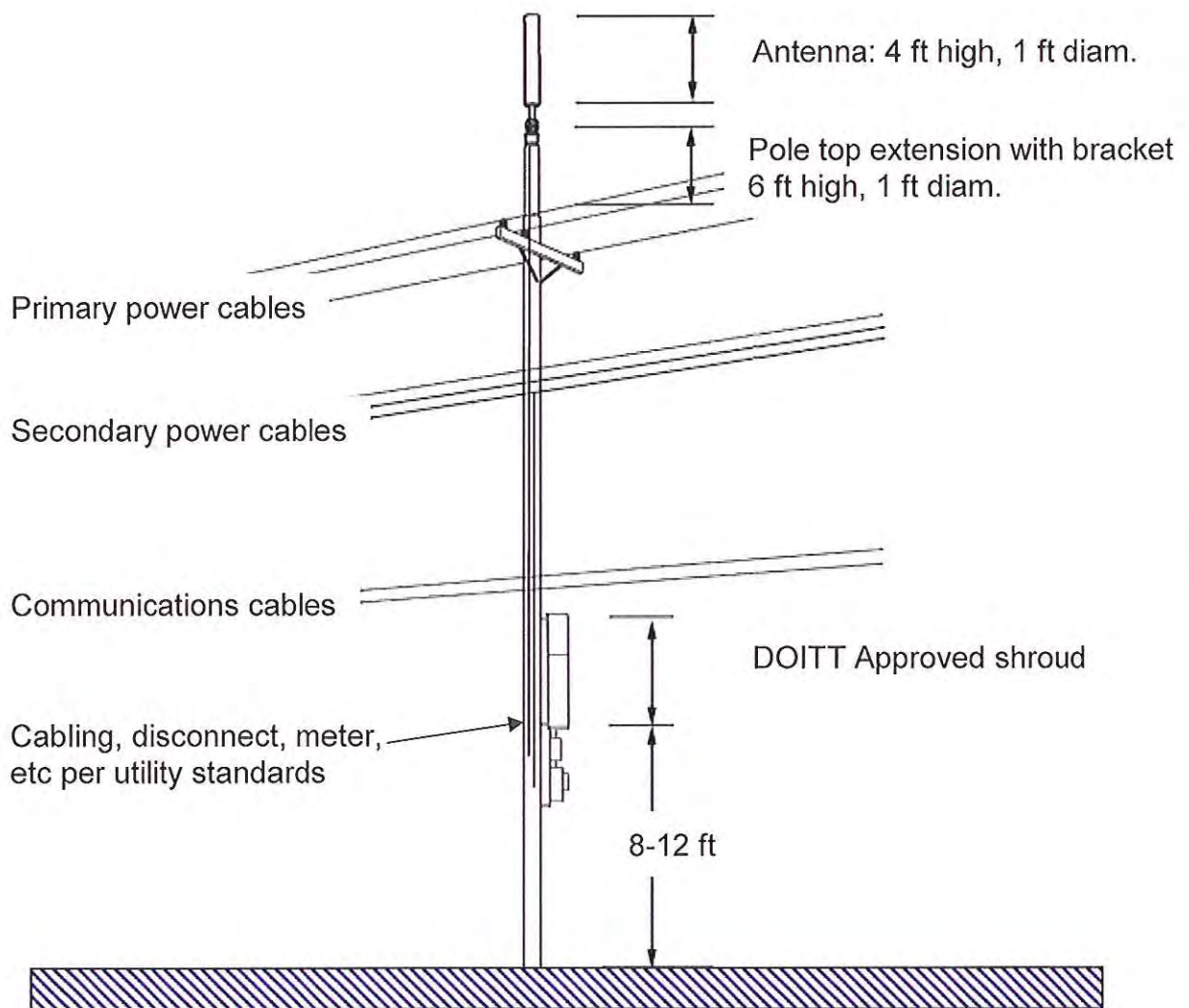
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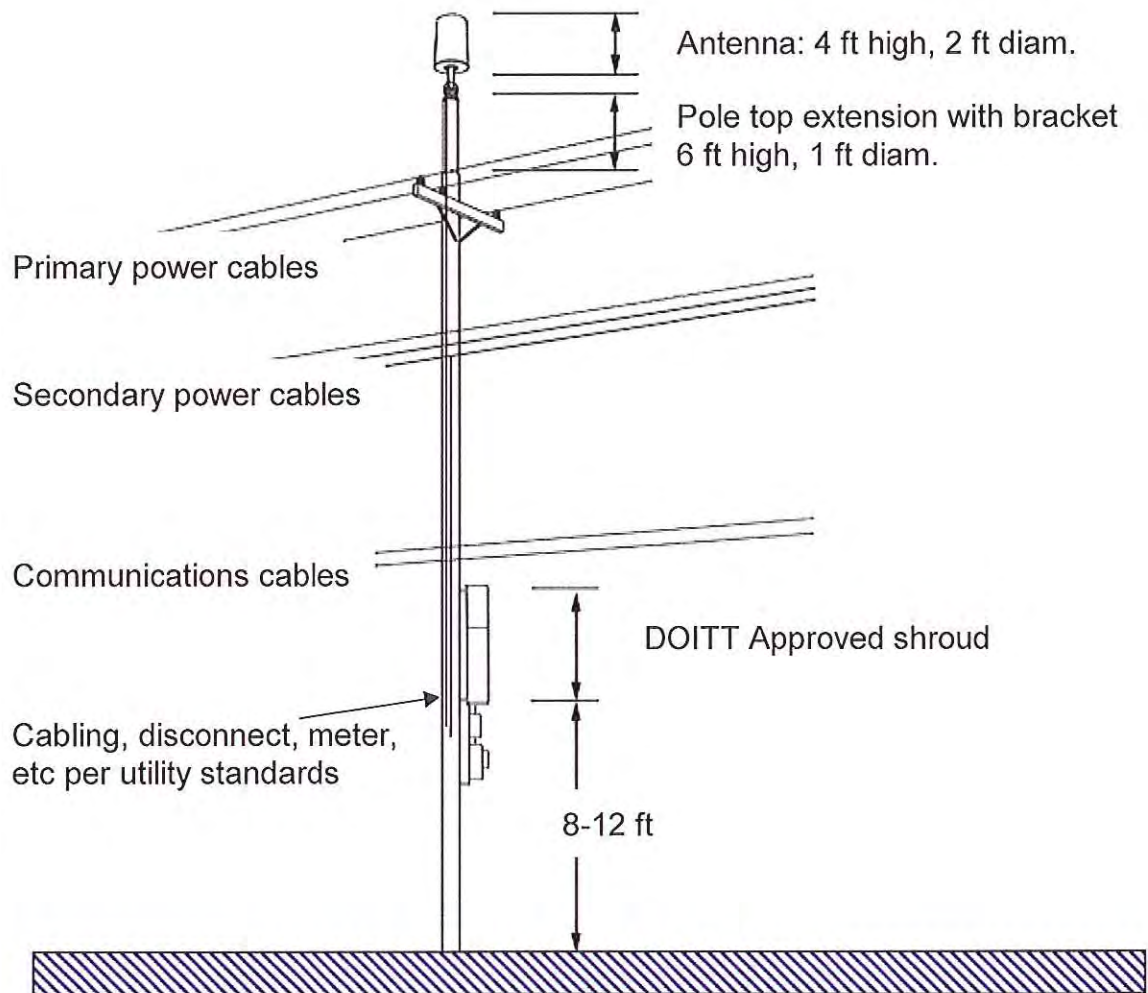
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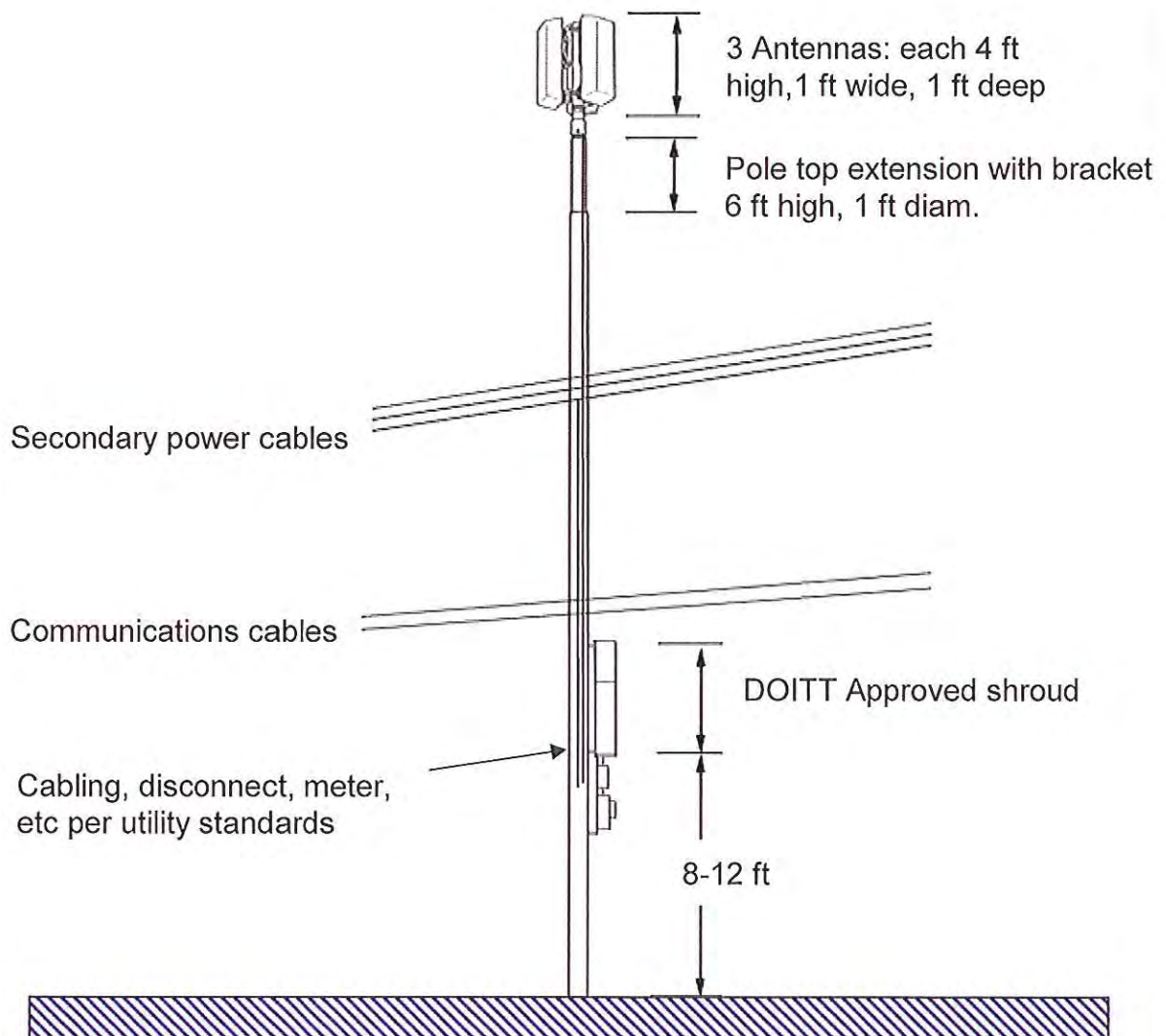
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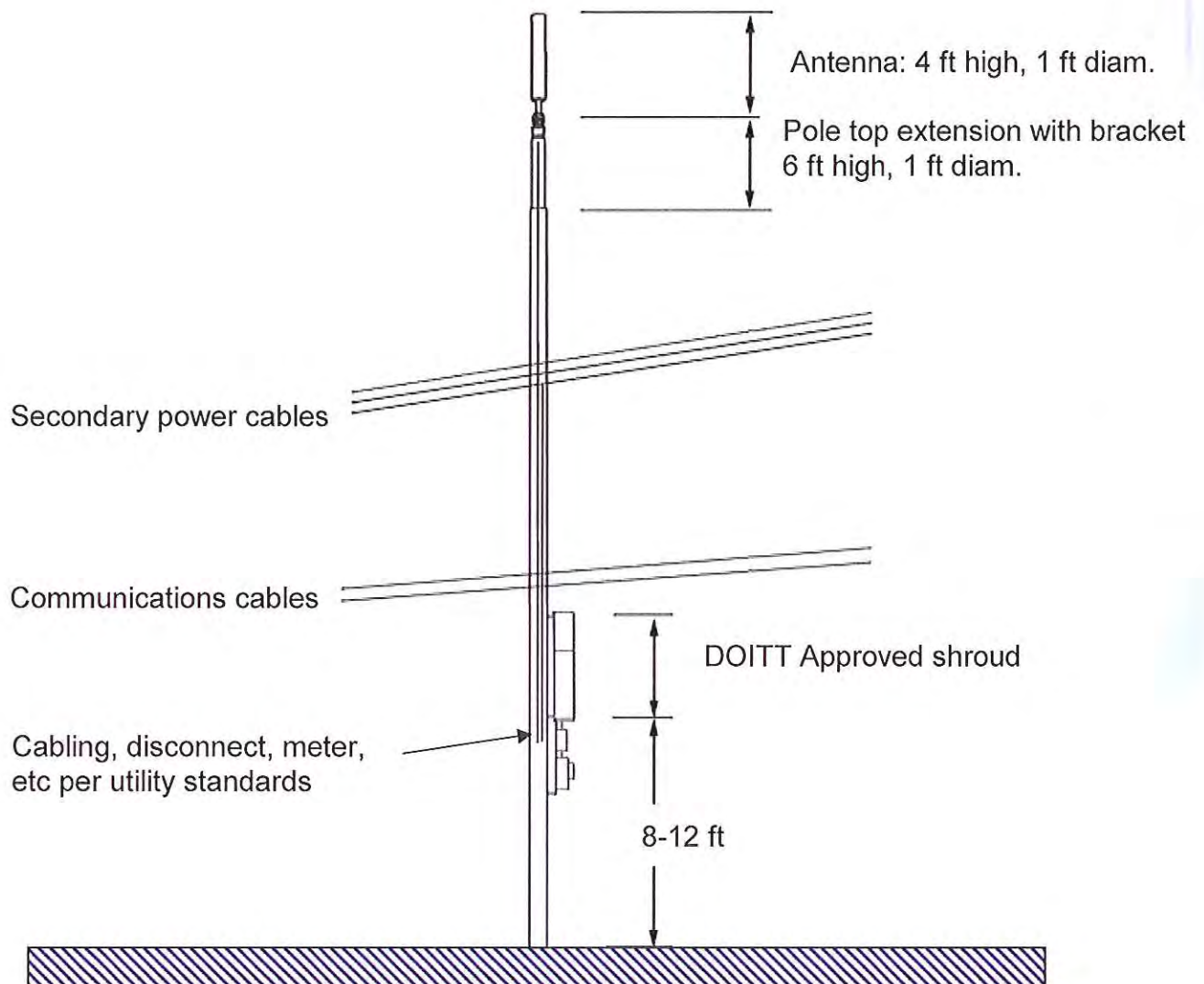
Antenna Pole Top Extension over Primary



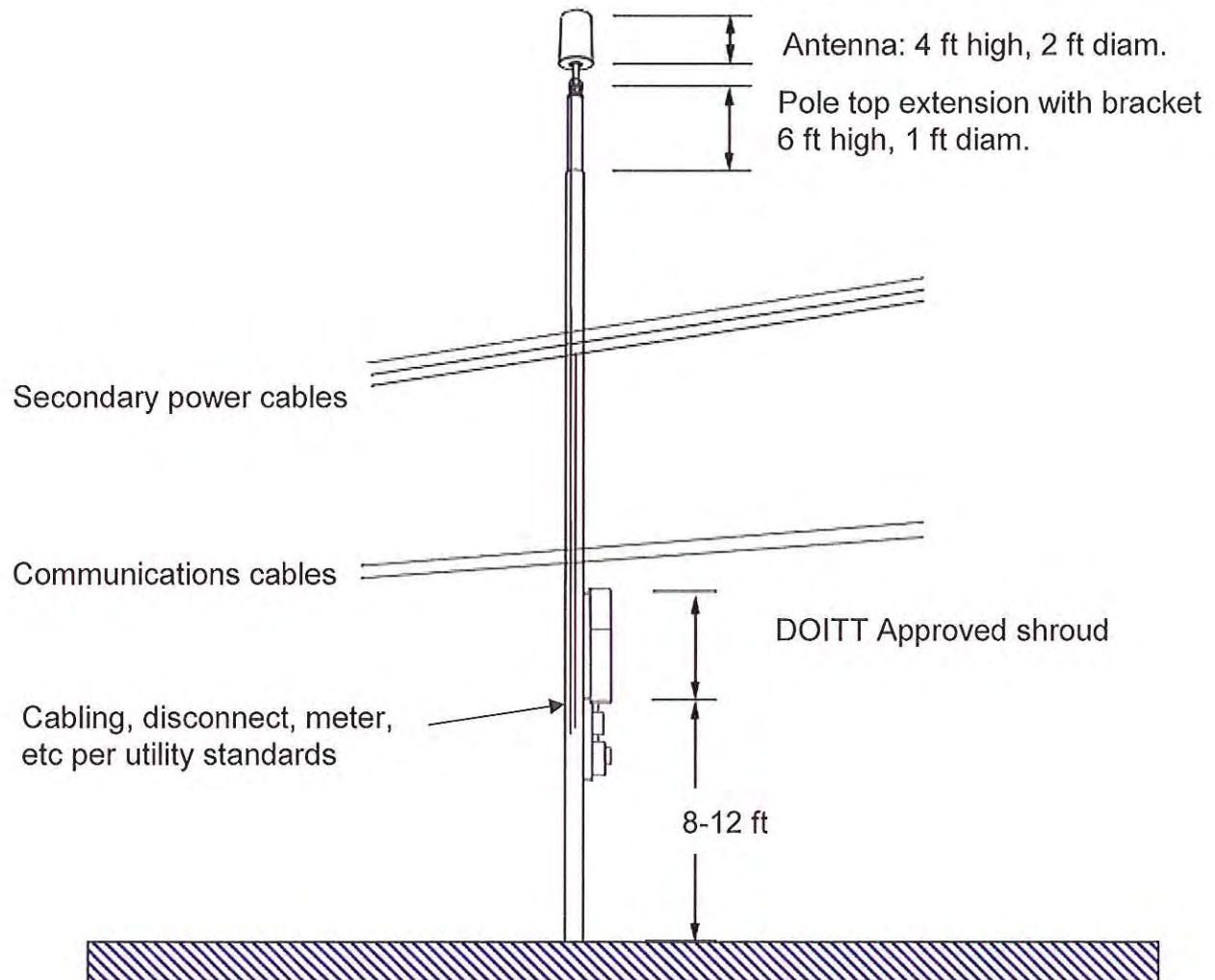
Antenna Pole Top Extension over Secondary



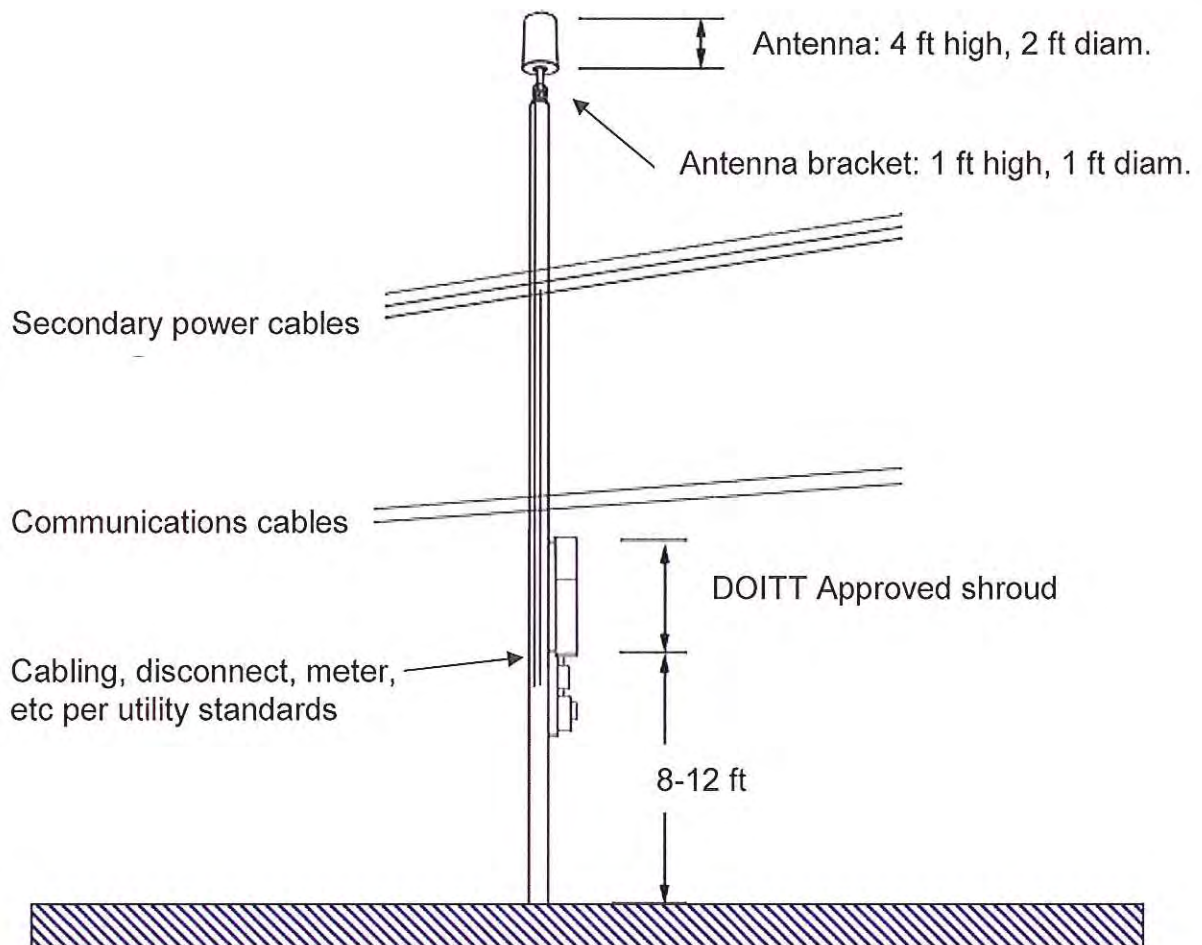
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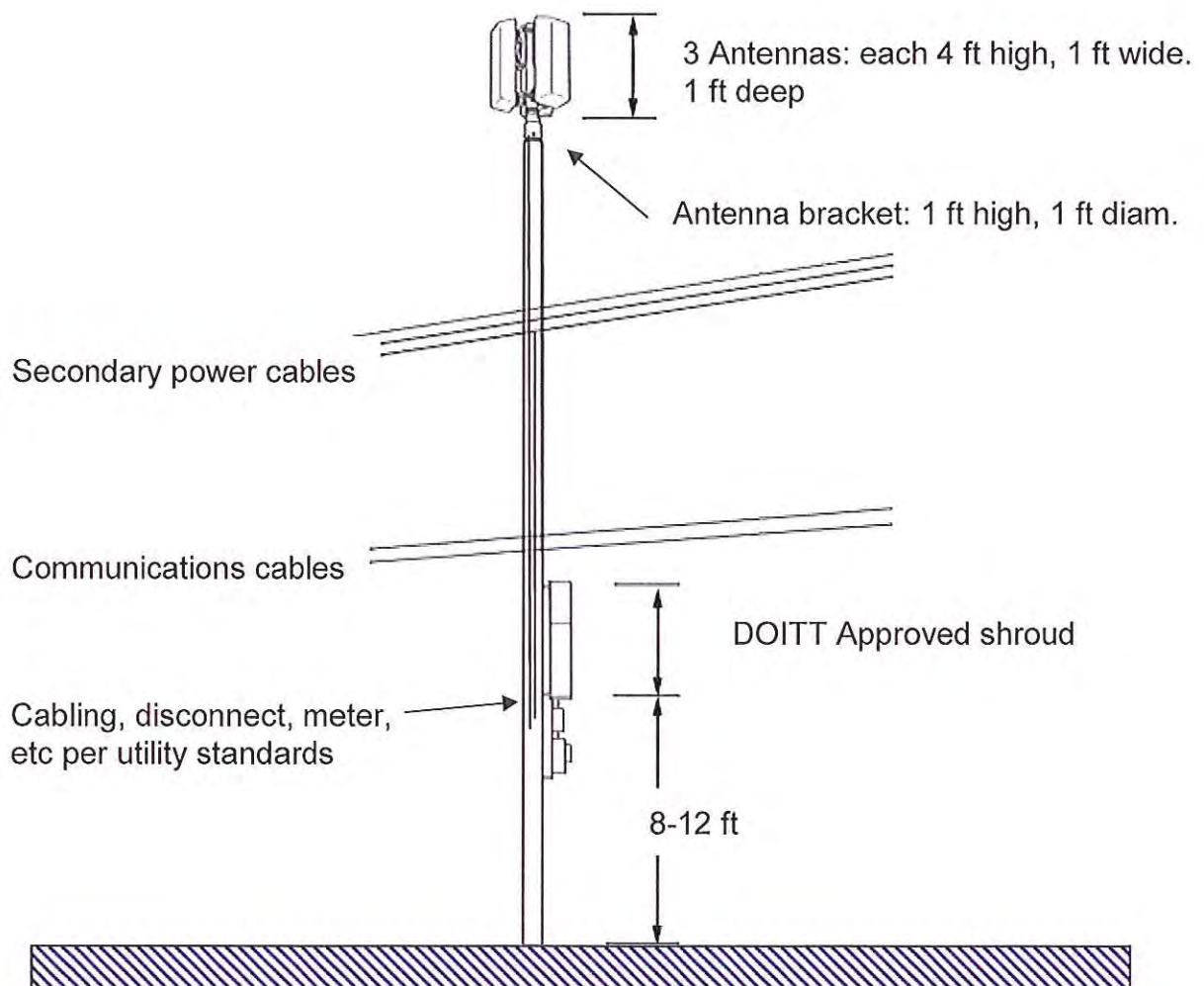
Antenna Pole Top Extension over Secondary



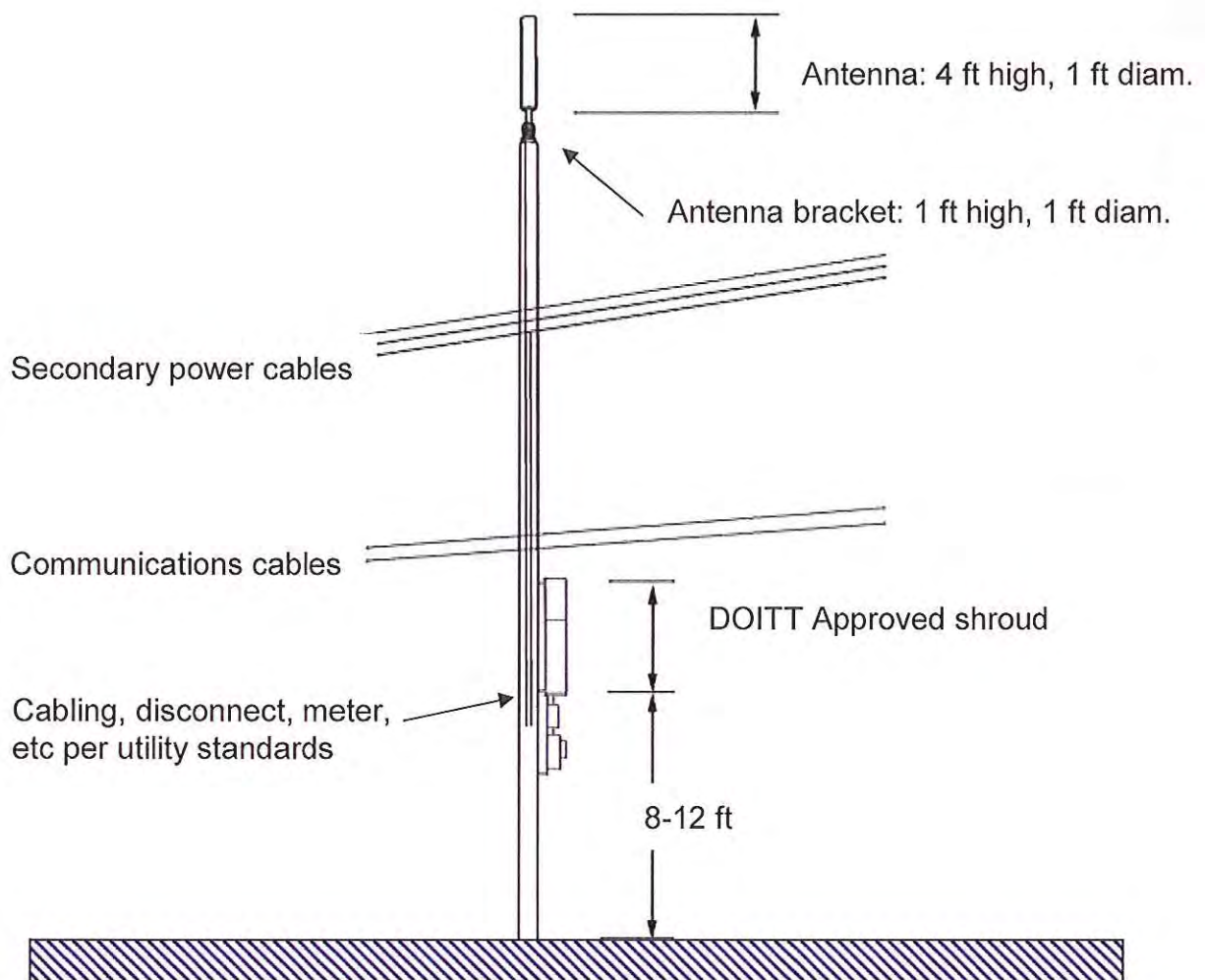
Antenna at Top of Power Pole



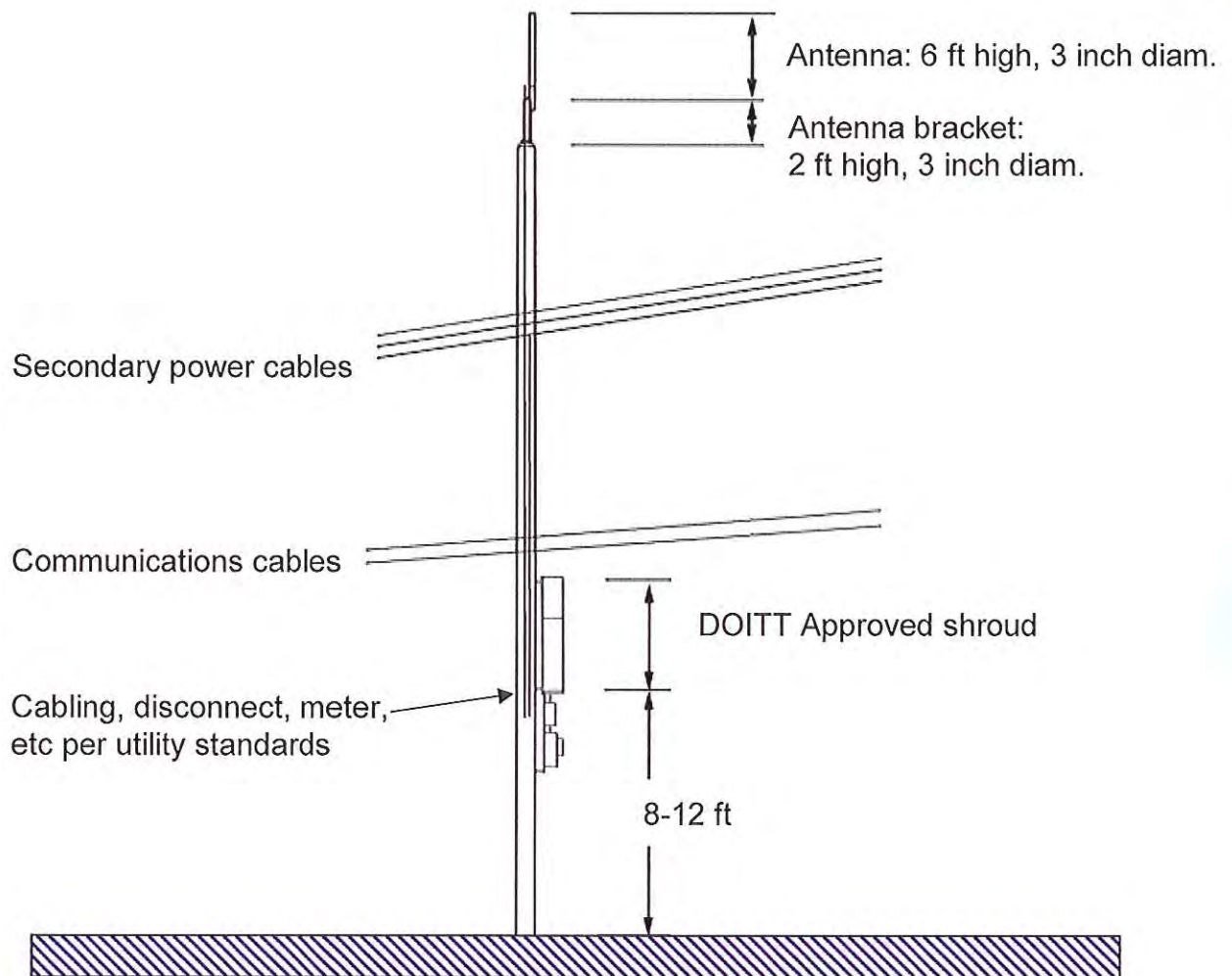
Antenna at Top of Power Pole



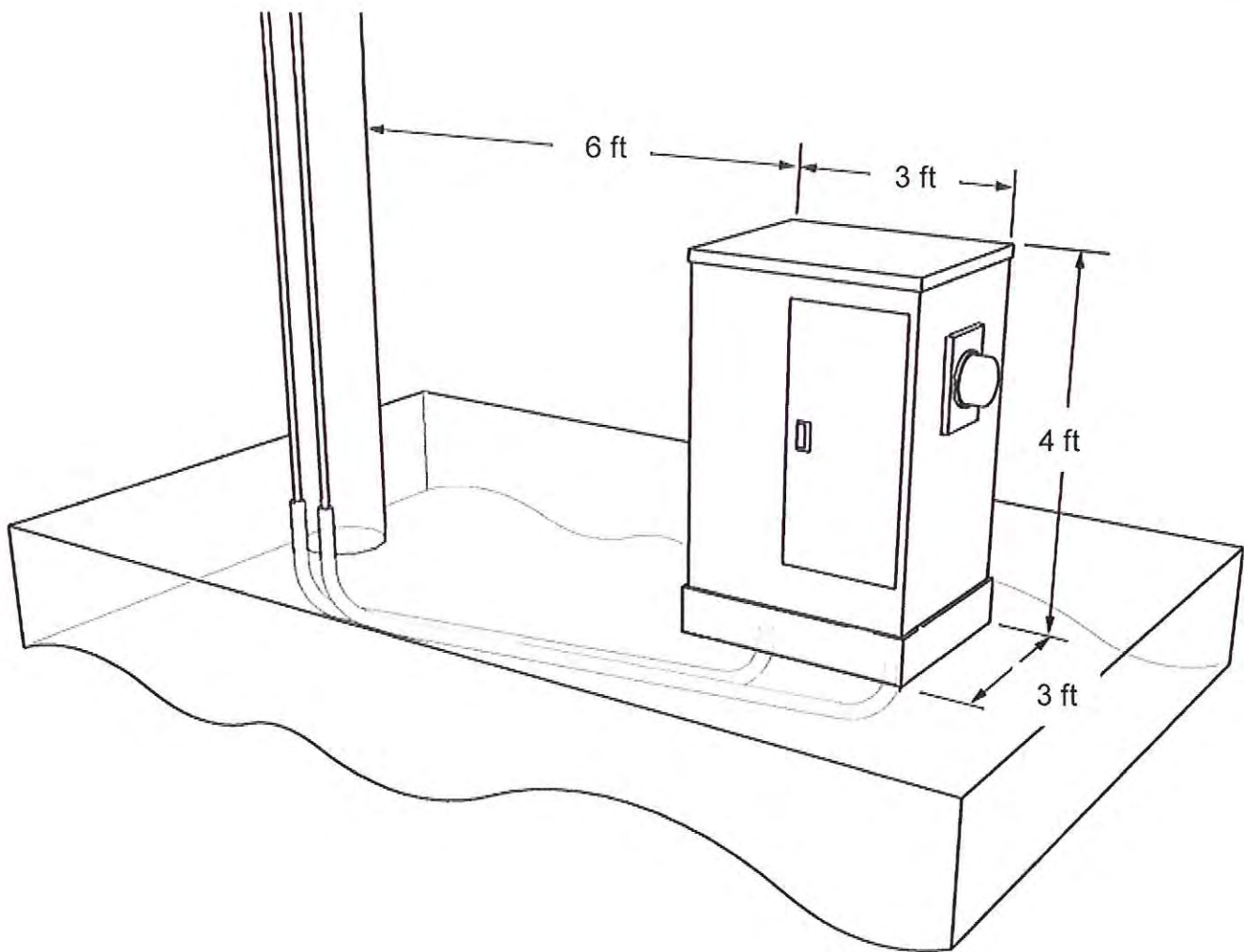
Antenna at Top of Power Pole



Antenna at Top of Power Pole



Equipment in Pedestal



FIRST AMENDMENT TO RIGHT-OF-WAY USE AGREEMENT

THIS FIRST AMENDMENT TO RIGHT-OF-WAY USE AGREEMENT (this “First Amendment”) made as of the Effective Date below, is entered into by and between the **CITY OF RYE** (the “City”), a municipal corporation duly organized and validly existing under the laws of the State of New York (the “State”), and **CROWN CASTLE NG EAST LLC (F/K/A NEXTG NETWORKS OF NY, INC.)** (“Crown Castle”), a Delaware limited liability company.

WITNESSETH:

WHEREAS, the City has previously entered into a Right-of-Way Use Agreement with Crown Castle to permit Crown Castle to utilize certain facilities within the City’s rights-of-way to maintain a fiber-based telecommunications network (“Network”) for a term commencing February 17, 2011 and ending February 17, 2021, with three (3) five (5) year renewal terms (the “Use Agreement”);

WHEREAS, pages 2-23 of Exhibit A to the Use Agreement repeatedly refers to a certain component of Crown Castle’s equipment as “DoITT Approved shroud;”

WHEREAS, DoITT is the New York City Department of Information Technology and Telecommunications;

WHEREAS, the City does not fall under DoITT’s jurisdiction and DoITT does not own or control any of the poles contemplated in the Use Agreement;

WHEREAS, Consolidated Edison and/or its affiliates (“Con-Ed”) does own or control all of the poles contemplated in the Use Agreement;

WHEREAS, the City and Crown Castle desire to amend the Use Agreement to reflect that Con-Ed owns or controls the poles contemplated in the Use Agreement and that any equipment used by Crown Castle is approved by Con-Ed; and

WHEREAS, pursuant to a resolution duly adopted at its meeting held on April __, 2016, the City Council authorized the execution of an amendment to the Use Agreement to replace Exhibit A attached to the Use Agreement with a new Exhibit A, thereby permitting Crown Castle to utilize certain equipment that is approved by Con-Ed.

NOW THEREFORE, pursuant to the terms, provisions, covenants and conditions more fully set forth below, the Parties hereto agree as follows:

1. Replacement of Exhibit A

Exhibit A attached to the First Amendment hereby replaces and nullifies the Exhibit A attached to the Use Agreement.

2. Effective Date

The effective date of this First Amendment shall be April __, 2016.

3. Full Force and Effect

Except as amended by this First Amendment, the terms and conditions of the Use Agreement shall remain in full force and effect.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties have set their hands as of the day and year first above written.

CITY OF RYE

By: _____

Name: _____

Title: _____

**CROWN CASTLE NG EAST LLC
(F/K/A NEXTG NETWORKS OF NY, INC.)**

By: _____

Name: Lewis Kessler

Title: Vice President, DAS and Small Cell Networks

ACKNOWLEDGEMENTS

State of New York)
)ss.:
County of Nassau)

On the ____ day of _____ in the year 2016, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

State of New York)
)ss.:
County of Nassau)

On the ____ day of _____ in the year 2016, before me, the undersigned, personally appeared Lewis Kessler personally, known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

State Level Regulatory Overview

Crown Castle is classified by the New York Public Service Commission (NY PSC) as, “telephone corporation which owns, operates or manages any radio-telephone facility used in providing for hire one-way or two-way radio communication of any form whatsoever between points in New York State.”

- A telephone corporation is required to obtain a Certificate of Public Convenience and Necessity (CPCN) from the NY PSC in order to access the public rights-of-way for the purpose of installing telecommunications facilities.

—Crown Castle, under its subsidiary Crown Castle NG East Inc., has been granted a CPCN by the NY PSC (4/4/2003).

State of New York CPCN

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

WILLIAM M. FLYNN
Chairman
THOMAS J. DUNLEAVY
JAMES D. BENNETT
LEONARD A. WEISS
NEAL N. GALVIN



DAWN JABLONSKI
General Counsel
JANET HAND DEIXLER
Secretary

April 4, 2003

Julie Kaminski Corsig
Davis Wright Tremaine LLP
1500 K Street, Suite 450
Washington, D.C. 20005

Re: Case No. 03-C-0027

Dear Ms. Corsig:

The application, by NextG Networks of NY, Inc. on January 7, 2003, for a Certificate of Public Convenience and Necessity to operate in New York State as a facilities-based provider and reseller of telephone service, without authority to provide local exchange service, is hereby approved. This approval is based upon the accuracy of the information provided in the company's application and may be revoked if the application is found to contain false or misleading information, for failure to file or maintain current tariffs, or for violation of Commission rules and regulations.

The company's tariff, P.S.C. No. 1 – Telephone, is also approved.

The company is not authorized to use its own operators to handle 0- (emergency or non-emergency) calls. Such calls must be routed to another telephone company or operator services provider authorized to handle such calls, until such time as an amended Certificate of Public Convenience and Necessity is obtained pursuant to Part 649.6 of the Commission's rules.

The company must obtain any required consents of municipal authorities before commencing construction of telephone lines. It must also comply with applicable federal laws, New York State Public Service Law and related statutes, and the Commission's rules and regulations.

The company is also required to file a Statement of Gross Intrastate Operating Revenues by March 31 each year. It will be notified in writing each year of the required content and format of this report.

Finally, please complete and return the enclosed, two-page questionnaire to Maria Le Boeuf of our staff within 30 days of receipt of this letter. This information will be added to the directory of telephone companies posted at our website, in order to help consumers search for companies available to meet their telecommunications needs. Any updates or changes should be promptly forwarded as well.

If you have any questions, please contact Maria Le Boeuf at (518) 474-1362.

By direction and delegation
of the Commission,

Allan H. Bausback
Director
Office of Communications

cc: Robert Delsman, Esq.
NextG Networks of NY, Inc.
2033 Gateway Place, Suite 500
San Jose, CA 95110-3709

Enclosure

Proposed Locations in the City Of Rye

Customer Node ID	Latitude	Longitude	Closest Street Address	On Street
ODAS_WEST_N192	40.979977	-73.699977	290 North st	North St
ODAS_WEST_N194	40.974761	-73.694671	12 Sharon Ln	Sharon Ln
ODAS_WEST_N199	40.979682	-73.697097	124 Maple ave	Maple Ave
ODAS_WEST_N206	40.980935	-73.681797	44 Grace Church St	Grace Church St
ODAS_WEST_N207	40.982891	-73.67976	8 Holly Ln	Holly Ln
ODAS_WEST_N216	40.983397	-73.690144	151 Locust ave	Locust Ave
ODAS_WEST_N226	40.973723	-73.699185	401 Theodore Fremd Ave	Theall Rd
ODAS_WEST_N227	40.972115	-73.700646	411 Theodore Fremd Ave	Theall Rd
ODAS_WEST_N228	40.96958	-73.702641	555 Theodore Fremd Ave	Theall Rd
ODAS_WEST_N231	40.968234	-73.703793	330 Theall Rd	Osborne Rd
ODAS_WEST_N233	40.966302	-73.701183	57 Osborne Rd	Osborne Rd
ODAS_WEST_N239	40.964291	-73.703176	42 Lasalle Ave	Glen Oaks Dr
ODAS_WEST_N247	40.961636	-73.69968	47 Soundview Ave	Soundview Ave
ODAS_WEST_N248	40.960297	-73.698198	98 Soundview Ave	Soundview Ave
ODAS_WEST_N249	40.958368	-73.69581	170 Soundview Ave	Soundview Ave
ODAS_WEST_N255	40.963749	-73.682672	339 Rye Beach Ave	Rye Beach Ave
ODAS_WEST_N261	40.960694	-73.691962	19 Hix Ave	Hix Ave
ODAS_WEST_N265	40.959945	-73.683144	630 Forest Ave	Dearborn Ave
ODAS_WEST_N267	40.960442	-73.685816	53 Dearborn Ave	Dearborn Ave
ODAS_WEST_N268	40.962438	-73.68231	578 Forest Ave	Forest Ave
ODAS_WEST_N269	40.95994	-73.688288	2 Garden Dr	Garden Dr
ODAS_WEST_N272	40.961302	-73.686952	10 Van Buren St	Van Buren St
ODAS_WEST_N274	40.957782	-73.687341	51 Hewlett Ave	Hewlett Ave
ODAS_WEST_N279	40.951041	-73.684584	5 Pine Island Rd	Pine Island Rd
ODAS_WEST_N281	40.957526	-73.689085	650 Milton Rd	Milton Rd
ODAS_WEST_N283	40.944423	-73.695083	350 Stuyvesant Ave	Stuyvesant Ave
ODAS_WEST_N285	40.950422	-73.691306	150 Stuyvesant Ave	Stuyvesant Ave
ODAS_WEST_N286	40.962681	-73.705331	421 Park Ave	Park Ave
ODAS_WEST_N287	40.948598	-73.688398	999 Forest Ave	Forest Ave
ODAS_WEST_N288	40.946246	-73.693019	290 Stuyvesant Ave	Stuyvesant Ave
ODAS_WEST_N289	40.955003	-73.690219	740 Old Milton Rd	Old Milton Rd
ODAS_WEST_N252	40.967448	-73.687004	4 Ellsworth St	Playland Pkwy
ODAS_WEST_N271	40.957462	-73.684092	717 Forest Ave	Forest Ave
ODAS_WEST_N282	40.941949	-73.696417	499 Stuyvesant Ave	Stuyvesant Ave
ODAS_WEST_N193	40.976517	-73.693379	95 North st	North St
ODAS_WEST_N195	40.973615	-73.693455	11 North st	North St
ODAS_WEST_N196	40.978064	-73.692768	2 Hammond Rd	Theodore Fremd Ave
ODAS_WEST_N197	40.987699	-73.686586	19 Seneca st	Seneca St
ODAS_WEST_N198	40.982784	-73.696418	255 Central ave	Central Ave
ODAS_WEST_N203	40.984	-73.693498	190 Locust ave	Locust Ave
ODAS_WEST_N208	40.984595	-73.680535	" " Thistle Ln	Thistle Ln
ODAS_WEST_N211	40.984591	-73.683514	17 Purdy ave	Purdy Ave
ODAS_WEST_N218	40.986494	-73.677473	17 Peck ave	Peck Ave

ODAS_WEST_N219	40.987004	-73.682348	33 Cedar st	Cedar St
ODAS_WEST_N221	40.984812	-73.68887	14 Ridgewood Dr	Ridgewood Dr
ODAS_WEST_N222	40.985742	-73.686616	4 Ridgewood Dr	Iroquois St
ODAS_WEST_N223	40.987111	-73.687746	64 Highland Rd	Highland Rd
ODAS_WEST_N229	40.96945	-73.697551	37 Colby Ave	Old Post Rd
ODAS_WEST_N234	40.96887	-73.692753	80 Claremont Ave	Claremont Ave
ODAS_WEST_N235	40.968316	-73.694972	45 Fulton Ave	Fulton Ave
ODAS_WEST_N236	40.96659	-73.694493	4 Reymont Ave	Reymont Ave
ODAS_WEST_N237	40.96617	-73.706003	110 Glen Oaks Dr	Glen Oaks Dr
ODAS_WEST_N240	40.966355	-73.703546	12 Harding Dr	Harding Dr
ODAS_WEST_N242	40.965906	-73.693184	112 Sonn Dr	Sonn Dr
ODAS_WEST_N250	40.967361	-73.697316	51 Franklin Ave	Franklin Ave
ODAS_WEST_N253	40.965131	-73.686488	444 Milton Rd	Milton Rd
ODAS_WEST_N254	40.965159	-73.684331	78 Elmwood Ave	Elmwood Ave
ODAS_WEST_N256	40.964766	-73.681298	511 Forest Ave	Forest Ave
ODAS_WEST_N257	40.963197	-73.697396	31 Allendale Dr	Allendale Dr
ODAS_WEST_N258	40.963471	-73.69514	110 Oakland Beach Ave	Oakland Beach Ave
ODAS_WEST_N259	40.960655	-73.695406	20 Chamberlain St	Chamberlain St
ODAS_WEST_N260	40.959633	-73.693772	12 Byrd St	Byrd St
ODAS_WEST_N262	40.962217	-73.688585	530 Milton Rd	Oakland Beach Ave
ODAS_WEST_N263	40.96304	-73.686006	46 Hill St	Hill St
ODAS_WEST_N264	40.961629	-73.683708	387 Oakland Beach Ave	Halsted Pl
ODAS_WEST_N266	40.962348	-73.691238	1 Rose St	Oakland Beach Ave
ODAS_WEST_N270	40.958612	-73.685862	4 Fairlawn Ct	Fairlawn Ct
ODAS_WEST_N275	40.954555	-73.687069	21 Green Ave	Green Ave
ODAS_WEST_N276	40.955742	-73.685681	15 Valleyview Ave	Valleyview Ave
ODAS_WEST_N277	40.953674	-73.688754	31 Overhill Ave	Overhill Ave
ODAS_WEST_N278	40.952667	-73.687736	11 Halls Ln	Halls Ln
ODAS_WEST_N280	40.961833	-73.693775	10 White Birch Dr	White Birch Dr
ODAS_WEST_N284	40.948151	-73.692038	230 Stuyvesant Ave	Stuyvesant Ave

Cross Street 1	Pole ID	Pole Type	Antenna Type
Summit Ave	W29	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Marlene Ct	W1	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
North St	VZ4	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Ralston St	T610	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Larkspur Ln	NYT 9	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Ridgewood Dr	T16	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Playland Access Dr	T23	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Garver Dr	T168	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Osborne Rd	T6	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Coolidge ave	W18	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Boston Post Rd	T 7	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Lasalle Ave	NYT 7	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Boston Post Rd	NYT 5	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Boston Post Rd	W10	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Boston Post Rd	18	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Halstead Pl	11	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Dolphin Dr	NYT 8	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Forest Ave	W13	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Everett St	6	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Rye Beach Ave	T67	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Milton Rd	T78	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Newberry Pl	10707	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Robert Crisfield Pl	W 9	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Forest Ave	NYT 8	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Hewlett Ave	T86	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Dead End	4	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Van Wagenen Ave	NYT 16	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Florence Ave	NYT 8	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Magnolia Pl	T118	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Van Wagenen Ave	31	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Stuyvesant Ave	T 97	Wood Comm Zone	BRSAWS360D-698/1710-2-T0-D
Milton Rd	W006624	MSL	Galtronics 14.5" X 24" (P5622)
Philips Ln	N/A	New	dbSpectra 48 x 8
Dead End	N/A	New	dbSpectra 48 x 8
Hammond Rd	W11S	Wood Pole Top	dbSpectra 48 x 8
Old Post Rd	W18	Wood Pole Top	dbSpectra 48 x 8
Hammond Rd	T47 S	Wood Pole Top	dbSpectra 48 x 8
Mendota Ave	NYT3	Wood Pole Top	dbSpectra 48 x 8
Summit Ave	29	Wood Pole Top	dbSpectra 48 x 8
Maple Ave	NYT21	Wood Pole Top	dbSpectra 48 x 8
Mistletoe Ln		Wood Pole Top	dbSpectra 48 x 8
School St	W5	Wood Pole Top	dbSpectra 48 x 8
Midland Ave	N/A	Wood Pole Top	dbSpectra 48 x 8

New St	17990	Wood Pole Top	dbSpectra 48 x 8
Iroquois St	P5	Wood Pole Top	dbSpectra 48 x 8
Ridgewood Dr	W12	Wood Pole Top	dbSpectra 48 x 8
Club Rd	NYT1	Wood Pole Top	dbSpectra 48 x 8
Boston Post Rd	NYT 1	Wood Pole Top	dbSpectra 48 x 8
Parkway Dr	3701	Wood Pole Top	dbSpectra 48 x 8
Morehead Dr	NYT 6	Wood Pole Top	dbSpectra 48 x 8
Sonn Dr	NYT 1	Wood Pole Top	dbSpectra 48 x 8
Coolidge Ave	NYT16	Wood Pole Top	dbSpectra 48 x 8
Hughes Ave	NYT 1	Wood Pole Top	dbSpectra 48 x 8
Crescent Ave	T4	Wood Pole Top	dbSpectra 48 x 8
Fraydun Pl	NYT 2	Wood Pole Top	dbSpectra 48 x 8
Rye Beach Ave	NYT 58S	Wood Pole Top	dbSpectra 48 x 8
Oakwood Ave	8	Wood Pole Top	dbSpectra 48 x 8
Elmwood Ave	W57	Wood Pole Top	dbSpectra 48 x 8
Fullerton Pl	4	Wood Pole Top	dbSpectra 48 x 8
Griffon Pl	N/A	Wood Pole Top	dbSpectra 48 x 8
Mildred Ave	9	Wood Pole Top	dbSpectra 48 x 8
Helen Ave	W4	Wood Pole Top	dbSpectra 48 x 8
Riverside View Ln	N/A	Wood Pole Top	dbSpectra 48 x 8
Hillside Pl	NYT 3	Wood Pole Top	dbSpectra 48 x 8
Oakland Beach Ave	7	Wood Pole Top	dbSpectra 48 x 8
Rose St	26A	Wood Pole Top	dbSpectra 48 x 8
Dead End	8	Wood Pole Top	dbSpectra 48 x 8
Fairway Ave	4	Wood Pole Top	dbSpectra 48 x 8
Forest Ave	N/A	Wood Pole Top	dbSpectra 48 x 8
Stuyvesant Ave	4	Wood Pole Top	dbSpectra 48 x 8
Forest Ave	6	Wood Pole Top	dbSpectra 48 x 8
Hickory Dr	5	Wood Pole Top	dbSpectra 48 x 8
Van Wagenen Ave	W14 L330	Wood Pole Top	dbSpectra 48 x 8

Crown Castle Proposed and Existing Locations in City of Rye

Proposed Locations

 Existing Metal Street Light

 Existing Wood Pole



Westchester County

Village of City of Rye

Existing Crown Castle Locations in the City of Rye

Location ID	Latitude	Longitude	Location Address	Installation Type
NYD6382	40.961369	-73.682507	Across from 594 Forest Ave	Pole Top
NYD6384	40.963170	-73.693739	138 Oakland Beach Ave	Pole Top
NYD6383	40.965694	-73.686414	Side of 411 Milton Rd (50ft South)	Pole Top
NYD6385	40.966648	-73.697485	36 Franklin Ave	Pole Top
NYD6381	40.967238	-73.676533	Across from 52 Roosevelt Ave	Pole Top
NYD6386	40.973074	-73.695710	120 Old Post Rd	Pole Top
NYD6387	40.974950	-73.700310	Across from 401 Theodore Fremd Ave	Comm Zone
NYD6380	40.980584	-73.693459	2 Clinton Ave	Pole Top

Existing Crown Castle Deployments in the City of Rye

NYD6387 Comm Zone Installation - Across from 401 Theodore Fremd Ave



NYD6387 Comm Zone Installation - Across from 401 Theodore Fremd Ave



NYD6383 Pole Top Installation - Side of 411 Milton Rd (50ft South)



NYD6383 Pole Top Installation - Side of 411 Milton Rd (50ft South)



NYD6382 Pole Top Installation - Across from 594 Forest Ave



NYD6382 Pole Top Installation - Across from 594 Forest Ave





CITY COUNCIL AGENDA

NO. 9

DEPT.: City Manager

DATE: June 8, 2016

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Public Hearing on the proposed revision to the Rye City Charter to rescind Article 12 "Police Department" and Article 13 "Fire Department" and create a new Article 12 "Department of Public Safety" and to create a new position of "Commissioner of Public Safety" which position shall have charge and supervision of the Police and Fire Departments.

FOR THE MEETING OF:

June 8, 2016

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council hold a Public Hearing on the proposed revision to the Rye City Charter regarding the establishment of a "Department of Public Safety" and the creation of a new position of "Commissioner of Public Safety" which position shall have charge and supervision of the Police and Fire Departments.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: At the July 8, 2015 City Council meeting the Mayor appointed a study group to study the issues of the Fire Department and provide feedback to the City Council. The Study Group includes Councilmembers Richard Mecca, Kirstin Bucci, Mayor Sack and the Chiefs of the Fire Department. Meetings have been held with the professional firefighters, volunteer firefighters, and the Board of Wardens. The recommendation from the Study Group is to establish a Department of Public Safety and to create a new position of Commissioner of Public Safety who will oversee the supervision of the Police and Fire Departments.

See attached proposed Local Law.

CITY OF RYE
LOCAL LAW NO. 2016

A local law to rescind Article 12 “Police Department” and Article 13 “Fire Department” of the Rye City Charter and create a new Article 12 “Department of Public Safety” and to create a new position of “Commissioner of Public Safety”, which position shall have charge and supervision of the Police and Fire Departments as follows:

Be it enacted by the City Council of the City of Rye as follows:

Section 1: Repeal City Charter Article 12 “Department of Police” in its entirety and replace same with a new Article C12 “Department of Public Safety”

Section 2: Repeal City Charter Article 13 “Fire Department” in its entirety.

Section 3: Department of Public Safety.

Article C12-1. “Commissioner of Public Safety”

- A. There shall be Department of Public Safety, the head of which shall be the Commissioner of Public Safety, who shall be appointed by the City Manager, and he/she shall serve at the pleasure of the City Manager. The Commissioner of Public Safety shall have at least the qualifications and experience specified by the City Council. The Commissioner of Public Safety shall report directly to the City Manager.
- B. The Commissioner of Public Safety shall have charge and supervision of the Fire and Police Departments and shall provide in all ways possible for the safety, care, comfort and protection of the inhabitants of the City of Rye and of their property.

Article C12-2. Powers and Duties of Commissioner of Public Safety.

- A. The Commissioner of Public Safety shall have jurisdiction, supervision and control of the government, administration, disposition and discipline of the officers and members of the Fire and Police Departments; and shall possess and exercise fully and exclusively all powers and perform all duties pertaining to the government, maintenance and direction of the fire department, and the apparatus and property thereof, and buildings furnished therefore and of the Police Department and equipment furnished therefore, and shall have the general directions and supervision of the expenditure of all moneys appropriated to the Department of Public Safety. He/she shall have authority to administer oaths and take evidence, affidavits and acknowledgements in all matters and proceedings pertaining to the Department of Public Safety.
- B. The Commissioner of Public Safety shall have the power to make rules and regulations, approved by the City Council, in regard to the government, administration, disposition and discipline of the members Fire Department and the Police Department. Such rules and regulations may provide for the hearing,

examination, investigation, trial and determination of charges made or prepared against any officer or member of said department for neglect of official duty or incompetency or incapacity to perform his official duties, or some delinquency seriously affecting his general character or fitness for the office, and may, in his/her discretion, punish, discipline and/or terminate any officer or member found guilty thereof, after reasonable notice and upon due trial by the aforesaid Commissioner of Public Safety in the form and manner prescribed by the rules and regulations of his Department.

- C. The Commissioner of Public Safety shall have the power to appoint all officers and members of the Fire Department, except those positions which are elected positions by the Volunteer Fire Department and all officers and members of the Police Department, including Bay Constables, subject to civil service rules and regulations, to such positions in said departments as are established by the City Council.
- D. The Commissioner of Public Safety shall have general supervision over the records of the Department of Public Safety and its officers and employees and shall possess such other powers and perform such other duties as may be prescribed by law or by resolution of the City Council.
- E. The Commissioner of Public Safety shall be responsible for the administration and supervision of police officers assigned to policing and enforcing all laws and ordinances applicable to Rye Town Park and the maintenance of order therein.
- F. The Commissioner of Public Safety shall assist the City Manager in the administration of flood, disaster and other emergency plans.
- G. The Commissioner of Public Safety shall be responsible for the administration, in coordination with other municipalities, of an emergency ambulance service on behalf of the inhabitants of the City.

Article C12-3. Constitution of the Fire Department and the Police Department.

The Fire Department shall be supervised by the supervisory career officers and such other officers as the Commissioner of Public Safety shall authorize. The Police Department shall consist of the paid division, including the Bay Constables, and the auxiliary police division and shall be supervised by the supervisory career officers of the Police Department and such other officers as the Commissioner of Public Safety shall authorize. The supervisory career officers of the Fire Department and the supervisory career officers of the Police Department, under the direction and control of the Commissioner of Public Safety, shall have the supervision and management of the officers, employees and members of the respective departments.

Article C12-4. Election and approval of officers of the Rye Volunteer Fire Department.

The Rye Volunteer Fire Department shall be constituted of a/several volunteer fire company(ies) and shall have the power to elect a chief, a first assistant chief, a second

assistant chief, and all company officers to be elected from the company(ies); however, such positions shall only be filled if such volunteers meet all of the training requirements established by the Commissioner of Public Safety. All elected officers shall be approved by the Commissioner of Public Safety and the City Council. The chief, first assistant chief and second assistant chief shall work with the supervisory career officers of the Fire Department and report directly to the Commissioner of Public Safety. Each company shall have the power to elect company officers as are necessary and to select members to fill any vacancies which may occur in their ranks. The company(ies) may adopt by-laws, subject to the approval of the Public Safety Commissioner, City Manager and City Council, to govern the leadership, management and direction of their respective company(ies). The Commissioner of Public Safety may remove any member on the ground of incompetence or misconduct after a hearing upon due notice and upon stated charges with the right of such officer and member to a review pursuant to article seventy-eight of the civil practice law and rules.

Section 5: Severability.

If any clause, sentence, paragraph, section or part of any section of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

Section 6: Effective date.

This local law will take effect immediately on filing in the office of the Secretary of State.



CITY COUNCIL AGENDA

NO. 10

DEPT.: Corporation Counsel

DATE: June 8, 2016

CONTACT: Kristen K. Wilson, Esq., Corporation Counsel

AGENDA ITEM: Authorization for City Manager to sign the proposed amendment to the existing License Agreement for 88 Davis LLC.

FOR THE MEETING OF:

June 8, 2016

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: That the City Council review the proposed amendment to the existing License Agreement for 88 Davis LLC and provide authorization to the City Manager to sign.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: The City entered into a License Agreement with the former owners of 88 Davis Avenue on April 19, 2000 which allowed the owners to maintain a wall and landscaping within the City right-of-way at the end of Davis Avenue. The current owners of 88 Davis Avenue are requesting a modification to this License Agreement to allow the maintenance of additional landscaping and a fence within the Davis Avenue right-of-way until such time as the property is redeveloped.

See attached:

- Letter from Petitioner
- Proposed Amended License Agreement
- Original License Agreement

LEO NAPIOR

DIRECT TEL.: 914-701-0800
MAIN FAX: 914-701-0808
LNAPIOR@HKPLAW.COM

May 17, 2016
VIA E-MAIL

Marcus Serrano
Rye City Manager
1051 Boston Post Road
Rye, New York 10580

Re: ***88 Davis Avenue – Amended License Agreement***

Dear Mr. Serrano:

As you know, we represent 88 Davis, LLC, the owner of 88 Davis Avenue (the “Subject Property”).

We submit this letter in response to comments and questions raised by the City Council in connection with this matter on May 11, 2016. Transmitted herewith is the Davis Avenue Street Improvement Plan that we presented at the Council meeting.

As we indicated at the Council meeting, the License Agreement was entered into by the prior owner of the Subject Property and the City when the Subject Property was first developed with a single-family residence. The southernmost end of Davis Avenue served principally as an extension of the driveway for the Subject Property and was not designed for a functional turnaround area.

The principal of 88 Davis, LLC, resides at 14 Ann Lane and also owns 83 Davis Avenue. When our client demolished the previously existing residence at 88 Davis Avenue and the driveway was removed this extension of the driveway into the right-of-way was also removed with the understanding that this portion of Davis Avenue is a private street and not within the City’s jurisdiction or control. It was subsequently discovered that the City may have some form of an interest in Davis Avenue based on the existence of the prior unrecorded License Agreement and our client was directed by City staff to request an amendment to the License Agreement reflecting the change in circumstances.

Our client simply wishes to continue utilizing the area as open vegetated space between the properties rather than returning it to a paved condition and essentially creating a road to nowhere. Prior to the development of 88 Davis Avenue with a single family residence, which has now been removed, this area was unimproved and Davis Avenue ended where the proposed improvements are indicated on the Street Improvement Plan. The proposed Amended License

HKP

Agreement obligates the owner of 88 Davis Avenue to restore the extension of Davis Avenue if and when 88 Davis Avenue is redeveloped.

Moreover, the improvements shown on the attached Street Improvement Plan will be installed in connection with the current redevelopment of 83 Davis Avenue, which will serve as a more functional turnaround area than the prior existing conditions. In addition, the maintenance of the area as open vegetated space serves as a reduction in unnecessary impervious surfaces in the area which will improve stormwater quality and the volume of runoff in the area.

Furthermore, we have also attached hereto four (4) letters of support from the owners of: (i) 76 Davis Avenue; (ii) 74 & 60 Davis Avenue; (iii) 16 Ann Lane; and (iv) 12 Ann Lane. These four properties are all within the immediate vicinity of the southern end of the Davis Avenue right-of-way and would be the most impacted by the License Agreement. As you can see, all of the neighbors support the granting of the License Agreement and view the landscaping as an improvement over the previously existing conditions.

Please forward this information to the Council members for their review in advance of the next Council meeting. Thank you for your attention to this matter.

Very Truly Yours,

HARFENIST KRAUT & PERLSTEIN LLP

By:



Leo Napior

CC: Christian Miller, Rye City Planner
Kristen Wilson, Corporation Counsel
Ryan Coyne, City Engineer

The Munson Company
9 North Goodwin Avenue
Chicago, IL 60600

area

05/20/2016

PROJECT NAME:
DAVIS AV
83 Davis Avenue
City of Rye, N.Y.



ENGINEER & ENVIRONMENTAL CONSULTANT:


EVANS ASSOCIATES
 ENVIRONMENTAL CONSULTING, INC.
 205 Amity Road
 Bethany, Connecticut 06524
 T. (203) 393-0690
 F. (203) 393-0196
 email: evans.associates@eaec-inc.com

Drawing Title:
Street
Pla

Date: April 15, 2016

DWIL. by. airp

ID: 83 Davis Ave Site_04-15-2016



LEO NAPIOR

DIRECT TEL.: 914-701-0800
MAIN FAX: 914-701-0808
LNAPIOR@HKPLAW.COM

May 5, 2016
VIA HAND DELIVERY

Marcus Serrano
Rye City Manager
1051 Boston Post Road
Rye, New York 10580

Re: ***88 Davis Avenue – Amended License Agreement***

Dear Mr. Serrano:

We represent 88 Davis, LLC, the owner of 88 Davis Avenue (the “Subject Property”). Our client has recently removed the prior single family residence from the Subject Property and intends to keep the Subject Property vacant for the foreseeable future.

There was an existing License Agreement between the City and the former owners of the Subject Property, Grace Associates, LLC, dated April 19, 2000, which allowed the owners of the Subject Property to maintain a wall and landscaping within the City right-of-way at the end of Davis Avenue. Our client is seeking to modify the terms of that License Agreement to allow the maintenance of additional landscaping and a fence within the Davis Avenue right-of-way until such time as the Subject Property is redeveloped.

A copy of the existing License Agreement and the proposed Amended License Agreement are attached hereto. We respectfully request that this matter be placed on the City Council agenda for May 11, 2016.

Please contact the undersigned if you require any additional information concerning this matter.

Very Truly Yours,

HARFENIST KRAUT & PERLSTEIN LLP

By: 

Leo Napior

CC: Christian Miller, Rye City Planner
Kristen Wilson, Corporation Counsel

AMENDED LICENSE AGREEMENT

THE AGREEMENT made the ____ day of _____, 2016, by and between the CITY OF RYE, a municipal corporation organized under the laws of the State of New York, with its principal place of business at Rye City Hall, 1051 Boston Post Road, Rye, New York (hereinafter referred to as the "FIRST PARTY") and 88 DAVIS, LLC, (hereinafter referred to as the "SECOND PARTY") owner of property located at 88 Davis Avenue, Rye, New York, also known on the current tax assessment map of the City of Rye as Sheet No. 146.11, Block 3, Lot 82 (hereinafter referred to as the "Property").

WITNESSETH

WHEREAS, there is an existing License Agreement between the FIRST PARTY and the SECOND PARTY, as the successor in interest to the Property of GRACE ASSOCIATES, LLC, dated April 19, 2000, allowing the SECOND PARTY to maintain a wall and landscaping in the right-of-way of Davis Avenue in front of the Property;

WHEREAS, the SECOND PARTY desires to maintain a lawn, landscaping, wall and/or fencing (hereinafter the "Improvements") within the Davis Avenue right-of-way in front of the Property; and

WHEREAS, the FIRST PARTY is willing to amend the prior license to permit the Improvements in the City right-of-way.

NOW, THEREFORE, in consideration of the payment of \$10.00, receipt of which is acknowledged by the FIRST PARTY, and other consideration, the parties hereto agree as follows:

1. That the SECOND PARTY is hereby granted a license to place the Improvements in the right-of-way of Davis Avenue in front of the Property.

2. The SECOND PARTY, its successors, heirs or assigns, shall at all times be responsible for and have a license to maintain the Improvements within the City right-of-way.

3. The SECOND PARTY, its successors, heirs or assigns, shall indemnify and save harmless the FIRST PARTY and its employees, officers and agents, from all claims, suits and actions and all damages and costs to which they may be put by reason of death or injury to all persons or property of another resulting from unskillfulness, willfulness, negligence or carelessness in the installation and maintenance of the Improvements. The SECOND PARTY will maintain liability insurance issued by an insurance company licensed to do business in the State of New York in form and amount deemed sufficient by the City Attorney and shall provide a certificate of insurance evidencing the same and which shall provide thirty days notice of cancellation of the same to the City. Said policy of insurance and certificate shall name the City of Rye as additional insured.

4. The entire cost of constructing and maintaining the Improvements shall be the sole responsibility of the SECOND PARTY, and the FIRST PARTY shall have no financial obligation therein.

5. The SECOND PARTY agrees that if the SECOND PARTY, its successors, heirs or assigns, shall at any time proceed to develop the Property with a new residence, upon request by the FIRST PARTY the SECOND PARTY shall remove the Improvements and restore the disturbed areas within the Davis Avenue right-of-way to their prior condition or as reasonably directed by the FIRST PARTY to provide an appropriate turnaround, and such removal and restoration shall be at the expense of the SECOND PARTY, its successors, heirs or assigns.

6. This Agreement shall inure to the benefit of and be binding on the successors and assigns in interest of the SECOND PARTY, which covenant shall run with the land.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands and seals the day and year first above written.

CITY OF RYE

By: _____
Marcus Serrano
City Manager

88 DAVIS, LLC

By: _____

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On _____, 2016, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On _____, 2016, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

Notary Public

LICENSE AGREEMENT

THE AGREEMENT made the 19th day of April, 2000, by and between the CITY OF RYE, a municipal corporation organized under the laws of the State of New York, with its principal place of business at Rye City Hall, 1051 Boston Post Road, Rye, New York (hereinafter referred to as the "FIRST PARTY") and GRACE ASSOCIATES, LLC, (hereinafter referred to as the "SECOND PARTY"), owner of property at 80 Davis Avenue, Rye, New York, also known of the current tax assessment map of the City of Rye as Sheet No. 146.11, Block 3, Lot 82 (hereinafter the "Property")

WITNESSETH

WHEREAS, the SECOND PARTY desires to maintain a wall and landscaping within the Davis Avenue City right-of-way in the area of the Property; and

WHEREAS, the FIRST PARTY is willing to grant a license to permit the wall and landscaping in the City right-of-way.

NOW, THEREFORE, in consideration of the payment of \$10.00, receipt of which is acknowledged by the FIRST PARTY, and other consideration, the parties hereto agree as follows:

1. That the SECOND PARTY is hereby granted a license to place the wall and landscaping in the right-of-way of Davis Avenue in front of the Property.
2. The SECOND PARTY, its successors, heirs or assigns, shall at all times be responsible for and have a license to maintain the wall and landscaping within the City right-of-way.
3. The SECOND PARTY, its successors, heirs or assigns, shall indemnify and save harmless the FIRST PARTY and its employees, officers, and agents, from all claims, suits and actions and all damages and costs to which they may be put by reason of death or injury to all persons or property of another resulting from unskillfulness, willfulness, negligence or carelessness in the

installation and maintenance of the wall and landscaping. Licensee will maintain liability insurance issued by an insurance company licensed to do business in the State of New York in form and amount deemed sufficient by the City Attorney and shall provide a certificate of insurance evidencing the same and which shall provide thirty days notice of cancellation of the same to the City. Said policy of insurance and certificate shall name the City of Rye as additional named insured.

4. The entire cost of constructing and maintaining the wall and landscaping shall be the sole responsibility of the SECOND PARTY, and the FIRST PARTY shall have no financial obligation therein.

5. The SECOND PARTY agrees that if the adjacent neighbor to the Property shall at any time proceed to improve access from said neighbor's property to Davis Avenue, the SECOND PARTY, its successors, heirs or assigns, shall allow a twelve foot (12') opening in the wall for such access and shall restore the area as necessary, including to original grade, to allow for such connection to Davis Avenue, and such wall removal and restoration shall be at the expense of the SECOND PARTY, its successors, heirs or assigns, provided however, that nothing herein shall be construed to require the SECOND PARTY, its successors, heirs or assigns, to make any improvements to allow for such access beyond restoring the property to the condition it was in prior to construction of the wall and installation of landscaping.

6. If, within two (2) years from the date of this Agreement, it appears that the trees which have been planted by the SECOND PARTY in the portion of the right-of-way in which the grade has been modified with fill are not healthy or appear to be dying due to being planted in the fill, the FIRST PARTY shall give notice of such condition to the SECOND PARTY and the SECOND PARTY shall thereafter be required to remove the dead or dying trees and the fill so as to restore the area to its

original grade and shall replant trees at this original grade.

7. This Agreement shall inure to the benefit of and be binding on the successors and assigns in interest of the SECOND PARTY, which covenant shall run with the land.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands and seals the day and year first above written.

CITY OF RYE

BY: 

Christopher J. Bradbury
Interim City Manager

Grace Associates, LLC

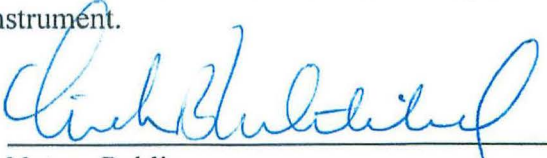
By: 

ROBERT C. HOWARD
MANAGING MEMBER

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:


On April 18, 2000 before me, the undersigned, personally appeared ^{Robert C. Howard}~~Christopher J. Bradbury~~, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signature on the instrument, the individual, or the personal upon behalf of which the individual acted, executed the instrument.

LINDA B. WHITEHEAD
Notary Public, State of New York
No. 4890973
Qualified in Westchester County
Commission Expires April 6, 2001


Notary Public

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On April 19, 2000 before me, the undersigned, personally appeared CHRISTOPHER J. BRADBURY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signature on the instrument, the individual, or the personal upon behalf of which the individual acted, executed the instrument.


Notary Public

LICENSE AGREEMENT

**GRACE ASSOCIATES, LLC
With
CITY OF RYE**

Property Affected:

Davis Avenue, City of Rye

City of Rye
Sheet 146.11
Block 3
Lot 82

RECORD AND RETURN
City of Rye
1051 Boston Post Road
Rye, New York 10580



CITY COUNCIL AGENDA

NO. 11

DEPT.: Engineering

DATE: June 8, 2016

CONTACT: Ryan X. Coyne, PE, City Engineer

AGENDA ITEM: Presentation of the City of Rye Stormwater Management Program 2015 Annual Report.

FOR THE MEETING OF:

June 8, 2016

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: Review and comment on the attached Draft Annual Report.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND:

Pursuant to the requirements of the Phase II Stormwater Regulations, attached is the 2015 annual report indicating the extent to which the City is complying with Stormwater Management Program filed with NYSDEC in 2003. The City is required to file this annual report with the NYSDEC; the report shows the activities that City conducted in 2015 to improve water quality and the activities that will be undertaking/continuing in the future.

The Council should review and comment on the draft report.



CITY COUNCIL AGENDA

NO. 12

DEPT.: City Manager

DATE: June 8, 2016

CONTACT: Marcus Serrano, City Manager

ACTION: Discussion and timeline of items to be included in a November, 2016 Referendum.

FOR THE MEETING OF:

June 8, 2016

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: The City Council will put forward a 2016 Referendum on the following:

- 1) Change to the City Charter (Article 12 and 13) regarding the creation of a Department of Public Safety
- 2) Change to the City Charter (Article 21) to raise the City's discretionary debt limit
- 3) Consideration of the purchase of the NYS Thruway field
- 4) Adoption of a Bond resolution to secure the funding for the purchase of the property

Timeline for the Referendum:

June 8, 2016 – Hold Public Hearing on the creation of a Department of Public Safety

July 13, 2016 – Set a Public Hearing on the change to the City's debt limit

Set a Public Hearing on the Bond resolution for the Thruway property

August 3, 2016 – close Public Hearing and adopt the Bond resolution by 60% majority including a yes vote by the Mayor

Hold Public Hearing on the creation of a Department of Public Safety

September, 2016 – send ballot information to Board of Elections

November, 2016 – General Election



CITY COUNCIL AGENDA

NO. 13

DEPT.: City Manager

DATE: June 8, 2016

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Authorization for the City Manager to enter into an agreement with the Rye Country Day School regarding reimbursement for costs associated with Phase I, Phase II, Environmental and Geotechnical assessment of the NYS Thruway property.

FOR THE MEETING OF:

June 8, 2016

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council authorize the City Manager to enter into an agreement with the Rye Country Day School regarding assessments of the NYS Thruway property.

IMPACT: ☒ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: The City is exploring an opportunity to acquire the property on Boston Post Road currently owned by the New York State Thruway Authority. The firm Woodard and Curran has been retained by the City to perform an initial feasibility review associated with an athletic facility development at the property. Rye Country Day School is interested in a future fieldhouse to accommodate their sports programming on the site and have agreed to share in the costs of the feasibility review. The Council is asked to authorize the City Manager to enter into an agreement with the Rye Country Day School regarding assessments of the NYS Thruway property.

See attached.



CITY COUNCIL AGENDA

NO. 14

DEPT.: City Manager

DATE: June 8, 2016

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Discussion to amend Local Law Chapter §197, "Zoning", of the Rye City Code, Section §197-86, "Tables of Regulations", to allow accessory seasonal outdoor customer seating in the B-1 Neighborhood Business District.

FOR THE MEETING OF:

June 8, 2016

RYE CITY CODE,

CHAPTER
SECTION

RECOMMENDATION: That the Council discuss amending the City Code to allow for outdoor dining in the B-1 Neighborhood Business District.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND: Currently the Rye City Code allows for accessory seasonal outdoor customer seating, or outdoor dining, in the B-2 Central Business District only. An establishment must submit an application on an annual basis with the applicable fees and be reviewed by the Planning Commission. A request has been made to allow outdoor dining in the B-1 Neighborhood Business District. The change to include the new District would include: (1) an update to Local Law §197-86, (2) referral to the Planning Commission, (3) Preparation of an Environmental Assessment Form (EAF), (4) SEQA determination, (5) notice to Westchester County, (6) Notice in the City's official paper, (7) a Public Hearing, and (8) a Resolution for the Local Law adoption.

See attached:

- Current Local Law §197-86
- Current Application for Outdoor dining
- Map of the eleven (11) B-1 Neighborhood Business District

CITY OF RYE
LOCAL LAW
Chapter 197: Zoning

Section §197-86 Table of Regulations: Table B Business Districts-Use Regulations, Column 3, Permitted Accessory Uses, Row B-2 Central Business Districts, of the Code of the City of Rye:

- (4) Seasonal outdoor customer seating annual permit. The Planning Commission may annually permit seasonal outdoor customer seating and tables on a property and, to a limited degree, extensions onto abutting City property, subject to the following limitations:
 - (a) Outdoor customer seating shall only be permitted from April through October and shall require a new permit approved by the Planning Commission before each season. During the months of November through March, the tables, chairs and any related equipment must be stored inside of the building or removed from the site.
 - (b) The Planning Commission shall limit the area of outdoor customer seating such that it will not interfere in any way with fire exits or other requirements of the Building Code of New York State.
 - (c) The Planning Commission shall limit the area to be devoted to outdoor customer seating so that it will not interfere with access by the handicapped and shall maintain on any City sidewalk a safe, adequate and unobstructed passageway for pedestrians not less than five (5) feet in clear width from the edge of the outdoor seating area to the nearest obstruction.
 - (d) The outdoor area to be devoted to seasonal outdoor customer seating shall not be considered for the purpose of determining on-site parking requirements.
 - (e) The Planning Commission may impose conditions and requirements as it deems appropriate, including, but not limited to size and configuration of the outdoor seating area; maximum number of tables and chairs; permitted hours of outdoor seating; type, size and color of tables and chairs; requirements for the daily removal of tables and chairs; limitations on the placement of tables during City-approved outdoor events, and/or standards for cleanliness and removal of debris.

- (f) The Planning Commission shall not issue a permit if it finds that the proposed outdoor seating would be incompatible with other uses on the property or an abutting property.
- (g) The Planning Commission may deny the issue of a permit if it finds that during the prior year the permit holder violated any condition of the permit, that during the prior year the applicant or the property owner provided or permitted outdoor seating without having obtained a permit or that there are outstanding notices of violation concerning the property or the applicant's use.
- (h) An insurance certificate naming the City as an additional insured in the amount of \$2 million and a signed and notarized indemnification and hold harmless agreement shall be provided for any seasonal outdoor customer seating approved by the Planning Commission on City property.



Seasonal Outdoor Customer Seating

City of Rye, New York Planning Department

1051 Boston Post Road, Rye, New York 10580

Phone: (914) 967-7167

Fax (914) 967-7185

www.ryeny.gov/planning.htm

A. Establishment Name: _____

B. Applicant or Representative:

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____
Fax: _____
Email: _____

C. Property Owner:

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____
Fax: _____

D. Property Information:

Street Address: _____
City: Rye State: NY Zip: 10580
Property Area (Acres): _____
Tax Map Designation: Sheet: _____ Block: _____ Lot(s): _____

E. Application Information:

Area of outdoor seating: _____
Number of tables: _____
Size of tables: _____
Table material type and color: _____
Number of chairs: _____
Chair material type and color: _____
Days and hours of outdoor seating: _____

F. Application Submission Information

1. A plan shall be provided with appropriate dimensions showing the following:
 - The size and configuration of the outdoor customer seating area and the extent of encroachment (if any) on adjacent City property. If seating is proposed in front of an



Seasonal Outdoor Customer Seating

City of Rye, New York Planning Department

Page 2 of 2

- adjacent establishment the owner/operator of that adjacent establishment and property owner shall also endorse this application.
- The location of adjacent buildings and storefront entrances.
 - Dimensions to City curb and other existing obstructions (e.g. trees, signs, planters or other street amenities)
2. If any outdoor customer seating is located on City property the applicant shall provide the City of Rye with an insurance certificate naming the City as an additional insured in the amount of \$2 million and shall provide a signed and notarized indemnification and hold harmless agreement.
3. Fees:
- Application Fee: \$500
 - License Fee: \$100 per table (*applicable to applications located on City property*).
4. Applications must be submitted not less than ten days before a Planning Commission Meeting. Upon submission of an application the applicant shall post in the front window of the establishment the following sign having a minimum size of 2 feet by 3 feet. The size of lettering shall be a minimum of 2 inches, except that the words "PUBLIC NOTICE" appearing at the top of the sign shall have no less than 5 inch high lettering.

PUBLIC NOTICE

AN APPLICATION FOR SEASONAL OUTDOOR CUSTOMER SEATING HAS BEEN SUBMITTED FOR THIS ESTABLISHMENT AND WILL BE CONSIDERED BY THE RYE CITY PLANNING COMMISSION AT ITS NEXT AVAILABLE MEETING.

ADDITIONAL INFORMATION IS AVAILABLE AT THE CITY PLANNER'S OFFICE AT RYE CITY HALL, 1051 BOSTON POST ROAD.

G. Signatures

By signing this application the applicant attests that to the best of his or her knowledge all information provided herein is accurate and truthful. The signature of the applicant and owner also grants consent to having any City Staff or Board or Commission members responsible for of the review or approval of this application to enter the property of the subject application.

Applicant Signature

Date

Property Owner Signature(s)

Date

Neighborhood Business District Study

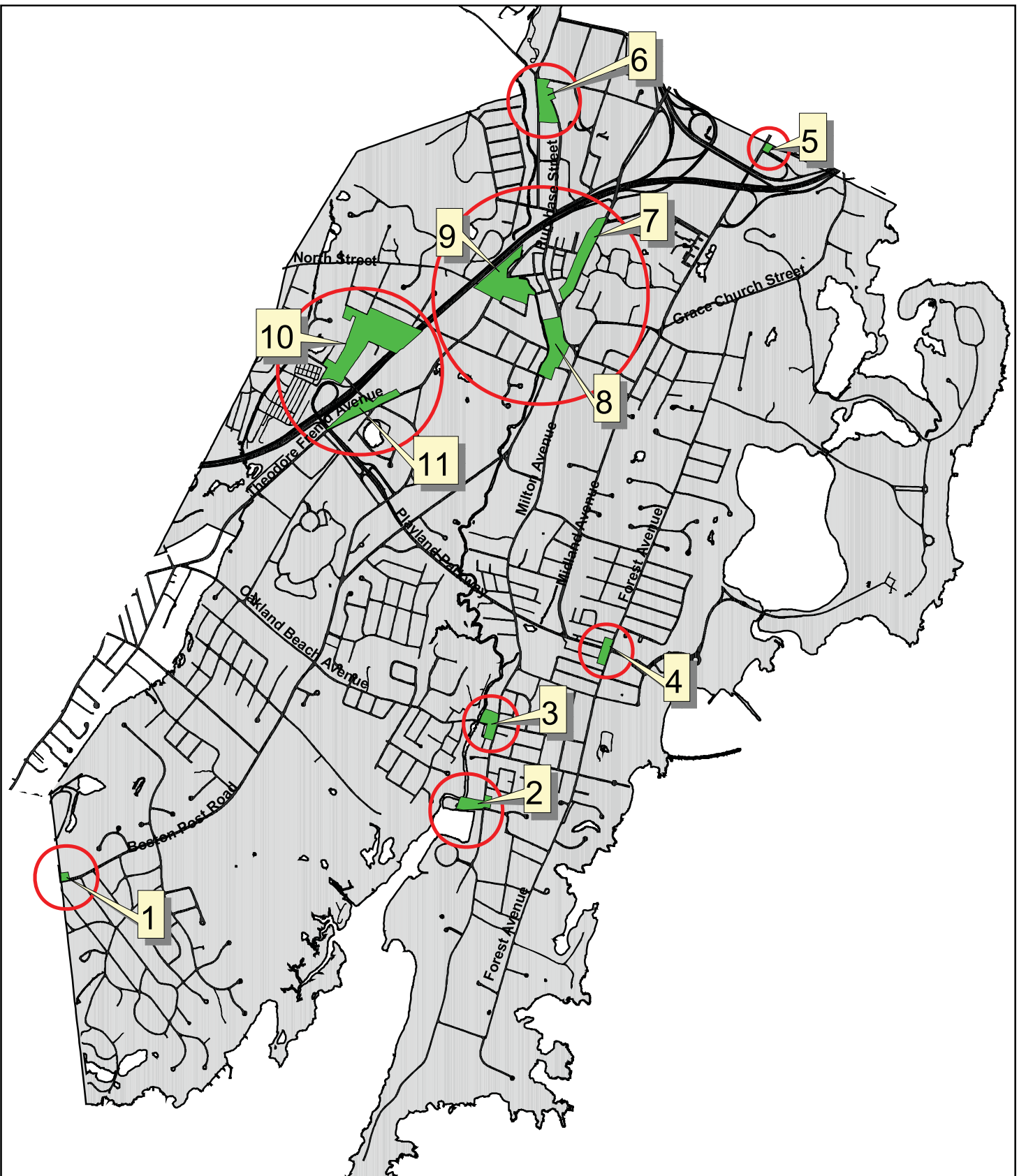




Figure 1: Neighborhood Business Districts

 B-1 Zoning District Boundary
 Roads

Last Revised: Jan. 2005



Note: This map is intended for general planning purposes only.



CITY COUNCIL AGENDA

NO. 16

DEPT.: City Manager

DATE: June 8, 2016

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Resolution to amend the Nominations, Elections and Voting Eligibility procedures for the Rye Golf Club Commission regarding voting procedures.

FOR THE MEETING OF:

June 8, 2016

RYE CITY CODE,

CHAPTER
SECTION

RECOMMENDATION: That the Council approve the proposed changes regarding voting procedures for the Rye Golf Club Commission.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: The Rye Golf Club Commission has proposed governance changes to their Nominations, Elections and Voting Eligibility procedures. Upon approval by the City Council, the Golf Club Commission will implement the following changes:

- the Rye Golf Club Commission will eliminate the current Nominating Committee; any member in good standing can submit an application to run for the Commission

See attached redline version of the proposed changes.

Rye Golf Club
Nominations, Elections and Voting Eligibility

1) Commission

- a) The Rye Golf Club Commission will consist of seven adult Club members in good standing elected by the eligible voting Club members. The Commission shall at no time have more than one non-resident member.
- b) The term of each Commission member shall be three years, commencing January 1 of the year following a regular election year. There is no limit to the number of terms a Commission member may serve.
- c) A Commission member-elect shall be allowed to attend Commission meetings from their date of election but may not participate in voting until they are sworn in.
- d) The Commission members will select a chairperson from their group for a one-year term (the "Chairperson") at the first regular Commission meeting in an applicable calendar year. A Chairperson may serve as Chairperson for an unlimited number of terms. The Chairperson will appoint a Vice Chairperson who will act as Chairperson in his/her absence.
- e) Commission vacancies shall be filled at the next regular election following the vacancy for the remainder of the vacant term. In the event the Commission falls below seven members, the person(s) with the next number of highest votes from the previous election shall, if such person is otherwise eligible and willing to fill such vacancy, be appointed to the Commission to maintain seven Commission members until the next regular election. In the event there is no one to fill the vacancy a special election will be held to fill the vacancy and maintain seven Commission members until the next regular election.
- f) A quorum of the Commission is established by four members present at a meeting.

2) ~~Nominating Committee and Nominations~~

- a) ~~For each election, a Nominating Committee shall be formed and comprised of three adult Club members in good standing, comprised as follows:~~
 - i) ~~One club member appointed by the Commission (this member shall not be a current Commission member); and~~
 - ii) ~~One current Commission member who is not standing for re-election shall be appointed by the Commission Chairperson. This member will serve as chairperson of the Nominating Committee; and~~
 - iii) ~~One club member elected by the membership in the previous regular election.~~

- b) ~~The Nominating Committee will review all submissions for Commission candidacy and Nominating Committee candidacy as described in Paragraph 2(e). The Nominating Committee shall provide a ballot with at least one more candidate than the number of members being elected. If the Nominating Committee receives fewer submissions by the submission deadline date than the number of members that will be elected, the Nominating Committee shall provide a ballot with at least as many candidates as the number of Commission members to be elected.~~
- c) ~~No member of the Nominating Committee shall be eligible for election as a candidate for the Commission for the regular election for which the Nominating Committee member is providing nominations.~~
- d) ~~The term of each Nominating Committee member shall be for one year, commencing January 1 of the year following the regular election. There is no limit to the number of terms a Nominating Committee member may serve.~~
- e) **Nominations**
 - i) ~~The Nominating Committee shall not be required to include more than the minimum number of candidates as provided in Paragraph 2(b);~~
 - ii) ~~A proposed candidate for election to the Commission or Nominating Committee shall be an adult member in good standing. The Golf Club Member Handbook shall indicate membership categories and members entitled to be considered for candidacy.~~
 - iii) ~~A Club member may request to be considered as a candidate for election to the Commission or the Nominating Committee in the next regular election by submitting a written request to the Nominating Committee chairperson on or after January 1 and prior to May 15 of such year. Any such request must be submitted by email to nomination@ryegolfclub.com or in person to the membership office during regular business hours in a sealed envelope addressed to the "Nominating Committee Chairperson" indicating whether such person wishes to be considered as a candidate for the Commission or the Nominating Committee and such other information as a member may wish to provide the Nominating Committee for its consideration. The Nominating Committee may in its sole discretion select or reject any such submissions or select one or more other eligible Club members, subject to the minimum candidate requirements set forth in Paragraph 2(b). The proposed slate of candidates shall be posted on the Club website by July 5.~~
 - iv) ~~Any eligible member submitting a valid request for consideration as a candidate that is not selected by the Nominating Committee may be included as a candidate on the ballot by fulfilling each of the following requirements:~~
 - (1) ~~Completing a petition for candidacy form available from the Club Manager for the period June 15 to July 5 of such year;~~

~~(2) Receiving and submitting signatures of fifty (50) eligible voting members in support of the petition for candidacy (see Golf Club Member Handbook for eligible voting members).~~

~~(3) Submitting a complete petition form in accordance with the instructions supplied therewith to the Club Manager prior to July 5.~~

~~The Club Manager shall verify the status of members signing in support of such petition. Any submitted petition form not complying with the foregoing requirements shall not be considered and such member shall not be included on the ballot.~~

~~v) The final ballot form will be posted on the Club website at least one week prior to the start of the annual election.~~

2) Election

Formatted: Bullets and Numbering

- a) Voting will take place over a two-week period online through a secure online service approved by the Nominating Committee and/or Commission that suits our needs.
- b) An invitation email will be sent to all eligible voters with instructions on how to cast your vote online.
- c) For those members wishing to cast their vote onsite, a computer kiosk will be available at the club during normal business hours throughout the voting time period.
- d) Votes will be tallied in accordance with the instructions provided therewith and will not be counted as a result of any of the following:
 - i) Vote is not cast within the specified time period; or
 - ii) Vote is not cast in accordance with specified instructions; or
 - iii) Vote is rejected for any reason by the online service being used.
- e) Valid ballots shall be tallied for each Commission candidate and Nominating Committee candidate by the online service. The results will be forwarded to the City Clerk who shall submit a list of election results to the City Council for approval no later than November.

3) Voting eligibility

- a) An invitation email shall be sent (to the email on file) to each eligible voting member. The Golf Club Member Handbook shall indicate the membership categories and members entitled to voting privileges.

- b) To receive an invitation email and vote in an election, the voting member must have an email on file and have a member logon account established prior to the election.
- c) No Club member shall be entitled to vote more than once in an election.

**Rye Golf Club
Commission Responsibilities**

1) The Commission.

- a) *Role.* The Commission shall serve in an advisory capacity on behalf of the members of the Golf Club and shall have the responsibilities set forth in Section 1(c) below. Neither the Commission, any Committee of the Commission nor any member of the Commission or member of any Committee thereof, shall have any direct authority or responsibility for execution, implementation or management of any activity, program, employment matter, or contract involving the Golf Club. The Golf Club Manager (who reports to the City Manager) shall be responsible for the execution, implementation and management of the authorized operation of the Golf Club.
- b) *Advisory Recommendations.* The Commission shall make such recommendations as it deems proper in respect of the current and proposed activities, programs, policies and other matters related to the Golf Club, the Commission shall also make recommendations concerning the duties and responsibilities of independent contractors (e.g., Golf Professional), including recommendations concerning employment of prospective individuals to fill those positions, and any other areas the Commission deems appropriate; such recommendations shall be made directly to the Golf Club Manager. The Commission shall also make recommendations concerning the duties and responsibilities of the Golf Club Manager, including recommendations concerning employment of prospective individuals to fill the position, and any other areas the Commission deems appropriate; such recommendations shall be made directly to the Rye City Manager.
- c) *Responsibilities.* The Commission shall:
 - i) Adopt, interpret, apply and enforce such rules and regulations relating to the use of the Golf Club as it deems appropriate, which rules and regulations shall not be inconsistent or conflict with any agreement of the City of Rye or any published policy of the Rye City Council;
 - ii) review, advise on and approve an annual budget for the Golf Club provided and prepared by Golf Club staff and finance committee. Annual budgets shall include proposed annual membership categories and fees and proposed charges for other services provided by the Golf Club, prior to timely submission of such annual budget to the Rye City Manager;
 - iii) select a Commission Chairperson; and

- iv) decide such matters as may be properly brought before the Commission for a decision.
- d) *Commission Chairperson.* The responsibilities of the Commission Chairperson shall be:
 - i) to appoint a chairperson to each Standing Committee of the Commission;
 - ii) to organize limited duration Ad Hoc Committees of the Commission as may be necessary from time to time for the purpose of making recommendations to the Commission in respect of matters not properly within the scope of the usual and customary advisory role of a Standing Committee of the Commission;
 - iii) to appoint a chairperson to each Ad Hoc Committee of the Commission;
 - iv) to serve as an ex-officio member on each Committee of the Commission;
 - v) to appoint a Vice-Chairperson of the Commission who shall serve as Chairperson during the absence of the Chairperson; and
 - vi) to direct such matters as the Chairperson deems necessary and appropriate to a Committee of the Commission for the advice and recommendation of such Committee.

2) Committees of the Commission.

- a) *Standing Committees.* The Commission shall have Standing Committees to advise and make recommendations to the Commission on such matters that properly come before a Standing Committee or as may be directed to such Committee by the Commission or the Commission Chairperson. The Standing Committees of the Commission initially shall include Committees relating to Golf, Pool, House and Finance.
- b) *Ad Hoc Committees.* The Commission shall have such Ad Hoc Committees as may be constituted from time to time pursuant to Section 1(d)(ii) above.
- c) *Nominating Committee.* The Nominating Committee shall not be considered a Standing Committee or Ad Hoc Committee and shall be subject solely to the rules set forth in the **Rye Golf Club Nominations, Elections and Voting Eligibility** Section 2 concerning Nominating Committee and Nominations.
- d) *Committee Members and Chairpersons.*
 - i) Each Standing Committee and Ad Hoc Committee of the Commission shall be constituted with no fewer than three members and no more than seven members; provided that a Committee may be constituted with two members and up to nine members in appropriate circumstances with the approval, by majority vote, of the Commission.

- ii) A Committee member shall be a member of the Golf Club holding a valid current membership entitling such member to voting privileges.
- iii) The Chairperson appointed to each Standing Committee shall be a Member of the Commission, other than the Chairperson of the Commission.
- iv) The Chairperson of an Ad Hoc Committee may be a Member of the Commission.
- v) The Chairperson of a Committee shall make efforts to seek out qualified members to serve as members of such Committee. The Committee Chairperson will then make recommendations to the Commission of any such qualified members it believes should serve on such Committee. Such nominees shall serve as Committee members upon approval by majority vote of the Commission. Such nominees will serve as Committee members at the convenience of the Commission and can be removed from such Committee service at any time and for any reason at the sole discretion of the Commission. A Committee member shall serve until the earlier of the end of the Golf Club year for which he or she serves as a member or the date a Committee terminates, or the date on which such member is removed by the Commission.



CITY COUNCIL AGENDA

NO. 17

DEPT.: City Manager

DATE: June 8, 2016

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Resolution to amend the Boat Basin Commission procedures regarding Voting procedures and the Commission level of members.

FOR THE MEETING OF:

June 8, 2016

RYE CITY CODE,

CHAPTER
SECTION

RECOMMENDATION: That the Council approve the proposed changes regarding voting procedures and Commission level for the Boat Basin Commission.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: The Rye De Pauw Boat Basin Commission has proposed governance changes regarding the number of members and election procedures. Upon approval by the City Council, the Boat Basin Commission will implement the following changes:

- the Boat Basin Commission will consist of seven members; the Commission will maintain the eligibility of one non-resident member
- the term of a Boat Basin Commission member will increase from the current two years to three years
- the Boat Basin Commission will eliminate the current Nominating Committee; any member in good standing can submit an application to run for the Commission

See attached redline version of the proposed changes.

RESOLUTION
establishing
THE DE PAUW MUNICIPAL BOAT BASIN COMMISSION

WHEREAS, the City of Rye owns and operates the De Pauw Municipal Boat Basin in Milton Harbor; and

WHEREAS, the City Council of the City of Rye has determined that the DePauw Municipal Boat Basin should be operated as a municipal enterprise and has established the De Pauw Municipal Boat Basin Enterprise Fund for such purpose; and

WHEREAS, the City Council of the City of Rye has determined that it is in the best interests of the City that a new municipal Commission be established to advise the City Council and the City Manager on the operation of said Boat Basin and related matters; now therefore be it

RESOLVED, that the De Pauw Municipal Boat Basin Commission be and the same hereby is established as follows:

Section 1. Commission; Appointment

(a) There will be a De Pauw Municipal Boat Basin Commission to consist of ~~five~~seven ~~adult Boat Basin resident~~ members in good standing who have a permit to moor a boat at the facility. The Commission will maintain the eligibility of one non-resident member. The members will be appointed by the City Council after election by the resident and non-resident permit-holders of the Boat Basin. The members of the Commission will elect a Chairman each year from their group. The Chairman may serve only three terms in succession.

(b) The term of the members will be ~~two~~ three years, commencing on January 1. There is no limit to the number of terms a member may serve.

(c) Vacancies will be filled within 45 days by appointment of the City Council until the next election, at which time the unexpired term will be filled by the candidate elected with the least number of votes.

~~Section 2. Nominating Committee~~

(a) ~~The City Council will designate a three member nominating committee to consist of one current Commission member who is not standing for re-election at that time, one permit holder recommended by the Commission and one person elected to the nominating committee during the previous year's election.~~

(b) ~~The nominating committee will not be restricted in the maximum number of people it can name and it must name at least two more candidates than there are open seats.~~

(c) ~~The Chair shall be appointed by the City Council.~~

(d) ~~The nominating committee may not name any of its members as candidates.~~

(e) ~~Other permit holders who wish to serve on the Commission and who are not named by the nominating committee may secure a place on the ballot by obtaining signatures of 25 qualified voting permit holders on a designating petition.~~

Section 23. Responsibilities

(a) The Commission shall adopt rules and regulations relating to the recreational use of the Municipal Boat Basin, which are not inconsistent or in conflict with any agreement of the City of Rye or any declared policy of the City Council and subject to the approval of the City Manager.

(b) It may make recommendations to the City Council and City Manager with respect to future programs and activities of the De Pauw Municipal Boat Basin and any other important related policy matter. .

(c) It shall approve annual budget estimates prepared by staff personnel, including mooring categories and proposed fee schedules prior to submission of such estimates to the City Manager. Such budget estimates are to be consistent with the City Council's policy on the self-sufficiency of Enterprise Funds. .

(d) The City Manager is responsible for implementation of the City Council's policy, the rules and regulations of the Municipal Boat Basin and the supervision and direction of employees assigned to the Municipal Boat Basin.

Section 34. Election

(a) Voting will take place by mail over a three-week period.

(b) One ballot will be allowed per mooring permit.

(c) Resident and non-resident permit-holders will have equal voting rights.

(d) Ballots will be tabulated by the City Clerk and the results will be prominently posted at the Boat Basin.

(e) The City Clerk will submit a list of the elected nominees to the City Council by September 10.



CITY COUNCIL AGENDA

NO. 18

DEPT.: Finance

DATE: June 8, 2016

CONTACT: Joseph S. Fazzino, Deputy City Comptroller

AGENDA ITEM: Resolution to transfer funds from contingent account to the Legal Department to fund legal services.

FOR THE MEETING OF:
June 8, 2016

RECOMMENDATION: That the City Council adopt the following resolution:

WHEREAS, City staff has determined that the amounts required for the cost of legal services performed and on-going for various legal cases were not anticipated and were not provided for in the adopted 2016 budget, and;

WHEREAS, the General Fund Contingent Account has a balance of \$300,000, now therefore be it;

RESOLVED, that the City Comptroller is authorized to transfer \$100,000 from the General Fund Contingent Account to the City Legal Services Account.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: Use and status of the Contingent Account:

01/01/2016 Beginning balance	\$350,000
05/11/2016 Transfer to B&V Fund, Recreation Thruway Fields Project	(50,000)
06/08/2016 Transfer to Legal Department for legal services	<u>(100,000)</u>
06/08/2016 Balance	<u>\$200,000</u>



CITY COUNCIL AGENDA

NO. 19

DEPT.: Recreation

DATE: June 8, 2016

CONTACT: Sally Rogol, Rye Recreation Supervisor

ACTION: Consideration of Bid for 2016 Rye Recreation Summer Camp Bus Services (Contract #2016-04).

FOR THE MEETING OF:

June 8, 2016

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: Bid Opening scheduled for Tuesday, June 7, 2016 at 11:00 AM

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: Contract #2016-04 for 2016 Rye Recreation Summer Camp Bus Services was rebid due to inconsistencies in the bids received. The Bid Opening is scheduled for Tuesday, June 7, 2016 at 11:00 a.m. Once the bids have been received and tabulated, a recommendation will be made from Recreation Supervisor Sally Rogol to the City Council.