

MINUTES of the Regular Meeting of  
the City Council of the City of Rye held in  
City Hall on September 9, 1998 at 8:00  
P.M.

PRESENT:

STEVEN OTIS, Mayor  
CAROLYN C. CUNNINGHAM  
ROBERTA DOWNING  
ROBERT H. HUTCHINGS  
ROSAMOND LARR  
ARTHUR STAMPLEMAN  
KATHLEEN E. WALSH  
Councilmen

ABSENT: None

1. Roll Call

Mayor Otis called the meeting to order; a quorum was present to conduct official City business.

2. Residents may be heard who have matters to discuss that do not appear on the agenda

There were no residents wishing to address the Council.

3. Public hearing on the proposed relocation of an undeveloped paper street shown on the Official City Map on Parsonage Point

Mayor Otis opened the public hearing.

Mayor Otis acknowledged receiving the August 27, 1998 memo with supplemental information from Anthony T. Antinozzi, Esq., relating to the relocation of a private road on the Official Map of the City of Rye.

Mr. Antinozzi summarized his request as follows:

- I. The Planning Commission recommended that approval be given to the relocation of the road. The old road is not a complete mapped road; it only goes three-quarters of the distance of the proposed subdivision road.

II. All the owners that abut the property and have an interest in that road consent to its relocation.

III. It will also complete the road that should be mapped across the entire part of Parsonage Point. There are two lots at the end of the road which are non-conforming and relocation of the road will make them legal in the sense that they will be fronting the mapped street.

He respectfully requested the Council to grant this relocation.

Mayor Otis closed the public hearing.

Councilman Stampleman made a motion, seconded by Councilwoman Cunningham, to adopt the following resolution:

**WHEREAS**, Parsonage Investment Company, LLC, has applied to the City Council for the approval of relocation of a dead-end unnamed private road on Parsonage Point, and

**WHEREAS**, Section 29 of the General City Law provides for making such relocation changes on the Official Map maintained by the City of Rye, and

**WHEREAS**, a properly noticed public hearing was held on September 9, 1998 pursuant to Section 29 of the General City Law on the proposed road relocation, and

**WHEREAS**, the Planning Commission, through its subdivision approval process, has approved of the requested relocation of said unnamed private road and has communicated that approval to the City Council, and

**WHEREAS**, no objection or opposition was made to the relocation proposal at the above public hearing, now, therefore, be it,

**RESOLVED**, that the unnamed road, which runs across Parsonage Point from the intersection of Forest Avenue and Van Wagenen Avenue as shown on the file map No. 2214, is approved for relocation as shown on the subdivision plat approved as Parsonage Point Subdivision #178 Formerly Equitable Holding Corp., and be it further

**RESOLVED**, that the official map of the City of Rye is amended to include this approved relocation.

ROLL CALL:

AYES: Mayor Otis, Councilmen Cunningham, Downing,  
Hutchings, Larr, Stampleman and Walsh

NAYS:None

ABSENT: None

The resolution passed.

4. Public hearing on proposed local law grandfathering certain fences which are legally nonconforming as to height (For discussion only)

Mayor Otis acknowledged receiving additional comments about this fence issue. He said he is presently working on a draft local law and is interested in hearing comments from the Council.

Councilwoman Cunningham said the entire existing law on fences has to be rewritten for clarity. Some distinction could be made on an individual basis by the Zoning Board of Appeals for people on collector streets as opposed to local streets. No one wants to make Rye a fenced city.

Councilwoman Walsh said the kind of street being addressed is a more typical intermunicipal connector street.

A Council discussion focused on a new way of defining streets and the need to draft a proposed local law on fences.

Mayor Otis closed the public hearing.

5. Public hearing on proposed local law amending Article VIII of Chapter 191, Vehicles and Traffic, of the Rye City Code by creating a new Section 191-48 and renumbering the current Section 191-48 to Section 191-49

Mayor Otis opened the public hearing.

Corporation Counsel Gardella said that Acting City Judge John Alfano has raised issues concerning the validity of Marina parking tickets because the City of Rye Code does not currently include a provision covering these regulations. This proposed local law will solve any confusion or legal questions.

Mr. Peter Fox, Boat Basin Supervisor, will designate Parking Areas I & II at the Marina with appropriate signage.

Councilwoman Cunningham suggested that the title of the proposed local law should reflect the subject.

Councilman Hutchings initiated a discussion on parking commercial vehicles overnight.

Mayor Otis closed the public hearing.

Councilwoman Cunningham made a motion, seconded by Councilman Hutchings, to adopt the following local law:

### **LOCAL LAW NO. 8-1998**

#### **A local law amending Article VIII of Chapter 191 of the Rye City Code by creating a new Section 191-48 and renumbering the current Section 191-48 to Section 191-49**

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

Section 1. A new Section 191-48 of Chapter 191 of the Rye City Code is hereby created to read as follows:

§ 191-48. Marina Parking Regulations.

No person is permitted to park a motor vehicle in the Boat Basin parking lots located at the entrances at 650 Milton Road and Hewlett Avenue without a valid parking permit. Such permit must be displayed on the driver's side of the vehicle's front window. Failure to display a permit will be a separate violation of this Section.

- A. The Boat Basin fee will include one original parking permit. A replacement or additional permit is available for an additional fee. A one day parking permit is also available for a fee. The above fees should be set by resolution of the City Council.
- B. Vehicles must be parked front wheels to curb. Parking is not

permitted in the launch area.

- C. Boat trailers must be stored in an area authorized by the Boat Basin Supervisor. All trailers must be registered vehicles. Any trailers left in the Boat Basin parking lots will be subject to removal.
- D. Overnight parking is prohibited in Parking Area #1 which is the south parking lot at the 650 Milton Road entrance. This is the main parking area. Overnight parking is permitted in Parking Area #2 which is north of the main parking area.
- E. This section is not subject to the requirements of section 191-47.

Section 2. The current Section 191-48 of Chapter 191 of the Rye City Code is hereby amended as follows:

§ 191-49. Enforcement.

The enforcement of this regulation shall be entrusted to the Police Commissioner, who shall see that proper signs are prepared and posted in the affected areas.

Section 3. This local law shall take effect immediately on filing in the office of the Secretary of State.

ROLL CALL:

AYES: Mayor Otis, Councilmen Cunningham, Downing,  
Hutchings, Larr, Stampleman and Walsh  
NAYS: None  
ABSENT: None

The local law was adopted.

6. Continuation of public hearing on proposed local law regulating the siting of wireless telecommunications facilities, including towers, antennae, and related facilities

Mayor Otis opened the public hearing and announced that a copy of a memorandum explaining the law is available at this meeting.

There being no one wishing to address this proposed local law, Mayor Otis closed the public hearing.

Councilwoman Cunningham made a motion, seconded by Councilman Stampleman, to adopt the following local law:

**LOCAL LAW NO. 9-1998**

**A LOCAL LAW REGULATING THE SITING OF WIRELESS  
TELECOMMUNICATIONS FACILITIES, INCLUDING TOWERS,  
ANTENNAE AND RELATED FACILITIES**

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

Section 1. Chapter 196 of the Code of the City of Rye is hereby REPEALED.

Section 2. A new Chapter 196 is hereby created to read as follows:

§ 196-1. Purpose And Legislative Intent.

The Telecommunications Act of 1996 affirmed the City of Rye's authority concerning the placement, construction and modification of wireless telecommunications facilities. The City Council finds that wireless telecommunications facilities and related equipment may pose a unique hazard to the health, safety, public welfare and environment of the city and its inhabitants, and may also have an adverse visual impact on the community, its character and thus the quality of life in the city. The intent of this law is to ensure that the placement, construction or modification of wireless telecommunications facilities and related equipment is consistent with the city's land use policies and zoning code; to minimize the negative and adverse visual impact of wireless telecommunications facilities; to assure a comprehensive review of environmental impacts of such facilities; to protect the health, safety and welfare of the City of Rye; and to encourage shared use of wireless telecommunication facilities.

§ 196-2. Title.

This law may be known and cited as the Wireless Telecommunications Facilities Siting and Special Use Permit Law for the City of Rye, or may otherwise be known as the Wireless Facilities Law.

§ 196-3. Definitions.

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

1. “Accessory Facility or Structure” means an accessory facility or structure serving or being used in conjunction with a telecommunications facility, and located on the same property or lot as the telecommunications tower, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. “Applicant” means and shall include any individual, corporation, estate, trust partnership, joint stock company, association of two (2) or more persons, limited liability company, or entity submitting an application to the City of Rye for a Special Use Permit for a Telecommunications Facility.
3. “Application” means the form approved by the Council, together with all necessary and appropriate documentation that an applicant submits in order to receive a Special Use Permit for a Telecommunications Facility.
4. “Antenna” means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to radio, television, cellular, paging, personal telecommunications services (PCS), and microwave telecommunications.
5. “Break point” means the location on a telecommunications tower (tower) which, in the event of a failure of the tower, would result in the tower falling or collapsing within the boundaries of the property on which the tower is placed.
6. “City” means the City of Rye, New York

7. "Collocation" means the use of the same telecommunications tower or structure to carry two or more antennae for the provision of wireless services by two or more persons or entities.
8. "Commercial Impracticability" or "Commercially Impracticable" shall have the meaning in this law and any Special Use Permit granted hereunder as is defined and applied under the U.S. Uniform Commercial Code (UCC).
9. "Completed Application" means an application that contains all information and/or data necessary to enable the Council to evaluate the merits of the application, and to make an informed decision with respect to the effect and impact of the telecommunications tower on the city in the context of the permitted land use for the particular location requested.
10. "Council" means the City Council of the City of Rye, which is the officially designated agency or body of the community to whom applications for a Special Use Permit for a Telecommunications Facility must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or revoking special use permits for telecommunications facilities. The Council may, at its discretion, delegate or designate other official agencies of the City to accept, review, analyze, evaluate and make recommendations to the Council with respect to the granting or not granting, recertifying or not recertifying, or revoking special use permits for telecommunications facilities.
11. "EAF" means the Environmental Assessment Form approved by the New York Department of Environmental Conservation.
12. "FAA" means the Federal Aviation Administration, or its duly designated and authorized successor agency.
13. "FCC" means the Federal Communications Commission, or its duly designated and authorized successor agency.
14. "Free standing tower" means a tower that is not supported by guy wires and ground anchors or other means of attached or external support.
15. "Height" means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna.
16. "NIER" means Non-Ionizing Electromagnetic Radiation.

17. "Person" means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or governmental entity.
18. "Personal Wireless Facility" - See definition for "Telecommunications Tower".
19. "Personal Wireless Services" or "PWS" or "Personal Telecommunications Service" or "PCS," or any functionally equivalent service or technology, that may be developed in the future shall have the same meaning as defined and used in the 1996 Federal Telecommunications Act.
20. "Site" - See definition for Telecommunications Tower.
21. "Special Use Permit" means the official document or permit by which an applicant is allowed to construct and use a telecommunications tower as granted or issued by the City.
22. "Telecommunications" means the transmission and reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
23. "Wireless Telecommunications Facility" or "Tower" or "Site" or "Personal Wireless Facility" or any functionally equivalent service or technology that may be developed in the future means a structure or location designed, or intended to be used, or used to support antennas. It includes without limit, antennas applied to the façade of a building or roof-mounted antennas, free standing towers, guyed towers, monopoles, and similar structures that employ camouflage technology, and including, but not limited to, structures such as a church steeple, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It is a facility or structure intended for transmitting and/or receiving radio, television, cellular, paging, personal telecommunications services, or microwave telecommunications, but excluding those used exclusively for fire, police and other dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.

24. "Telecommunications Structure" means any structure used in, associated with, or necessary for the provision of wireless services and as described in the definition of 'Wireless Telecommunications Facility'.
25. "Temporary" means in relation to all aspects and components of this law fewer than ninety (90) days.

§ 196-4. Overall Policy and Desired Goals for Special Use Permits for Wireless Telecommunications Facilities.

- A) In order to ensure that the placement, construction, and modification of wireless telecommunications facilities conforms to the City's purpose and intent of this law, the Council creates a Special Use Permit for a Telecommunications Facility. As such, the Council adopts a policy with respect to a Special Use Permit for a Wireless Telecommunications Facility for the purpose of achieving the following goals:
  1. implementing an application process for person(s) seeking a Special Use Permit for a Wireless Telecommunications Facility;
  2. establishing a policy for examining an application for and issuing a Special Use Permit for a Wireless Telecommunications Facility that is both fair and consistent;
  3. establishing reasonable time frames for granting or not granting a Special Use Permit for a Wireless Telecommunications Facility, or recertifying or revoking the Special Use Permit granted under this law;
  4. promoting and encouraging, wherever possible, the sharing and/or collocation of a wireless telecommunications facility among service providers;
  5. promoting and encouraging, wherever possible, the placement of a wireless telecommunications facility in such a manner as to cause minimal disruption to the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such a wireless telecommunications facility and to minimize adverse aesthetic impacts to the community.

§ 196-5. Special Use Permit Application and Other Requirements.

- A) All applicants for a Special Use Permit for a Wireless Telecommunications Facility or any modification of such facility shall comply with the requirements set forth in this section.

- B) An application for a Special Use Permit for a Wireless Telecommunications Facility shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Council, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- C) Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Council.
- D) The applicant shall include a statement in writing:
  - 1) that the applicant's proposed wireless telecommunications facility will be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the Council in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and Federal laws, rules, and regulations;
  - 2) that the construction of the wireless telecommunications facility is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in New York State.
- E) No wireless telecommunications facility or tower or other tall structure shall be installed or constructed for the purpose of providing wireless telecommunications service until a plan of the site is reviewed and approved by the Council, and in situations involving towers, until the site plan is reviewed and approved by the Planning Commission.

All applications for the construction or installation of a new wireless telecommunications facility shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a licensed professional engineer registered in the State and shall contain the following information. Where this section calls for certification, such certification shall be by a qualified New York State licensed Professional Engineer acceptable to the City, unless otherwise noted. The application shall include, in addition to the other requirements for the Special Use Permit, the following information:

- 1) Documentation that demonstrates the need for the wireless telecommunications facility to provide service primarily within the City;
- 2) Name and address of person preparing the report;
- 3) Name and address of the property owner, operator, and applicant, to include the legal form of the applicant;
- 4) Postal address and tax map parcel number of the property;
- 5) Zoning District or designation in which the property is situated;
- 6) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
- 7) Location of all residential structures within seven hundred-fifty (750) feet;
- 8) Location of all habitable structures within seven hundred-fifty (750) feet;
- 9) Location of all structures on the property which is the subject of the application;
- 10) Location, size and height of all proposed and existing antennae and all appurtenant structures;
- 11) Type, size and location of all proposed and existing landscaping;
- 12) The number, type and design of the wireless telecommunications facility(s) antenna(s) proposed and the basis for the calculations of the wireless telecommunications facility's capacity to accommodate multiple users;
- 13) The make, model and manufacturer of the wireless facility and antenna(s);
- 14) A description of the proposed wireless facility and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
- 15) The frequency, modulation and class of service of radio or other transmitting equipment;
- 16) Transmission and maximum effective radiated power of the antenna(s);
- 17) Direction of maximum lobes and associated radiation of the antenna(s);
- 18) Applicant's proposed wireless facility maintenance and inspection procedures and related system of records;
- 19) Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC. The certifying engineer need not be approved by the City;
- 20) Certification that the proposed antenna(s) will not cause interference with existing telecommunications devices. The certifying engineer need not be approved by the City;
- 21) A copy of the FCC license applicable for the use of the wireless telecommunications facility;
- 22) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and

substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed wireless telecommunications tower on the proposed site. The certifying engineer need not be approved by the City;

- 23) Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites.
  - 24) Applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new wireless telecommunications facility that it constructs.
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- F) In the case of a new wireless telecommunications facility, the applicant shall be required to submit a report demonstrating its efforts to secure shared use of existing wireless telecommunications facility(s). Copies of written requests and responses for shared use shall be provided to the Council.
  - G) Certification that the wireless telecommunications facility and attachments both are designed and constructed (“As Built”) to meet all County, State and Federal structural requirements for loads, including wind and ice loads.
  - H) After construction and prior to receiving a Certificate of Compliance, certification that the wireless telecommunications facility and related facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
  - I) The applicant shall submit a completed long form EAF and a completed Visual EAF addendum. The Council may require submission of a more detailed visual analysis based on the results of the Visual EAF addendum. Applicants are encouraged to seek pre-application meetings with the City Council to address the scope of the required visual assessment.
  - J) A Visual Impact Assessment which shall at the Council’s request include:
    - 1) A “ Zone of Visibility Map” which shall be provided in order to determine locations where the facility may be seen.
    - 2) Pictorial representations of “before and after” views from key viewpoints to be determined by Council or the City’s Board of Architectural Review, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors or

travelers. The City will provide guidance concerning the appropriate key sites at a pre-application meeting.

- 3) An assessment of the visual impact of the facility base, guy wires and accessory buildings from abutting and adjacent properties and streets.
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- K) The applicant shall, in a manner approved by the Council, demonstrate and provide in writing and/or by drawing how it shall effectively screen from view its proposed wireless telecommunications facility base and all related facilities and structures, subject to Council approval.
  - L) All utilities serving any wireless telecommunications facility site shall be installed underground and in compliance with all laws, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate. The Council may waive or vary the requirements of undergrounding installation of utilities whenever, in the opinion of the Council, such variance or waiver shall not be detrimental to the health, safety, general welfare or environment, including the visual and scenic characteristics of the area.
  - M) All wireless telecommunications facilities and accessory facilities shall contain a demonstration that the facility be sited so as to have the least adverse visual effect on the environment and its character, and the residences in the area of the wireless telecommunications facility site.
  - N) Both the wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and with the natural surroundings.
  - O) An access road and parking to assure adequate emergency and service access shall be provided, should such be deemed necessary by the Council. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation-cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
  - P) A person who holds a Special Use Permit for a Wireless Telecommunications Facility shall construct, operate, maintain, repair, modify or restore the permitted wireless telecommunications facility in strict compliance with all

current technical, safety and safety-related codes adopted by the City, County, State, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

- Q) A holder of a Special Use Permit granted under this law shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or law, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- R) The Council intends to be the lead agency, pursuant to SEQRA. The Council shall conduct a review of the proposed project in combination with its review of the application under this law.
- S) An applicant shall submit to the Building Inspector the number of completed applications determined to be needed at the pre-application meeting. A copy of the notification of application shall be provided to the legislative body of all adjacent municipalities and to the Westchester County Planning Board.
- T) If the applicant is proposing the construction of a tower, the applicant shall examine the feasibility of designing a tower to accommodate future demand for at least two (2) additional commercial applications, e.g. future collocations. The scope of this examination shall be determined by the Council. The wireless telecommunications facility shall be structurally designed to accommodate at least two (2) additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the wireless telecommunications facility is not technologically feasible, or is commercially impracticable and creates an unnecessary and unreasonable burden, based upon:
  - 1) The number of FCC licenses foreseeably available for the area;
  - 2) The kind of wireless telecommunications facility site and structure proposed;

- 3) The number of existing and potential licenses without wireless telecommunications facility spaces/sites;
  - 4) Available space on existing and approved telecommunications towers.
- U) Unless waived by the Council, there shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. Where the application is for the shared use of an existing telecommunications tower(s) or other high structure, the applicant can seek to waive any application requirements that may not be applicable. At the pre-application meeting, the waiver requests, if appropriate, will be decided by the city. Costs of the City's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.
- V) The holder of a Special Use Permit shall notify the city of any intended modification of a wireless telecommunications facility and shall apply to the city to modify, relocate or rebuild a wireless telecommunications facility.

§ 196-6. Location of Wireless Telecommunications Facilities.

- A) Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities, including towers or other tall structures, in accordance with the following priorities, one (1) being the highest priority and five (5) being the lowest priority:
1. on existing tall structures or telecommunications towers ;
  2. collocation on a site with existing telecommunications towers or structures;
  3. in commercially zoned areas along Interstate 95, Interstate 287 or railroad tracks;
  4. in non-residential areas;
  5. on other property in the City.

If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.

An applicant may not by-pass sites of higher priority by stating the site presented is the only site leased or selected. An application shall address collocation as an option and if such option is not proposed, the applicant must explain why collocation is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting collocation, shall not be a valid basis for any claim of commercial impracticability or hardship.

Notwithstanding the above, the Council may approve any site located within an area in the above list of priorities, provided that the Council finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants.

- B) The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.
- C) The applicant shall, in writing, identify and disclose the number and locations of any additional sites that the applicant has, is, or will be considering, reviewing or planning for wireless telecommunications facilities in the city, and all municipalities adjoining the city, for a two-year period following the date of the application.
- D) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Council may disapprove an application for any of the following reasons:
  - 1) conflict with safety and safety-related codes and requirements;
  - 2) conflict with traffic needs or traffic laws, or definitive plans for changes in traffic flow or traffic laws;
  - 3) conflict with the historic nature of a neighborhood or historical district;
  - 4) the use or construction of a wireless telecommunications facility which is contrary to an already stated purpose of a specific zoning or land use designation; or
  - 5) the placement and location of a wireless telecommunications facility which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the city, or employees of the service provider or other service providers;
  - 6) conflicts with the provisions of this law.

§ 196-7. Shared use of Telecommunications Tower(s).

- A) Location of antennas on pre-existing structures shall be considered and preferred. Shared use of existing telecommunications towers or other existing structures shall be preferred by the city, as opposed to the proposed construction of new telecommunications towers. Where such shared use is unavailable, the applicant shall submit a comprehensive report inventorying existing towers and other appropriate structures within four (4) miles of any proposed new tower site, unless the applicant can show that some other distance is more reasonable, and outlining opportunities for shared use of existing facilities and the use of other pre-existing structures as a preferred alternative to new construction.
- B) An applicant intending to share use of an existing telecommunications tower or other tall structure shall be required to document the intent of the existing owner to share use.
- C) In the event an application to share the use of an existing telecommunications tower does not increase the height of the telecommunications tower, the Council shall waive such requirements of the application required by this local law as may be for good cause shown.
- D) Such shared use shall consist only of the minimum antenna array technologically required to provide service within the City unless good cause is shown.

§ 196-8. Height of a Wireless Telecommunications Facility.

- A) The applicant must submit documentation justifying to the Council the total height of any wireless telecommunications facility and/or antenna and the basis therefor. Such justification shall be to provide service within the City, to the extent practicable, unless good cause is shown.
- B) Wireless telecommunications facilities shall be no higher than the minimum height necessary. Unless waived by the Council upon good cause shown, the maximum height shall be one hundred (100) feet, based on three (3) collocated antenna arrays and ambient tree height of seventy (70) feet.
- C) The maximum height of any wireless telecommunications facility and attached antennas constructed after the effective date of this law shall not exceed that which shall permit operation without artificial lighting of any kind in

accordance with municipal, County, State, and/or any Federal law and/or regulation.

§ 196-9. Visibility of a Wireless Telecommunications Facility

- A) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
- B) Telecommunications towers and facilities shall be of a galvanized finish, or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Council and the Board of Architectural Review, and shall be maintained in accordance with the requirements of this law.
- C) If lighting is required, applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within fifteen-hundred (1,500) feet of all property lines of the parcel on which the wireless telecommunications facility is located;

§ 196-10. Security of Wireless Telecommunications Facilities.

All wireless telecommunications facilities and antennas shall be located, fenced, or otherwise secured in a manner which prevents unauthorized access. Specifically:

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

§ 196-11. Signage.

Wireless telecommunications facilities shall contain a sign no larger than four (4) square feet to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point of the site. No other signage, including advertising, shall be permitted on any

wireless telecommunications facilities, antennas, antenna supporting structures or antenna towers, unless required by law. Signs shall be approved by the Board of Architectural Review.

§ 196-12. Lot Size and Setbacks.

- A) All proposed telecommunications towers and associated equipment shall be set back from abutting parcels, recorded rights-of-way and road and street lines a distance sufficient to substantially contain on-site all ice-fall or debris from a tower or tower failure, and to preserve the privacy and sanctity of any adjoining properties.
- B) Wireless telecommunications facilities shall be located with a minimum setback from any property line a distance equal to the height of the facility, plus ten (10) feet, or the existing setback requirement of the underlying zoning district, whichever is greater. Further, any accessory structure shall be located so as to comply with the minimum setback requirements for the property on which it is situated.

§ 196-13. Retention of Expert Assistance and Reimbursement by Applicant.

- A) The Council may hire any consultant and/or expert necessary to assist the Council in reviewing and evaluating the application and any requests for recertification.
- B) An applicant shall deposit with the city funds sufficient to reimburse the city for all reasonable costs of consultant and expert evaluation and consultation to the Council in connection with the review of any application. The initial deposit shall be \$7,500.00 for a facility application and \$5,000 in the case of collocation. These funds shall accompany the filing of an application and the city will maintain a separate escrow account for all such funds. The city's consultants/experts shall bill or invoice the city no less frequently than monthly for its services in reviewing the application and performing its duties. If at any time during the review process the balance of this account falls below \$2,500, additional funds must be submitted to the city to bring the balance of the account to \$5,000, or in the case of collocation, \$5,000, or upon request from the applicant, a lesser amount to be set by the City Council, before any further action or consideration is taken on the application. In the event that the amount held in escrow by the city is more than the amount of the actual billing or invoicing, the difference shall be promptly refunded to the applicant.

- C) The total amount of the funds 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 by the Council or its consultant/expert to complete the necessary review and analysis. Additional funds, as required, shall be paid by the applicant. The initial amount of the escrow deposit shall be established at a pre-application meeting with the city. Notice of the hiring of a consultant/expert shall be given to the applicant at or before this meeting.

§ 196-14. Exceptions from a Special Use Permit for a Wireless Telecommunications Facility.

- A) No person shall be permitted to site, place, build, construct or modify, or prepare any site for the placement or use of, a wireless telecommunications facility as of the effective date of this law without having first obtained a Special Use Permit for a Wireless Telecommunications Facility. Notwithstanding anything to the contrary in this section, no Special Use Permit shall be required for those exceptions noted in the definition of wireless telecommunications facility, such as those used exclusively for fire, police and other dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.
- B) New construction, including routine maintenance on an existing wireless telecommunications facility, shall comply with the requirements of this law.
- C) All wireless telecommunications facilities existing on or before the effective date of this law shall be allowed to continue as they presently exist, provided however, that any modification to existing facilities must comply with this law.

§ 196-15. Public Hearing Required

- A) Public hearing and public notification by applicant. Before the City Council acts on any application, it shall hold a public hearing thereon in accordance with the General City Law. To facilitate notification of the public, a public notification list shall be prepared by the applicant, using the most current City of Rye tax maps and tax assessment roll, showing the tax map sheet, block and lot number, the owner's name and owner's mailing address for each property located wholly or partially within seven hundred-fifty (750) feet of the perimeter of the property that is the subject of the application. If a

property on the public notification list is also listed as a cooperative or an apartment on a list entitled "Apartment List City of Rye", maintained by the City Assessor's Office, the address of each of the dwelling units in the building shall also be listed under the name "Occupant" and each "Occupant" shall be considered a property owner for the purposes of the list. When the public hearing is required by the City Council, the applicant shall deliver a copy of the public notice provided by the City Planner to all of the property owners contained on the public notification list either personally or by first-class mail, posted within Westchester County at a post office or official depository of the Postal Service, and shall post a sign on the property in accordance with the following requirements:

- (1) The delivery or mailing shall be limited solely to the public notice provided to the applicant by the City Planner.
- (2) In the case of personal delivery, the public notice shall be delivered to all of the property owners and/or their spouse contained on the public notification list at least fourteen (14) days prior to the date of the public hearing.
- (3) In the case of delivery by mail, the public notice shall be mailed to all of the property owners contained on the public notification list by first-class mail, posted within Westchester County at a post office or official depository of the Postal Service, at least twenty-one (21) days prior to the date of the public hearing.
- (4) Within two (2) business days after the personal delivery or mailing of the public notice, the applicant shall file an affidavit with the City Planner stating that the public notification list was prepared in accordance with required procedures, that the list includes all properties located wholly or partially within seven hundred fifty (750) feet of the perimeter of the property that is the subject of the application, and that the public notice was personally delivered or mailed to all of the property owners on the list and the date on which the public notice was delivered or mailed, which affidavit shall contain a copy of the list and the public notice.
- (5) In the event that a mailed public notice is returned by the Postal Service because it could not be delivered, the envelope indicating the reason for the return shall be filed with the City Planner no later than the day before the day of the public hearing.

- (6) At least one (1) week preceding the date of the public hearing, at least one (1) sign, a minimum of two by three (2 x 3) feet in size and carrying a legend prescribed by the City Council announcing the public hearing, shall be posted on the property. The height of the lettering on the sign shall be no less than two (2) inches, except that the words PUBLIC NOTICE appearing at the top of the sign shall have no less than five (5) inch high lettering. The sign shall be in full public view from the street and not more than thirty (30) feet therefrom. No later than the day before the day of the public hearing, applicant shall file an affidavit with the City Planner stating that the sign was posted on the property in accordance with these requirements. The sign shall be removed from the property within two (2) days after the public hearing.
- B) In cases of review by the Board of Architectural Review or the Planning Commission, the notice rules for these bodies shall apply for the properties within the seven hundred (750) foot perimeter as previously set forth.
- C) The Council shall schedule the public hearing referred to in Subsection (A) of this section once it finds the application is complete. The Council, at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary.

§ 196-16. Action on an Application for a Special Use Permit for a Wireless Telecommunications Facility.

- A) The Council will undertake a review of an application pursuant to this law in a timely fashion and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.
- B) The Council may refer any application or part thereof to the Board of Architectural Review (BAR) and/or the Planning Commission for their review.
- C) Except for necessary building permits, and subsequent Certificates of Compliance, no additional permits or approvals from the City other than the Special Use Permit granted under this local law, shall be required for telecommunications facilities covered by this law.
- D) After the public hearing and after formally considering the application, the Council may approve and issue, or deny a Special Use Permit. Its decision shall be in writing and shall be based on substantial evidence in the record.

The burden of proof for the grant of the permit shall always be upon the applicant.

- E) If the Council approves the Special Use Permit for a Wireless Telecommunications Facility, then the applicant shall be notified of such approval in writing within ten (10) calendar days of the Council's action, and the Special Use Permit shall be issued within thirty (30) days after such approval.
- F) If the Council denies the Special Use Permit for a Wireless Telecommunications Facility, then the applicant shall be notified of such denial in writing within ten (10) calendar days of the Council's action.
- G) The City's decision on an application for a Special Use Permit for a Wireless Telecommunications Facility shall be supported by substantial evidence contained in a written record.

§ 196-17. Recertification of a Special Use Permit for a Wireless Telecommunications Facility.

- A) At any time between twelve (12) months and six (6) months prior to the five (5) year anniversary date after the effective date of the permit and all subsequent fifth anniversaries of the original Special Use Permit for a Wireless Telecommunications Facility, the holder of a Special Use Permit for such tower shall submit a written request for recertification. In the written request for recertification, the holder of such Special Use Permit shall note the following:
  - 1) the name of the holder of the Special Use Permit for the Wireless Telecommunications Facility;
  - 2) if applicable, the number or title of the Special Use Permit;
  - 3) the date of the original granting of the Special Use Permit;
  - 4) whether the wireless telecommunications facility has been moved, re-located, rebuilt, repaired, or otherwise modified since the issuance of the Special Use Permit;
  - 5) if the wireless telecommunications facility has been moved, re-located, rebuilt, repaired, or otherwise modified, then whether the Council approved such action, and under what terms and conditions, and whether those terms and conditions were complied with and abided by;
  - 6) any requests for waivers or relief of any kind whatsoever from the requirements of this law and any requirements for a Special Use Permit; and

- 7) that the wireless telecommunications facility is in compliance with the Special Use Permit and compliance with all applicable codes, laws, rules and regulations.
- B) If, after such review, the Council determines that the permitted wireless telecommunications facility is in compliance with the Special Use Permit and all applicable codes, laws and rules, then the Council shall issue a recertification Special Use Permit for the Wireless Telecommunications Facility, which may include any new provisions or conditions that are mutually agreed upon, or required by codes, law or regulation.
- C) If the Council does not complete its review, as noted in Subsection (B) of this section, prior to the five (5) year anniversary date of the Special Use Permit, or subsequent fifth anniversaries, then the applicant for the permitted wireless telecommunications facility shall receive an extension of the Special Use Permit for up to six (6) months, in order for the Council to complete its review.
- D) If the holder of a Special Use Permit for a Wireless Telecommunications Facility does not submit a request for recertification of such Special Use Permit within the time frame noted in Subsection (A) of this section, or if the Council finds that the wireless telecommunications facility has been moved, relocated, rebuilt, or otherwise modified without approval of such having been granted by the Council under this law, then such Special Use Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit, or subsequent fifth anniversaries, unless the holder of the Special Use Permit adequately demonstrates to the Council that extenuating circumstances prevented a timely recertification request. If the Council agrees that there were legitimately extenuating circumstances, then the holder of the Special Use Permit may submit a late recertification request.

§ 196-18. Extent and Parameters of Special Use Permit for a Wireless Telecommunications Facility.

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

- 1) such Special Use Permit shall be non-exclusive;
- 2) such Special Use Permit shall not be assignable or transferable without the express written consent of the Council;

- 3) such Special Use Permit may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit for a Wireless Telecommunications Facility, or for a material violation of this law.

§ 196-19. Application Fee.

- A) At the time that a person submits an application for a Special Use Permit for a new Wireless Telecommunications Facility, such person shall pay an application fee to the City of Rye of \$5,000. If the application is for a Special Use Permit for collocating on an existing wireless telecommunications facility, the fee shall be \$3,000.
- B) No application fee is required in order to recertify a Special Use Permit for a Wireless Telecommunications Facility, unless there has been a modification of the wireless telecommunications facility since the date of the issuance of the existing Special Use Permit for which the conditions of the Special Use Permit have not previously been modified. In the case of any modification, the fees provided in Subsection (A) shall apply.

§ 196-20. Performance Security.

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

§ 196-21. Reservation of Authority to Inspect Wireless Telecommunications Facilities

- A) In order to verify that the holder of a Special Use Permit for a Wireless Telecommunications Facility and any and all lessees, renters, and/or licensees

of a wireless telecommunications facility place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

- B) The city shall pay for costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including towers, antennas, and appurtenant or associated facilities, or refusal to otherwise cooperate with the city with respect to an inspection, or if violations of this law are found to exist, in which case the holder, lessee or licensee shall reimburse the city for the cost of the inspection.
- C) Payment of such costs shall be made to the city within thirty (30) days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is/are appealed in accordance with the procedures set forth in this law, said reimbursement payment must still be paid to the city and the reimbursement shall be placed in an escrow account established by the city specifically for this purpose, pending the final decision on appeal.

§ 196-22. Annual NIER Certification.

The holder of the Special Use Permit shall, annually, certify to the city that NIER levels at the site are within the threshold levels adopted by the FCC. The certifying engineer need not be approved by the City.

§ 196-23. Liability Insurance.

- A) A holder of a Special Use Permit for a Wireless Telecommunications Facility shall secure and at all times maintain public liability insurance, property damage insurance, and umbrella insurance coverage for the duration of the Special Use Permit in amounts as set forth below:
  - 1) Commercial General Liability: \$1,000,000 per occurrence/\$2,000,000 aggregate;
  - 2) Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate;

- B) The Commercial General Liability insurance policy shall specifically include the City and its officials, employees and agents as additional insureds.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State.
- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the city with at least thirty (30) days written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the city at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.
- F) Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than fifteen (15) days after the grant of the Special Use Permit, the holder of the Special Use Permit shall deliver to the city a copy of each of the policies or certificates representing the insurance in the required amounts.

§ 196-24. Indemnification.

Any Special Use Permit issued pursuant to this law shall contain a provision with respect to indemnification. Such provision shall require the holder of the Special Use Permit, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the city, officials of the city, its officers, agents, servants, and employees, from any and all penalties, damage, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a wireless telecommunications facility within the city. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the city.

§ 196-25. Penalties for offenses.

- A. Civil sanctions. Any person who violates any of the provisions of this chapter shall be liable for a civil penalty of not more than \$3,000 for every such

violation. Each consecutive day of violation will be considered a separate offense. Such civil penalty may be released or compromised by the City Council. In addition, the City Council shall have power, following a hearing, to direct the violator to comply with the provisions of this law.

- B. Criminal sanctions. Any person, firm or corporation who willfully violates any of the provisions of this chapter or permits promulgated thereunder, excluding provisions set forth in the rules and regulations promulgated thereunder, upon conviction thereof of the first offense, shall be guilty of a violation punishable by a fine of not less than \$500 and not more than \$1,000 and for a second offense and each subsequent offense, shall be guilty of a violation punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment of not more than 15 days, or both. Each consecutive day of violation will be considered a separate offense.
- C) Notwithstanding anything in this law, the holder of the Special Use Permit for a Wireless Telecommunications Facility may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this law or any section of this law. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit. The city may also seek injunctive relief to prevent the continued violation of this law.

§ 196-26. Default and/or Revocation.

- A) If a wireless telecommunications facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this law or of the Special Use Permit, then the Council shall notify the holder of the Special Use Permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within seven (7) days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this law, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Council may, at its sole discretion, order the violation remedied within twenty-four (24) hours.
- B) If within the period set forth in (A) above the wireless telecommunications facility is not brought into compliance with the provisions of this law, or of the Special Use Permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facility into compliance, then the Council

may revoke such Special Use Permit for a Wireless Telecommunications Facility, and shall notify the holder of the Special Use Permit within forty-eight (48) hours of such action.

§ 196-27. Removal of a Wireless Telecommunications Facility.

- A) Under the following circumstances, the Council may determine that the health, safety, and welfare interests of the City warrant and require the removal of a wireless telecommunications facility.
  - 1) a wireless telecommunications facility with a permit has been abandoned (i.e. not used as a wireless telecommunications facility) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God;
  - 2) a permitted wireless telecommunications facility falls into such a state of disrepair that it creates a health or safety hazard;
  - 3) a wireless telecommunications facility has been located, constructed, or modified without first obtaining the required Special Use Permit, or any other necessary authorization;
- B) If the Council makes such a determination as noted in Subsection (A) of this section, then the Council shall notify the holder of the Special Use Permit for the Wireless Telecommunications Facility within forty-eight (48) hours that said wireless telecommunications facility is to be removed, the Council may approve an Interim Temporary Use Agreement/Permit, such as to enable the sale of the wireless telecommunications facility.
- C) The holder of the Special Use Permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facility, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the Council. However, if the owner of the property upon which the wireless telecommunications facility is located wishes to retain any access roadway to the wireless telecommunications facility, the owner may do so with the approval of the Council.
- D) If a wireless telecommunications facility is not removed or substantial progress has not been made to remove the wireless telecommunications facility within

ninety (90) days after the permit holder has received notice, then the Council may order officials or representatives of the City to remove the wireless telecommunications facility at the sole expense of the owner or permit holder.

- E) If the City removes, or causes to be removed, a wireless telecommunications facility, and the owner of the wireless telecommunications facility does not claim the property and remove the facility from the site to a lawful location within ten (10) days, then the city may take steps to declare the facility abandoned, and sell it and its components.
- F) Notwithstanding anything in this section to the contrary, the Council may approve a Temporary Use Agreement/Permit for the Wireless Telecommunications Facility, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected wireless telecommunications facility shall be developed by the holder of the permit, subject to the approval of the Council, and an agreement to such plan shall be executed by the holder of the permit and the city. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the city may take possession of and dispose of the affected wireless telecommunications facility in the manner provided in this section.

§ 196-28. Applicability of Application Requirements and Permit Conditions.

Any applicant can request the waiver of application requirements that are inapplicable to their permit application. Such request shall be in writing. Requests should be discussed at the pre-application meeting. The applicant shall have the burden of supporting such requests. Determinations as to applicability of application requirements shall be made by the city.

In determining permit conditions, the City Council can waive inapplicable permit requirements, consistent with the policy goals and priorities of this law. The applicant shall have the burden of supporting such requests. Determinations as to applicability of permit condition requirements shall be made by the City Council.

§ 196-29. Adherence to State and/or Federal Rules and Regulations.

- A) To the extent that the holder of a Special Use Permit for a Wireless Telecommunications Facility has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or

Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Special Use Permit for a Wireless Telecommunications Facility, then the holder of such a Special Use Permit shall conform the permitted wireless telecommunications facility to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

§ 196-30. Conflict with Other Laws

Where this law differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal government, the more restrictive or protective of the city and the public shall apply.

§ 196-31. Severability.

If any phrase, sentence, part, section, subsection, or other portion of this local law or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this local law, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

§ 196-32. Enforcement.

This chapter shall be enforced by the Building Inspector in the same manner as provided in Chapter 197, Zoning, and subject to the same penalties as set forth therein.

§ 196-33. Authority.

This local law is enacted pursuant to the Municipal Home Rule Law. This local law shall supersede the provisions of city law to the extent it is inconsistent with the same,

and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

Section 3. This local law shall take effect immediately on filing in the office of the Secretary of State.

ROLL CALL:

AYES: Mayor Otis, Councilmen Cunningham, Downing,  
Hutchings, Larr, Stampleman and Walsh

NAYS: None

ABSENT: None

The local law was adopted.

7. Discussion and review of proposed extension of public sanitary sewer service to Manursing Island Road properties

Linda Whitehead, Esq., of McCullough, Goldberger & Staudt, represented seven property owners on South Manursing Island Road who have agreed to cooperate and to contribute towards the cost of extending the public sanitary sewer service to their properties. The proposal requires an extension of the sewer main and a new pump station. The homeowners have retained an engineer who has worked in conjunction with City Engineer George Mottarella on the preparation of these conceptual plans. Since the road is a private road, each owner will also be required to give the City an easement for access to maintain the sewer main and the pump station. She respectfully requested the City Council to approve this proposal.

Discussion focused on:

- maintenance cost to City,
- significant environmental benefit to having these properties on the sewer line,
- necessary easements, and
- acceptance of property rights by the Council.

Councilman Stampleman made a motion, seconded by Councilwoman Larr, to adopt the following resolution:

**RESOLVED**, that the City Manager be and is hereby authorized to sign an easement agreement for access to maintain the sewer main as well as the pump station to Manursing Island Road properties.

ROLL CALL:

AYES: Mayor Otis, Councilmen Cunningham, Downing,  
Hutchings, Larr, Stampleman and Walsh

NAYS: None

ABSENT: None

The resolution passed.

8. Discussion of proposed revisions to the existing signage regulations

Mayor Otis acknowledged the August 31, 1998 memo from the Board of Architectural Review (BAR) regarding proposed revisions to the existing signage regulations.

Mr. Nicholas Everett, chairman of the BAR, expressed his appreciation to Mrs. Wendy Rolland for her time, talent, and diligence in helping to review and recodify the existing signage regulations. He said the BAR has reviewed the current City of Rye signage regulations since 1993. The process of this review was initiated by developing a Statement of Intent, holding two public hearings, and reviewing ordinances from neighboring towns.

In a question and answer period on the proposed local law, Mr. Everett and Mrs. Rolland highlighted that the proposed local law:

- places all aspects of sign regulation in one section;
- organizes signage regulations around three districts: the CBD, neighborhood business district, and residential districts;
- contains definitions and restrictions which establish sizes, locations, and uses of signs;
- makes it easier for the retail community to understand and observe;
- makes it easier for the BAR to interpret and enforce;
- incorporates suggested changes from Elizabeth Keane, the summer assistant to the Corporation Counsel, as outlined in her July 8, 1998 memo to the Corporation Counsel; and
- contains a new section on memorials and historic structures.

Councilwoman Cunningham congratulated Mr. Everett and Mrs. Rolland for their excellent work on the proposed local law.

Councilman Hutchings recommended having some tolerance for special occasion signs because he felt it added to the festivity for the community.

A Council discussion focused on the importance of community education on the signage ordinance to ensure understanding and compliance.

Mayor Otis suggested having coverage of the proposed signage ordinance in the Gannett Newspapers which would emphasize this recodification and the availability of the proposed draft to the public. He also recommended providing a plain language explanation of the proposal with its similarities and differences to the existing ordinance. Businesses should be made aware of this proposed local law and a public hearing will be scheduled to afford them and others the opportunity to review and comment on the proposed local law.

Councilman Stampleman asked the City Manager for a report on the enforcement issue of signage.

Councilwoman Downing and Councilman Stampleman commended the BAR and Mrs. Rolland for all their work.

Councilman Stampleman made a motion, seconded by Councilwoman Downing, to adopt the following resolution:

**WHEREAS**, a proposed local law entitled "A local law amending the Code of the City of Rye by creating a new chapter, Chapter 165, Sign Regulation" has heretofore been introduced at this meeting and placed before the Mayor and each Councilman, and

**WHEREAS**, it is now desired to call a public hearing on such proposed local law, now, therefore, be it

**RESOLVED**, by the Council of the City of Rye as follows:

Section 1. Pursuant to Section 20 of the Municipal Home Rule law and the Charter of the City of Rye, New York, a public hearing will be held by the Council of said City on October 21, 1998 at 8:00 P.M. at City Hall, Boston Post Road, in said City, for the purpose of affording interested persons an opportunity to be heard concerning such proposed law.

Section 2. Such notice of public hearing shall be in substantially the following form:

**PUBLIC NOTICE  
CITY OF RYE**

**Notice of Public Hearing on Proposed Local Law  
amending the Code of the City of Rye  
by creating a new chapter, Chapter 165, Sign Regulation**

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on the 21st day of October, 1998, at 8:00 P.M. at City Hall, Boston Post Road, in said City, at which interested persons will be afforded an opportunity to be heard concerning the proposed local law entitled "A local law amending the Code of the City of Rye by creating a new chapter, Chapter 165, Sign Regulation".

Copies of said proposed local law may be obtained from the office of the City Clerk.

City Clerk

Dated:

ROLL CALL:

AYES: Mayor Otis, Councilmen Cunningham, Downing,  
Hutchings, Larr, Stampleman and Walsh

NAYS:None

ABSENT: None

The resolution passed.

9. Review of Financial Goals, Policy Statements, budget development assumptions and guidelines by City Council

Mayor Otis acknowledged the receipt of the September 3, 1998 memo from City Manager Frank Culross.

Councilman Stampleman commended the City Manager for including his suggestions into the Financial Policy Statement.

Councilwoman Cunningham suggested amending the words "fine structure" to "schedule of fines" in the proposed resolution in Section 2 under the "Resolved."

Councilman Stampleman made a motion, seconded by Councilwoman Cunningham and unanimously carried, to adopt the following resolution:

WHEREAS, the City Council has reviewed the Financial Goals and Financial Policy Statements in accordance with the budget calendar, now, therefore, be it

RESOLVED that the following changes and additions to said Financial Goals and Financial Policy Statements be adopted:

1. The third paragraph under Revenue Policies shall be amended as follows:
  - The City will strive to reduce reliance on the property tax by: a) expanding and diversifying the City tax base; b) seeking to develop additional revenue sources; [and] c) seeking enabling legislation for local option taxes; and d) being aware of and considering all meaningful, appropriate grants for which it is eligible.
2. A new paragraph shall be added to Revenue Policies as follows:
  - The City will periodically review its schedule of fines and related administrative measures to ensure that they act as appropriate deterrents to acts by the public which violate the City's laws and regulations.
3. The diversification limitation for institutions in Section V (Diversification) of the Investment Policy shall be amended as follows:
  - No more than 55% of the overall portfolio of bank deposits may be deposited in a single bank, except in the case of Money Center banks for which the limit is 75%

10. One appointment to Board of Assessment Review for a five-year term, by the Council

Councilman Stampleman made a motion, seconded by Councilwoman Larr, to approve Mayor Otis' appointment of Mr. Robert Brunner to the Board of Assessment Review for a five-year term expiring the year 2003.

ROLL CALL:

AYES: Mayor Otis, Councilmen Cunningham, Downing,  
Hutchings, Larr, Stampleman and Walsh

NAYS: None

ABSENT: None

The motion carried.

11. Consideration of request from residents of Elmwood and Oakwood Avenues for controlled traffic for a *Block Party* on Saturday, September 12, 1998 with a rain date of Sunday, September 13, 1998

Councilman Hutchings made a motion, seconded by Councilwoman Downing and unanimously carried, to approve the request from residents of Elmwood and Oakwood Avenues for controlled traffic for a *Block Party* on Saturday, September 12, 1998 with a rain date of Sunday, September 13, 1998.

12. Consideration of request from residents of Ormond Place for controlled traffic for a *Block Party* on Saturday, September 26, 1998 with a rain date of Sunday, September 27, 1998

Councilwoman Downing made motion, seconded by Councilman Hutchings and unanimously carried, to approve the request from residents of Ormond Place for controlled traffic for a *Block Party* on Saturday, September 26, 1998 with a rain date of Sunday, September 27, 1998.

13. Consideration of request from residents of Mead Place for controlled traffic for a *Block Party* on Saturday, September 26, 1998 with a rain date of Sunday, September 27, 1998

Councilwoman Downing made a motion, seconded by Councilman Hutchings and unanimously carried, to approve the request from residents of Mead Place for controlled traffic

for a *Block Party* on Saturday, September 26, 1998 with a rain date of Sunday, September 27, 1998.

14. Consideration of the request of the Recreation Department to use City Hall, the Village Green, and city streets for the Annual Turkey Run on Saturday, November 28, 1998

Councilman Stampleman made a motion, seconded by Councilwoman Downing and unanimously carried, to approve the request of the Recreation Department to use City Hall and the Village Green and city streets for the Annual Turkey Run on Saturday, November 28, 1998.

15. Bids for Dredging and Ancillary Work at the Municipal Boat Basin  
Roll Call

Mayor Otis acknowledged the September 3, 1998 memo from the City Manager regarding the bids for dredging and ancillary work at the Municipal Boat Basin.

Mr. Peter Fox, Boat Basin Supervisor, said that the Boat Basin Commission is anticipating exercising some of the options that were submitted as part of the bid package. An additional \$60,676.80 will be needed to achieve the following goals:

Option 2A	Miscellaneous Timber Bracing	\$ 5,000.00
*Option 3A	Re-mobilization	\$25,000.00
Option 4A	12 New 60' Steel Piles	\$30,676.80

\*Option 3A will be exercised only if the sedimentation basin permit is secured after the contractor has left the site.

The following bids were received:

**DREDGING SERVICES AT THE CITY OF RYE MUNICIPAL BOAT  
BASIN**

**CONTRACT NO. 9812**

NAME OF BIDDER	Security	Total Bid
RDA Construction Corp. 111 Summer Street E. Boston, MA 02128	Bid Bond	\$377,450.00

Local Towing Beach Road E. Norwalk, CT 06855	Bid Bond	\$274,033.50
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Councilwoman Cunningham made a motion, seconded by Councilman Hutchings, to adopt the following resolution:

**RESOLVED**, that Contract No. 9812, for the Dredging and Ancillary Work at the Municipal Boat Basin, be and is hereby awarded to Local Towing, Inc., the low bidder meeting specifications, in the amount of \$274,033.50, and be it further

**RESOLVED**, that the City Comptroller is hereby authorized to establish a budget in the amount of \$334,710.30 which includes \$60,676.80 for additional options of remobilization to be funded from the retained earnings of the Boat Basin.

ROLL CALL:

AYES: Mayor Otis, Councilmen Cunningham, Downing, Hutchings, Larr, Stampleman, and Walsh

NAYS:None

ABSENT: None

The resolution passed.

16. Draft unapproved minutes of the special meeting held August 17, 1998 and the regular meeting of the City Council held August 19, 1998

Councilwoman Larr made a motion, seconded by Councilwoman Walsh and unanimously carried, to approve the minutes of the special meeting of the City Council held August 17, 1998 as amended.

Councilman Stampleman made a motion, seconded by Councilwoman Walsh and unanimously carried to approve the minutes of the regular meeting of the City Council held August 19, 1998 as amended.

17. Miscellaneous communications and report

A. Councilwoman Cunningham reported on a meeting held in the Westchester County Center in White Plains on the Order on Consent issued by the New York State Department of Environmental Conservation (NYSDEC) to correct inflow and infiltration in various sewer districts within Westchester County. Alan D. Scheinkman, Esq., County Attorney for Westchester County, briefed the attendees on the position of the United States Environmental Protection Agency and NYSDEC regarding violations. She said since this is an enforcement action, a SEQRA resolution is not required.

City Manager Culross added that Westchester County will assume the responsibility for doing the repairs to the sewers for the infiltration and the public inflow. The City will be responsible for eliminating sources of private inflow which are illegal connections made to existing sewer systems. The City Manager said the County will issue a violation notice against all the communities. The municipalities will be required to enter into a Consent Agreement by December 31, 1998. Construction of sewer repairs will begin by December 31, 2000 and be completed by the year 2003. The City of Rye will be required to begin enforcement by December 31, 2000 and to achieve 90% reduction in the private inflow by 2002. The Westchester Municipal Officials Association's Sewer Committee is trying to have a unified discussion with the County. A goal is to work with other communities and to foster public education. It is anticipated that there will be a need for administrative search warrants to implement the Administrative Order.

B. Councilman Stampleman asked the City Manager to report on any costs associated with upgrading the recently donated boat to the Fire Department.

C. Councilmen Stampleman, Downing, and Walsh said that the Rye Free Reading Room, Board of Architectural Review, and Landmarks Advisory Committee have come to an agreement on the design for the proposed addition to the Rye Free Reading Room.

Councilwoman Cunningham questioned if the City should include the cost for the reconfiguration of the municipal parking lot in the Capital Improvements Program's budget.

City Manager Culross responded that there is no provision in the budget for the reconfiguration of the parking lot. He said a significant issue of the reconfiguration is the possible reconstruction of the retaining wall.

D. In response to Councilwoman Larr's question on overtime for paid firemen, the City Manager said that the Fire Department was on standby for the fireworks display at the Apawamis Club which is a requirement of the permit.

18. Old Business

Prompted by the conditions of the broken stone wall by the A&P on the Boston Post Road at the intersection of Purdy Street and the overgrown weeds adjacent to the City's border near Mamaroneck, Councilwoman Walsh suggested that the City Manager, as he reviews the departmental budgets, determine if the City has reached the threshold of requiring additional personnel for maintenance and/or enforcement of the Code of the City of Rye.

19. New Business

A. Mayor Otis announced that Joanne DeFilippo is retiring after twenty three years of service to the City of Rye. He commended Mrs. DeFilippo for her dedicated work in the Building, Planning and the City Clerk's Offices.

Councilman Stampleman made a motion, seconded by Councilwoman Walsh and unanimously carried, to adopt the following resolution:

***WHEREAS**, Joanne DeFilippo, has served the City of Rye in many capacities for the past twenty-three years; and*

***WHEREAS**, her commitment has earned her the respect and admiration of her fellow workers and of a host of citizens of the City of Rye; and*

***WHEREAS**, she has provided quality service in the Building, Planning, and the City Clerk's Offices; and*

*WHEREAS, Joanne is retiring from the City of Rye to enjoy life in Kentucky;*

*NOW, THEREFORE, I, Steven Otis, Mayor of the City of Rye, on behalf of the City Council, do hereby congratulate Joanne DeFilippo for her distinguished service, express appreciation for her many years of dedication and wish her success and happiness in all her future endeavors.*

*Signed and sealed this 11th day of September, 1998.*

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*Steven Otis  
Mayor*

SEAL

The resolution passed.

B. Councilwoman Downing said Reverend George Packard, rector of Christ Church, has expressed concern about parking and traffic problems on Rectory Street. Both Councilwoman Downing and Reverend Packard said this is a dangerous situation, since the nursery school children have to cross the street to the Playground area. The City Manager will investigate this issue and report to the Council.

C. The City Manager announced that the sale of Public Improvement serial bonds for the restoration and new addition of Whitby Castle, a new golf locker building and site improvements at the Rye Golf Club will go on sale on September 16, 1998. Persons interested in placing an order for the bonds may contact their banker or broker.

20. Adjournment

Councilman Stampleman made a motion, seconded by Councilwoman Cunningham and unanimously carried, to adjourn into executive session to discuss personnel matters and litigation strategy relating to Home Depot at 10:10 P.M.

The Council reconvened at 10:40 P.M.

There being no further business to discuss, the meeting was adjourned at 10:41 P.M.

Respectfully submitted,

Alice K. Conrad  
City Clerk