

A regular Town Board meeting of the Town of Hamburg, County of Erie and State of New York was held at the Town Hall, 6100 South Park Avenue, Hamburg, New York on the 5th day of November 2018.

3.

On a motion of Councilman Petrie, seconded by Supervisor Shaw, the following resolution was

ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie
 Noes 0

RESOLVED, that the Town Board moved out of Executive Session and into the regular Town Board meeting at 8:09 P.M.

TOWN BOARD MEMBERS PRESENT:

James M. Shaw	Supervisor
Thomas Best, Jr.	Councilman
Elizabeth Farrell	Councilman
Michael Mosey	Councilman
Michael Petrie	Councilman

ALSO PRESENT: Catherine A. Rybczynski, Town Clerk; Steve Walters, Town Attorney; Jerry Giglio, Traffic Safety Coordinator and Health and Safety Coordinator; Samantha Tarczynski, Director of Administration and Finance; Drew Reilly, Planning Consultant; Mike Quinn, Engineering Consultant; Kevin Trask, Captain in the Police Department; Martin Denecke, Director of Youth, Recreation and Senior Services; Tim Regan, Community Development; Ted Casey, Highway Superintendent.

The Pledge of Allegiance was recited.

Information on location of Fire exits was provided.

4.

On a motion of Councilman Mosey, seconded by Councilman Best, the following resolution was ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie
 Noes 0

BE IT RESOLVED, that the Town Board approve the termination and rehiring of personnel for the Youth, Recreation and Senior Services Department as follows:

#	Emp #	Employee Name	N or R	Position	Start date	Full time hourly rate	PT/Sea/temp hourly rate	Termination Date
1	2851	Birmingham, James		Rec Attd-ET7180-Seas				10/24/2018
	2851	Birmingham, James	R	Rec Attd-ET7180-P/T	10/25/18		\$14.00	
2	3507	Biellak, Paul		Rec Attd-A7310-Seas				11/4/2018
	3507	Biellak, Paul	R	Rec Attd-A7310-P/T	11/5/18		\$11.25	
3	3896	Dosch, Amanda		Rec Attd-A7310				11/6/2018
4	4741	Griffin, Katie		Lifeguard-A7310				11/6/2018
5	3905	Lease, Warren		Rec Attd-A7310-Seas				11/25/2018
	3905	Lease, Warren	R	Rec Attd-A7310-P/T	11/26/18		\$13.00	
6	4842	Meade, Juliet		Rec Attd-A7310				11/6/2018
7	2783	Motz, Lisa		Rec Attd-A7310-Seas				11/10/2018
	2783	Motz, Lisa	R	Rec Attd-A7310-P/T	11/11/18		\$14.00	
8	4903	O'Brien, Connor	R	Lifeguard-A7310-P/T	10/13/18		\$11.25	
9	3704	Reid, Gregory		Rec Attd-ER7251-Seas				11/21/2018
	3704	Reid, Gregory	R	Rec Attd-ER7251-P/T	11/22/18		\$10.95	
10	4795	Royce, Jason		Rec Attd-A7310				11/6/2018
11		Schrader, Rebecca	N	Lifeguard-A7310-P/T	11/6/18		\$11.25	
12	4358	Volk, Charles		Rec Attd-ER7251-P/T				10/27/2018
	4358	Volk, Charles	R	Rec Attd-A7310-P/T	10/28/18		\$11.00	

5.

On a motion of Councilman Mosey, seconded by Supervisor Shaw, the following resolution was ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie
 Noes 0

RESOLVED, that the Town Board authorizing alcohol waivers for the following December 2018 Taylor Road rentals:

12/02/18	12/07/18	12/08/18	12/09/18	12/15/18
12/16/18	12/22/18	12/23/18	12/24/18	12/25/18
12/26/18	12/28/18	12/29/18	12/30/18	12/31/18

6.

On a motion of Supervisor Shaw, seconded by Councilman Farrell, the following resolution was

ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie
 Noes 0

WHEREAS, the Town of Hamburg receives grants and donations from time to time and,

WHEREAS, the use of these funds has been determined by the granting agency/donor and,

WHEREAS, these items are not included in the 2018 budget,

NOW, THEREFORE BE IT RESOLVED, that the Town Board approves the receipt of the following monies and approves a budget amendment to the revenue and expenditure accounts as follows:

Receipt	Revenue Code	Expenditure Code	
Amount	To Increase	To Increase	Purpose/Source
\$ 1,060.00	A.1972.40	A.6780.486	Participants Council Fund Donations
\$ 651.49	B.2610	B.3120.411	Forfieted assets
\$ 600.00	A3778	A.1110.451	Erie County Stenographer Reimbursements
Total:			
\$ 2,311.49			

7.

On a motion of Supervisor Shaw, seconded by Councilman Mosey, the following resolution was

ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie
 Noes 0

WHEREAS, the Town of Hamburg receives insurance proceeds, rental income, and reimbursements for services from time to time and,

WHEREAS, the use of these funds has been recommended by the respective department and,

WHEREAS, these items are not included in the 2018 or budget,

NOW, THEREFORE BE IT RESOLVED, that the Town Board approves the receipt of the following monies and approves a budget amendment to the revenue and expenditure accounts as follows:

Receipt	Revenue Code	Expenditure Code	
Amount	To Increase	To Increase	Purpose/Source
\$ 7,197.00	A.2665	A.1640.413	Sale of Scrap to Auctions International Inc.
\$ 37.05	A.2665	A.7140.413	Sale of scrap to Liberty Diamond Hurwitz Scrap
\$ 127.82	ET.2665	ET.7250.413	Sale of scrap Fastenal
\$ 710.00	A.2665	A.1640.413	Sale of equipment to Auctions International Inc.
\$ 190.17	A.2665	A.7140.413	Sale of scrap t o Liberty Iron and Metal Inc.
\$ 8,295.00	A.2665	A.1640.413	Sale of equipment to Auctions International Inc.
\$ 885.50	A.2665	A.7140.413	Sale of fencing to Metalico
Total:			
\$ 17,442.54			

8.

On a motion of Councilman Petrie, seconded by Councilman Farrell, the following resolution was

ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie
 Noes 0

RESOLVED, that the Town Board approve the appointment of Jane Kiener to the full time position of Senior Clerk Typist, probationary, in the Engineering Department. This appointment is from the Erie County Civil Service list #42-179, established 8/1/17. Appointment effective November 19, 2018; salary is \$22.35 per hour; funds available in A1440.100.

The following spoke concerning this resolution:

Councilman Mosey

9.

On a motion of Supervisor Shaw, seconded by Councilman Best, the following resolution was

ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie
 Noes 0

RESOLVED, that the Town Board of Hamburg approves and adopts the Memorandum of Understanding that was agreed to on 10/28/18 which is annexed to this agenda and made a part hereof.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is between **Local 2478 International Association of Fire Fighter, AFL-CIO-CLC, Town of Hamburg Public Safety Dispatch Unit** (hereinafter referred to as "The Union") and the **Town of Hamburg** (hereinafter referred to as "The Town" or "the Employer")

WHEREAS Public Safety Dispatcher ("PSD") Cindy Rehberg and PSD Tony Bienias are members of the Union, and are subject to the terms and conditions of the Collective Bargaining Agreement between the Union and the Employer; and

WHEREAS, both PSD Cindy Rehberg and PSD Anthony Bienias transferred to Town of Hamburg employment from other jurisdictions and were credited with seniority from their original date of hire in such other jurisdictions; and

WHEREAS, Article 8, Section 7(u) of the Collective Bargaining Agreement ("CBA") provides, "Seniority", subject to Civil Service Law, for all allowable purposes is based on the date of hire with the Town of Hamburg in a full time position in Public Safety Dispatch;" and

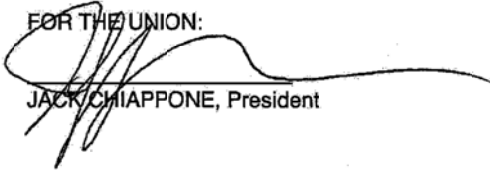
WHEREAS, the parties acknowledge that both PSD Cindy Rehberg and PSD Anthony Bienias relied on the misinterpretation of the Seniority provisions of the CBA in deciding to transfer to employment with the Town of Hamburg; and

WHEREAS, as a means of promoting harmonious relations between the parties and avoiding the costs of litigating the matter, the parties agree to the following:

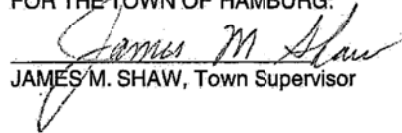
1. For these employees only, PSD Cindy Rehberg and PSD Anthony Bienias, the Town shall continue to credit each with credits for seniority as if they had transferred seniority credits from their previous jurisdictions; and
2. For bidding of shifts and bidding of vacation time, departmental seniority based on his or her date of hire in the Town of Hamburg will continue to be utilized as has been the past practice.
3. The Town shall not seek and reimbursement for any overpayments it may have previously made to either of the named individuals.
4. That the Union agrees that any employees who may transfer to the Town of Hamburg from another jurisdiction shall be treated as a new employee as provided in the CBA.
5. This Memorandum of Understanding applies only to the employment status of PSD Cindy Rehberg and PSD Anthony Bienias. The Town shall be entitled to administer the CBA as written with respect to any future transferees.

Dated: October 25th, 2018

FOR THE UNION:


JACK CHIAPPONE, President

FOR THE TOWN OF HAMBURG:


JAMES M. SHAW, Town Supervisor

10.

On a motion of Supervisor Shaw, seconded by Councilman Farrell, the following resolution was

ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie
 Noes 0

WHEREAS, the Hamburg Town Code contains and specifies the local laws, and ordinances of the Town of Hamburg; and

WHEREAS, the Town of Hamburg has observed an increase in discussions and potential applications for new Telecommunication's Facilities (cell towers and micro-cells) within the region and currently the Town of Hamburg has regulations adopted in 1996 that do not address the changing technology related to these facilities, and

WHEREAS, the Town Board of the Town of Hamburg has determined that it is necessary to update the Town's Telecommunications Facilities Law; Article XLVII of the Zoning Code and issued a Moratorium on Telecommunication Facility applications, and

WHEREAS, the Town Code Review Committee, Town Attorney's office and the Planning Department have drafted a new Telecommunications Facilities Law and that draft law has been presented to the Town Board, and

WHEREAS, pursuant to Municipal Home Rule Law, the Town Board is proposing to enact a local law as follows:

Be it enacted by the Town Board of the Town of Hamburg, New York, that the Hamburg Town Board amends Article XLVII: Telecommunications Facilities of the Hamburg Town Code as illustrated in the attached copy.

NOW, THEREFORE BE IT RESOLVED, that the Town Board would like to start the process of adopting these zoning revisions by referring these proposed code revisions to the Hamburg Planning Board and to Erie County in accordance with General Municipal Law section 239-m, and authorizing the Planning Department to begin the SEQR process by completing a SEQR coordinated review to establish the Hamburg Town Board as SEQR Lead Agency, and

BE IT FURTHER RESOLVED, that the Hamburg Town Board sets a Public Hearing on these proposed amendments at the Hamburg Town Hall, 6100 South Park Avenue, Hamburg, NY at 7:00 pm on December 10, 2018.

The following spoke concerning this resolution:

Councilman Mosey, Drew Reilly, Planning Consultant

DRAFT- 10/25/18

Article XLVII

Telecommunication Facilities

§ 280-329 Authority.

The Planning Board of the Town of Hamburg is hereby authorized to review and approve, approve with modifications or disapprove tower special permits and site plans consistent with Town Law §§ 274-a and 274-b.

§ 280-330 Intent.

The purpose of this article is to establish general guidelines for the siting of Telecommunications Facilities including communications towers and antennas which are regulated in accordance with the Telecommunications Act of 1996 and other applicable federal laws.

The intent of this article is to regulate the location of telecommunication facilities, in accordance with the Town's Master Plan and Zoning Map and giving full consideration to existing land uses and environmentally sensitive areas, and conforming to the Telecommunications Act of 1996 and other applicable federal laws, by:

(1) Accommodating the need for telecommunication towers/antennas while regulating their location and number in the community

(2) Encouraging the location of towers in nonresidential areas, away from significant natural resources and without adverse effect to designated and eligible for designation historic resources;

(3) Minimizing the total number of towers throughout the community;

(4) Strongly encouraging the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;

(5) Encouraging owners of towers and antennas to locate them, to the maximum extent possible, in areas where the adverse impact on the size and scale of the community's built environment, the natural environment, and designated and eligible for designation historic resources is minimal;

(6) Encouraging users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening and innovative camouflaging and design techniques (stealth technology);

(7) Enhancing the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;

(8) Helping to ensure that these facilities are limited to those for which the petitioner has demonstrated a need for service. No towers shall be built purely "on speculation" for future users.

(9) Avoiding potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

§ 280-331 Definitions.

These definitions only apply to this article. Duplicate definitions that are found in other sections of the law do not apply to this section of the law.

Accessory Structure or Facility

An accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to generators or other emergency power supply equipment, utility or transmission equipment storage sheds or cabinets, or fencing.

Antenna or Antennas

A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, personal telecommunication services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the Town's siting, building, and permitting authority.

Commercial Impracticability or Commercially Impracticable

The inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a particular return or investment or profit, standing alone, shall not deem a situation to be "commercially impracticable" and shall not render an act or terms of an agreement "commercially impracticable."

Height

The distance measured from the pre-existing grade level to the highest point on the tower or structure, including any antenna or lightning protection device.

Modification or Modify

The addition, removal, or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade, or change out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is technically equivalent to the component being replaced for any matters that involve the normal repair and maintenance of a wireless facility.

Personal Wireless Facility

See definition for “Wireless Telecommunications Facilities.”

Petitioner

Any wireless service provider or agent submitting an application for a special use permit for Wireless Telecommunications Facilities.

Tower Special Use Permit

The official document or permit by which a petitioner is allowed to construct and use wireless telecommunications facilities as granted or issued by the Town.

Temporary

Temporary in relation to all aspects and components of this local law, something intended to, or that does, exist for fewer than 90 days.

Wireless Telecommunications Facility

Any exterior facility, including an antenna, antenna array or other communications equipment, excluding a satellite dish antenna or small cell telecommunications facility, established for the purpose of providing wireless voice, data, and image transmission within a designated service area and which includes equipment consisting of personal wireless services, as defined in federal law, including by Federal Communications Commission orders or regulations. A telecommunications facility must not be staffed. A telecommunications facility consists of one or more antennas attached to a support structure and related equipment. Equipment may be located within a building or an exterior equipment cabinet.

Wireless Telecommunications Facility, Co-Location

Siting additional telecommunications facilities on an existing structure or pole using the same base or support structure, without the need to construct a new base structure. Co-location may include siting multiple facilities from the same provider or from more than one provider in the same location.

Wireless Telecommunications Facility, New

The establishment of a telecommunications facility on a base structure where no such facility presently exists.

Wireless Telecommunications Facility, Small Cell or Micro-cell

An exterior facility, excluding a satellite dish antenna, established for the purpose of providing wireless voice, data and/or image transmission within a designated service area. A small cell telecommunications facility must not be staffed, and consists of one or more antennas attached to a support structure or building. Antennas may not be larger than a maximum height of four (4) feet and a maximum width of two (2) feet, six (6) inches. These type units which fall under the Federal Telecommunications Act will be processed in accordance with this law.

Wireless Telecommunications Facility, Stealth

Any telecommunications facility that is integrated into an architectural feature of a structure or the surrounding landscape so that the facility and its purpose to provide wireless services is not visually apparent or prominent.

Wireless Telecommunications Facility, Support Structure

A monopole, tower, utility pole, existing light pole, building or any other freestanding self-supporting structure or replacement of equivalent dimensions which can safely support the installation of a telecommunications facility.

§ 280-332 Applicability.

All new Wireless Telecommunications Facilities (towers or antennas), or relocated, rebuilt, modified, or extended towers or antennas in the Town of Hamburg shall be subject to these regulations, including the general requirements contained in §280-334 of this article.

§ 280-332 A. Exclusions.**A. Amateur Radio Station Operators/Receive-Only Antennas.**

This article shall not govern any tower or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

B. Pre-Existing Wireless Telecommunication Facilities (Towers and Antennas).

Pre-existing wireless towers or antennas. Pre-existing towers and pre-existing antennas shall not be required to meet the requirements of this article (unless modified as defined in this Code), other than any applicable state or federal requirements and any applicable building codes.

C. Radio Array.

For purposes of implementing this article, a Radio Array, shall not be considered as a Telecommunications Facility.

§ 280-332 B. Where Permitted; Approvals and Bulk Requirements.

Applications for Telecommunications Facilities shall propose, locate, site, and erect these facilities in accordance with the following priorities as listed in the order below; A. Co-Located / Existing Structure Antennas being the most preferred and B.4 Non-Co-Located in Residential Districts being the least preferred.

A petitioner for a non-co-located / new structure antenna may not bypass sites of higher priority by stating that the site proposed is the only site leased or selected. All applications shall address co-location as an option. The petitioner shall submit a written report demonstrating the petitioner's review of the higher priority locations and demonstrating by technical reasons why a higher priority site was not chosen.

A. Co-Located / Existing Structure Antennas.

An antenna that is to be attached to an existing wireless telecommunications facility, or any building or structure is permitted in all zoning districts and will be reviewed administratively through a Building Permit process (which may include a courtesy review by the Planning Board, as determined by the Building Department). If the proposal is to locate the antenna on or within Town owned property, the project will require approval from the Hamburg Town Board.

The building permit application will include a structural analysis/report verifying the ability of the structure to handle the antenna. Antennas on structures, building, etc. shall be located in such a manner to reduce their visual appearance, utilizing stealth technology to the fullest extent possible. In areas of high visibility, accessory equipment structures may need to be screened, camouflaged or placed below ground in a vault. Co-located antennas may be placed on:

1. Existing utility or telephone poles, height of the new antenna shall not extend above the height of the existing structure by more than 4 feet (note the requirement for placing new antennas on or within Town owned property). Also if the new antenna is being placed on a structure within a higher governmental owned lands (like a road right-of-way), but is to be located on a structure (like a utility pole that is not owned by that higher government, then the project will require Planning Board review and approval prior to issuance of a building permit;
2. Industrial buildings, height of new antenna shall not extend above the height of the existing building by more than 12 feet;
3. Multifamily residential buildings, height of new antenna shall not extend above the height of the existing building by more than 12 feet;
4. Commercial buildings, height of new antenna shall not extend above the height of the existing building by more than 12 feet;
5. Water tower, height of new antenna shall not extend above the height of the water tower by more than 12 feet; or
6. Existing standalone, wireless telecommunication facility, height of new antenna shall not extend above the height of the existing facility by more than 12 feet.

B. Non-Co-Located / New Support Structure Antennas

An antenna that will not be mounted on an existing structure, as defined above, or is more than the allowed height above that structure on which it is mounted, is permitted as follows(all new towers shall not be lattice towers):

1. Municipal or government owned property:

(a) If located on municipally (Town of Hamburg) owned property, a Town lease or license agreement must be obtained and the Town must refer the proposal to the Planning Board for their input. The tower/ support structure must be setback the height of the tower from any residentially zoned property and be in accordance with the requirements of this article.

(b) If proposed in Town road right-of-way, the Town will require lease or license agreement, but also require the project to receive a tower special use permit (including Planning Board and Highway Department referral and recommendation).

(c) If located on county, state, or federal property, the tower/ support structure shall be administratively reviewed by the Town and the Planning Board shall conduct a courtesy review and the tower must be setback the height of the tower from any property line.

(d) If located on a public school property, the project will be reviewed by the Town Planning Board.

2. M1, M2, M3, and FG zoning districts require site plan application per section 280-338 of this article. If the Tower is to be set back less than the height of the proposed tower to any adjacent residential district, then the application will require a tower special use permit and site plan approval.

(a) Setback a minimum of 100' from any property line.

3. All commercial zoning districts (C1, C2, C3, HC, and WC) and mixed use zoning districts (PRD and PUD) require site plan application per section 280-335 of this article and tower special use permit per section 280-338 this article.

(a) The tower must be setback a minimum of the height of the tower from any residentially zoned property or any front yard line.

(b) Towers exceeding 195' in height in commercial zoning districts and mixed use zoning districts shall be treated as Type 1 Actions under the State Environmental Quality Review Act (SEQRA).

4. Residential zoning districts (NC, R1, R2, R3, R4, RA, and RE) require site plan application 280-335 of this article and tower special use permit section 280-338 of this article.

(a) The tower must be set back a minimum of the height of the tower from all property lines and any existing building not located on the site, but not less than 100 feet.

(b) The maximum height of a tower in these zoning districts is 175 feet. An area variance for height will be required from the Zoning Board of Appeals to exceed this height, following initial review by the Planning Board.

(c) All applications for telecommunications facilities in these zoning districts shall be treated as Type 1 Action under the State Environmental Quality Review Act (SEQRA).

§ 280-333. General Requirements, Site Plan.

The following requirements apply to all applicants for non-co-located/ new structure antennas (except municipal property structures):

- A. All applicants, after obtaining other required approvals, must obtain a building permit from the Code Enforcement Officer of the Town of Hamburg. The Code Enforcement Officer is hereby authorized to issue building permits under this article if it is determined that an applicant has met the requirements established in this article.
- B. All applications are subject to site plan review by the Town of Hamburg Planning Board. The intent of site plan review is to evaluate site plans and require changes consistent with minimizing conflicts which may result between the site layout and design of proposed uses and natural site conditions and features and/or existing or planned adjacent uses. Site plan review is also responsible for ensuring that development comply with clearly calculated planning goals and policies as are provided in the Town of Hamburg's Comprehensive Plan and other area-specific planning documents.
- C. An applicant is required to demonstrate, using technological evidence, that the tower or antenna must be located where it is proposed in order to satisfy its function in the applicant's grid system. Further, the applicant must demonstrate by technological evidence that the height requested is the minimum height necessary to fulfill the cell site's function within the grid system.
- D. The Town of Hamburg may deny the application to construct a new tower if the applicant has not proven to the Town that they cannot mount the antenna on an existing structure and/or public property.
- E. Applications for necessary permits will only be processed when the applicant demonstrates that it is either an FCC-licensed telecommunications provider or has in place agreements with an FCC-licensed telecommunications provider for use or lease of the support structure or tower (no tower may be built "on-spec").
- F. Principal or accessory use. Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.
- G. Lot size. For purpose of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot-coverage requirements and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.
- H. Inventory of existing sites. Each applicant shall provide to the Town an inventory of its existing towers, antennas or sites approved for towers or antennas that are either within the jurisdiction of the Town of Hamburg or within one mile of the border thereof, including

specific information about the location, height, and design of each tower. The Planning Department or the Code Enforcement Officer may share such information with other applicants applying for administrative approvals or special use permits under this article or other organizations seeking to locate antennas within the jurisdiction of the Town of Hamburg; provided, however that the Town official is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

- I. Aesthetics. Applications shall meet the following requirements:
 1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness. Proposed color(s) shall be delineated on the site plan.
 2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening and landscaping that will blend them into the natural setting and surrounding buildings.
 3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to or closely compatible with the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible (stealth or camouflaging technology should be considered).
- J. Fencing. A well-constructed masonry or stone wall or privacy fence made of natural materials, not less than 8 feet (for Residential districts) or 10 feet (for non-residential districts) in height from finished grade, shall be provided around each antenna and/or tower and shall also be equipped with an anticlimbing device. Access to the tower shall be through a locked gate. No barbed wire shall be used. Use of chain-link and PVC fencing is prohibited.
- K. Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views or residential homes.
- L. State or federal requirements. All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this article shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- M. Building codes; safety standards. To ensure the structural integrity of towers and antennas, the owner of a tower or antenna shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town of Hamburg concludes that a tower or antenna fails to comply with such codes and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the tower or antenna, the owner shall have

30 days to bring such tower or antenna into compliance with such standards. Failure to bring such tower or antenna into compliance within said 30 days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

- N. Measurement. For purposes of measurement, tower setbacks shall be calculated and applied to facilities located in the Town of Hamburg irrespective of municipal and county jurisdictional boundaries.
- O. Not essential services. Towers and antennas shall be regulated and permitted pursuant to this article and shall not be regulated or permitted as essential services, public utilities or private utilities.
- P. Franchises. Owners and/or operators of towers or antennas shall certify that all franchises and licenses required by law by any governmental entity, including the Town of Hamburg, now or in the future for the construction and/or operation of a wireless communication system in the Town of Hamburg have been obtained and shall file a copy of all required franchises and licenses with the Office of Planning and Development or the Code Enforcement Officer.
- Q. Signs. No signs or advertising material of any nature shall be allowed on an antenna or tower.
- R. Buildings and support equipment. Buildings and support equipment associated with antennas or towers shall comply with the requirements of section 280-335.
- S. Multiple antenna/tower plan. The Town of Hamburg encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.
- T. The owner of any tower or antenna shall provide the Town Clerk with a demolition bond equal to twice the cost of removal of the tower or antenna.
- U. The owner of any tower or antenna shall identify the entities providing the backhaul network for the antenna or tower described in the application and other cell sites owned or operated by the applicant in the Town of Hamburg, as well as any information detailing the purpose for the proposed antenna or tower.
- V. All applicants under this article must comply with the State Environmental Quality Review Act (SEQRA).
- W. Unless otherwise provided, towers and antennas and their related structures shall comply with all existing setbacks within any zoning districts. Additional setbacks may be required by this Article, the Code Enforcement Officer, Planning Board, or the Town Board, as applicable, to contain on-site substantially all ice-fall or debris from tower failure and/or to comply with the purpose of this article. Setbacks shall apply to all tower parts, including guy wire anchors, and to any accessory facilities.
- X. A petitioner may be required to submit an environmental assessment analysis and a visual addendum. Based on the results of the analysis, including the visual addendum, the Town may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the pre-application meeting.

- Y. The petitioner shall furnish a visual impact assessment, which shall include:
1. Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
 2. A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.
 3. Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
 4. A narrative discussing:
 - (a) The extent to which the proposed facility would be visible from, but not limited to state highways, major roads, state and local parks, public lands, historic districts, preserves, historic sites, archaeological sites, environmental conservation areas, any other location where the site is visible to visitors, travelers, employees, or residents; and
 - (b) The tree line elevation of vegetation within 100 feet of the facility;
 5. Property boundaries (copy of property survey), along with the location of all existing structures on the property and the location(s) of all existing structures on the adjacent properties within 50 feet of the property lines.
 6. The distance between the proposed tower and the existing structures on the subject property and the adjacent properties, located within 50 feet of the property lines.
- Z. A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require the disclosure of confidential business information.
- AA. Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:
1. Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicants engineering requirements,
 2. Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,
 3. Evidence that existing facilities do not have sufficient structural strength to support applicants proposed antenna and related equipment. Specifically:

- a. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
 - b. The applicants proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicants proposed antenna.
 - c. Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
4. For facilities existing prior to the effective date of this ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;
 5. Evidence that the applicant has made diligent good faith efforts to negotiate colocation on an existing facility, building, or structure, and has been denied access.
- AB. Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).
- AC. The petitioner shall examine the feasibility of designing a proposed tower to accommodate future demand for a minimum of five (5) additional commercial applications, for example, future co-locations. The tower shall be structurally designed to accommodate a minimum of five additional antenna arrays equal to those of the petitioner, and located as close to the petitioner's antenna as possible without causing interference. This requirement may be waived, provided that the petitioner, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:
1. The foreseeable number of FCC licenses available for the area;
 2. The kind of wireless telecommunication facility site and structure proposed;
 3. The number of existing and potential licenses without wireless telecommunication facilities' spaces/sites; and
 4. Available space on existing and approved towers.
- AD. Petitioner/ applicant may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the petitioner must explain to the reasonable satisfaction of the Planning Board and Town Board why co-location is commercially impracticable or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.

- AE. Notwithstanding the above, the Planning Board may approve any site located within an area in the above list of priorities, provided that the Planning Board finds that the proposed site is in the best interest of the health, safety, and welfare of the Town and will further the policies and goals set forth in the Town's laws and Comprehensive Plan.
- AF. The petitioner shall submit a written report demonstrating the petitioner's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.
- AG. Traffic, access, and safety:
1. A road turnaround and one parking space shall be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. The use of public roadways or road rights-of-way for the siting of a tower or antenna(s) accessory structures is prohibited. All applicable county, state, and federal regulations for traffic ingress and egress and fire access shall apply.
- AH. No tower shall contain any signs or advertising devices. A small sign, to be approved by the Planning Board, shall be placed on fencing surrounding the base of the tower identifying the owner of the facility, owner's physical mailing address, owner's telephone number, and owner's e-mail address.
- AI. The Planning Board may request alternative tower designs to include, but not limited to: stealth technology, flush mounted arrays, and concealed tower designs (e.g. monopines / trees, lighthouses, windmills, water towers, etc.).
- AJ. Proof of landowner's consent if the applicant will not own the property (a copy of a lease agreement must also be provided if the applicant will not own the property).
- AK. "Before" and "after" propagation studies prepared by a qualified radio frequency engineer (signed and sealed by a professional engineer registered in the State of New York), demonstrating existing signal coverage, contrasted with the proposed signal coverage resulting from the proposed telecommunications facility.
- AL. A "search ring" prepared by a qualified radio frequency engineer (signed and sealed documents by a professional engineer registered in the State of New York) and overlaid on an appropriate background map demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target cell. The applicant must be prepared to explain to the Planning Board why it selected the proposed site, discuss the availability or lack of availability of a suitable structure within the search ring which would have allowed for a co-located antenna(s), and to what extent the applicant explored locating the proposed tower in a more intensive use district. Correspondence with other telecommunications companies concerning co-location is part of this requirement.

§ 280-333 A.. Retention of Expert Assistance and Reimbursement by Petitioner

- A. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any requests for re-certification.
- B. A petitioner shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of any application including the construction and modification of the site, once permitted. The initial deposit shall be \$5,000. The placement of the \$5,000 with the Town shall precede the pre-application meeting. The Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for its services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$1,000, the petitioner shall immediately, upon notification by the Town, replenish said escrow account so that it has a minimum balance of \$5,000 or a lesser amount if stipulated by the Town. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the petitioner.
- C. The total amount of the funds needed as set forth in subsection B of this Section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis, and inspection of any construction or modification.

§ 280-334. Administratively Approved Uses

- A. The following provisions shall govern the issuance of administrative approvals:
 - 1. Applicants for administratively approved uses must comply with the site plan submittal requirements of section 280-335 of this article.
 - 2. The Code Enforcement Officer may administratively approve the uses listed in this section.
 - 3. Each applicant for administrative approval shall apply to the Code Enforcement Officer by providing them the information as specified in section 280-335 and submitting a nonrefundable fee as established by resolution of the Town Board of the Town of Hamburg.
 - 4. The Code Enforcement Officer shall respond to each such complete application within 60 days after receiving it by either approving or denying the application.
 - 5. If an administrative approval is denied, the applicant may file an application for a special use permit pursuant to section 280-338 in order to proceed.
- B. List of administratively approved uses:

1. An antenna attached to an existing wireless telecommunication facility, building, water tower, or other such structure as described in this law.
2. Installing a small cell network (in full compliance with the Telecommunications Act of 1996 and this law) through the use of multiple low-powered transmitters/receivers attached to existing wireline system poles, such as conventional cable or telephone wire poles or similar technology that does not require the use of stand-alone or co-located telecommunication towers/structures and/or antennas.

§ 280-335. Special Use Permits

- A. The following provisions shall govern the issuance of special use permits for the construction of new towers or antennas.
1. Applicants for a special use permit under this section are subject to the site plan review requirements of Article XXIII of the Zoning Local Law of the Town of Hamburg and this Article.
 2. Applications for special use permits under this section shall be subject to the procedures and requirements of Article XIV of the Zoning Local Law of the Town of Hamburg.
 3. In granting a special use permit, the Planning Board may impose conditions to the extent such conditions are necessary to minimize any adverse effect of the proposed tower and antenna on adjoining properties.
 4. Any information of an engineering nature that the applicant submits, whether civil, mechanical or electrical, shall be certified by a licensed professional engineer.
 5. An applicant for a special use permit shall submit the information described in this section and a nonrefundable fee as established by resolution of the Town Board of the Town of Hamburg.
 6. Compliance with the requirements of this article shall be required.
- B. Towers.
1. Information required. In addition to any information required for applications for special use permits pursuant to Article XLVI of the Zoning Local Law of the Town of Hamburg, applicants for a special use permit for a tower shall submit the following information:
 - a. A scaled site plan clearly indicating the location, type and height of the proposed tower or height increase, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower or increased height and any other structures, topography, parking and other information deemed by Town Staff to be necessary to assess compliance with this article.
 - b. Legal description of the parent tract and leased parcel.

- c. The setback distance between the proposed tower or existing tower proposed to be increased in height and the nearest residentially zoned properties.
 - d. A landscape plan showing specific landscape materials.
 - e. Method of fencing and finished color and, if applicable, the method of camouflage and illumination.
 - f. A description of compliance with requirements of this article and all applicable federal, state, or local laws.
 - g. A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
 - h. Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the Town of Hamburg.
 - i. A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
 - j. A description of the feasible locations of future towers or antennas within the Town of Hamburg based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
 - k. Proof of notification (certified mail return receipts to be given to the Town by the applicant) of all property owners within 500 feet of the boundaries of the property that the tower is to be constructed.
 - l. Full Environmental Assessment Form Part 1, with supplemental information, as required.
2. Factors considered in granting special use permits for towers. In addition to any standards for consideration of special use permit applications pursuant to Article XLVI of the Zoning Local Law of the Town of Hamburg. The Town Board of the Town of Hamburg shall consider the following factors in determining whether to issue a special use permit:
- (a) Height of the proposed tower or the increase in height proposed to any existing tower;
 - (b) Proximity of the proposed or existing tower to residential structures and residential zoning district boundaries;
 - (c) Nature of uses on adjacent and nearby properties;
 - (d) Surrounding topography;
 - (e) Surrounding tree coverage and foliage;

- (f) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - (g) Proposed ingress and egress; and
 - (h) Availability of suitable existing towers, other structures or alternative technologies not requiring the use of towers or structures, as discussed in this article.
3. Availability of suitable existing towers, other structures or alternative technology. No new tower or tower reconstruction, relocation or height increase shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Town Board of the Town of Hamburg that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Town Board related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
- (a) No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.
 - (b) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
 - (c) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - (d) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - (e) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
4. The following setback requirements shall apply to all towers for which a special use permit is required:
- (a) Towers must be set back a minimum distance equal to the height of the tower, including any proposed height increase, from any residentially zoned lot line.
 - (b) Accessory buildings must satisfy the minimum zoning district setback requirements and this Article.
5. Security Fencing.
- Towers shall be enclosed by security fencing as provided in section 280-335 of this article.
6. The following requirements shall govern the landscaping surrounding towers for which a special use permit is required:

(a) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four feet wide outside the perimeter of the compound.

(b) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.

(c) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

§ 280-335 A. Extent and Parameters of Special Use Permits for Wireless Telecommunications Facilities

- A. Such special use permit shall be non-exclusive.
- B. Such special use permit shall not be assigned, transferred, or conveyed without the express prior written notification to the Town within 30 days of such assignment, transfer, or conveyance.
- C. Such special use permit may, following a hearing upon due prior notice to the petitioner, be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this local law after prior written notice to the holder of the special use permit.

§ 280-335 B. Buildings or Other Equipment Storage

- A. Antennas mounted on structures or rooftops. The equipment cabinet or structure used in association with antennas shall comply with the following:
 - 1. The cabinet or structure shall not contain more than 300 square feet of gross floor area or be more than 12 feet in height. In addition, for buildings and structures which are less than 65 feet in height, the related unmanned equipment structure, if over 300 feet square feet of gross floor area or 12 feet in height pursuant to an area variance granted by the Zoning Board of Appeals of the Town of Hamburg, shall be located on the ground and shall not be located on the roof of the structure.
 - 2. If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than 25% of the roof area.
 - 3. Equipment storage buildings or cabinets shall comply with all applicable building codes.
- B. Antennas mounted on utility poles or light poles. The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:
 - 1. In residential districts, the equipment cabinet or structure shall be sited using stealth technology to the fullest extent practicable and may be located:

(a) In a front or side yard, provided that the cabinet or structure is no greater than three feet in height or 16 square feet of gross floor area and the cabinet / structure is located a minimum of two feet from all lot lines. The cabinet / structure shall be screened by an evergreen hedge with an ultimate height of at least 42 to 48 inches and a planted height of at least 36 inches.

(b) In a rear yard, provided the cabinet or structure is no greater than 12 feet in height of 140 square feet in gross floor area. The cabinet / structure shall be screened by an evergreen hedge with an ultimate height of six feet and a planted height of at least 36 inches.

2. In all zoning districts, the equipment cabinet or structure shall be no greater than 6 feet in height of 300 square feet in gross floor area. The structure of cabinet shall be screened by an evergreen hedge with an ultimate height of eight feet and a planted height of at least 36 inches. In all other instances, structures or cabinets shall be screened from view of all residential properties which abut or are directly across the street from the structure of cabinet by a solid fence eight feet in height or an evergreen hedge with an ultimate height of eight feet and a planted height of at least 36 inches.
- C. Antennas located on towers. The related unmanned equipment structure shall not contain more than 300 square feet of gross floor area or be more than 12 feet in height and shall be located in accordance with the minimum yard requirements of the zoning district in which located.
- D. Modification of building size requirements. Any area variances from the requirements of § 215-160A through C must be obtained from the Zoning Board of Appeals of the Town of Hamburg, New York, pursuant to § 215-117 of the Code of the Town of Hamburg.

§ 280-335 C. Removal of Abandoned Antennas and Towers.

Any antenna or tower that is not operated for a period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of receipt of notice from the Town of Hamburg notifying the owner of such abandonment. The Planning Board shall require the applicant to provide a demolition bond (in an amount determined by the Planning Board based on the cost of removal) for purposes of removing the tower in case applicant fails to do so as required above.

§ 280-336. Non-Conforming Uses.

- A. Non-expansion of non-conforming use. Towers that are constructed and antennas that are installed in accordance with the provisions of this article shall not be deemed to constitute the expansion of a nonconforming use or structure.
- B. Pre-existing towers. Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this article.
- C. Rebuilding damaged or destroyed non-conforming towers or antennas. Notwithstanding § 215-161, bona fide nonconforming towers or antennas that are damaged or destroyed

may be rebuilt without having to first obtain administrative approval or a special use permit and without having to meet the setback requirements specified in § 215-159B(4). The type, height and location of the tower on-site shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in § 215-161, hereof.

§ 280-336 A. Uses of Premises Owned or Controlled by Town.

This section only applies to proposed towers on Town-owned parcels.

- A. General. All applicants who wish to locate a tower or antenna on Town land must submit to the Office of Planning and Development or Code Enforcement Officer a completed application and detailed plan that complies with the requirements of this article and the Code of the Town of Hamburg and must furnish any other pertinent information as may be requested by the Town. In addition, such applicant shall submit along with the applications nonrefundable fee as shall be established by resolution of the Town Board of the Town of Hamburg. Any such application is subject to the site plan review requirements of Article XXIII of the Zoning Local Law of the Town of Hamburg. Upon receipt of any such complete application, within the 60 days, the Code Enforcement Officer shall issue a building permit if he is satisfied that the applicant is in compliance with the requirements contained herein or deny such application.
1. Towers on Town land. Towers or antennas may be located on Town land, provided that a license or lease authorizing such antenna or tower has been approved by the Town of Hamburg and further provided that the applicant complies with the provisions of this section.
 2. Priority of users. Priority for the use of Town land for antennas and towers will be given to the following entities in descending order:
 - (a) The Town of Hamburg;
 - (b) Public safety agencies, including law enforcement, fire and ambulance services, which are not part of the Town of Hamburg and private entities with a public safety agreement with the Town of Hamburg;
 - (c) Other governmental agencies, for uses which are not related to public safety; and
 - (d) Entities providing licensed commercial wireless telecommunication services, including cellular, personal communication services (PSC), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), data, Internet, paging and similar services that are marketed to the general public.
 3. Placement. The placement of antennas or towers on Town land must comply with the following requirements:
 - (a) The antennas or tower will not interfere with the purpose for which the Town land is intended.

- (b) The antennas or tower will have no adverse impact on surrounding private property.
 - (c) The applicant is willing to obtain adequate liability insurance and commit to a lease agreement which includes equitable compensation for the use of Town land and other necessary provisions and safeguards.
 - (d) The applicant will submit a letter of credit, performance bond or other security acceptable to the Town of Hamburg to cover the costs of the antenna or tower's removal.
 - (e) The antennas or tower will not interfere with other users of Town land.
 - (f) Upon reasonable notice, the Town of Hamburg may require the antenna or tower to be removed at the applicant's expense.
 - (g) The owner of the tower or antenna must reimburse the Town of Hamburg for any costs which the Town incurs because of the presence of the antenna or tower.
 - (h) The applicant must obtain all necessary land use approvals.
 - (i) The applicant will cooperate with the Town of Hamburg's objective to promote colocations and thus limit the number of separate antenna sites requested.
 - (j) The applicant's continued compliance with the requirements of this article.
4. Special requirements. The use of certain Town land, such as water tower sites, parks and Town road right of way, for antennas or towers brings with it special concerns due to the unique nature of these sites. The placement of antennas or towers on these special Town lands will be allowed only when the following additional requirements are met:
- (a) Water tower or reservoir sites. The Town of Hamburg's water towers and reservoirs represent a large public investment in water pressure stabilization and peak capacity reserves. Protection of the quality of the Town's water supply is of prime importance to the Town. The placement of antennas or towers on water tower or reservoir sites will be allowed only when the Town is fully satisfied that the following requirements are met:
 - [1] The applicant's access to the facility will not increase the risks of contamination to the Town's water supply;
 - [2] There is sufficient room on the structure and/or on the grounds to accommodate the applicant's facility;
 - [3] The presence of the facility will not increase the water tower or reservoir maintenance cost to the Town; and
 - [4] The presence of the facility will not be harmful to the health of workers maintaining the water tower or reservoir.

(b) Parks. The presence of certain antennas or towers represent a potential conflict with the purpose of some parks owned by the Town of Hamburg. In no case shall towers be allowed in designated conservation areas unless they are to be installed in areas which currently contain tower facilities. Antennas or towers will be considered only in the following parks after the recommendation of the Parks and Recreation Committee and approval by the Town Board of the Town of Hamburg:

[1] Public parks of sufficient scale and character that are adjacent to an existing commercial or industrial use;

[2] Commercial recreation areas and major play fields; and

[3] Park maintenance facilities.

(c) Town road right of way. The Town of Hamburg Town Board may allow antennas to be placed on existing structures within the Town road right of way. New structures within the Town road right of way will only be allowed under extenuating circumstances and would need to follow the full requirements of this law. Antennas to be placed on existing structures will also require input from the Highway Department, the Engineering Department, the Town Attorney and the Planning Board. They will utilize stealth technology and equipment will either be screened or placed underground. The Town will consider all financial impacts and the project and the possibility of yearly fees for use of these lands.

5. Termination. The Town Board of the Town of Hamburg may terminate any lease if it determines that any one of the following conditions exist:

(a) A potential user with a higher priority as described in section 280-342 of this article cannot find another adequate location and the potential use would be incompatible with the existing use;

(b) A user's frequency broadcast unreasonably interferes with other uses of higher priority as described in section 280-342 of this article regardless of whether or not this interference was adequately predicted in the technical analysis; or

(c) A user violates any of the standards in this article or the conditions attached to the Town of Hamburg's lease or other authorization.

(d) Before taking action, the Town of Hamburg will provide notice to the user of the intended termination and the reasons for it and provide an opportunity for the user to address the Town Board regarding the proposed action. This procedure need not be followed in emergency situations.

6. Reservation of Right. Notwithstanding the above, the Town Board of the Town of Hamburg reserves the right to deny, for any reason, the use of any or all Town land by any one or all.

§ 280-337. Severability

If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion

shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof

11.

On a motion of Supervisor Shaw, seconded by Councilman Petrie, the following resolution was
ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie
 Noes 0

BE IT RESOLVED that the Town Board of the Town of Hamburg adopt the special Town charges as indicated on the attached “Letter of Authorization” as part of the 2019 Town of Hamburg Budget. This resolution amends the previous resolution adopted on October 29, 2018.

Letter of Authorization

To: Erie County Real Property Tax Department
From: Town of Hamburg
Subject: Unpaid items to be included in tax warrant
Date: November 2, 2013

In accordance with New York State Town Law, section 198, the town board has opted to enforce various unpaid accounts for water, sewer, refuse and other unpaid town services as indicated below, by placing a lien upon the real property for which such services were provided. **Be sure to include a copy of the resolution(s) adopting all special town charges.**

In light of the aforementioned, the Erie County Legislature shall levy in such sums as indicated below and against the applicable properties as provided for on the town assessor's master computer assessment roll file, which is also hereby being delivered by the assessor with this letter of authorization.

• Total Unpaid Water	\$6462.11
• Total Unpaid Sewer	\$
• Total Unpaid Refuse	\$
• Total Ag Penalty	\$2,581.96
• Total Other Charges	\$20,562.30 grass cutting/\$18,303.00 board ups
• Total Omitted Taxes	\$
• Total of Items Above	\$47,909.37

Certification Town of Hamburg
James M. Shaw
Town Supervisor, James M. Shaw

Date: November 2, 2018
Catherine A. Rybczyński
Town Clerk, Catherine A. Rybczyński

Assessors Use Only

Date RPS file submitted to County RPTS _____

I hereby certify that the entries on the master assessment roll file delivered herewith equal the amounts as required by the town board as provided for above.

M. Bradshaw
Assessor, Milton Bradshaw

11-2-18
Date

County RPTS Use Only

Date filed received _____ By: _____

File in balance Yes _____ No _____

Town of Hamburg
2019 Budget
Special Assessments

Erie County Water Authority delinquent water charges=

Total \$6,462.11

Removal of weeds, grass and brush to include costs associated with unsafe building conditions/emergency enclosures in the Village of Hamburg and brush removal in the Village of Blasdell (RPS Code 48011) =

Total \$20,562.30/grass \$18,303.00 board-ups

Ag. Penalty \$2,581.96

TOTAL \$47,909.37

12.

On a motion of Supervisor Shaw, seconded by Councilman Farrell, the following resolution was

ADOPTED Ayes 5 Shaw, Best, Farrell, Petrie, Mosey
 Noes 0

RESOLVED, that the Town Board approve the Audit of Cash Disbursements as follows:

TOWN BOARD AUDIT OF CASH DISBURSEMENTS - November 5, 2018				
OPERATING FUND:			VOUCHER #'S	
BATCH #	173	\$11,126.09	99113	
BATCH #	174	\$128,973.77	99114-99190	
TOTAL OPERATING FUND DISBURSEMENTS:			\$140,099.86	
TRUST AGENCY				
BATCH #				
TOTAL TRUST & AGENCY DISBURSEMENTS:			\$0.00	
CAPITAL FUND DISBURSEMENTS:				
BATCH #				
TOTAL CAPITAL FUND DISBURSEMENTS:			\$0.00	
PAYROLL:				
PR #	P/R #22	\$726,126.08		
TOTAL PAYROLL DISBURSEMENTS:			\$726,126.08	
PETTY CASH				
TOTAL CASH DISBURSEMENTS SUBMITTED FOR AUDIT:			\$866,225.94	

13.

On a motion of Councilman Petrie, seconded by Councilman Farrell, the following resolution was

ADOPTED Ayes 5 Shaw, Best, Farrell, Petrie, Mosey
 Noes 0

BE IT RESOLVED, the Town Board, approve the transfer of funds in the amount of \$16,500.00 from account A.3620.0202 (Safety Inspection) to B.3120.0202 (Police) for the purchase of two (2) used Ford Explorer vehicles.

Reports from the Floor

Suzanne Tighe, speaking on behalf of her father, James Tighe, reads and explains a letter dated November 5, 2018. (letter attached) Ted Casey, Highway Superintendent, will go out and take a look at the ditch located at 4667 Wilson Drive and the Town Board will try to help with a resolution.

Jim Lehmann, Bayview Resident, discuss the new signal located at the intersection of Big Tree Road and St. Francis Drive. Jerry Giglio, Traffic Safety Coordinator and Health and Safety Coordinator, will call the Department of Transportation to inquire about the new type of signal.

Jim Lehmann, Bayview Resident, and Supervisor Shaw discuss the placement and buildup of sediment at the beach and boat area at the Town Park.

Reports from the Department Heads

Samantha Tarczynski, Director of Administration and Finance, comments they will be having another public Budget Meeting on Wednesday, November 7th, at 6 P.M. in Conference Room 7A.

Mike Quinn, Engineering Consultant, comments repairs to the defective sidewalk at the Town Park have begun and should be completed in a week or two.

Martin Denecke, Director of Youth, Recreation and Senior Services, comments Erie County Senior Services will be at the Senior Center on Wednesday, November 7th, from 12:30 to 2 PM holding a Public Hearing.

Jerry Giglio, Traffic Safety Coordinator and Health and Safety Coordinator, comments that the Safety Advisory Board will be having their monthly meeting Thursday, November 8th, at 7 P.M. in the Town Hall downstairs conference room.

Ted Casey, Highway Superintendent, thanks Mike Quinn, Engineering Consultant, on working on the CHIP funding. He discusses the Building and Grounds Department, Woodlawn Beach, snowplowing, overtime in the Highway Department, roads, and parks.

Tim Regan, Community Development, comments the Village of Blasdell Maple Ave Road reconstruction is finished. Work will be beginning on the Village of Hamburg waterline reconstruction on Huntington Court this week.

Steve Walters, Town Attorney, extends an early Happy Veterans Day to all the Veterans and thanks them for their service.

Catherine A. Rybczynski, Town Clerk, comments there are several Veteran's events on Sunday, November 11th. Events will be held at the Lakeside Cemetery at 9:30 A.M., at the American Legion Post 527 at 11:00 A.M., and at the VFW Post 1419 at 1:00 P.M.

Reports from the Town Board

Councilman Best wishes a Happy Veterans Day. He comments he will be attending all the Veterans Day events.

Councilman Mosey wishes a Happy Veterans Day. He comments he will be attending all the Veterans Day events.

Councilman Farrell also voices her regards to the Veterans and honoring everything they have done for us. The Rejuvenation Committee is preparing for their December 1st Christmas in the Cabin event.

Councilman Petrie comments that Martin Denecke, Director of Youth, Recreation and Senior Services, comments Erie County Senior Services, was successful in applying for a grant regarding jungle gyms. They are working on a plan to start handling the playground problems.

Supervisor Shaw comments they are almost through the Budget process. They have another Budget Meeting November 7th at 6 P.M. The Town Board has to approve a Budget on November 19th at the next regular Town Board meeting. He is pleased to report that the Town Board is determined and working hard with Department Heads, employees and members of the public to try to do their best to live within our means and to extend services to the people in our community.

14.

On a motion of Supervisor Shaw, seconded by Councilman Mosey, the following resolution was

ADOPTED	Ayes	5	Shaw, Best, Farrell, Petrie, Mosey
	Noes	0	

RESOLVED, that the Town Board adjourn the Town Board meeting at 8:55 P.M.

Open Meetings Law, Public Officers Law, Article 7, §106. Minutes.

Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

These minutes are an unofficial copy unless the original signature of the Town Clerk is affixed below. The original official paper minutes are stored in the Town's vault.

Catherine A. Rybczynski, R.M.C.
Town Clerk

November 5, 2018

Dear Honorable Mr. Shaw and other Members of the Hamburg Town Board,

Mr. and Mrs. James Tighe live at 4667 Wilson Drive, Hamburg, New York, and request your assistance in correcting a digging error at their property that occurred over a year ago. This situation has caused a great deal of stress and a potentially dangerous situation. A serious injury could easily occur with someone falling into a 1-2 foot deep ditch that now runs the entire front edge of the Tighe's property. This ditch was dug out by a Town of Hamburg work crew and left behind for the Tighe's to fix or pay the Town to fix.

James and Betty Tighe are 86 and 88 years old and have lived and raised their family at 147 Wilson Dr., currently renumbered to 4667 Wilson Drive, for more that 58 years. Mr. Tighe is a disabled Korean War, Navy Veteran.

Wilson and Tomaka Drives make up a horseshoe drive off of McKinley Parkway. The street changes names, Wilson and Tomaka, at the top of the horseshoe. Mr. & Mrs. Tighe reside at the top of the horseshoe on the inside of the horseshoe. It should be noted when the Town changed the numbers on all of the homes on Wilson and Tomaka they used the exact same numbers on both Wilson and Tomaka. The Tighe's have a neighbor just 5 or 6 houses away with the same house number. It causes a great deal of confusion with anyone looking for the houses with packages, mail or work to be done. During the last 40 years there has not been water or flooding issue at the top of Wilson Drive. There has been a great deal of flooding on Tomaka Drive. The Town has been addressing this flooding issue.

We firmly believe 4667 Wilson Dr. was dug up in error and 4667 Tomaka Dr. was the intended work location. Photos and video will confirm the flooding began just beyond 4667 Tomaka.

We have attempted to resolve the issue with Mr. Best, the former Town of Hamburg Highway Superintendent and the current Highway Superintendent, Mr. Casey. To be fair to Mr. Casey it seems he has been provided with partial and inaccurate information related to the issue and how it occurred.

- 1) There was no flooding on Wilson.
- 2) No other homes that we can locate on Wilson were dug up during this time period.
- 3) If the issue was related to flooding at the top of Wilson impacting Tomaka the logical house to dig up would be the home neighboring the Tighe's that has a great deal of frontage on Wilson and Tomaka Drives.

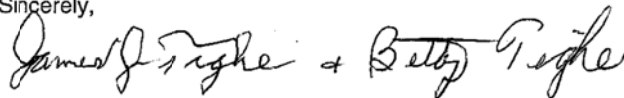
The following outline the concerns we have related to the ditch.

- 1) A dangerous 1 to 2 foot deep ditch now exists, where a level front yard existed for some 50 years. All the other homes on Wilson and Tomaka enjoy the same smooth to the street property that Mr. and Mrs. Tighe once had.
- 2) Mr. Tighe can no longer safely cut his grass without fear of falling in the ditch.
- 3) A woman recently called from the Town instructing Mr. Tighe, an 88 year old man who walks with a cane and suffers from severe vertigo to go out and cut the high grass in the ditch.
- 4) It does look terrible and is difficult to maintain.
- 5) Cars that park along the front of the house have the risk of exiting passengers falling into the ditch.
- 6) The Town has offered a monetary deal to the Tighe's to fix this problem created by the Town. Charging senior citizens \$500, \$600 or \$700 to fix a problem created by the Town is simply not acceptable.

We respectfully request that the Town of Hamburg repairs the problem ditch that they dug out in front of 4667 Wilson Drive as soon as possible with no charge to Mr. and Mrs. Tighe.

Thank you for your time and immediate assistance with this dangerous and upsetting situation. .

Sincerely,

Handwritten signature of James and Betty Tighe in cursive script.

James and Betty Tighe