



AGENDA FOR THE TOWN MEETING

January 8, 2018

7:00 p.m.

PLEDGE TO THE FLAG

CALL TO ORDER

CONSENT AGENDA

- Financial Statements
- Town Meeting Minutes
 - December 7, 2017 – Town Workshop
 - December 11, 2017 – Town Meeting

Red Indicates – Action Item
Green Indicates – Ordinance Introduction
Blue Indicates – Link to Additional Information

PERSONAL REQUESTS FOR AGENDA:

STAFF REPORTS:

Staff Planner

Main Street Manager

Engineers Report

UNFINISHED BUSINESS:

- Introduction Ordinance 17-10-01 – Telecommunication Facilities
- Introduction Ordinance 17-10-02 – Work Within Public Right-of-Ways
- MEA Energy Action Plans
- Memorandum Annexation Agreement Draft

REPORT OF COMMITTEES:

Water/Sewer

Public Works

Sustainability

Planning Commission Liaison

Parks & Recreation

Public Information

Commissioner Falcinelli

Commissioner Bussard

Commissioner Dietrick

Commissioner Catania

Commissioner Goodman

Commissioner Falcinelli

NEW BUSINESS:

- **Request from SHA for Road Detour in the Downtown**
- **Review of Subdivision Sign Regulations and Maintenance**
- **Review of Ethic Code Required Changes**
- **Review of Fee Schedules**
- **Review of Future MDE Water Appropriation Permits Requests**

PUBLIC COMMENTS:

ANNOUNCEMENTS:

ADJOURNMENT

Town of Middletown
Statement of Revenue & Expenditures
 General Fund
 Fiscal Year 2018
 For the 6 Months Ended December 31, 2017

	<u>ANNUAL BUDGET</u>	<u>YTD ACTUAL</u>	<u>OVER (UNDER) BUDGET</u>
<u>REVENUE</u>			
<u>LOCAL TAX</u>			
Real Property	\$ 1,253,427	\$ 840,456	\$ (412,971)
Tangible Personal Property	38,248	42,450	4,202
Public Utilities	9,827		(9,827)
Franchise (Cable)	50,615	29,530	(21,085)
Penalties & Interest	10,544		(10,544)
	<u>\$ 1,362,661</u>	<u>\$ 912,436</u>	<u>\$ (450,225)</u>
<u>STATE SHARED TAX</u>			
Admission & Amusement	\$ 21,526	\$ 11,406	\$ (10,120)
Highway Gasoline & Licenses	160,606	130,173	(30,433)
	<u>\$ 182,132</u>	<u>\$ 141,579</u>	<u>\$ (40,553)</u>
<u>COUNTY SHARED TAX</u>			
Income Taxes	\$ 896,179	\$ 397,769	\$ (498,410)
Tax Equity Grant	610,423	305,212	(305,211)
	<u>\$ 1,506,602</u>	<u>\$ 702,981</u>	<u>\$ (803,621)</u>
<u>LICENSES AND PERMITS</u>			
Business / Traders	\$ 4,900	\$ 930	\$ (3,970)
Planning / Zoning Fees	27,950	4,575	(23,375)
	<u>\$ 32,850</u>	<u>\$ 5,505</u>	<u>\$ (27,345)</u>
<u>PARKS AND RECREATION</u>			
Pavillion Fees	\$ 3,158	\$ 1,147	\$ (2,011)
	<u>\$ 3,158</u>	<u>\$ 1,147</u>	<u>\$ (2,011)</u>
<u>POLICE PROTECTION</u>			
State Grant	\$ 26,187	\$ 13,117	\$ (13,070)
	<u>\$ 26,187</u>	<u>\$ 13,117</u>	<u>\$ (13,070)</u>
<u>MISCELLANEOUS</u>			
Bank Shares Grant	\$ 2,500		\$ (2,500)
Miscellaneous & Donations		698	698
	<u>\$ 2,500</u>	<u>\$ 698</u>	<u>\$ (1,802)</u>
OPERATING REVENUES	\$ 3,116,090	\$ 1,777,463	\$ (1,338,627)
State Grants & Interest	\$ 78,703	\$ 2,056	\$ (76,647)
TOTAL REVENUE	\$ 3,194,793	\$ 1,779,519	\$ (1,415,274)

Town of Middletown
Statement of Revenue & Expenditures
 General Fund
 Fiscal Year 2018
 For the 6 Months Ended December 31, 2017

	<u>ANNUAL</u> <u>BUDGET</u>	<u>YTD ACTUAL</u>	<u>OVER (UNDER)</u> <u>BUDGET</u>
<u>EXPENDITURES</u>			
<u>LEGISLATIVE</u>			
Commissioner's Salary	\$ 16,500	\$ 6,500	\$ (10,000)
Communications	9,480	1,805	(7,675)
Dues & Subscriptions	7,400	6,485	(915)
Office Supplies & Exp	7,500	2,495	(5,005)
Advertising	2,500		(2,500)
Meetings & Conventions	<u>15,000</u>	<u>3,259</u>	<u>(11,741)</u>
	\$ 58,380	\$ 20,544	\$ (37,836)
<u>EXECUTIVE</u>			
Burgess Salary	<u>\$ 10,200</u>	<u>\$ 4,250</u>	<u>\$ (5,950)</u>
	\$ 10,200	\$ 4,250	\$ (5,950)
<u>ELECTION</u>			
Clerk Fees	\$ 450		\$ (450)
Other Administrative Expenses	<u>250</u>		<u>(250)</u>
	\$ 700		\$ (700)
<u>GENERAL SERVICES</u>			
<u>ADMINISTRATION</u>			
Administrative Salary	\$ 254,512	\$ 136,974	\$ (117,538)
Postage & Printing	200	7	(193)
Communications	7,205	4,914	(2,291)
Computer Expenses	29,512	32,564	3,052
Office Supplies & Exp	27,953	14,767	(13,186)
Office Maintenance	29,600	13,650	(15,950)
Dues & Subscriptions	150		(150)
Professional Services	4,600		(4,600)
Meetings & Conventions	100	4	(96)
Water and Sewer Grant			
	<u>\$ 353,832</u>	<u>\$ 202,880</u>	<u>\$ (150,952)</u>
<u>OPERATIONS</u>			
Director Salary	\$ 101,415	\$ 94,538	\$ (6,877)
Maintenance Salary	130,351	28,337	(102,014)
Communications	9,000	4,024	(4,976)
Supplies & Expenses	17,960	12,744	(5,216)
Dues & Meetings		416	416
Maintenance & Repairs	28,173	10,708	(17,465)
Tools & Equipment	<u>2,544</u>	<u>2,974</u>	<u>430</u>
	\$ 289,443	\$ 153,741	\$ (135,702)

PROFESSIONAL SERVICES

Town of Middletown
Statement of Revenue & Expenditures
 General Fund
 Fiscal Year 2018
 For the 6 Months Ended December 31, 2017

	<u>ANNUAL BUDGET</u>	<u>YTD ACTUAL</u>	<u>OVER (UNDER) BUDGET</u>
Independent Accounting	\$ 16,000	\$ 13,000	\$ (3,000)
Legal - Development		1,292	1,292
Legal - Ordinances	<u>7,388</u>	<u>2,698</u>	<u>(4,690)</u>
	\$ 23,388	\$ 16,990	\$ (6,398)
 <u>PLANNING & ZONING</u>			
Salary & Fees	\$ 51,797	\$ 23,274	\$ (28,523)
Other Expenses	<u>1,778</u>	<u>921</u>	<u>(857)</u>
	\$ 53,575	\$ 24,195	\$ (29,380)
 <u>MAIN STREET PROGRAM</u>			
Manager Salary	\$ 45,482	\$ 21,374	\$ (24,108)
Town Contribution	<u>10,000</u>	<u>11,186</u>	<u>1,186</u>
	\$ 55,482	\$ 32,560	\$ (22,922)
 <u>PUBLIC SAFETY</u>			
Fire Dept. Donation	\$ 20,000		\$ (20,000)
School Crossing Guards	16,338	7,239	(9,099)
Community Deputy Program	<u>385,232</u>	<u>99,781</u>	<u>(285,451)</u>
	\$ 421,570	\$ 107,020	\$ (314,550)
 <u>SANITATION & WASTE REMOVAL</u>			
Resident Trash & Yard Waste	\$ 271,796	\$ 139,296	\$ (132,500)
 <u>RECREATION AND CULTURE</u>			
Park Salary	45,030	18,470	(26,560)
Park Electric	1,175	1,041	(134)
Maintenance & Repairs	37,490	12,695	(24,795)
Mowing	32,319	15,912	(16,407)
Remsberg Park - Interest	7,906	5,033	(2,873)
Remsberg Park - Principal	<u>115,643</u>	<u>67,037</u>	<u>(48,606)</u>
	\$ 239,563	\$ 120,188	\$ (119,375)

Town of Middletown
Statement of Revenue & Expenditures
 General Fund
 Fiscal Year 2018
 For the 6 Months Ended December 31, 2017

	<u>ANNUAL BUDGET</u>	<u>YTD ACTUAL</u>	<u>OVER (UNDER) BUDGET</u>
<u>HIGHWAYS AND STREETS</u>			
Salary	\$ 71,266	\$ 44,984	\$ (26,282)
Street Lighting	203,160	71,909	(131,251)
Storm Water Management	7,800	1,060	(6,740)
Snow Removal	83,100	4,929	(78,171)
Repairs & Resurfacing	92,000	12,788	(79,212)
Signs	12,400	5,748	(6,652)
Truck Repair & Operation	42,600	6,701	(35,899)
Equipment Repairs & Ops	26,675	9,443	(17,232)
Mowing	33,440	22,504	(10,936)
Interest	59,874	2,972	(56,902)
West Green St - Principal	<u>79,300</u>	<u>65,960</u>	<u>(13,340)</u>
	\$ 711,615	\$ 248,998	\$ (462,617)
<u>OTHER EXPENSES</u>			
MT Historical Society - CIP	\$ 5,000	\$ 5,000	
Donations	100		(100)
Travel - Mileage	2,732	512	(2,220)
Community Events	33,140	49,665	16,525
Payroll Taxes	58,923	27,751	(31,172)
Insurance - Property	14,445	6,511	(7,934)
Insurance - Employee	136,214	106,880	(29,334)
Retirement/Pension	68,184	49,554	(18,630)
Web Page & Directory	3,890	1,880	(2,010)
Real Estate Taxes	800	1,679	879
Other	<u>3,500</u>	<u>2,513</u>	<u>(987)</u>
	\$ 326,928	\$ 251,945	\$ (74,983)
TOTAL EXPENDITURES	\$ 2,816,472	\$ 1,322,607	\$ (1,493,865)
INCOME (LOSS) Exc. Cash Reserves	\$ 378,321	\$ 456,912	\$ 78,591
CASH RESERVES	\$ 881,203	\$ 651,328	\$ (229,875)
SURPLUS / (DEFICIT)	\$ 1,259,524	\$ 1,108,240	\$ (151,284)

Town of Middletown
CIP Funds & Expenditures
 General Fund
 Fiscal Year 2017
 For the 6 Months Ended December 31, 2017

	<u>ANNUAL BUDGET</u>	<u>YTD ACTUAL</u>	<u>OVER (UNDER) BUDGET</u>
OPERATING REVENUE			
Revenue	\$ 3,116,090	\$ 1,777,463	\$ (1,338,627)
OPERATING EXPENSES			
Expenses	2,816,472	1,322,607	(1,493,865)
OPERATING SURPLUS (DEFICIT)	\$ 299,618	\$ 454,856	\$ 155,238
<u>OTHER FUND</u>			
POS - Development	\$ 76,500	\$ 993	\$ (75,507)
Community Legacy Grants	64,000		(64,000)
RETAINED EARNINGS	353,739		(353,739)
Interest	2,203	1,063	(1,140)
Improvement Fees	241,500	61,000	(180,500)
TOTAL OTHER FUNDS	\$ 737,942	\$ 63,056	\$ (674,886)
TOTAL FUNDS AVAILABLE	\$ 1,037,560	\$ 517,912	\$ (519,648)
<u>CIP PROJECTS & PURCHASES</u>			
SHA Streetscape Lighting	\$ 175,000	\$ 38,958	\$ (136,042)
Locust Blvd & Court Road Reconst	207,500	491,642	284,142
Lombardy Court - Selective Patch	125,000		(125,000)
Washington Street Retaining Wall	10,000		(10,000)
Young Branch Dr Mill and Overlay	130,000		(130,000)
Foxfield Swale Reconstruction	15,000	2,900	(12,100)
Maintenance Shop Expansion	75,000	3,170	(71,830)
Pedestrian Safety Improvements	75,000	26,274	(48,726)
Wayfinding Signs	8,750		(8,750)
Remsberg Park Walking Trail and	87,000	13,333	(73,667)
Remsberg Park Precast Bathroom	40,000		(40,000)
Memorial Park Playground Replace	36,000	56,499	20,499
Heritage Park (MVB Property)	31,883		(31,883)
Heritage Museum	39,000	17,883	(21,117)
Befco Slit Seeder	8,000		(8,000)
Municipal HVAC Replacement	30,000		(30,000)
Municipal Boiler Replacement	35,000		(35,000)
IT Lease - Computers, Servers, P	37,000	6,538	(30,462)
GMC Truck Body Replacement	17,204	19,940	2,736
	\$ 1,182,337	\$ 677,137	\$ (505,200)
OPERATING & CIP SURPLUS (DEFICIT)	\$ (144,777)	\$ (159,225)	\$ (14,448)

Town of Middletown
 CIP Funds & Expenditures
 General Fund
 Fiscal Year 2017
 For the 6 Months Ended December 31, 2017

	<u>ANNUAL BUDGET</u>	<u>YTD ACTUAL</u>	<u>OVER (UNDER) BUDGET</u>
Cash Reserves	\$ 881,203	\$ 455,728	\$ (425,475)
TOTAL CASH SURPLUS	<u>\$ 736,426</u>	<u>\$ 296,503</u>	<u>\$ (439,923)</u>

Town of Middletown
STATEMENT OF REVENUE and EXPENDITURES
WATER & SEWER
Fiscal Year 2018
For the 6 Months Ended December 31, 2017

	ANNUAL BUDGET	YTD ACTUAL	OVER (UNDER) BUDGET
<u>REVENUE</u>			
Water Revenue	\$ 608,726	\$ 155,420	\$ (453,306)
Sewer Revenue	603,153	149,530	(453,623)
Penalties/Reconnects	15,252	7,671	(7,581)
Rain Barrel Sales	1,000		(1,000)
General Fund Grant/Misc			
TOTAL OPERATING REVENUE	\$ 1,228,131	\$ 312,621	\$ (915,510)
<u>EXPENDITURES</u>			
<u>ADMINISTRATIVE</u>			
Office Salaries	\$ 48,827	\$ 14,684	\$ (34,143)
Communications	11,742	5,290	(6,452)
Postage	9,503	8,013	(1,490)
Office Supplies/Expense	15,712	8,606	(7,106)
Legal - Other	2,000		(2,000)
Meetings & Seminars	2,500	451	(2,049)
Advertising	500	498	(2)
Uniforms	3,925	2,785	(1,140)
Dues/Subscrip/Certifications	500	105	(395)
Travel	200	14	(186)
Payroll Taxes	27,798	11,552	(16,246)
Insurance - Prop. & Liability	10,215	4,224	(5,991)
Insurance - Workers Comp	8,980	3,906	(5,074)
Insurance - Health	53,324	26,184	(27,140)
Retirement/Pension	29,230	21,910	(7,320)
Real Estate Taxes	292	292	
Rain Barrel/Educational Programs	2,000		(2,000)
I & I Loan Principal and Interest	33,099	32,498	(601)
Sub-Total	\$ 260,347	\$ 141,012	\$ (119,335)
<u>Vehicles & Equipment</u>			
2016 Truck (Pearl)	\$ 2,280	\$ 70	\$ (2,210)
2008 Truck	2,280	318	(1,962)
2012 Truck (Miller)	2,280	148	(2,132)
2013 Truck (Whitney)	2,280	1,482	(798)
2015 Meter Van (Hightman)	2,280	757	(1,523)
Misc Equipment	3,000	1,765	(1,235)
Bobcat Mini-Excavator	3,000	58	(2,942)
Case Backhoe	3,000	609	(2,391)
Sub-Total	\$ 20,400	\$ 5,207	\$ (15,193)

Town of Middletown
STATEMENT OF REVENUE and EXPENDITURES
WATER & SEWER
Fiscal Year 2018
For the 6 Months Ended December 31, 2017

	ANNUAL BUDGET	YTD ACTUAL	OVER (UNDER) BUDGET
WATER			
Salaries	\$ 175,294	\$ 93,934	\$ (81,360)
Water Distribution System			
Supplies	5,500	1,919	(3,581)
Repairs & Maintenance	18,900	26,367	7,467
Water Line Break Repairs	5,000	1,435	(3,565)
Chemicals	500		(500)
Tools & Equipment	4,105		(4,105)
Sub-Total	\$ 34,005	\$ 29,721	\$ (4,284)
Water Plant/Reservoir/Booster/Tower/BS Wellhouse			
Electric	\$ 23,816	\$ 17,555	\$ (6,261)
Supplies	2,000	1,199	(801)
Repairs & Maintenance	66,700	12,650	(54,050)
Chemicals	9,199	6,056	(3,143)
Tools & Equipment	2,053		(2,053)
Testing & Analysis	14,400	3,700	(10,700)
Sub-Total	\$ 118,168	\$ 41,160	\$ (77,008)
Abandoned Well Costs			
TOTAL WATER EXPENSES	\$ 327,467	\$ 164,815	\$ (162,652)
SEWER			
Salaries	\$ 134,998	\$ 75,345	\$ (59,653)
Sewer Collection System			
Cone Branch PS	18,500	8,502	(9,998)
Brookridge South PS	10,779	1,287	(9,492)
Foxfield PS	6,500	1,559	(4,941)
Sanitary Sewerlines & Manholes	25,000	4,799	(20,201)
I & I Accrual	75,000	37,500	(37,500)
Sub-Total	\$ 135,779	\$ 53,647	\$ (82,132)

Town of Middletown
STATEMENT OF REVENUE and EXPENDITURES
WATER & SEWER
Fiscal Year 2018
For the 6 Months Ended December 31, 2017

	ANNUAL BUDGET	YTD ACTUAL	OVER (UNDER) BUDGET
Wastewater Treatment Plants			
East Wastewater Treatment Plant			
Electric	\$ 25,327	\$ 29,999	\$ 4,672
Supplies	6,352	1,607	(4,745)
Repairs & Maintenance	16,600	5,844	(10,756)
Chemicals	33,725	19,589	(14,136)
Tools & Equipment	6,090	75	(6,015)
Testing & Analysis	34,187	11,128	(23,059)
Sludge Hauling Expense	61,800	22,869	(38,931)
Sub-Total	\$ 184,081	\$ 91,111	\$ (92,970)
West Wastewater Treatment Plant			
Electric	\$ 17,010	\$ 5,022	\$ (11,988)
Supplies	2,500	934	(1,566)
Repairs & Maintenance	2,000	1,137	(863)
Chemicals	47,949	24,719	(23,230)
Tools & Equipment	2,510	70	(2,440)
Testing & Analysis	11,649	4,039	(7,610)
Sludge Hauling Expense	22,650	8,625	(14,025)
Sub-Total	\$ 106,268	\$ 44,546	\$ (61,722)
TOTAL SEWER EXPENSES	\$ 561,126	\$ 264,649	\$ (296,477)
TOTAL WATER/SEWER EXPENSES	\$ 1,169,340	\$ 575,683	\$ (593,657)
CONTINGENCY FUND - 3.5%	\$ 40,927	\$ 20,149	\$ (20,778)
ADJUSTED WATER/SEWER EXPENSES	\$ 1,210,267	\$ 595,832	\$ (614,435)
NET INCOME (LOSS)	\$ 17,864	\$ (283,211)	\$ (301,075)

Town of Middletown
CIP FUNDS and EXPENDITURES
WATER & SEWER
Fiscal Year 2018
For the 6 Months Ended December 31, 2017

	<u>ANNUAL BUDGET</u>	<u>YTD ACTUAL</u>	<u>OVER (UNDER) BUDGET</u>
<u>FUNDING SOURCES</u>			
Operating Revenue	\$ 1,228,131	\$ 312,621	\$ (915,510)
Operating Expenses	<u>1,118,967</u>	<u>575,683</u>	<u>(543,284)</u>
OPERATING SURPLUS (DEFICIT)	\$ 109,164	\$ (263,062)	\$ (372,226)
Cash Reserves	\$ 579,778	\$ 644,988	\$ 65,210
Debt Service Fee - New Homes	149,600	36,450	(113,150)
Capital Improvement Fees	159,132	39,783	(119,349)
Inflow & Infiltration - Reserve A	165,000	37,500	(127,500)
Tap Fees	621,000	156,000	(465,000)
Water Tower & Land Leases	185,837	81,882	(103,955)
Main Street Waterline Loan	1,500,000		(1,500,000)
Reservoir Cover Loan	<u>180,000</u>	<u>2,895,000</u>	<u>2,715,000</u>
TOTAL OTHER REVENUE	\$ 3,540,347	\$ 3,891,603	\$ 351,256
TOTAL FUNDS AVAILABLE	3,649,511	3,628,541	(20,970)
<u>DEBT SERVICE COSTS</u>			
Principal Payments			
MDE - East WWTP	\$ 241,265		\$ (241,265)
Main Street Waterline Loan	250,184		(250,184)
Reservoir Loan	56,578		(56,578)
Brookridge WTP Loan Payments	<u>370,314</u>		<u>(370,314)</u>
TOTAL DEBT SERVICE COSTS	\$ 918,341		\$ (918,341)
<u>WATER & SEWER PROJECTS</u>			
Main Street Waterline	\$ 1,500,000	\$ 738,365	\$ (761,635)
Reservoir Improvements	180,000		(180,000)
Stream Erosion - Well Field Resto	243,000	77,394	(165,606)
SCADA Control System	134,231		(134,231)
Booster Station Pump Bypass	60,000		(60,000)
Raw Waterline Cleaning ICE PIG	9,000	8,500	(500)
Valve Replacement Jefferson Villa	40,500		(40,500)
Water Meter Replacements	57,322	3,253	(54,069)
Vactor Trailer & Excavator	60,000		(60,000)
Vactor Trailer & Excavator	<u>165,000</u>	<u>7,435</u>	<u>(157,565)</u>
TOTAL WATER & SEWER PROJECTS	\$ 2,449,053	\$ 834,947	\$ (1,614,106)
TOTAL CIP COSTS	\$ 3,367,394	\$ 834,947	\$ (2,532,447)

Town of Middletown
 CIP FUNDS and EXPENDITURES
 WATER & SEWER
 Fiscal Year 2018
 For the 6 Months Ended December 31, 2017

	<u>ANNUAL BUDGET</u>	<u>YTD ACTUAL</u>	<u>OVER (UNDER) BUDGET</u>
TOTAL FUNDS REMAINING	<u>\$ 282,117</u>	<u>\$ 2,793,594</u>	<u>\$ 2,511,477</u>

**BURGESS AND COMMISSIONERS
OF MIDDLETOWN MARYLAND**

TOWN MEETING MINUTES

WORKSHOP MEETING

December 7, 2017

The workshop meeting of the Burgess and Commissioners of Middletown was called to order on December 7, 2017, by Burgess Miller at 7:00 p.m. in the Middletown Municipal Center, 31 W. Main Street, Middletown, Maryland. Present were: Commissioners Larry Bussard, Jennifer Falcinelli, Christopher Goodman, Tom Catania and Rick Dietrick.

CONSENT AGENDA:

Joint Meetings —Town Board and Planning Commission for 2018

Town Meeting Schedule for 2018

Budget Workshop Schedule for 2018

Financial Statements

Town Meeting Minutes

- *November 27, 2017*

PERSONAL REQUESTS FOR AGENDA:

STAFF REPORTS:

Community Deputy Report - DFC Chudoba gave the deputy report for November.

Staff Planner Report – Cindy gave her report.

Main Street Manager Report – Becky gave her report.

Engineers Report – Bruce gave his report.

Zoning Administrator’s Report – Ron was not present but submitted his report for the Board’s review.

UNFINISHED BUSINESS:

Introduction Ordinance 17-10-01 – Telecommunication Facilities – tabled to January.

Introduction Ordinance 17-10-02 – Work Within Public Right-of-Ways – tabled to January.

Memorandum Annexation- nothing new to report.

REPORT OF COMMITTEES:

WATER & SEWER – no report

PUBLIC WORKS – no report

SUSTAINABILITY – no report

PLANNING COMMISSION – no report

PARKS and RECREATION – no report

PUBLIC INFORMATION – no report.

NEW BUSINESS:

Discussion of Establishment of a Town Composting Site – Cindy reported that there is a multi-state funding program available if the Town wishes to do this a letter of support needs to be submitted by the middle of December. The Sustainability Committee is recommending an area around the community garden at Wiles Branch Park. Some Commissioners had some questions that Cindy could not answer. Cindy is going to invite Ann Payne and Phil Westcott to the meeting on Monday, December 11th to answer the questions the Commissioners have.

Proposal for Civil War Panel Replacement – Interpretive Direction LLC – submitted a proposal to the Town to rehab the 2 x 6 low profile graphic panel located across the street from the Municipal Center. The proposal is \$839.75. The Board will discuss further at the December 11th meeting.

Discussion of Concept Plan for Future Maintenance Facility – Drew showed the Board two (2) options of building our maintenance facility behind our east wastewater treatment facility off Holter Road.

COMMENT:

ANNOUNCEMENTS:

- *Town Offices will close on Friday, December 22, 2017 at 11am and re-open on Tuesday, December 26, 2017 at 8am.*

Workshop adjourned at 8:54pm.

Respectfully submitted,

Ann Griffin
Office Manager

BURGESS AND COMMISSIONERS OF MIDDLETOWN MARYLAND

TOWN MEETING MINUTES

REGULAR MEETING

December 11, 2017

The first monthly meeting of the Burgess and Commissioners of Middletown was called to order on December 11, 2017, by Burgess Miller at 7:00 p.m. in the Middletown Municipal Center, 31 W. Main Street, Middletown, Maryland. Present were: Commissioners Jennifer Falcinelli, Larry Bussard, Rick Dietrick, Tom Catania and Chris Goodman.

CONSENT AGENDA

Town Meeting Minutes – November 27, 2017 – town meeting

Joint Meetings – Town Board and Planning Commission for 2018

Town Meeting Schedule for 2018

Budget Workshop Schedule for 2018

Financial Statements

Commissioner Bussard motioned to accept this consent agenda as presented, seconded by Commissioner Falcinelli and passed unanimously.

PERSONAL REQUESTS FOR AGENDA:

Unfinished Business:

Memar Annexation Update – Burgess Miller stated that the original concept plan for this development was 80 active adult and 34 single family homes. Memar submitted a new concept plan showing 148 active adult homes and a 1,200-square foot club house. The Board likes the new concept better than the original concept plan. Mr. Memarsadeghi stated that his plan is to leave as much open space as possible in a natural state.

Motion by Commissioner Goodman to have Mr. Memarsadeghi move forward with the 148-active adult concept plan, seconded by Commissioner Catania. Motion carried 6-0.

REPORT OF COMMITTEES:

WATER & SEWER – Commissioner Falcinelli reported:

Water use for November – 301,245 gal., spring flow for November – 63,598, East WWTP treated 219,000 gals. and the WTTP treated 246,000 gals.

Well Field Stream Improvement project is underway, I & I project has started, and reservoir design has started.

Main Street waterline – waterline work has stopped and will resume in March 2018.

No Water/Sewer meeting in December.

PUBLIC WORKS – Commissioner Bussard reported:

Maintenance staff helped with Christmas in the Valley, we had our first little snow event where the guys came in and put salt down.

SUSTAINABILITY – Commissioner Dietrick reported:

Green Talks – educational talks throughout Town will start in January 2018,

PLANNING COMMISSION – Commissioner Catania reported:

Miller property (former Ingall's property) is moving forward and Richland Golf Course submitted a new site plan for a driving range that the Commission will look at in January. No meeting in December.

PARKS AND REC. COMMITTEE – Commissioner Goodman reported:

Eagle Scout project request has been submitted to put in a permanent sign at Remsburg Park.

Commissioner Goodman will invite the Eagle Scout to the January meet to make his presentation.

PUBLIC INFORMATION – Commissioner Falcinelli reported:

Encouraged the residents to sign up for the Alert Frederick County.

NEW BUSINESS:

Proposal for Civil War Panel Replacement – Interpretive Direction LLC – Burgess Miller stated that we received a proposal from Interpretive Direction LLC to make some repairs to the 2'x6' low-profile graphic panel across from the Municipal Center. The cost for these repairs is \$839.75. It was the Board's decision to have Becky our Main Street Manager to apply for grant to do this work.

Discussion of Concept Plan for Future Maintenance Facility – Drew showed the Board a few options on the proposed Maintenance Facility behind the East Wastewater Treatment plant off Holter Road. Drew stated that this is a long-term plan. Drew asked the Board if they were interested in moving forward with putting this out to bid for engineering services?

Motion by Commissioner Falcinelli to have this sent out to bid for engineering services for a concept plan, seconded by Commissioner Bussard. Motion carried 6-0.

PUBLIC COMMENT:

ANNOUNCEMENTS:

- *Town Office will close on Friday, December 22, 2017 at 11AM and re-open on Tuesday, December 26, 2017 at 8am.*

ADJOURNMENT

Motion by Commissioner Falcinelli to close the regular meeting at 8pm., seconded by Commissioner Bussard. Motion carried.

Motion by Commissioner Falcinelli to enter in a closed session meeting to discuss acquisition of real property, seconded by Commissioner Goodman. Motion carried.

Executive Session

- Acquisition of real property

Meeting adjourned at 8:00pm.

Respectfully submitted,

Ann Griffin
Office Manager

Town of Middletown Planning Department

To: Burgess & Commissioners and Middletown Planning Commission

From: Cindy Unangst, Staff Planner

Date: 1/2/2018

RE: Monthly Planning Update - January

Major Subdivisions:

Middletown Glen - Preliminary plans signed – May 29, 2013
Improvement plans conditionally approved – October 16, 2013
Final Plats conditionally approved – November 17, 2014
Plats 1 & 2 recorded at Courthouse – May 17, 2016
FRO planting at Remsburg Park completed – February 2017
Plat 3 recorded at Courthouse – March 1, 2017
Plat 4 recorded at the Courthouse – November 13, 2017
Next step – record additional final plat

Site Plans, Plats and Minor Subdivisions:

Cross Stone Commons – Final FRO Plan approved – May 19, 2014
Revised Site Plan conditionally approved – October 20, 2014
Improvement Plans conditionally approved – March 16, 2015 (Plans expire 3/16/2018)
Improvement Plan mylars signed – November 6, 2015
Next step – submit architectural renderings for buildings #2 and 4 for review/approval

Fire Station – BOA approved height variance request - October 20, 2016
Revised Site Plan conditionally approved – October 17, 2016 (Plans expire 10/17/19)
Improvement Plans conditionally approved – December 19, 2016 (Plans expire 12/19/19)
Improvement Plan mylars signed – May 30, 2017
Building permit conditionally approved – June 29, 2017

Franklin Commons - Site Plan conditionally approved – January 19, 2015 (Plans expire 1/19/2018)
FRO plan conditionally approved – January 19, 2015
Improvement Plans conditionally approved – Sept. 21, 2015 (Plans expire 9/21/2018)
Improvement Plan mylars signed – January 4, 2016
Next step – submittal of PWAs for approval and apply for building and grading permits

Caroline's View/Horman Apartments- Site Plan approved – April 21, 2008 (no sunset provisions prior to November 14, 2010)
Improvement Plans conditionally approved – May 17, 2010 (no sunset provisions prior to 11/10)
Revised Improvement Plan mylars signed – July 21, 2017
Next step – submittal of PWAs for approval and apply for building and grading permits

Jiffas – Site Improvement Plan conditionally approved – October 20, 2008 (no sunset provisions prior to November 14, 2010)

Forest Conservation Plan approved – October 20, 2008

Architectural plans approved by PC – March 16, 2015

BOA hearing for variance requests (approval received) – March 29, 2016 (**Expired 3/29/17**)

SWM plans submitted to SCD and Frederick County – December 5, 2016

Next step – apply for variance requests for siting of duplex building

Miller (Ingalls) – Concept and Phase I & II Plan approved & signed – September 27, 2010

Revised Concept Plan reviewed by PC – September 16, 2013

Site plan conditionally approved by PC – July 20, 2015 (Plans expire July 20, 2018)

Improvement plans conditionally approved by PC – June 19, 2017

Revised Lighting plan approved – October 16, 2017

Improvement plan mylars signed – January 2, 2018

Next step – apply for building and grading permits

Richland Driving Range – Concept plan reviewed by PC – January 18, 2016

Site Plan conditionally approved by PC – June 20, 2016 (Plans expire June 20, 2019)

Revised Site Plan submitted for review and approval – January 2, 2018

Next step – review/approval of revised site plan by Planning Commission

School Complex roadway plans – Improvement plans and FCP plans reviewed and approved by Town Board – May 8, 2017

(informed in June 2017 that funding was not approved for project)

SWM plans re-submitted to Frederick County and SCD for review/approval – 8/3/17

Williams – Preliminary/Final plat submitted for review – January 2, 2018

Annexations:

A.C. Jets Property- PC approval of annexation petition of 35.96 acres – December 21, 2009

Public hearing date - Monday, October 11, 2010

Annexation petition denied by Town Board – October 11, 2010

Admar Property – annexation petition sent to PC by Town Board – January 9, 2017

PC approval of consistency with zoning/comp plan – February 20, 2017

Text Amendments: Wireless Telecommunications ordinances – Town Board – January 2018

Reports:

Grants: MEA Smart Energy Communities grant application – award granted – May 2017

Meetings: Next Middletown Green Team Meeting – January 17, 2018

Next Joint town board/planning commission workshop – February 5, 2018



TO: The Burgess and Commissioners
From: Becky Axilbund, Main Street Manager
Date: January 4, 2018
RE: January Workshop Meeting

The month of December and the early part of January has been spent planning and getting ready to implement new projects and programs for the upcoming year. We are excited to roll out the program year for 2018!

January 2018:

- Finalization of real estate transaction – Main Street Middletown will be moving out of the space in Town Hall. Main Street Middletown is working on finalizing a real estate transaction. Our long-term goal is a revitalized space that will encompass an independent office space, room for meetings, a resource center for businesses, orientation information for tourist, and small retail venue.
 - Development of a formal Rehabilitation Plan (this may take several months to complete)
 - Grant application for funds for the real estate transaction
- Roll-out of revised Main Street Website. We have made significant changes to the content and arrangement of information. As of January 3, we are down to less than 4-items to edit/change.
- Roll-out of year-long photography contest
- Roll-out of new advertising campaign to out-of-county visitors via social media
- Roll-out of new content and graphics for the MSM Facebook Page
- Complete the Calendar of Events
- Hire professional photographer as part of our efforts to increase our social media and advertising capabilities.

Organization Committee:

- Finalization of the real estate transaction – Main Street Middletown and the seller were almost ready to go to closing on a purchase agreement, when Main Street Middletown discovered that actually closing too soon would disqualify our ability to apply for a specific grant for acquisition. This particular grant through the Maryland Historic Trust (in the Planning Department) has not been available for the last 7-years, this particular grant does not require a 50/50 cash match, and this grant allows for asks up to \$100,000. Not wanting to endanger our ability to pursue such a grant, we renegotiated terms. This has caused a delay in our move, but we still expect to complete this transaction during the month of January.
- We have new information on our website! We have more ways for businesses to have access to resources and we have the capabilities on the website for businesses or organizations to submit their own events to our website. We are planning a February Business Mixer to review the new website, introduce the new marketing plan, and a head's up on sponsorship opportunities at our various events.

Promotions Committee:

- Photography Contest to roll out by January 13th. The contest is designed to be a year-long online promotion. Each quarter (or season) has a theme: Winter Beauty, Middletown in Bloom, Fun in the Sun and Falling for Autumn. Contestants will send electronic photos to us. We will have photos on Facebook and there will be a specified time to vote on the top few selected. Photo contest are quarterly. Winners will be selected by a panel of judges and one winner per quarter will be based on the number of Likes

received by our Facebook Followers. The contest is open to any age. Smaller awards will be given to second and third place winners. First place winners will have their photos published and made into a poster for Main Street to sell. The poster will be available on Small Business Saturday.

- Calendar of Events – the graphic designer is working on the Calendar of Events currently. We appreciate everyone responding so quickly for us to get this information out!
- Social Media Calendar – we have a planned social media calendar for the upcoming year. Please follow us on Facebook and you will see posts once a week that spotlight Main Street Businesses, every other week have Tourist Tuesday with details on what to see and do here and in surrounding areas, once a month promote homes for sale, once a month promote student activities, gather input from citizens on why they chose to live in Middletown in a feature called “Why Middletown?”, and once a month we will incorporate a historic photo or detailed photo asking folks to identify the location with a small prize attached to the first correct answer. In short, there will be some structure along with the other posts about events.

Design Committee:

- The Design Committee met in December and reviewed the 250th Walking Tour Brochure. There are minor edits that need to be made to the existing walking tour brochure. We are also trying to collect as many old and new views of many of the discussed properties. Edits and any additional photo selections will be ready at the January 11 meeting. Next steps will then be to submit the information to Advanced Land for their part of the project to complete the GIS story map. This will live on the Town’s website.

Economic Development Committee

- The Economic Development Committee is planning four business mixers for 2018. The February date has not been finalized. However, at this date, we will provide the businesses an overview of our updated website, how to use our calendar of events, and discuss upcoming new Main Street Middletown events.

Grants

- Main Street Middletown is applying for a grant from the Maryland Historical Trust for the acquisition of property. The grant is due in mid-February.

Happy New Year!

Thank You for Your Support of Main Street Middletown!

ORDINANCE NO. 17-10-01

AN ORDINANCE TO REGULATE WIRELESS TELECOMMUNICATION FACILITIES AND COMPLEXES WITHIN THE TOWN OF MIDDLETOWN.

SECTION I. BE IT ORDAINED AND ENACTED by the Burgess and Commissioners of Middletown that Title 5, of the Middletown Municipal Code be, and hereby is, amended by adding thereto the attached Ordinance entitled “Wireless Telecommunications Facilities or Complexes” which is incorporated by reference herein, said Ordinance to be codified in the Code as Title 5, Chapter 5.12 “Wireless Telecommunications Facilities or Complexes”.

SECTION II. BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect twenty (20) calendar days following its approval by the Burgess and Commissioners.

INTRODUCED ON THE _____ DAY OF _____, 2017

PASSED ON THE _____ DAY OF _____, 2017

EFFECTIVE DATE: _____, 2017

ATTEST:

**BURGESS AND COMMISSIONERS
OF MIDDLETOWN**

Andrew J. Bowen, Town Administrator

By: _____
John D. Miller, Burgess

Table of Contents

Wireless Telecommunications Facilities or Complexes	1	Deleted: 1
Section 1. Purpose and Legislative Intent.....	1	Deleted: 1
Section 2. Severability	1	Deleted: 1
Section 3. Definitions.....	1	Deleted: 1
Section 4. General Policies and Procedures for Applications under this Section.....	4	Deleted: 4
Section 5. Responsible Party(s)	8	Deleted: 8
Section 6. Fees	9	Deleted: 8
Section 7. Existing Facilities and Complexes.....	9	Deleted: 98
Section 8. Certificate of Completion	9	Deleted: 9
Section 9. Exclusions.....	9	Deleted: 9
Section 10. Application Requirements for a New Tower, Support Structure, or a Substantial Modification or Co-location	10	Deleted: 9
Section 11. Requirements for Eligible Facility Co-locations or Modifications.....	13	Deleted: 13
Section 12. Location of Wireless Telecommunications Facilities.....	15	Deleted: 1514
Section 13. Type and Height of Towers	16	Deleted: 16
Section 14. Visibility and Aesthetics.....	17	Deleted: 1716
Section 15. Security	18	Deleted: 1817
Section 16. Signage.....	18	Deleted: 1817
Section 17. Setback and Fall Zone.....	18	Deleted: 1817
Section 18. Retention of Expert Assistance Cost to be Borne by Applicant	19	Deleted: 18
Section 19. Procedural Requirements for a Granting a Special Use Permit.....	19	Deleted: 1918
Section 20. Action on an Application.....	20	Deleted: 2019
Section 21. Transfer or Assignment.....	20	Deleted: 2019
Section 22. Violations.....	21	Deleted: 20
Section 23. Removal and Performance Security.....	21	Deleted: 2120
Section 24. Reservation of Authority to Inspect Wireless Telecommunications Facilities.....	21	Deleted: 2120
Section 25. Liability Insurance	21	Deleted: 21
Section 26. Indemnification	22	Deleted: 2221
Section 27. Fines.....	23	Deleted: 22
Section 28. Default and/or Revocation	23	Deleted: 2322

Section 29. Moving or Removal of Co-located Facilities and Equipment	23	Deleted: 2322
Section 30. RF Emissions	24	Deleted: 2423
Section 31. Relief.....	25	Deleted: 24
Section 32. Adherence to State and/or Federal Rules and Regulations.....	25	Deleted: 2524
Section 33. Conflict with Other Laws.....	25	Deleted: 2524
Section 34. Effective Date	25	Deleted: 25
Section 35. Authority	25	Deleted: 25

Wireless Telecommunications Facilities or Complexes

Section 1. Purpose and Legislative Intent

1. The Telecommunications Act of 1996 affirmed the Town of Middletown's authority concerning the placement, construction and Modification of Wireless Telecommunications Facilities or Complexes. This ordinance provides for the safe and efficient integration of Wireless Facilities or Complexes Necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.
2. The Town of Middletown (Town) finds that Wireless Telecommunications Facilities (Facilities) and Complexes may pose significant concerns to the health, safety, public welfare, character and environment of the Town and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. ~~To assure that the placement, construction or Modification of a Facility or Complex is consistent with the Town's land use policies, the Town is adopting a single, comprehensive, Wireless Telecommunications Facility or Complex application and permitting process. The intent of this Ordinance is to minimize the physical impact of Wireless Telecommunications Facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the Town.~~

Deleted: In order to

Section 2. Severability

1. If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance 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 Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
2. Any Special Use Permit issued pursuant to this Ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the Town.

Section 3. Definitions

For purposes of this Ordinance, 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 Wireless Telecommunications Facilities or Complexes, including but not limited to utility or transmission equipment storage sheds or cabinets.
2. "Amend", "Amendment" and "Amended" mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.
3. "Applicant" means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.

4. **"Application"** means all Necessary and *required* documentation that an Applicant submits in order to receive a Special Use Permit or a Building Permit for Wireless Telecommunications Facilities.
5. **"Antenna"** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
6. **"Certificate of Completion" or "COC"** means a required document issued by the Town that confirms that all work represented in the application i) was properly permitted; ii) was done in compliance with and fulfilled all conditions of all permits, including any final completion deadline; iii) was fully constructed as approved and permitted; and iv) a final inspection was requested, conducted and the Facility or Complex passed the final inspection.
7. **"Co-location"** means the use of an existing approved structure to support Antenna for the provision of wireless services.
8. **"Commercial Impracticability" or "Commercially Impracticable"** means 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 satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be "commercially impracticable" and shall not render an act or the terms of an agreement "commercially impracticable".
9. **"Completed Application"** means an Application that contains all necessary and required information and/or data as set forth in this Ordinance and that is necessary to enable an informed decision to be made with respect to an Application and action on the Application.
10. **"Complex"** means the entire site or Facility, including all structures and equipment located at the site.
11. **"DAS" or "Distributive Access System"** means a technology using antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.
12. **"Eligible Facility"** means an existing wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a Substantial modification. An Eligible Facility Application shall be acted upon administratively and shall not require a Special Use Permit, but shall require Staff Administrative Approval.
13. **"FAA"** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
14. **"Facility"** means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.
15. **"FCC"** means the Federal Communications Commission, or its duly designated and authorized successor agency.
16. **"Height"** means, the distance measured from the pre-existing grade level to the highest point on the Tower or support structure, even if said highest point is an Antenna or lightning protection device. As regards increasing the height of an existing structure, Height means the height above the top of the structure prior to any work related to a wireless Facility.
17. **"In-Kind Replacement"** means replacing a component(s) that is malfunctioning with a properly functioning component of the same weight and dimensions and increase the compensation paid to the owner or manager of the support structure.

18. **"Maintenance"** means plumbing, electrical, carpentry or mechanical work that may or may not require a building permit, but that does not constitute a Modification of the WTF.
19. **"Modification" or "Modify"** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless Facility or Complex with identical components, including but not limited to antennas, cabling, 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 an existing support structure or Tower as a co-location is a Modification, unless the height, profile or size of the compound is increased, in which case it is not a Modification.
20. **"Necessary" or "Necessity" or "Need"** all mean what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in the effect of prohibiting the provision of service as intended and described in the narrative of the Application. Necessary, Necessity or Need does not mean what may be desired, preferred or the most cost-efficient approach and is not related to an Applicant's specific chosen design standards.
21. **"NIER"** means Non-Ionizing Electromagnetic Radiation.
22. **"Person"** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
23. **"Personal Wireless Facility"** See definition for 'Wireless Telecommunications Facilities'.
24. **"Personal Wireless Services" or "PWS" or "Personal Telecommunications Service" or, "PTS"** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
25. **"Repairs and Maintenance"** means the replacement or repair of any components of a wireless Facility or Complex where the replacement is effectively identical to the component being replaced, or for any matters that involve the normal repair and maintenance of a wireless Facility or Complex without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless Facility or Complex that will impose new visible burdens of the Facility or Complex as originally permitted. Any work that changes the services provided to or from the Facility, or the equipment, is not Repairs or Maintenance.
26. **"Special Use Permit"** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use a Facility or Complex as granted or issued by the Town.
27. **"Stealth" or "Stealth Siting Technique"** means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean building the least visually and physically intrusive facility and Complex that is not technologically or commercially impracticable under the facts and circumstances. Stealth technique includes such techniques as i) DAS or its functional equivalent; or ii) camouflage where the Tower is disguised to make it less visually obtrusive and not recognizable to the average person as a Wireless Facility or Complex.
28. **"State"** means the State of Maryland.
29. **"Structural Capability" or "Structural Capacity" or "Structural Integrity"** means, notwithstanding anything to the contrary in any other standard, code, regulation or law, up to and not exceeding a literal 100% of the designed loading and stress capability of the support structure.
30. **"Substantial Modification"** means a change or Modification that

Deleted: "

- a. increases the existing vertical height of the structure by the greater of (a) more than ten percent (10%) or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet; or
 - b. except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance; or
 - c. increases the square footage of the existing equipment compound by more than 2,500 square feet.
31. "Telecommunications" means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
32. "Telecommunications Site" See definition for Wireless Telecommunications Facilities.
33. "Telecommunications Structure" means a structure used primarily to support equipment used to provide wireless communications or was originally constructed primarily for such purpose.
34. "Temporary" means not permanent in relation to all aspects and components of this Ordinance and that will exist for fewer than ninety (90) calendar days.
35. "Tower" means any structure designed primarily to support an antenna and/or other equipment for receiving and/or transmitting a wireless signal and is the lesser of i) more than ten feet (10') taller than the adjacent buildings or trees; or ii) taller than ~~thirty-five feet (35')~~.
36. "Town" means the Burgess and Commissioners of Middletown, Maryland
37. "Wireless Telecommunications Facility or Facilities (WTF or WTFs)", "Facility", "Site", "Complex", "Telecommunications Site" and "Personal Wireless Facility Site" all mean a specific location at which a structure that is designed or intended to be used to house, support or accommodate Antennas or other transmitting or receiving equipment is located. This includes without limit. Towers and support structures of all types and kinds, including but not limited to, buildings, church steeples, silos, water Towers, signs or other any other structure that is used or is proposed to be used as a support structure for Antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets and other structures associated with the Complex used to provide, though not limited to, radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services, Internet access service and any commercial wireless telecommunication service whether or not licensed by the FCC.

Deleted: forty
Deleted: 40

Deleted:

Section 4. General Policies and Procedures for Applications under this Ordinance

In order to ensure that the location, placement, construction and Modification of a Facility or the components of a Complex do not endanger or jeopardize the Town's health, safety, public welfare, environmental features, the nature and character of the community or neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the Town hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or Administrative Approval granted authority for Wireless Facilities for the express purpose of achieving the following outcomes:

- 1. The Town shall not be required to issue a permit for a carrier to achieve its goal from a single location and facility only, and instead may require that multiple smaller and less intrusive facilities be used to achieve the Applicant's goal.

2. Requiring a Special Use Permit for any new Complex, Facility or any Substantial Modification of a Facility or Complex or for a Co-located Facility;
3. Requiring Administrative Approval and a properly issued Building Permit for any co-location or Modification of a Facility or Complex that is not a Substantial Modification or Substantial Co-location.
4. Implementing an Application process and requirements;
5. Establishing procedures for examining an Application and issuing a Special Use Permit or Administrative Approval that are fair and consistent;
6. Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;
7. Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of attachments to a Facility or Complex in such a manner as to minimize the physical and visual impact on the community, including but not limited to the use of stealth siting techniques.
8. Requiring that the Facility and Complex shall be the least visually intrusive among those options that are not technologically impracticable given the facts and circumstances.
9. The Town is the officially designated agency or body of the municipality, to whom applications for a Special Use Permit for a Facility or Complex must be made, and that is authorized to make decisions with respect to granting or not granting or revoking Special Use Permits applied for under this Ordinance. However, the Town shall possess the sole right to grant all Special Use Permits.
10. The Town hereby designates the Town Administrator or the Town Administrator's designee as the authority for requests for all Administrative Approvals, i.e. for anything other than a Substantial Modification or a new tower or support structure.
11. Prior to the submission of an application there shall be a pre-application meeting for all intended applications. The pre-application meeting may be held either on site or telephonically as deemed appropriate by the Town Administrator. The purpose of the pre-application meeting will be to address i) issues that will help to expedite the review and permitting process; and ii) specific issues or concerns the Town or the Applicant may have. Costs of the Town's consultant to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a fee set forth in the Town's Schedule of Fees, which shall have been paid to the Town prior to any site visit or pre-application meeting or any work related to an intended application preceding the site visit or pre-application meeting in excess of one (1) hour related to the application.
12. If there has not been a prior site visit for the requested Facility or Complex within the previous six (6) months a site visit shall be conducted.
13. An Applicant shall submit to the Town the number of completed Applications determined to be needed at the pre-application meeting. If Town action is required, applications will not be transmitted to the Town for consideration until the application is deemed Complete by staff or the Town's expert consultant.
14. If the proposed site is within one (1) mile of another Jurisdiction, written notification of the Application shall be provided to the legislative body of all such adjacent jurisdictions as applicable and/or requested.
15. The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official Applicant of Record, unless the owner is the Town, in which case, to prevent a conflict of interest, the Town shall not be a party to the Application.

Deleted: Town

Deleted: .

Deleted:

Deleted: Manager

16. All Applicants shall closely follow the instructions for preparing an Application. Not following the instructions without permission to deviate from such shall result in the application being deemed incomplete and a tolling of the time allowed for action on an Application until a Complete Application is received.
17. Within thirty (30) days of the date of submission of an Application the Applicant shall be notified in writing of any deficiencies related to the completeness of the Application. Remediation of deficiencies in an Application shall be deemed an amendment of the Application that was received.
18. The Town may deny applications not meeting the requirements stated herein or which are otherwise not complete after proper notice and a reasonable opportunity to make the Application Complete has been afforded. Applications will be deemed abandoned if left incomplete for more than ninety (90) days after the date of notice of incompleteness.
19. No work of any kind on or at a Facility or Complex shall be started until the Application is reviewed and approved and the Special Use Permit or Administrative Approval, as applicable, has been issued, and a Building Permit has been issued in accordance with the Town's Code.
20. Any and all representations made by the Applicant or that are made in support of the Application shall be deemed to be on the record, whether written or verbal, and shall be deemed to have been relied upon in good faith by the Town. Any verbal representation shall be treated as if it were made in writing.
21. Other than to remediate non-compliant situations related to matters of safety or the conditions of a permit, no permits for work at a Facility or Complex shall be issued where the Facility or Complex is not in full compliance with all applicable local, State and federal laws, rules, regulations and orders. A Facility or Complex not in full compliance with this Ordinance shall be required to be brought into full compliance before any Permit of any kind will be issued.
22. An Application shall be signed on behalf of the Applicant(s) by a person vested with the authority to bind and commit the Applicant attesting to the truthfulness, completeness and accuracy of the information presented
23. The Applicant must provide documentation to substantiate that it has the right to proceed as proposed on the site or at the Complex in the form of an executed copy of the lease with the landowner or landlord or a signed letter of agency granting authorization. If the applicant owns the Site or Complex, a copy of the ownership record is required.
24. Applications shall include written commitment statements to the effect that:
 - a. the applicant's Facility or Complex shall at all times and without exception be maintained in a safe manner, and in compliance with all conditions of all permits, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable Town, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Town in writing; and
 - b. the construction of the Facility or Complex is legally permissible, including, but not limited to the fact that the Applicant is licensed to do business in the State.
25. Where a certification is called for in this Ordinance, such certification shall bear the signature and seal of a Professional Engineer licensed in the State.
26. A support structure and any and all accessory or associated structures shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of stealth or camouflage or concealment technique as may be required by the Town.

27. All utilities at a Complex or site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the Town, including specifically, but not limited to applicable electrical codes.
28. At a Facility or Complex needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the Application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations.
29. All work at a Facility or Complex shall be done in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electric Safety Code, the National Electrical Code, the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. 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.
30. A holder of a Special Use Permit or Administrative Approval granted authority granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.
31. Unless such is proven to be technologically impracticable, the Town requires the co-location of new antenna arrays on existing structures, as opposed to the construction of a new Complex or support structure or increasing the height, footprint or profile of a Facility or Complex beyond the conditions of the approved Special Use Permit for an existing Facility or Complex. In instances not qualifying as an Eligible Facility, the Applicant shall submit a comprehensive report inventorying all existing structures more than fifty feet (50') in height within one-half (1/2) mile of the location of any proposed new Facility or Complex.
32. An Applicant intending to co-locate on or at an existing Facility or Complex shall be required to document the intent of the existing owner to permit its use by the Applicant.
33. Co-located equipment shall consist only of the minimum Antenna array technologically Needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.
34. A DAS system that is owned or operated by a commercial carrier and is part of a commercial wireless system, or are used for commercial purposes, is expressly included in the context of this Ordinance, regardless of the location or whether the Facility or any of its components is located inside or outside a structure or building.
35. The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Ordinance, as well as other applicable land use and zoning regulations. An Applicant may not by-pass sites of higher siting priority than the priority chosen solely because the site proposed is under lease or an option to lease exists. If a site other than the number 1 priority, or attaching to an existing structure is proposed, the applicant must demonstrate and explain to the reasonable satisfaction of the Town why co-location is technically or commercially impracticable. Contractual or Build-to-Suit agreements between carriers and a proposed Tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with the siting priorities.

36. Any technical information must be provided in such a manner, detail and form that the content and any conclusions are able to be verified by a third party using the information used and provided by the applicant.
37. All costs associated with the preparation and submission of an Application and/or necessitated by the requirements for obtaining and maintaining any and all Town permits shall be borne by the Applicant or Permittee.
38. Any new Wireless Facility shall be designed and constructed so as to be the least visually intrusive, create the least visual impact reasonably possible and have the least negative impact on nearby property values, provided that pursuant to 47 U.S.C. 332(c)(7)(B)(ii) compliance with this requirement does prohibit or effectively serve to prohibit the provision of the intended service from one or more Facilities.
39. No new Facility or antenna array shall be identifiable, recognizable or discernable as a Wireless Facility or antenna by a typical lay-person from a distance of two-hundred fifty feet (250') or more.
39. The fact that a proposed use satisfies all specific requirements for a Special Use Permit in a given type of zoning or land use district does not create a presumption that the use is compatible or in harmony with nearby properties within one thousand feet (1,000') and, in itself, is not sufficient to require the grant of a Special Use Permit.
40. Inventory of existing sites. Each applicant for approval of an antenna and/or a tower shall provide to the Town Administrator an inventory of its existing antennas and towers that are within the jurisdiction of the Town of Middletown, including specific information about the location, height and design characteristics of each tower or antenna. Applicants are encouraged to submit an inventory of potential future tower sites within the jurisdiction of the Town of Middletown. The Town Administrator may share such information with other applicants applying for administrative approval under this section or other organizations seeking to locate towers or antennas within the jurisdiction of the governing authority; provided, however, that the Town Administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
41. Buffering of the site shall be installed to screen and/or mitigate the impacts of the wireless facility on surrounding areas, properties, or rights-of-way. In order to provide spatial separation and create a visual block from adjacent properties and streets, a buffer shall be installed around the outside of all improvements on the site, including the tower, any ground buildings or equipment, and security fencing. Depending upon the specific situation for the location involved and the impact of such ground-mounted equipment cabinets and buildings may be located outside the buffered area if they are constructed so the exterior appearance of the equipment cabinet or building has the appearance of surrounding structures. The applicant shall submit scaled elevations of such buildings to assist in the evaluation of compliance with this appearance criteria.

Deleted:

Deleted: in accordance with Subsection 4(25) of the Town of Middletown Zoning Ordinance

Deleted: G

Section 5. Responsible Party(s)

With the exception of the Town itself, the owner(s) of a Facility or Complex, any support structure used to accommodate wireless Facilities, and of the land upon which a Facility support structure or Complex is located, shall at all times be jointly and individually responsible for: (1) the clean, neat, non-littered and safe condition of the Facility or Complex, support structure and all components on the site related to the Facility or Complex; (2) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the Facility or Complex, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the Facility or Complex; and (3) assuring the proper permitting as required by this Article and other Town regulations by all lessees and users of the Facility or Complex, including but not limited to any upgrades and/or Modifications of equipment. Said owner(s) shall regularly and diligently monitor activities at the site to assure that the Facility or Complex is operated in compliance with this Ordinance, other Town regulations and any Special Use Permit.

Section 6. Fees

All fees and charges, including but not limited to Application fees, Expert Assistance fees, Inspection fees and Permit fees, shall be as set forth in the Town's Schedule of Fees and Charges. For new towers, ~~or other~~ support structures or ~~for~~ substantial modifications, the Expert Assistance fee shall be as set forth in the Town's Fee Schedule. The Town may choose to waive their application fee if the applicant locates on Town Owned property, not including in the Town's public rights-of-ways.

Deleted: .

Section 7. Existing Facilities and Complexes

- A. Any legally permitted Facility, Tower or other support structure or Complex that exists on the effective date of this Ordinance of the Town's codes shall be allowed to continue as it presently exists, provided that i) all work was properly permitted; ii) the Facility or Complex is in compliance with all applicable local, State and federal laws, rules regulations, orders and permit conditions; iii) the Site is in compliance with the latest version of TIA ANSI 222 as regards the physical condition of the Site; and iv) a Certificate of Completion (COC) was issued for the most recent work performed;
- B. Any work not properly previously permitted prior to the adoption of this Ordinance must be properly permitted within ninety (90) days of the effective date of this Ordinance or prior to any Modification of, on or at the site or Facility.
- C. Any new Co-location and/or Modification of a Facility, Tower or other support structure or Complex or a Carrier's equipment located on the Tower or Facility, must be permitted under this Ordinance and the entire Facility or Complex and any new Co-location or Modification shall comply with all applicable laws, rules and regulations, including obtaining a valid COC.

Section 8. Certificate of Completion

- A. No work shall be allowed to be done at or on any Facility or Complex, excepting normal repair and maintenance work as defined in this Ordinance, for which the owner cannot produce the COC for the most recent work, until a final inspection has been conducted and a COC has been issued. The owner of the Facility, Tower or other support structure or Complex shall pay for the actual cost of the required final inspection prior to the inspection being conducted. If the Facility or Complex does not pass the initial final inspection, the owner shall be required to pay for any subsequent re-inspection prior to the re-inspection being conducted. A passing final inspection is required prior to the issuance of a COC.
- B. If no COC can be produced for previously done work, at the discretion of the Town Administrator, per day per violation fines and other penalties as allowed by law maybe imposed until the Facility or Complex is compliant and the required COC has been issued. The time used for the determination of the start date for such fines and penalties shall be thirty (30) days from the date the previously done work was permitted, unless the Applicant can dispositively prove to the contrary.

Section 9. Exclusions

The following shall be exempt from this Ordinance:

- A. Any facilities expressly exempt from the Town's zoning, land use, siting, building and permitting authority.
- B. Any reception or transmission devises expressly exempted under the Telecommunications Act of 1996.
- C. A Facility used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications that is less than 50' above ground level.

Deleted: 100'

- D. Facilities used exclusively for providing wireless service(s) or technologies where i) there is no charge for the use of the wireless service; ii) the Facility or Complex does not require a new Tower or increase the height or profile of the structure being attached to; and iii) the service is not intended to be useable more than seventy-five feet (75') from the Antenna.

Section 10. Application Requirements for a New Tower, Support Structure, or a Substantial Modification or Co-location

- A. All Applicants for a Special Use Permit for a new Wireless Facility or Complex, including for a new Tower or other new support structure or that constitutes a Substantial Modification, shall comply with the requirements set forth in this Section. In addition to the required information set forth in this Section, all applications for the construction or installation of new Wireless Facility or Complex or Substantial Modification shall contain the information hereinafter set forth prior to the issuance of a Building Permit. Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant.

Ownership and Management

1. The Name, address, phone number and e-mail address of the person preparing the Application;
2. The Name, address, phone number and e-mail address of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name, e-mail address and all Necessary contact information shall be provided;
3. The Postal address and tax map parcel number of the property;
4. A copy of the FCC license(s) applicable for the intended use(s) of the Wireless Telecommunications Facilities, including all FCC licensed frequency bands to be used;
5. The Applicant shall disclose in writing any agreement in existence that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower or support structure that it constructs or has constructed for it;

Zoning and Planning

6. The Zoning District or designation in which the property is situated;
7. The size of the property footprint on which the structure to be built or attached is located, stated both in square feet and lot line dimensions, and a survey showing the location of all property lot lines;
8. The location, size of the footprint and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the Application;
9. A site plan to scale, not a hand drawn sketch, showing the footprint of the Support Structure and the type, location and dimensions of access drives, proposed landscaping and buffers in compliance with the Town's Building or Development Code, including but not limited to fencing and any other requirements of site plans;
10. Elevation drawings showing the profile or the vertical rendition of the Tower or support structure at the Facility or Complex and identifying all existing and proposed attachments, including the height above the existing grade of each attachment and the owner or operator of each, as well as all lighting;
11. The type of Tower or support structure, the number of antenna arrays proposed to be able to be accommodated and the basis for the calculations of the Tower's or support structure's capability to accommodate the required number of antenna arrays for which the structure must be designed;
12. Disclosure in writing of any agreement in existence prior to the submission of the Application that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower that it constructs.
13. A certified statement of i) the total cost of construction for the work associated with the Application; and ii) the total cost of all equipment of the Applicant at the Facility. To verify the accuracy of the information, the Town reserves the right to require copies of applicable invoices or other clear and convincing corroborating evidence.

Safety

14. the age of the Tower or support structure and Complex stated in years, including the date of the grant of the original permit;
 15. a description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or other type of support structure;
 16. for a tower, the make, model, type and manufacturer of the Tower and the structural design analysis and report, including the calculations, certified by a Professional Engineer licensed in the State, proving the Tower or support Structure's capability to safely accommodate the Facilities of the Applicant without change or Modification;
 17. if a Substantial Co-location, change or Modification of a Facility or Complex is needed, a detailed narrative explaining what changes are needed and why they are needed;
 18. a Complete, unredacted copy of the foundation design and report for the Tower or other structure, including a geotechnical sub-surface soils investigation report and foundation design for the Facility;
 19. if Substantially Modifying or Co-locating on an existing Tower or other support structure, a Complete, unredacted and certified TIA ANSI 222 Report regarding the physical condition of the Complex and all of its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the Application. No Building Permit shall be issued for any Wireless Facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this subsection and other adopted standards of the Town regarding the physical condition and/or safety of the Facility, unless and until all remediation work that is deemed needed has been completed, or a schedule for the remediation work has been approved by the Town Administrator;
 20. In an instance involving a Tower with only a single array of antennas, or for the first antenna array to be attached to a Tower where the array will be thirty-three feet (33') or more above ground level, and not within 100 feet of areas to which the public has or could reasonably have or gain access to, in lieu of a full RF emissions study, if deemed appropriate by the Town, signed documentation in the form of the FCC's "Checklist to Determine whether a Facility may be Categorized Excluded" may in certain cases be allowed to be used and shall be provided to verify that the Facility and Complex with the proposed installation will be in full compliance with the current FCC's RF Emissions regulations;
 21. In certain instances, the Town may deem it appropriate to have a post-construction on-site RF survey of the Facility or Complex done after the construction or Modification and activation of the Facility or Complex, such to be done under the direction of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance. Such study shall reflect the cumulative effects, readings or levels of all active RF equipment at the Site;
 22. In the event the Town deems it necessary to determine compliance with the FCC's Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the preceding §A, (21) of this Section, the Town expressly reserves the right to request the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the Town, itself, may be prohibited from determining.
 23. If not submitted in a previous application, a signed statement that the Applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.
- B. A written copy of an analysis completed by a qualified individual or organization to determine if the proposed Wireless Telecommunications Facility or Complex is in compliance with Federal Aviation Administration Regulation Part 77, and if it requires lighting, including any Facility or Complex where the application proposes to increase the height of the existing Tower or support structure.
- C. New Towers shall be prohibited on private property in Residential Districts, Historic Districts and areas officially deemed to be visual or sensitive scenic areas within the Town's Corporate Limits.

Deleted:

Deleted:

- D. All Applications for a proposed Facility or Complex applicable to this Section shall contain clear and convincing evidence that the Facility or Complex is sited and designed so as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved. To achieve this goal the Town expressly reserves the right to require the use of Stealth or Camouflage siting techniques such as, but not limited to, DAS (Distributive Antenna System), a Small Cell Facility or a functional equivalent as regards size, and such shall be subject to approval by the Town.
- E. If proposing a new Tower or support structure, or a Substantial Co-location or Modification of an existing structure, the Applicant shall be required to submit clear and convincing evidence that there is no alternative solution within the search ring of the proposed site that would be less visually intrusive and that not to permit the proposed new Tower or support structure, or a Substantial Co-location or Modification would result in the prohibition of service or the perpetuation of a significant gap in service.
- F. An Applicant proposing a new Tower or support structure shall use the largest search ring technically possible, and may be required to prove with certified technical/engineering documentation that the search ring used is the largest that could be used.
- G. In order to better inform the public, in the case of a new Tower or support structure or Substantial Modification, the applicant shall hold a "balloon test" prior to the initial public hearing on the application. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a ten (10) foot in length brightly colored balloon with horizontal stabilizers, at the maximum height of the proposed new Tower or support structure or Substantial Modification. Unless conditions at the time preclude it, for reasons of instability vis-à-vis wind speed, the use of spherical balloons shall not be permitted.
- H. At the option of the Town Administrator, a community meeting may be held concurrent with the balloon test, the notification of which shall be as set forth in the following §1(4).
- I. At least fourteen (14) days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than fourteen (14) days after the conduct of the balloon test. The sign shall be at least four feet (4') by eight feet (8') in size and shall be readable from the road by a person with 20/20 vision.
1. Such sign shall be placed off, but as near to, the public right-of-way as is possible.
 2. Such sign shall contain the times and date(s) of the balloon test and contact information.
 3. The dates, (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the Town and as agreed to by the Town. The Applicant shall inform the Town in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four (4) consecutive hours between 10:00 am and 2:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with pictures from various locations of the balloon shall be provided with the application.
 4. The Applicant shall notify all property owners and residents located within one-thousand five hundred feet (1,500) of the nearest property line of the subject property of the proposed construction of the Tower and Facility or Complex and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least fourteen (14) days prior to the conduct of the balloon test and shall be delivered by first-class mail. The Town Administrator shall be provided an attested copy of the list of addresses to which notification is provided. The Wireless Telecommunications Facility or Complex shall be structurally designed to accommodate at least four (4) Antenna Arrays, with each array to be flush mounted or as close to flush-mounted as is reasonable possible.

Deleted: y

Deleted: .

J. The Applicant shall provide certified documentation in the form of a structural analysis and report certified by a licensed Professional Engineer, including all calculations, showing that the Facility or Complex will be constructed to meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent standards shall apply.

K. The Applicant shall furnish a Visual Impact Assessment, which may be required to include

1. a computer generated "Zone of Visibility Map" at a minimum of a one mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage; and
2. To-scale photo simulations of "before and after" views from key viewpoints inside of the Town as may be appropriate and required, 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, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;

Deleted: pictorial representations (photo simulations)

L. The Applicant shall provide a written description and a visual rendering demonstrating how it shall effectively screen from view at least the bottom fifteen feet (15') of the Facility or Complex and all related equipment and structures associated with the Facility or Complex.

M. A Building Permit shall not be issued for the construction of a new Tower or other support structure until i) there is an Application filed for or by a specific carrier that documents with verifiable technical evidence that the Facility or Complex is Necessary for that carrier to serve the community and that co-location on an existing Structure is not feasible, or ii) that no owner of an existing structure within the Applicant's search ring will allow attachment to the owner's building or other type of structure.

N. Co-location on an existing structure is not reasonably feasible if such is technically or Commercially Impracticable or the owner of the Structure is unwilling to enter into a contract for such use at a fair and reasonable price. If an Applicant feels the price is unreasonable, sufficient documentation in the form of clear and convincing evidence to support such a claim shall be submitted to determine whether co-location on a given existing structure is Commercially Impracticable or otherwise unreasonable.

Section 11. Requirements for Eligible Facility Co-locations or Modifications

A. For the co-location, modification or upgrade of a wireless facility that qualifies as an Eligible Facilities request under applicable law, the following information shall be required to be contained in an application. Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant.

Safety

- 1) the age of the Tower or other support structure in years, including the date of the grant of the original permit;
- 2) a description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or a description of another other type of support structure;
- 3) certified documentation in the form of a structural analysis and report done by a Professional Engineer licensed in the State of Maryland. Said analysis and report shall include all supporting calculations, showing that the Facility, as it exists, will meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not

limited to, the Maryland Building Code and all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict, the more stringent shall apply.

- 4) a copy of i) the installed foundation design, including a geotechnical sub-surface soils investigation report; and if necessary ii) a foundation remediation design and recommendation for the Tower or other structure;
- 5) a certified, unredacted report and supporting documentation, including photographs, regarding the physical situation and physical condition of all equipment and facilities at the site in the form of a report based on an on-site inspection done pursuant to and in compliance with the latest version of TIA/ANSI 222. The inspection shall be done by a qualified individual experienced in performing such inspections and the report shall be signed by an individual with authority to order any needed remediation or resolution of issues.
- 6) a copy of the FCC licenses for each frequency band applicable for the intended use of the Wireless Telecommunications transmission and/or receive equipment;
- 7) a list of all frequencies, to be used at the Facility;
- 8) the number, type and model of the Antenna(s) proposed, along with a copy of the manufacturer's specification sheet(s), i.e. cut sheet(s), for the antennas;
- 9) certification from the owner of the Facility certifying that the Facility and all attachments thereto are currently in compliance with the conditions of the approved Special Use Permit or Administrative Approval or identifying any non-compliant situation.

Ownership and Management

- 10) the Name, address and phone number of the person preparing the Application;
- 11) the Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name and all Necessary contact information shall be provided;
- 12) the Postal address and tax map parcel number of the property;
- 13) a copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities.

Construction

- 14) The total cost of construction showing the cost of labor all new and/or replacement components and equipment.

- B. In certain instances, the Town may deem it appropriate to have an on-site RF survey of the facility performed after the construction or Modification and activation of the Facility, such to be done under the direction of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance. Such study shall reflect the cumulative effects, readings or levels of all active RF equipment at the Site;
- C. In the event the Town deems it necessary to determine compliance with the FCC's Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the previous §B of this Section, the Town expressly reserves the right to seek the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the Town, itself, may be prohibited from determining.

E. Attachments to Existing Structures Other Than Towers

- 1) Attachments to Buildings: To preserve and protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure.
- 2) Utility poles and light standards: If attaching to a utility pole or light standard, no equipment may extend more than ten percent (10%) of the existing height beyond the top of the structure as

originally permitted, and no equipment other than cabling shall be lower than fifteen feet (15') above the ground. Only one (1) increase of the height of a utility pole or light standard shall be allowed.

- 3) Attachments to Water Tanks: If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the Applicant can prove that to locate elsewhere less visually on the tank will prohibit or have the effect of prohibiting the provision of service or that to do so would be technologically impracticable.
- 4) Profile: So as to be the least visually intrusive and create the smallest profile reasonably possible under the facts and circumstances involved, and thereby have the least adverse visual effect, all antennas attached shall be flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.

Section 12. Location of Wireless Telecommunications Facilities

- A. No tower or other new support structure taller than 35' shall be permitted in any existing or planned (i.e. platted) residential neighborhood, nor within one-half mile of any existing or planned (i.e. platted) residential neighborhood. Said height limit shall not be as-of-right, but shall be the maximum permissible height subject to the verifiable proof-of-technical need information submitted.
- B. If a new telecommunications support structure is proposed to be located within one-half mile of an existing or planned residential neighborhood and is proven by verifiable clear and convincing technical information to be a Technical Necessity for the Applicant's service to be provided in the intended service area of the proposed facility, irrespective of the type of zoning, the support structure shall not be taller than ten feet (10') above the tallest obstruction between the proposed support structure and a residential neighborhood.
- C. Applicants shall locate, site and erect all Facilities and associated equipment in accordance with the following priorities, in the following order:
 1. On existing structures without increasing the dimensions or size of the structure;
 2. On existing structures, more than one thousand feet from the nearest boundary of the public right-of-way without increasing the height or size of the profile of the Tower or structure by more than is allowed for an Eligible Facility.
 3. On existing structures without increasing the height of the structure by more than is Needed, as such Need can be proven by clear and convincing verifiable technical evidence.
 4. On properties in areas zoned for Commercial use.
 5. In designated Renaissance or Historic Districts in the public right-of-way, but without increasing the height or size of the profile of the support structure, and only if Camouflaged or Stealthed to the satisfaction of the Town Administrator.
 6. In areas zoned for Residential use, in the public right-of-way, but without increasing the height of the size or dimensions of the support structure, and only if Camouflaged or Stealthed to the satisfaction of the Town Administrator.
- D. If the applicant proposes and commits to locate on Town-owned property or structures, the Town reserves ~~the~~ right to waive the Town's Application Fee that would otherwise be paid to the Town. Deleted: to
- E. If the proposed site is not proposed for the highest priority listed above, then a detailed narrative and technical explanation shall be provided as regards why a site from all higher priority designations was not selected. The person seeking such an exception must demonstrate to the satisfaction of the Town the reason or reasons why a Special Use Permit or Administrative Approval should be granted for the proposed Facility. Deleted: Town Administrator
- F. Notwithstanding anything else to the contrary, the Town may approve any site located within an area in the above list of priorities, provided that the Town finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. The Town

may also direct that the proposed location be changed to another location that is more in keeping with the goals of this Ordinance and the public interest as determined by the Town and that serves the intent of the Applicant.

- G. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town may disapprove an Application for any of the following reasons:
1. Conflict with safety and safety-related codes and requirements, including but not limited to setback and Fall Zone requirements;
 2. Non-Compliance with zoning or land use regulations;
 3. The placement and location of a Facility or Complex would create an unacceptable risk, or the reasonable possibility of such, to any person or entity for physical or financial damage, or of trespass on private property;
 4. The placement and location of a Facility or Complex would result in a conflict with, compromise in or change in the nature or character of the adjacent and surrounding area, and expressly including but not limited to loss in value as measured over the twelve (12) months preceding the Application having been filed;
 5. Conflicts with the provisions of zoning or land use regulations;
 6. Failure to submit a Complete Application within sixty (60) days after proper notice and opportunity to make the Application Complete.

H. Notwithstanding anything to the contrary in this Ordinance, for good cause shown such as the ability to utilize one or more shorter, smaller or less intrusive Facilities elsewhere and still accomplish the primary service objective, the Town may require the relocation of a proposed site if relocation could result in a less intrusive Facility or Complex singly or in combination with other locations, including allowing for the fact that relocating the site chosen by the Applicant may require the use of more than one (1) Facility to provide substantially the same service.

Deleted: .

I. Telecommunication towers shall be permitted in the TC (Town Commercial), GC (General Commercial), SC/LM (Service Commercial/Light Manufacturing), and OS (Open Space) zoning districts only, and comply with the maximum permitted height.

Deleted: C

Deleted: Office and Institutional

Section 13. Type and Height of Towers

- A. No new Towers of a lattice or guyed type shall be permitted.
- B. Except in the public rights-of-way and in Residentially zoned areas, the maximum permitted total height of a new tower or other proposed support structure, shall be one hundred feet (100') above pre-construction ground level, unless it can be shown by clear and convincing verifiable technical evidence from a carrier who has committed to use the tower that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the Town. The maximum permitted height is permissive and is expressly not as-of-right.
- C. The policy decision has been made that more Facilities of a shorter and less intrusive height is in the public interest, as opposed to fewer but taller support structures. Therefore, spacing or the distance between Facilities shall be such that the service may be provided without exceeding the maximum permitted height.
- D. If proposed to be taller than the maximum permitted height, the Applicant for a new Tower or support structure shall submit clear and convincing verifiable technical evidence by a carrier or wireless service provider that has committed to use the Tower or other support structure justifying the total height requested. Technical evidence must be verifiable using the information provided by the Applicant. If the Applicant chooses to provide evidence in the form of propagation studies, to enable verification of the Need for the requested height or location, such must include all modeling information and support data used to produce the studies at the requested height and at a minimum of ten feet (10') lower. The Town or its designee will provide the form that shall be used for providing the modeling information.

- E. The Town reserves the right to require a drive test to be conducted under the supervision of the Town or its designee to verify the technical Need for what is requested.
- F. At no time shall a Tower or other support structure be of a height that requires lighting by the FAA.
- G. Towers shall be structurally designed to support a minimum of four (4) carriers using functionally equivalent equipment to that used by the first carrier attaching to a Tower or other support structure, so that the height can be increased if Needed.
- H. New structures within Rights-of-Ways – Required Design Characteristics. Pursuant to the Town's Right-of-Way regulations, the following shall govern new poles and other support structures in the Rights-of-Way.
 - a. Wireless installations shall be consistent throughout the City limits and the extraterritorial jurisdiction (ETJ);
 - b. Wireless installations shall be on inert, non-conductive poles or structures;
 - c. All antennas shall not be easily recognizable as an antenna by an average person from 250 feet away;
 - d. Wireless installations shall utilize a "concealed" design, including all cabling being inside a hollow pole;
 - e. All radios, network equipment and batteries will be enclosed in a pedestal cabinet near the pole, or in a pole-mounted cabinet or under a pole-mounted shroud or other location deemed appropriate under the facts and circumstance that is not technologically impracticable;
 - f. Cabinets, if used, should be consistent in size and no larger than standard DOT streetlight signal cabinets;
 - g. Unless proven unfeasible by clear and convincing evidence, in lieu of installing new poles, any wireless installation in the PROW shall replace a pre-existing distribution pole, secondary pole or streetlight;
 - h. Wireless installations shall be on poles that meet or exceed current NESC standards and wind and ice loading requirements of ANSI 222 Version G;
 - i. and
 - j. To avoid unsightly rust and corrosion, any new or replacement pole installed shall not be made of metal or concrete.

Deleted: indiscernible

Deleted: Any new poles installed shall be environmentally "green" and not leach any volatile organic compounds or toxic materials into the ground

Deleted: reinforced

Section 14. Visibility and Aesthetics

- A. No Tower, nor any support structure that is not a building and is constructed after the effective date of this Section, shall be tall enough to require lighting by the FAA.
- B. Stealth: All new Facilities, including but not limited to Towers, shall utilize Stealth or Camouflage siting techniques that are acceptable to the Town, unless such can be shown to be either Commercially or technologically Impracticable.
- C. Finish/Color: Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Ordinance.
- D. Lighting: Notwithstanding the prohibition of lighting, in the event lighting is subsequently required by the FAA, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. For any Facility or Complex for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 20 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device shall be compliant with or not expressly in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.

- E. **Retrofitting:** In the event a Tower or other support structure that is lighted as of the effective date of this Ordinance is modified, at the time of the first Modification of the Facility the Town reserves the right to require that the Tower be retrofitted so as to comply with the lighting requirements of the preceding §(D) of this Section or be reduced to a height that does not require lighting.
- F. **Flush Mounting:** Except for omni-directional antennas, all new or replacement antennas, shall be flush-mounted or as close to flush-mounted on the support structure as is functionally possible, unless it can be demonstrated by clear and convincing technical evidence that such has the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), or unless the Applicant can prove that it is technologically impracticable.
- G. **Placement on Building:** If attached to a building, all antennas shall be mounted on the fascia of the building and camouflaged so as to match the color and, if possible, the texture of the building, or in a manner so as to make the antennas as visually innocuous and undetectable as is reasonably possible given the facts and circumstances involved.

Section 15. Security

All Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A. All Facilities, including Antennas, Towers and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be easily climbed or collided with and shall expressly include removing the climbing steps for the first ten feet (10') from the ground on a monopole; and
- B. Transmitters and Telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

Section 16. Signage

Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing 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 on the equipment shelter or cabinet of the Applicant and must be visible from the access point of the Facility or Complex and must identify the equipment owner of the shelter or cabinet. On Tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

Section 17. Setback and Fall Zone

- A. All proposed Towers and any other proposed Wireless support structures shall be set back from abutting parcels, recorded rights-of-way and roads and streets by the greater of the following distances: i) a distance equal to the height of the proposed Tower or support structure plus ten percent (110%) of the height of the Tower or other structure, otherwise known as the Fall Zone; or ii) the existing setback requirement of the underlying zoning district, whichever is greater.
- B. For any Facility located within a fenced compound, any Accessory structure shall be located within the fenced compound as approved in the Special Use Permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The Fall Zone or setback shall be measured from the nearest portion of the tower to the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines.

- C. The nearest portion of any private access road leading to a Facility shall be no less than ten (10) feet from the nearest property line.
- D. There shall be no development of habitable buildings within the Setback area or Fall Zone.

Section 18. Retention of Expert Assistance Cost to be Borne by Applicant

- A. Since retail subscriber rates reflect all capital costs, including costs of permitting such as but not limited to payment of the cost of the Town's expert assistance, and to prevent taxpayers from having to bear the cost related to the issue of permitting and regulating a commercially used Wireless Telecommunications Facilities or negotiating agreements to lease or amend or modify a lease for any Town-owned property or structure, an Applicant shall pay to the Town fees as set forth in the Town's Fee Schedule. The fees are intended to cover all reasonable costs of the expert assistance needed by the Town in connection with the review of any Application, including both the technical and non-technical review, and the permitting, inspection, construction or Modification requested, any Application pre-approval evaluation requested by the Applicant and any lease negotiations. The payment of the Expert Assistance fees to the Town shall precede any work being done that is related to the intended Application or lease, including a pre-application meeting or site visit.
- B. The Town may hire any consultant of its choice to assist the Town in reviewing and evaluating Applications and negotiating leases, provided the consultant has at least five (5) years of experience working exclusively for the public sector regulating Towers and Wireless Facilities and negotiating leases, and has not had a recommendation successfully legally challenged.
- C. The total amount of the funds needed for expert assistance as set forth in the Town's Fee schedule may vary with the scope and complexity of the Application, the completeness of the Application and other information as may be needed to complete the necessary technical and non-technical reviews, analysis and inspection of any construction or Modification or the amount of time spent responding to an Applicant's arguments as regards its Application as relates to the requirements of this Ordinance.
- D. For a new Tower or support structure or a Substantial Modification, to prevent taxpayer subsidization, the expert assistance fee shall be no less than \$7,500.
- E. The Town will maintain an accounting record for the expenditure of all such funds.
- F. If an Application is Amended, or a waiver or relief is requested from any regulations at any time prior to the grant of the Certificate of Completion required under this Ordinance, the Town reserves the right to require additional payment for the review and analysis equal to, but not exceeding, the cost created for the Town by the Applicant or its Application. Such amount shall be paid to the Town prior to the issuance of the Special Use Permit or Administrative Approval or the Certificate of Completion, whichever is procedurally needed next.

Section 19. Procedural Requirements for a Granting a Special Use Permit

- A. When a Special Use Permit is requested, the following procedures shall apply.
- B. When deemed necessary or otherwise in the public interest, as part of the process for any new Towers or Telecommunications Support Structure, the Town may require a Neighborhood Meeting with area residents, the Applicant, a representative(s) from the Town staff and the Town's consultant to discuss the proposed Facility and the effects of such.
- C. The Town shall schedule any required public hearing(s) once it finds the Application is Complete and there are no issues of non-compliance or conflict with applicable law, rule or regulation. The Town shall not be required to set a date for a hearing if the Application is not

Complete or if there are unresolved issues of non-compliance by the Applicant or a party to the Application. The Town may, at any stage prior to issuing a Special Use Permit or Administrative Approval, require such additional information as it deems Necessary and that is not expressly prohibited from being required by applicable law as relates to the issue of the siting, construction or Modification of or at a Wireless Telecommunications Facility or Complex.

- D. Upon Town approval, a Special Use Permit shall be issued for a new Tower or Substantially Modified Wireless Support Structure or Substantial Co-location. Notwithstanding the preceding, the Building Permit for a new Tower or other proposed support structure shall not be issued until an Applicant has provided clear and convincing substantiating documentation governing the placement of the first antenna array of a carrier who has committed to use the structure prior to its construction and that carrier has been properly permitted under this Ordinance.

Section 20. Action on an Application

- A. The Town will undertake, or have undertaken, a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
- B. The Town may refer any Application or part thereof to any advisory committee or consultant for a non-binding recommendation.
- C. Either after the public hearing if a hearing is required, or after Administrative review for an Eligible Facility Application, and after formally considering the Application, the Town may j) approve; ii) approve with conditions; or iii) deny for cause a Permit or Administrative Approval Application. The decision shall be in writing and shall be supported by substantial evidence contained in a written record, which record may be the minutes of any or all official meetings. Throughout the Application and permitting process, the burden of proof for compliance with this Ordinance or the need for a waiver or relief shall always be upon the Applicant.
- D. An Applicant shall not be permitted to refuse to provide information needed to establish the substantial written record required under federal law and applicable case law. Refusal for more than sixty days without agreement by the Burgesses shall result in denial of the Application or the Application shall be deemed abandoned.
- E. Approval Notification: If the Town approves the Special Use Permit or Administrative Approval, then the Applicant shall be notified of the approval of its Application, including any conditions, within 30 calendar days of the Town's action. The Special Use Permit or Administrative Authorization shall be issued within thirty (30) days after such approval.
- F. Denial Notification: If denied, the Applicant shall be notified of the denial of its Application at the Town Meeting, and in writing within 30 calendar days of the Town's action, which notice shall contain the reason or reasons for the denial.

Deleted:

Section 21. Transfer or Assignment

The extent and parameters of a Special Use Permit or Administrative Authorization for a Facility or Complex shall be as follows:

- A. Such Special Use Permit or Administrative Authorization shall not be assigned, transferred or conveyed without the express prior written notification to the Town, such notice to be not fewer than thirty (30) business days prior to the intended assignment, transfer or conveyance.
- B. A transfer, assignment or other conveyance of the Special Use Permit or Administrative Authorization shall require the written commitment of the proposed new holder of the Special Use Permit or Administrative Authorization to abide by all applicable laws, rules and regulations, including but not limited to this Ordinance.

Section 22. Violations

- A. Following written notice of violation and an opportunity to cure, any Permit or Administrative Approval granted under this Ordinance may be revoked, canceled, or terminated for a violation of the uncured conditions and provisions of the Special Use Permit or other applicable law, rule, regulation or order, and if warranted the payment of a fine(s) as is permissible.
- B. If not cured within the time frame set forth in the Notice of Violation, a hearing shall be held upon thirty (30) days prior notice to the Applicant citing the violation and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the Special Use Permit.
- C. Following the original notice and an opportunity to cure, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines or penalties.

Section 23. Removal and Performance Security

- A. Removal and Performance: The Applicant and the owner of record of any proposed new Tower or other support structure or Complex shall, at its sole cost and expense, be required to execute and file with the Town a bond or other form of security that is acceptable to the Town as to the type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower or other support structure and with such sureties as are deemed adequate by the Town to assure the faithful performance of the terms and conditions of this Ordinance and the conditions of any Special Use Permit issued pursuant to this Ordinance. 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, if abandoned, until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Special Use Permit. The amount of the Bond is, in part, determined by the current cost of demolition, removal and site restoration multiplied by the compounding or cumulative effect of a three percent (3%) annual cost escalator over a thirty (30) year projected useful life of the structure.
- B. Performance: The owner of any equipment attached to a support structure or located in a Complex shall be required to execute and file with the Town a performance bond or other form of performance security that is acceptable to the Town as to the type of security and the form and manner of execution, in the amount of \$25,000.

Section 24. Reservation of Authority to Inspect Wireless Telecommunications Facilities

- A. In order to verify that the holder of a Special Use Permit for a Facility or Complex and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, places, constructs and maintains such facility in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this Ordinance, the Town or its designee shall have the right to 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, buildings and equipment and connections contained therein, or other structures constructed or located on the permitted site.
- B. Refusal to allow or grant access to the Town's representative upon reasonable notice shall be deemed a violation of this ordinance.

Section 25. Liability Insurance

- A. A holder of a Special Use Permit for a Wireless Telecommunications Support Structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below.
1. Commercial General Liability covering personal injuries, death and property damage \$2,000,000 per occurrence/\$5,000,000 aggregate; and
 2. Automobile Coverage: \$1,000,000.00 per occurrence/ \$3,000,000 aggregate; and
 3. A \$5,000,000 Umbrella coverage; and
 4. Workers Compensation and Disability: Statutory amounts.
- B. For a Facility or Complex located on Town property, the Commercial General Liability insurance policy shall specifically name the Town and its officers, Boards, employees, committee members, attorneys, agents and consultants 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 and with an AM Best's rating of at least A.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days prior to the expiration of the insurance that such policies are intended to renew or replace.
- F. Before construction of a permitted Wireless Telecommunications Facility or Complex is initiated, but in no case later than fifteen (15) days prior to the grant of the Building Permit, the holder of the Special Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the required insurance in the required amounts.
- G. A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the Town shall not be deemed to comply with this Section.

Section 26. Indemnification

- A. Any application for Wireless Telecommunication Facilities that is proposed to be located on Town property shall contain a signed statement fully and completely indemnifying the Town. Such provision shall require the applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, hold harmless and exempt the Town and its officers, Boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, 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 there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, Modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility or Complex. Notwithstanding the preceding, there shall be no claim of indemnification with respect to any act attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. 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 Town.
- B. Notwithstanding the requirements noted in subsection A of this section, an indemnification provision will not be required in those instances where the Town itself, or an agency or department of the Town, applies for and secures a Special Use Permit for a Wireless Telecommunications Facility or Complex.

Section 27. Fines

- A. In the event of a violation of this Ordinance, or any Special Use Permit or Administrative Approval issued pursuant to this Ordinance, the Town may impose and collect, and the holder of the Special Use Permit or Administrative Approval for a Wireless Telecommunications Facility or Complex shall pay to the Town, fines or penalties as set allowed by State law or as otherwise established by the Town.
- B. Notwithstanding anything in this Ordinance, the holder of the Special Use Permit or Administrative Approval for a Facility or Complex may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Section or any section of this Ordinance. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit in addition to the payment of fines. The Town may also seek injunctive relief to prevent the continued violation of this Ordinance without limiting other remedies available to the Town.

Section 28. Default and/or Revocation

If a support structure, Facility or Complex 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 Ordinance or of the Special Use Permit or Administrative Approval, then the Town shall notify the holder of the Special Use Permit or Administrative Approval in writing of such violation. A Permit or Administrative Approval holder found to be in violation may be considered in default and subject to fines as permitted under applicable State law, and if a violation is not corrected to the satisfaction of the Town in a reasonable period of time the Special Use Permit or Administrative Approval shall be subject to revocation.

Section 29. Moving or Removal of Co-located Facilities and Equipment

- A. If attached to an existing tower or other support structure, unless the Town deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's equipment to be relocated from one structure to another without clear and convincing evidence that not to do so would, for technical reasons, prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.
- B. If the lease for the existing attachment and use expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed upon i) the provision of clear and convincing evidence satisfactory to the Town of the need to move or relocate the facility; and ii) clear and convincing evidence satisfactory to the Town of the lack of impact on the neighborhood or area of the intended new location. Cancellation or abandonment of a lease by a lessee or refusal to agree to terms of a lease that are not Commercially Impracticable shall not be deemed a permissible reason for relocating.
- C. The owner of any Facility or Complex shall be required to provide a minimum of thirty (30) days written notice to the Town Clerk prior to abandoning any Facility or Complex.
- D. Under the following circumstances, the Town may determine that the health, safety, and welfare interests of the Town warrant and require the removal of Facilities.
 - 1. a Facility or Complex that has been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety (90) consecutive days or a cumulative total of one hundred-eighty (180) non-consecutive days in any three hundred-~~sixty-five~~ (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall be completed within 90 days of abandonment, Deleted: sixty five
 - 2. A Support Structure, Facility or Complex falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight; Deleted:

3. A Support Structure or Facility or Complex has been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or Administrative Approval, and the Special Permit or Administrative Approval may be revoked.
- E. If the Town makes a determination as noted in §D(2) or D (3) of this section, then the Town shall notify the holder of the Permit or Administrative Approval for the Facility or Complex that said Facility or Complex is to be removed.
- F. The holder of the Special Use Permit or Administrative Approval, or its successors or assigns, shall dismantle and remove the Facility or Complex and all associated structures and equipment from the site and restore the site to as close to its original condition as is reasonably possible, such restoration being limited only by physical or Commercial Impracticability. Restoration shall be completed within ninety (90) days of the receipt of a written notice from the Town. However, if the owner of the property upon which the Facility or Complex is located wishes to retain any access roadway to the Facility or Complex, the owner may do so with the approval of the Town.
- G. If a Facility or Complex has not been removed, or substantial progress has not been made to remove the Facility or Complex, within ninety (90) days after the permit holder has received notice, then the Town may order officials or representatives of the Town to remove or have removed the Facility or Complex at the sole expense of the owner or Special Use Permit holder.
- H. If the Town removes, or causes a Facility to be removed, and the owner of the Facility or Complex does not claim and remove it from the site to a lawful location within ten (10) days, the Town may take steps to declare the Facility or Complex abandoned, and sell all remaining equipment and materials.
- I. Notwithstanding anything in this Section to the contrary, the Town may approve a temporary use permit/agreement for the Facility or Complex, but for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected Facility or Complex shall be developed by the holder of the Special Use Permit, subject to the approval of the Town, and an agreement to such plan shall be executed by the holder of the Special Use Permit or Administrative Approval and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession and dispose of the affected Facility or Complex in the manner provided in this Section and may utilize the bond in Section 23 of this Ordinance.

Section 30. RF Emissions

- A. As may be deemed appropriate from time to time, to assure the protection of the public health and safety, the Town expressly reserves the right under its Police Powers to require that a user of a Facility or Complex or the owner of the Facility or Complex, verify compliance with the FCC's regulations regarding cumulative RF emissions at the Site under the observation of a qualified staff member or the Town's consultant, and that all users of the Facility or Complex cooperate with the party responsible for such testing or verification. Failure to cooperate shall be deemed a violation of this Section and subject the non-cooperating party to all applicable and permissible fines and penalties.
- B. In the event the Town deems it necessary to determine compliance with the FCC's Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the preceding § (A) of this Section, the Town expressly reserves the right to request the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the Town, itself, may be prohibited from determining.
- C. With respect to Support Structures other than Towers, if any section or portion of the structure attached to or to be attached to is not in compliance with the FCC's regulations

regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape, as appropriate, as well as placing RF Radiation signs as needed and appropriate to warn individuals of the potential danger. As deemed warranted by the Town at any time, the right of the Town is expressly reserved to do itself, or order done, an on-site RF emissions survey.

Section 31. Relief

- A. Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance shall address and identify such at the Pre-Application meeting. The relief or exemption must be contained in the submitted Application for either a Special Use Permit or Administrative Approval, or in the case of an existing or previously granted Special Use Permit or Administrative Approval, a request for Modification of the Facility or Complex and/or equipment. Such relief may be temporary or permanent, partial or complete.
- B. The burden of proving the need for the requested relief, waiver or exemption shall be solely on the Applicant to prove.
- C. The Applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption.
- D. No relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the Town, its residents and other service providers.

Deleted: affect

Section 32. Adherence to State and/or Federal Rules and Regulations

- A. To the extent that the holder of a Special Use Permit or Administrative Approval for a Wireless Telecommunications Facility or Complex 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 or Administrative Approval for Wireless Telecommunications Facilities, then the holder of such a Special Use Permit or Administrative Approval shall conform the permitted Facility or Complex 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.

Section 33. Conflict with Other Laws

Where this Ordinance differs or conflicts with other Local Laws, rules and regulations, unless the right to do so is preempted or prohibited by the Town, State or federal government, the more stringent shall apply.

Section 34. Authority

This Ordinance is enacted pursuant to applicable authority granted by the State and federal government.

Deleted: Section 34. Effective Date
¶ This Ordinance shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements. ¶
Deleted: 5

Approved as to Form

ORDINANCE NO. 17-10-02

AN ORDINANCE TO AMEND TITLE 12 “STREETS, SIDEWALKS AND PUBLIC PLACES” OF THE MIDDLETOWN MUNICIPAL CODE BY ENACTING PROVISIONS PERTAINING TO THE REGULATION WORK WITHIN PUBLIC RIGHTS OF WAY TO BE DESIGNATED AS CHAPTER 12.12 “WORK WITHIN PUBLIC RIGHTS-OF-WAY”.

SECTION I. BE IT ORDAINED AND ENACTED by the Burgess and Commissioners of Middletown that Title 12, of the Middletown Municipal Code be, and hereby is, amended by adding thereto the attached Ordinance entitled “An Ordinance Regulating The Authorization For Work Within Public Rights-Of-Way; Franchises, Licenses, And Permits” which is incorporated by reference herein, said Ordinance to be codified in the Code as Title 12, Chapter 12.12 “Work Within Public Rights-Of-Way”. .

SECTION II. BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect twenty (20) calendar days following its approval by the Burgess and Commissioners.

INTRODUCED ON THE _____ DAY OF _____, 2017

PASSED ON THE _____ DAY OF _____, 2017

EFFECTIVE DATE: _____, 2017

ATTEST:

**BURGESS AND COMMISSIONERS
OF MIDDLETOWN**

Andrew J. Bowen, Town Administrator

By: _____
John D. Miller, Burgess

AN ORDINANCE REGULATING THE AUTHORIZATION FOR WORK WITHIN PUBLIC RIGHTS-OF-WAY; FRANCHISES, LICENSES, AND PERMITS

Purpose and Intent:

The Town of Middletown (Town) finds that i) extremely limited space exists in the public Rights-of-Way (PROW) that requires diligent responsible management, including but not limited to responsible and prudent siting policies; ii) protecting the public safety in and near the PROW is of paramount concern; iii) the Facilities that use and occupy the PROW often pose significant concerns regarding the health, safety, public welfare, protecting the nature and character of the Town and its neighborhoods and for the environmental effects of work and Facilities in the PROW. The Town recognizes that facilitating the development of the responsible policies regarding the use of the PROW can be an economic development asset to the Town and of significant benefit to the Town and its residents. To assure that the placement, construction and Modification of Facilities in the PROW are consistent and to the extent practicable for functionally similar Users are not discriminatory, and that the regulations governing the use of the PROW are reasonable and balanced, the Town adopts a single, comprehensive set of regulations governing the use and occupancy of the PROW. The intent of this Ordinance is to i) maximize the efficient use of the limited space of the PROW, minimize the physical impact of Facilities on the PROW and adjacent properties; ii) minimize the impact of Facilities on the community, including but not limited to the visual impact; iii) protect the nature and character of the community to the extent reasonably possible; iv) establish a fair and efficient process for the review of and action on applications; v) facilitate the processing of applications to the extent practicable; vi) assure taxpayers' money in the form of Town funds is not used to subsidize application-related costs normally and traditionally borne by an Applicant; vii) assure a prompt and efficient review of applications; viii) determine any negative environmental impacts associated with the location, construction and Modification of Facilities located in the PROW; and protect the health, safety and welfare of the Town, its residents and visitors.

Sec. 1. - Definitions.

The following words and terms in this division shall have the meaning given below unless the context indicates otherwise. These meanings shall apply whether a word is capitalized or not, or is singular or plural.

Application means a formal request for the authority, right or permission to place or Modify a structure in, and to use and occupy, the public rights-of-way prior to receiving the necessary permit(s), including but not limited to a building permit.

Attached Equipment means any equipment attached to a utility pole or other support structure in the PROW.

Authorization means written permission from the Town to apply for any required permits needed to construct, place, Modify or temporarily disrupt or do work in the PROW, including but not limited to

required permits such as building, electrical, street or curb cutting and excavation permits, or to maintain Facilities in the PROW, and includes but is not limited to a Franchise or a Town-granted License. An Authorization is not a permit, but must be issued or granted before applying for any Town permit.

Best Case means using that which is the most favorable to serve the intended purpose that is reasonably possible.

Certificate of Completion or COC means a document required and issued by the Town that confirms that all work represented in the application i) was properly permitted, including but not limited to having obtained all required permits such as building, electrical, street or curb cutting and excavation permits ; ii) was done in compliance with and fulfilled all conditions of all permits, including any final completion deadline; iii) was fully constructed as approved and permitted; and iv) a final inspection was requested, conducted and the work and the Facility passed the final inspection.

“Commercial Impracticability” or “Commercially Impracticable” means the inability to perform an act on conditions or terms that cumulatively are i) reasonable in commerce; ii) the cause or occurrence of which could not have been reasonably anticipated or foreseen; and that iii) jeopardizes the financial efficacy of the operation. Standing alone for a single facility or application, the inability to achieve a desired financial return on investment or profit shall not deem a situation to be “Commercially Impracticable” and shall not by itself render a requirement “Commercially Impracticable”.

Complete Application means a document or series of documents containing all required information and that the information contained therein has been verified as being true, accurate and correct, and that all applicable fees and charges related to an Application have been paid.

Emergency means a condition that poses a clear and imminent danger to life, health, property damage or a significant loss of property, or requires immediate repair to restore an essential service to a group of Users of such service.

Excavate means, without limitation, any cutting, digging, grading, tunneling, boring, or other alteration of the surface or subsurface material or earth in the PROW.

Facility means any pole, pipe, culvert, conduit, duct, cable, wire, fiber, amplifier, pedestal, antenna, transmission or receiving equipment, other electronic equipment, electrical conductor, manhole, appliance, sign, pavement structures, irrigation system, monument sign, monument mailbox and any other similar equipment, for public or private use.

Franchise, License or PROW Use and Occupancy Agreement means a written contractual agreement setting forth both the required terms and conditions for the use and occupancy of the PROW, and any negotiated terms and conditions for such.

Ground-mounted Equipment means any equipment associated with the equipment attached to a utility pole or other support structure in the PROW that is located above ground.

Holder means the person or entity issued an Authorization, Franchise, License or Permit or the Transferee or assignee of such.

Maintenance means excavation, plumbing, electrical, carpentry or mechanical work that may or may not require a building permit, but that does not constitute a Modification to the WTF.

Modify or Modification means the addition, removal or change of any of the physical and visually discernable components or aspects of a Facility, including but not limited to the change to, or addition of, anything that changes the structural loading of the support structure, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, the color or materials of any visually discernable components, emergency and vehicular access, parking and/or an upgrade or change in equipment. Adding a User to an existing utility pole or support structure is a Modification of the utility pole or structure, unless the height, profile, diameter or size of the Facility is increased, in which case it is not a Modification, but shall be treated as a new structure.

Monument means any permanent, non-commercial structure placed in the public rights-of-way, such as, but not limited to, a mailbox or sign.

Necessary or Necessity or Need means what is technologically required for the equipment or service to function as designed by the manufacturer and that anything less will result in the effect of preventing or prohibiting the provision of service as intended and described in the Application. Necessary, Necessity or Need does not mean what may be desired, preferred or the most cost-efficient approach, and is not related to an Applicant's specific chosen design standards.

Person means an individual, association, firm, partnership, limited liability company, joint venture, corporation, government, utility, or other organized entity able to contract for the activities described in this Ordinance, whether for profit or not for profit. The term does not include the Town.

Public Right of Way or PROW means the area that is used as, or offered, dedicated or reserved for use as a public street, highway, alley, trail, sidewalk, curb, gutter, bike lane, bridge, round-about, tunnel, causeway, or shoulder that is located in the Town or in an area proposed for annexation to the Town. The area also includes, without limitation, drainage areas and dedicated areas, whether with or without surface improvements and that are adjacent to improved areas dedicated for one or more of the above listed uses. The PROW encompasses the surface of the ground, and the area above and below the ground.

Rubber Stamp or Rubber Stamping means to review without meaningful, thorough review of an application as represented by the requirements of this Ordinance. Rubber stamping of an Application shall not be permitted.

Telecommunication(s) means the provision or exchange of information by electronic, electrical and radio frequency means involving a transmission source and/or a receiving source and includes a single co-arrangement of transmitters and receivers, known as a transceiver.

Telecommunications devices means and includes any User owned or controlled communications equipment, including a telephone, computer, television or any functionally equivalent similar device.

Telecommunications equipment means and includes wireless radio frequency transmission or receive equipment, microwave equipment, fiber optic cable, coaxial cable, satellite transmission or received equipment larger than eighteen inches (18") in diameter and any Internet access modem.

Town means the Burgess and Commissioners of Middletown, Maryland.

User or Person means an individual or entity that uses the PROW to conduct business, excluding the vehicular or pedestrian use of the PROW, and does or proposes to place Facilities in the PROW, places such Facilities, or owns or maintains such Facilities. The term includes, but is not limited to Licensees and Franchisees.

Warehouse or Warehousing means obtaining the required Authorization to work, construct, Modify or replace a structure or equipment in the PROW and not expeditiously performing the authorized work in a reasonable time frame as set forth in Section 9 of this Ordinance.

Sec. 2. - General conditions for use of the PROW.

The provisions of this Ordinance apply to work performed in the PROW and to Facilities that have been or are proposed to be placed in the PROW, except for maintenance and/or repair work. Non-compliance with a requirement in this Ordinance is a violation of the law and is subject to all remedies available under the law. The right to perform work in the PROW and the ability to maintain Facilities in the PROW are allowed subject to the conditions that follow, and as supplemented by those set forth in other sections of this Ordinance, standards adopted by the Town, and requirements contained in Authorizations.

- A. An Authorization does not grant an exclusive right to provide a service or to construct, operate, Modify or maintain a Facility in the PROW.
- B. The Town retains all rights it may have to use all portions of the PROW for any purpose not prohibited by law.
- C. A permit or Authorization does not convey any title to any portion of the PROW.
- D. The Town and its officials, officers, and employees shall not be liable for any direct, indirect, or consequential damages that result when Facilities in the PROW are damaged during the construction, installation, Modification, inspection, maintenance, or repair of public improvements that have received funding from a governmental entity or that are installed pursuant to a contract with the Town.
- E. Users and persons who cause work to be done in the PROW shall pay for all damage that results, directly or indirectly, from work performed for their benefit in the PROW, and for the installation, repair, maintenance, and operation of their Facilities in the PROW.
- F. Non-enforcement or lack of prompt enforcement of one or more provisions of an Authorization does not waive the Town's right to enforce the provisions of an Authorization.
- G. An Authorization creates no third-party rights against the Town and is intended only for the benefit of the person(s) receiving the Authorization.
- H. An Authorization does not limit the Town's exercise of its regulatory, police, governmental, legislative, or contracting authority. If an Authorization conflicts with the terms of a permit or with the Town code, the more strict shall control.
- I. The owner of a pole or other structure shall be responsible for the Facility as a whole at all times being in compliance with all permitting and safety regulations, including any

attachments to the pole(s) or other structure(s). At no time shall an owner allow unpermitted work on or at a Facility.

- J. The Town shall review applications to determine whether a use would have a detrimental effect on public safety as it relates to the PROW or would place an undue physical burden on the PROW.
- K. In considering an application, the Town may use such outside experts as it deems necessary. In the event the Town deems it necessary to employ an outside expert with respect to a particular application. The reasonable and verifiable cost of such expert shall be borne by the applicant.
- L. By the acceptance of a PROW permit, the applicant agrees to assume all liability for all or any damages to persons or property accruing to the public or to the Town which may or might result from the opening or excavation.
- M. The issuance of a PROW Authorization for any purpose, including but not limited to construction or replacement of support poles, shall constitute an agreement on the part of the Applicant that it will at any time thereafter, upon notice from the Town, at its own expense, make such change in location or construction of such facility as may be necessary to protect the public safety property values.

Sec. 3. – Right-of-Way Management.

- A. The Town shall have the right to limit activity and the placement of new or additional equipment, materials, or facilities in a PROW if there is insufficient space to reasonably accommodate all requests to occupy and use the PROW.
- B. The Town shall consider requests for occupying and using a PROW in the order of receipt of fully completed applications for PROW permits.
- C. The Town shall strive, to the extent reasonably possible, to accommodate all requests, but shall be guided by the physical space available in, and the condition of, the PROW at the requested location, and whether such use would have a detrimental effect on public health, safety or welfare as it relates to the PROW.
- D. The Town shall have the right, to monitor any equipment or activity located in a PROW.
- E. A permit holder shall allow the Town to make inspections of any part of the permit holder's equipment, material, or facilities located in a PROW at any time upon three (3) days' notice or, in the case of an emergency, upon direction or demand by the Town.
- F. The Town shall have the right to prohibit a permit holder from attaching any telecommunications antenna or other such equipment to any Town historic-style streetlighting.

Sec. 4. - General requirements for work in the PROW.

- A. *Authorization; required information.* Persons doing work in the PROW and Users of the PROW, including but not limited to Users with a Franchise or License with the Town, shall obtain an Authorization and all required permits and shall pay applicable application, review, permit,

expert assistance and inspection fees. The Town shall not issue an Authorization or Permit(s) if the person or User owes money to the Town for prior fees, restoration costs, or other costs sustained by the Town in connection with an Application for Authorization, work done or Facilities in the PROW, and is more than sixty (60) days in arrears.

- B. *Information required.* Applicants for Authorization shall furnish accurate drawings, maps, and any other relevant information that may be required by the Town Administrator for the particular type of work involved, in the form the requests and shall seek approval of construction and Modification plans, if required.
- C. *Compliance with requirements; revocation of Authorizations.* Persons and Users shall comply with this Ordinance, with any additional standards adopted by the Town, and with the requirements of Authorizations and permits granted pursuant to Authorizations. As may be permitted by applicable State law, the Town Administrator may revoke an Authorization for noncompliance with any term, condition or implemented standards and requirements, or when, after notice to the holder of the Authorization, an activity continues to hamper or obstruct the use of the PROW or endangers the public health or safety.
- D. *Bonds; performance guarantees.* For any new pole or structure located in the PROW, a person or a User conducting activities subject to this Ordinance in the PROW may be required to provide a performance bond or other performance guarantee for the work. The amount, form, and content of the guarantee shall be determined in the discretion of the Town based on the facts and circumstances involved.
 - (1) Users with multiple Facilities in the PROW shall be allowed to provide a single bond or performance guarantee that covers all of its Facilities in the PROW in the Town.
 - (2) The Town may increase or decrease the amount of the bond or performance guarantee required.
 - (3) The Town shall determine, in its discretion, the time period for which a performance guarantee shall be kept in force.
 - (4) The Town may consider, among other things, the time period for a project and assessment of the performance of the project, the length of a License or Franchise, and/or the projected time during which Facilities will exist in the PROW.
 - (5) The performance guarantee shall, among other things, ensure compensation for i) damages resulting from the proposed work or a User's maintenance of Facilities in the PROW; ii) direct and indirect costs to the Town of remedying damage to the PROW or Facilities within the PROW; iii) direct and indirect costs to the Town of remedying matters of noncompliance with Town Ordinances or Authorizations; and iv) fines or penalties or fees owed to the Town.
 - (6) The rights reserved to the Town under a bond or performance guarantee do not limit the claims or rights the Town may bring against a person, except where a bond or guarantee has fully satisfied a Town claim.
 - (7) Every bond or performance guarantee shall require the surety to provide notice of cancellation or nonrenewal by registered or certified mail, which notice must be received by the Town Administrator at least 30 days prior to any cancellation or nonrenewal.

- E. **Insurance.** The Town may require Users and persons that do work in the PROW to provide insurance in an amount deemed adequate by the Town Administrator, the Town Attorney and/or the Town Risk Manager. The insurance shall be issued by a company authorized to do business in the State, including but not limited to: i) workers' compensation coverage as required by State law; ii) employers' liability insurance; iii) commercial general liability; and iv) business auto policy. The Town's officials, employees and consultants shall expressly be named as additional insureds on such insurance policies. The amount of insurance shall be as determined by the Town, in part based on the scope of the work and the tenure or term of occupancy.
- F. **No interference with Town utilities.** Persons doing work in the PROW shall not interfere with existing utilities, including such infrastructure as water, sewer, gas and electric, the natural and constructed storm water system, traffic signals and associated lines, or with the repair or replacement of such systems. Persons doing work in the PROW shall give the Town Administrator at least ten working days advance notice to locate and mark any existing Town utility lines prior to initiating work. Damage to utilities or other infrastructure shall be paid for by the person or User contracting for the work that resulted in such damage.
- G. **Compliance with regulations, safety standards, and applicable codes and standards.** Compliance with all applicable federal, state and local regulations, and all applicable federal, state, local and industry codes and standards is required. These include, but are not limited to, compliance with the Occupational Safety and Health Act and applicable rules and regulations subsequently enacted, compliance with the latest versions of the National Electrical Code, National Electrical Safety Code, TIA-ANSI 222, compliance with fiber optic installation standards and telecommunication industry standards, compliance with plumbing and pipe installation codes and standards, and compliance with standards and codes for traffic safety and lane closures. Persons and Users shall provide all equipment and personnel necessary to meet applicable regulations, codes, and standards and shall furnish additional equipment or personnel if directed by the Town. Information requested by the Town regarding compliance with these standards shall be provided within the time frame requested by the Town.
- H. **Licensed professionals.** Where required under state law, work in the PROW shall be performed and supervised only by qualified persons and licensed professionals as deemed appropriate by the Town Administrator.
- I. **Notice of beginning and end of project.** Persons doing work in the PROW shall promptly notify the Town Administrator upon beginning and ending the work authorized in a given Application, and shall promptly request a final inspection of the work and the condition of the PROW at the location(s) where the work was performed. A copy of a passing final inspection report for the latest work performed at a given location(s) shall be required as part of any future application or Authorization by that person for work at that location(s).
- J. **Inspections; fees.** The Town Administrator shall conduct, or have conducted, inspections of work performed in the PROW. Users and Persons performing such work shall comply with all Town directives to facilitate such inspections. The Town Administrator may charge fees as set by the Town for such inspections, which may be varied to account for the nature and scope of the project, the number of inspections required, or other relevant factors. The Town Administrator may direct a person or User to do additional work if warranted by the result of an inspection and such person or User shall promptly comply with such directive.

Deleted: the

Deleted:

- K. *Removal for Violation.* Unless prohibited by State law, if Facilities are installed in violation of this Ordinance, the Town may require their removal, at the owner's sole expense.
- L. *Identification.* All utility poles and any other support structure or ground-mounted equipment erected within the boundaries of any public highway, street or other right-of-way shall be lettered or stenciled in a permanent manner with the initials of the owners or with some other designation of ownership, together with a number for the same. A report or map showing the location and number of each pole shall be filed by the owner or owners of said poles with the Town annually on or before July 1st of each year.
- M. The filing of an application and the issuance of a permit for the erection of a utility or similar pole shall constitute an agreement on the part of the applicant that it will at any time thereafter, upon notice from the Town, at its own expense, make such change in location, external support and restore the pole to plumb as may be required.

Sec. 5. – Indemnification, Hold Harmless and Insurance.

- A. *Indemnification and Hold Harmless.* A permit holder shall, at its sole cost and expense, after the effective date of this Ordinance indemnify and hold harmless the Town and its elected and appointed officials, employees and agents at all times against any and all claims for personal injury, including death, and property damage arising out of the permit holder's use or occupancy of a right-of-way.
- B. A permit holder shall defend any actions or proceedings against the Town in which it is claimed that personal injury, including death, or property damage was caused by the permit holder's use or occupancy of a right-of-way.
- C. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.
- D. A permit holder shall not be required to indemnify and hold the Town harmless for claims caused by the Town's or any person's negligence, gross negligence or willful misconduct.
- E. A permit holder shall, at all times during the life of a PROW Authorization carry, and require its subcontractors to carry, liability, property damage, workers' disability, and vehicle insurance in such form and amount as shall be determined by the Town and as set forth in the Authorization. A permit holder shall name the Town as an additional insured on its liability insurance policies.
- F. All required insurance coverage shall provide for 30 days' notice to the Town in the event of material alteration or cancellation of such coverage prior to the effective date of such material alteration or cancellation.

Sec. 6. - Work in PROW requiring an application; Authorizations; standards; fees.

- A. Grandfathered Facilities: All existing Facilities in the PROW as of the date of adoption of this Ordinance shall be grandfathered and not subject to this Ordinance, until such time as an Authorization as required under this Ordinance is needed.
- B. *Work requiring an application to the Town.* Persons and Users of the PROW shall make application to the Town Administrator for the following activities in the PROW, and obtain the necessary Authorizations and permits before initiating the work:
 - (1) The Construction of one (1) or more new poles or other structures, or the replacement of such.
 - (2) The Installation of Facilities for electrical, gas, video, internet, telephone, cable, hardline or wireless Telecommunications, television, or other information or data transfer service to customers within the Town.
 - (3) The Excavation or disturbance of the surface within the PROW, including but not limited to construction of new portions of the PROW;
 - (4) The cutting, moving, alteration or modification of any pipe, conduit, pole or other support structure, meter, hydrant, Telecommunications Facility, or other equipment or structure, or attachment to such structures or Facilities;
 - (5) The Modification of Facilities within the PROW, including but not limited to equipment enclosures associated with equipment on a utility pole or other support structure, and placing new Facilities or equipment on structures already located in the PROW; and
 - (6) The Installation or modification of Facilities used for the conveyance of utility or utility-like services, including but not limited to water, sewer, storm water, electricity, hardline or wireless Telecommunications irrespective of the medium or technology used that involves any safety, aesthetic or visual intrusion or impact issues;
- C. *Authorizations - Franchises, Licenses, permits, construction drawings, and other approvals.* Depending upon the work involved, including but not limited to the degree or extent of the physical or visual impact involved, the Town Administrator may in its discretion require Authorizations, as well as one or more types of permits such as a building, electrical, excavation and street and/or curb cutting permit for the work described in §(B) of this Section, and may require submission of all information it deems relevant and necessary for the receipt of an Authorization(s). The Town Administrator shall determine, in its discretion, whether Authorization shall be required for work described in §(B) and for Users with Facilities in the PROW.
- D. *Unlawful to do work without Authorizations; Emergency.* Except in the event of an emergency, it shall be unlawful to do work in the PROW or maintain Facilities in the PROW without the required Authorizations. In the event of an emergency, a person may do such work as is necessary to address, and if necessary and remedy the emergency situation, but only the emergency situation, and shall immediately notify the Town of such. Application shall immediately be made for necessary Authorizations from the Town, notwithstanding that due to the emergency nature of the work, work may have started or been completed, and all required fees shall be paid even if after the fact.

- E. *Standards.* The Town Administrator shall develop standards and requirements for PROW Franchises, Licenses, permits, and other approvals, and may attach conditions to such documents. The Town Administrator may also develop specific standards and requirements for doing work in the PROW, even if a Franchise or License may not be required.
- F. *List of contractors.* The Town Administrator may require that Applicants and persons who contract to have work performed in the PROW maintain an updated list of the contractors working on their projects, and acknowledge and assume responsibility for the actions of the contractors. All contractors working in the PROW must obtain a Business License from the Town.
- G. *Fees; accounts.* The Town Administrator shall charge such fees as are authorized by the Town for applications for Authorizations, review of information and plans in the pursuit of an Authorization, inspections and reinspections, maintenance of Facilities in the PROW, verification of accuracy and correctness of information, oversight or administration of proposed ongoing or completed activities, and for any other work involved in the review of an application or request for Authorization. The Town Administrator may allow persons to establish and fund escrow accounts or other accounts with the Town to which fees may be charged and from which payment may be withdrawn, as long as the amount of any withdrawal is replaced within thirty (3) calendar days of the date of withdrawal.
- H. *Reinspection fees.* The Town shall charge fees as are authorized by the Town for additional reviews and inspections required for work not completed to Town standards and/or work that damages existing infrastructure, as well as restoration of disturbed or damaged portions of the PROW.
- I. *Civil penalties.* Any person who violates this Ordinance may be subject to all civil and equitable remedies as allowed by law. Notwithstanding the foregoing, the violation of a stop work order issued pursuant to this subsection shall constitute a misdemeanor and may be punishable as such. The Town shall charge civil penalties as are authorized by the Town for:
- (1) Violation of subsections (a) and/or (b).
 - (2) Additional violations of subsection (a) and/or (b) by the same User within one-year of the first violation.
- J. *Assessment of Civil Penalties.* Civil penalties authorized by this section may be assessed against the User on whose behalf work is being performed and against the contractor or subcontractor who is performing such work. Penalties not paid within 30 days of written demand will be assessed a late fee of one percent of the unpaid balance per month.
- K. *Stop work order.* When there is a violation of this Ordinance the Town may issue a stop work order to any person or entity performing work in the PROW. A stop work order shall be in writing, state the date, the location, the work to be stopped and the reasons therefore, and state the conditions under which the work may be resumed.
- L. *Barricading work:* All activity in a public PROW must be properly marked and barricaded and, if deemed necessary by the Town Administrator, by flashing amber lights so placed as to indicate from the roadway or pedestrian way in both directions the exact location and limits of said occupation or activity and at all times must be properly guarded. Permit holders are responsible for maintaining safe conditions in and around the area of occupation in a public PROW and in areas of related activity at all times during the activity or work. The permit holder shall comply

Deleted:

with all applicable safety ordinances, rules, regulations, codes and policies at all times and under all circumstances.

Sec. 7. - Restoration of surrounding areas.

- A. *Obligation to restore disturbed areas.* A person or User that conducts excavation or other activities that disturb the PROW or Facilities within the PROW, shall restore the PROW to a condition equivalent to that prior to the disturbance. The restoration shall include, but is not limited to, installation of pavement, resurfacing nearby or adjacent areas, grading any disturbed unpaved surface areas, restoring below ground Facilities, planting and landscaping, replacing curb and curb ramps to applicable standards, and repairing improvements and Facilities. Restoration shall meet the standards set by the Town Administrator. Such restoration includes any work necessary to maintain the nature and character of the area that existed prior to the work.
- B. *Temporary restoration.* Where permanent restoration is impractical because of weather or other circumstances, the Town Administrator may require temporary restoration to be followed by permanent restoration.
- C. *Timetable for Restoration.* The Town Administrator shall determine the time period during which restoration must be accomplished on an individual case-by-case basis and such time period shall take into account the extent of the restoration work required, availability of needed materials and other limiting factors.
- D. *Repair of inadequate restoration work.* The Town Administrator's inspection and/or approval of original restoration work does not waive the Town Administrator's or the Town's right to require additional restoration where and when warranted. Therefore, where restoration work proves to be inadequate over time, as determined in the Town Administrator's discretion, if the issue is not one of normal wear and tear or is not caused by a third party, but is truly due to the inadequacy of the restoration, the Town Administrator may require additional reasonable restoration. Such additional restoration may be required for a period of three years from the date of completion of the initial restoration work. The person responsible for the work necessitating the original restoration shall be responsible for the costs of the additional restoration and inspection.
- E. *Reimbursement to Town of costs of restoration.* If a person responsible for damage to the PROW does not complete required restoration during the period required by the Town Administrator, the Town may complete the restoration. The costs for such shall be promptly reimbursed by the User or the person responsible for the original work that required restoration of the PROW.

Deleted:

Sec. 8. - Requirements for location, construction relocation, modification, maintenance and removal of Facilities in the PROW.

Users that locate, relocate, modify, repair, maintain, or remove Facilities in the PROW shall comply with the following requirements.

- A. *Locations.* The Town Administrator shall have the discretion to determine compliance with this Section and to approve, deny, alter and condition all proposed locations of Facilities in the PROW, and to determine whether placement, if allowed, shall be above ground or below ground, all as determined by the technical need of the Applicant for a specific location, or alternatively the technological impracticability of a given location.

B. **Maximum Permitted Height:** Absent a showing by clear and convincing technical or safety-related evidence of the need for a greater specific height for reasons of technical Necessity, technical impracticability or compliance with applicable safety codes, the maximum permitted height for new or replacement poles or other support structures in the PROW, including any increases in height of existing structures and poles, shall be forty feet (35') above pre-construction ground level. Forty feet is not as-of-right, but is the maximum permitted height, and shorter, minimally impactful and intrusive poles and support structures shall be preferred.

Deleted: 40

C. **Minimum Distance Between Poles or other support structures:** Absent a showing by clear and convincing technical evidence of the technical Need for a greater distance between poles or other support structures in the PROW or for safety-related reason, the minimum distance between poles or other support structures on the same side of a street as measured in any direction shall be one hundred feet (100'). This minimum distance shall not be applicable for poles or support structures that are used to support lines or cables crossing a street or other man-made or natural barrier.

D. **Least Visual Impact.** Any equipment attached to a utility pole or other support structure shall be of a size and be located and constructed so as to create the least visual impact on the immediate surrounding area reasonably possible, and the least physical intrusion and impact on the limited space in the PROW, including occupying both the least amount of vertical and horizontal space reasonably possible. Absent the demonstration by verifiable clear and convincing technical evidence of the inability to use smaller equipment, no equipment shall be allowed in the PROW to be attached to or associated with a utility pole or other support structure of a size large enough to require an Environmental Assessment Analysis and Report under federal or State law or rule.

(1) **Equipment Inside Pole.** Excluding electric utility lines and equipment, after the effective date of this Ordinance cables used to distribute wireline communications service(s) under Title II or Title IV of 47 U.S.C. shall be placed inside the pole or support structure, unless technologically impracticable, or unless doing so would prevent compliance with applicable safety codes or such equipment is able to be attached mid-span to the transmission cable.

(2) **Pole Replacement.** If placement inside a pole is physically or technologically impracticable, then, as determined most appropriate under the facts and circumstances by the Town Administrator, the pole shall i) be replaced in compliance with Section 12 of this Ordinance, or ii) if deemed appropriate under the facts and circumstances the equipment shall be stealthed or camouflaged to the reasonable satisfaction of the Town Administrator. If a pole is to be attached to, replacement of poles in compliance with Section 12 of this Ordinance shall be preferred to stealthing or camouflaging.

(3) If new equipment to be attached to an existing pole necessitates increasing the height of the pole, the pole shall be replaced with an approved type of pole as set forth in Section 12 of this Ordinance.

- (4) **Maximum Size of Pole-Mounted Equipment.** Excluding cable, the maximum size of any piece of hardline or wireless communications equipment attached to a pole or other support structure, such as but not limited to amplifiers and antennas or other transceivers, shall not exceed three (3) cubic feet in total volume and would fit within an imaginary enclosure or container three (3) cubic feet in volume. This standard shall apply in all instances, unless the Applicant can justify with verifiable written evidence that the three (3) cubic feet maximum allowed size would, in effect, prohibit the construction of the facility. Any greater size shall be the minimum amount able to be proven to be needed for reasons of Technical Need or safety.
- (5) **New & Replacement Poles or Support Structures:** In addition to all other information required, an application for a new or replacement pole or support structure, must include detailed design characteristics, including overall dimensions, material composition, aesthetic appearance, a detailed site plan and a structural analysis with calculations which must be certified by a Professional Engineer licensed in the State and be able to be independently verified using the information submitted by the Applicant. Depending upon the situation and circumstances involved, to-scale photo simulations may be required showing the Facility as it will appear upon completion, showing the Facility from four (4) directions, each with ninety degrees (90°) azimuth separations.
- (6) **Lateral Extensions:** No lateral equipment extensions parallel to the PROW from a pole or other support structure in the PROW, such as but not limited to equipment standoffs, shall exceed three (3) feet in length.
- (7) **Riser Cable:** All exterior riser or other vertically run cable attached to the exterior of a pole or other support structure shall be protected with non-conductive, non-degradable material and shall be of a color that matches the color of the pole or other support structure as closely as is reasonably possible.
- (8) **Ground-mounted Equipment and Equipment Enclosures:** Absent a showing by clear and convincing technical evidence of the technical Need or for safety reasons for a greater size, nothing larger in size than seventeen (17) cubic foot enclosure may be placed above-ground in the PROW.
- (9) **Compliance with NESC and NEC:** All attachments to poles or other structures in the PROW, and all underground work and Facilities placed underground, shall at all times be in compliance with the edition of the National Electrical Safety Code (NESC), the National Electrical Code (NEC), the State Building Code and the Office of Safety Administration (OSHA) regulations in effect at the later of i) the time the Facility was constructed; ii) the time of the last modification of equipment on the pole or other support structure; or the edition in effect at the time of the current application.
- (10) **Compliance with TIA-ANSI 222 re Stand-alone communications poles and structures:** All poles or support structures used only by providers of communications service(s) shall comply with the latest version of TIA-ANSI 222 at the time of construction, as well as at the time of any Modification. Verification of submitted evidence of compliance with the

applicable version of TIA-ANSI 222 shall be a prerequisite for the issuance of a building permit.

- E. *Underground locations for wire and fiber.* Wires, fiber, and conduits shall generally be located underground, except in areas zoned for above-ground Facilities. A User that wishes to place such Facilities above ground in an underground area shall demonstrate to the Town's satisfaction why above ground placement is a Necessity.
- F. *Existing ducts.* If underground ducts or conduits are available and not technologically impracticable to use, underground wires shall be located in such ducts or conduits. Before installing new ducts or conduits, a User shall make all reasonable effort to procure the right to use existing ducts or conduits upon reasonable terms and charges negotiated by and agreed to by the parties.
- G. *Documentation of sufficient space.* A User shall provide verifiable evidence to demonstrate to the Town Administrator's satisfaction that sufficient space exists in the PROW and on any pole for proposed new or modified Facilities to be placed without interfering with existing or future public projects, and that the placement of the pole, other structure and/or equipment will not unduly or unnecessarily disrupt the normal use of the PROW, negatively impact the permanent condition of the PROW or by itself negatively impact adjacent property values.
- H. *Public noticing.* Depending upon the facts and circumstances involved, for projects involving the disruption of vehicular or pedestrian traffic in the PROW, breaking the integrity of the surface of pavement or sidewalk, or when involving a new structure(s) or the increase in height of an existing structure by more than ten percent (10%) of its existing height, the Town Administrator shall i) require the Applicant to post notice of the proposed work and its scope on the Town's website or post a reasonably sized notice no smaller than twenty-four inches (24") by eighteen inches (18") on or within three feet (3') of all utility poles along the impacted portion of the PROW or ii) distribute written notices to all individual properties for a distance of two-hundred feet (200') from the location of any such work in or adjacent to the area of PROW, for a minimum of one (1) calendar week prior to the start of the work proposed.
- I. *Documentation to Town upon completion.* Upon completion of the authorized work, the person responsible for the work shall give the Town Administrator and the Town all reasonable information either requests regarding the work performed. Such information may include, but is not limited to as-built or other appropriate drawings and maps, in the form required by the Town Administrator.
- J. *Maps and information on file with Users.* During the time a person or User has Facilities in the PROW, the User shall maintain up-to-date as-built maps showing both the general and specific placement of its Facilities in the PROW. A User shall also maintain information regarding the function and capacity of its Facilities and, upon request by the Town, furnish said maps and information to the Town Administrator within the time period specified, at no cost to the Town and in such form and detail as the Town requires.
- K. *Underground location.* Users with underground Facilities shall maintain a membership in the State's underground locating system and respond to and locate underground Facilities and equipment as required by applicable State regulations and requirements.

- L. **Relocation of Facilities.** A User shall, at its own cost, relocate its Facilities within a reasonable time frame as determined by the Town Administrator, if the Town determines that the Facility(s):
- (1) Interferes with a use of the PROW, or the provision of services to Town residents; or
 - (2) Interferes with the repair or maintenance of any Town-maintained utility; or
 - (3) Will impede the construction of a project funded in part with public funds, or a project to be dedicated to the public upon completion, or
 - (4) That the PROW can be better or more efficiently utilized by the relocation of the Facility(s).
- M. **Maintenance of Facilities.** Users shall monitor, maintain, and repair their Facilities in the PROW to assure that they function in a safe manner and do not create a risk to persons or property. To allow adequate public notification, Users shall notify the Town Administrator at least forty-eight (48) hours in advance of maintenance and repair work that may disrupt or impede the use of the PROW or its use, including the nature and scope of the work and the estimated duration of the disruption or impedance.
- N. **Removal of Facilities in the PROW.** Facilities placed in the PROW without Authorization and all required currently valid permits, and Facilities for which a License or Franchise has expired, shall be removed upon order of the Town. In addition, all abandoned Facilities, or Facilities that do not function as intended for ninety (90) consecutive calendar days, shall be removed by their owner. If Facilities that are required to be removed are not removed within fourteen (14) calendar days of notice by the Town, the Town may remove them or have them removed, with the cost of removal to be borne by the holder of the Authorization or owner of the Facility(s).
- O. **Third party use.** Authorized and properly permitted Users shall allow other authorized Users of the PROW to utilize available space in or on the User's Facilities upon reasonable terms and charges or as otherwise proscribed by the State or federal government. For private investor-owned Facilities only, charges calculated in accordance with section 224 of the Communications Act of 1934, as amended, 47 USC 224 shall constitute reasonable charges for pole attachments.
- P. **Certificate of Completion.** An Application for the Modification of a Facility, for attachments to a pole or other support structure, or to place a ground-mounted equipment enclosure(s), shall contain a copy of the COC issued for the last previous work at that location or on that Facility that required a final inspection and the Issuance of a COC. Such an Application will not be deemed Complete without such previously issued COC.
- Q. **Failure to apply for and be granted an Authorization and/or to obtain a Certificate of Completion.** Failure to apply for and be granted an Authorization and/or a COC, each as required under this Ordinance, shall result in the appropriate party being required, as appropriate, to i) apply for and be issued an Authorization and/or ii) obtain a COC prior to any further work being performed at the location or Facility.
- R. **Rubber Stamping Prohibited.** As no two locations or Facilities are identical and many are not even substantially the same, it shall be impermissible for an Application for an Authorization issued under this ordinance to be Rubber Stamped by any Department of the Town, and each Facility and location, whether applied for individually, or as part of a consolidated application pursuant to subsection 9(i)(2) of this Ordinance, shall be individually reviewed and analyzed in a meaningful manner so as to identify any issues or matters of concern and for compliance with all applicable laws, rules, regulations, ordinances, codes and accepted practices.

Sec. 9. - Exemptions from requirements.

The Town Administrator or the Town may exempt the Town and its contractors and the Maryland Department of Transportation (MddOT) from particular requirements in Sections 2 through 5 of this Ordinance when substantial compliance has been assured through the Town's contracting system or, in the case of MddOT, where the need for state infrastructure on Town roads, or a joint undertaking by the Town and MddOT, or the use of state controlled areas of the PROW makes the application of such requirements unreasonable.

Sec. 10. - Franchises and Licenses.

- A. *Users or Occupants in the PROW subject to a Franchise.* In order to use, place or maintain Facilities in the PROW, all persons that operate utilities, quasi-utilities, Telecommunications Facilities or provide services using the PROW that the Town may legally Franchise or License, shall apply for a Franchise or License from the Town. Services for which a Franchise or License shall be required include, but are not necessarily limited to telephone, Telecommunications irrespective of the medium or technology used, electrical power, water distribution, wastewater collection, sewage collection, gas distribution or transportation, trash and solid waste collection and/or disposal, off-street parking Facilities, and storm water management and drainage Facilities.
- B. *Performance guarantee.* All new Users after the effective date of this Ordinance shall provide the Town with a performance bond or other performance guarantee satisfactory to the Town Administrator, the Town attorney and/or the Town Risk Manager.
- C. All Users, Licensees and Franchisees shall obtain all required permits prior to performing work in the PROW.
- D. *Franchises or Licenses.* After the effective date of this Ordinance, if allowed or required by Town or State law or regulation, a proposed new User applying after the effective date of this Ordinance shall apply for and be issued a Franchise or License, as appropriate, prior to the placement of any equipment or structure in the PROW. The Director of Public Works or the Director's designee, shall determine, in his/her discretion, the necessity of a Franchise or License and the type of Franchise or License, taking into consideration the length of time the Facilities will or are expected to be in the PROW, the potential impact on the PROW, and the Town's prior practice. Facilities for which a Franchise or License shall be required include monument signs, monument mailboxes, coaxial and fiber optic cable, non-Franchised Telecommunications equipment irrespective of the medium or technology used, irrigation systems, specialty street signs, canopies, specialty pavement structures, and other semi-permanent or permanent structures or features in the PROW.
 - (1) *Monument signs and mailboxes.* A License shall be required for any monument sign or private mailbox..
 - (2) *Telecommunications Facilities and service providers.* After the effective date of this Ordinance, new Telecommunications Users must obtain a PROW use and occupancy agreement, Franchise or License before constructing or adding equipment that is subject to the Telecommunications Act of 1996 (47 U.S.C. as amended), as well as providers of retail or wholesale Telecommunications services using third party-owned Facilities located in the PROW. The Town shall be responsible for granting a Franchise or License

for Users proposing to construct and maintain Telecommunications Facilities within the PROW.

- (3) *License or Franchise for other Facilities.* The Town Administrator may grant a License or Franchise to construct and maintain other Facilities not included in subsection (D)(1) and (2) of this subsection.

E. *Contents of Franchises and Licenses.* Licenses and Franchises shall, at a minimum, contain the following provisions:

- (1) The identity and legal status of the User in the State;
- (2) The name and contact information of the officer, agent, or employee of the User responsible for communications with the Town, which shall be updated as the information changes;
- (3) A general description of existing and proposed Facilities and the specific locations and portions of the PROW to be utilized for such Facilities, with additional specifics as may be required by the Town Administrator;
- (4) A description of the Facility(s) proposed to be located in the PROW, including manufacturer's cut sheets for any active electronic device(s) and a to-scale photo of the location prior to construction and a photo simulation of the location showing the Facility after construction from four (4) directions, each with ninety degrees (90°) azimuth separations;
- (5) A description of the services to be offered within the Town, if any, and identification on a street map of the Town of the specific parts of the Town or properties within the Town where such services will be available, which description and map shall be updated when the service area(s) change;
- (6) A description of the services or Facilities to be offered to the Town itself, or to other public or governmental institutions within the Town, if any such services are to be offered;
- (7) Acknowledgment that the License or Franchise does not limit the Town's police power and that the Town may enact additional Ordinances, standards, and requirements applicable to Users;
- (8) Acknowledgment that the User may be required, at User's sole cost and expense, to obtain certain permits and approvals from the Town in addition to the License or Franchise;
- (9) Acknowledgment that the User is responsible for all damage caused by its employees, agents and contractors;
- (10) A commitment to pay for all damages that arise in connection with the User's acts or omissions in the PROW;
- (11) A commitment to defend and indemnify the Town for all claims and liabilities that arise in connection with the User's acts or inappropriate or impermissible lack of action in the PROW;

- (12) A description, including the amount, of bonds or performance guarantees and insurance that are required;
 - (13) The proposed length of term of the Franchise or License;
 - (14) An acknowledgment that transfer or assignment of an Authorization, License, or Franchise requires approval of the Town, such approval not to be unreasonably withheld;
 - (15) The amount of compensation paid to the Town for the use of the PROW and a schedule of payment of such;
 - (16) The total fully-allocated capital cost of the project.
- F. *Assignment.* Unless an Authorization, Franchise or License prohibits assignment to a different party, notice of the assignment shall be given to the Town Administrator not fewer than 30 days prior to the effective date of the assignment, with ownership and contact information updated to reflect the assignee's ownership and contact information.
- G. *Information available to the Town.* All Users, Licensees and Franchisees shall provide the Town within ten (10) calendar days of a request i) all books, data, records, maps, plans, GIS data files, billings, payments, and submissions to the State relating to the User's Facilities and their function, location, income, history, maintenance, and repair, and ii) filings with the State Public Service Commission and the Federal Communications Commission. The documents shall be provided within a reasonable period of time after the filing date, such date not to exceed 30 days. The Town may examine all such information at no cost. If information is copied for the Town, the costs of copying, if any, shall be limited to the actual charges of a commercial copying Facility selected by the Town.
- H. *Declaration of forfeiture.* The Town may declare the forfeiture of an Authorization, permit, License or Franchise, and all of the rights arising thereunder, in the event the holder continues not to comply with any material provision(s) of its Authorization, permit, License or Franchise, or is in substantial violation of this Ordinance or other standards adopted by the Town after due and proper notice and reasonable opportunity to cure or remedy. The Town shall give the holder at least thirty (30) calendar days' written notice of its intent to declare a forfeiture, which notice shall include a description of the non-compliant matter and the specific citation(s) at issue. The User shall then have thirty (30) days from receipt of the Town's notice to cure the non-compliance or to make verifiable substantial progress toward such cure, as determined in the reasonable discretion of the Town.

Section 11. Applications for Support Structures/Poles, Equipment and Equipment Housings and Modifications of Facilities located in the PROW:

- A. *Application Required:* An Application must be filed with the Town Administrator for any work other than normal maintenance on any pole or other support structure, including modification, change or replacement of equipment that would be different in size, weight or appearance than the existing equipment.
- B. An Application to Modify or replace a Facility shall contain a copy of the last Certificate of Completion issued for that Facility.

- C. ***False or Misleading Statements.*** During the application process, or in an application, an Applicant may not make statement(s) verbally or in writing that is intended to be relied upon by the Town and is fraudulent, misleading or that causes or are intended to cause a reasonable probability of confusion or misunderstanding as to the legal rights, obligations, or options of the Town, nor fail to inform the Town of a relevant fact material to the application that is known or should be known by the Applicant, the omission of which is deceptive or misleading .
- D. ***Urgency.*** An Applicant shall not misrepresent the urgency of the work represented in an Application, including any asserted deadline by which action by the Town on the Application is needed.
- E. ***Processing Urgent Requests.*** The Town shall attempt to process urgent requests sooner than the required maximum time allowed by State or federal law. Notwithstanding the preceding, due to the effects of having to re-allocate human resources to accommodate such urgent requests, an Applicant shall not misrepresent the urgency of the situation to have a Facility(s) permitted or authorized. It shall be a condition of all Authorizations for an application requesting urgent treatment that the work shall be completed within ninety (90) calendar days of the issuance of the Authorization or pay a penalty of \$100 per day per Facility until the final inspection is requested, except for force majeure situations and situations not reasonably within the control of the Applicant.
- F. ***Warehousing of Authorizations and permit(s) not allowed.*** Warehousing of an Authorization shall never be permitted. To prevent Warehousing of Authorizations and/or permit(s) for new structures in the severely limited and scarce space of the PROW and on existing poles, thereby preventing another person or entity from using a given location(s) and space because the proposed structure at the location was not built expeditiously, an application shall contain a proposed date for the completion of the construction or Modification of any structure, including the placement of equipment attached to or associated with the structure. The completion date shall not be more than one-hundred-eighty (180) days after the issuance of a building permit to occupy a given location and space.
- G. ***Site Visit:*** Prior to the submittal of an application and following payment of any required fee(s) or anticipatory deposits , a site visit to each Facility proposed to be Modified or to the proposed location of a new Facility, shall be conducted to determine i) the physical condition of the Facility or proposed location; and ii) to identify issues of concern, non-compliance with applicable laws, rules and regulations, including but not limited to any safety-related issues or concerns and other matters contained in this Ordinance.
- H. ***Number of Facilities Applied for by a given person or entity:*** Due to limited staff resources, to prevent forced de facto pro-forma or rubber-stamping approval of an application without meaningful review for compliance with applicable federal, State and local law and regulations, and to prevent inadvertent non-compliance by the Town with any federal or state-imposed time requirements for reviewing an application, no person or entity may make application for more than ten (10) Facilities or locations under this Ordinance within any thirty (30) consecutive calendar day period.

- I. **Facilitating Applications and Mitigating Applicant Costs:**
- (1) To facilitate the preparation and submittal of an application in compliance with this Ordinance, and thereby expedite the review and permitting of an application, a pre-application meeting shall be held, the Town's costs for such being paid for by the Applicant prior to the meeting.
 - (2) To facilitate the application process and to mitigate application-related costs for Applicants, depending upon the scope of the proposed work and its impact both visual and physical as determined by the Town Administrator, applications not involving new support structures may be submitted in groups of up to three (3) Facilities in a single consolidated application and be subject to only one (1) application fee. Notwithstanding this, no Application for a new or replacement pole or other support structure shall contain more than a single location or Facility.
- J. **No Unidentified Facilities:** No Authorization shall be granted for new support structures, new equipment or a new Facility that is not expressly and individually identified at the time the application is filed, including the specific location and design characteristics of each Facility.
- K. **No Taxpayer Subsidization:** Historic, current and anticipated Subscriber rates for services provided using the PROW are assumed to reflect permitting costs, unless verifiable clear and convincing evidence to the contrary is provided. Therefore, Town funds shall not directly or indirectly be used subsidize an Applicant's reasonable application-related review and permitting costs.
- L. **Application Fee:** To prevent taxpayer subsidization of application-related costs, an Application Fee shall be required of all Applications involving i) a new or replacement pole(s) or support structure(s); or ii) any modification of a Facility; or iii) any change of existing equipment attached to an existing pole(s) or support structure(s) that is visually discernable, changes the appearance of the Facility, changes the structural loading on the pole or support structure, or involves verification of compliance with an aspect of the National Electrical Safety Code (NESC), the National Electrical Code (NEC) or TIA ANSI 222 not previously applicable to that Facility. The amount of the appropriate Application Fee shall be as set forth in the Town's Schedule of Fees.
- M. **Payment for Legal and/or Expert Assistance:** To prevent taxpayer subsidization of application-related costs as required by this Ordinance and determined to be appropriate and necessary by the Town Administrator, Applicants may be required to place on deposit with the Town an amount estimated to be sufficient to pay for reasonable legal and/or other expert assistance costs of the Town attributable to the Application. The minimum amount(s) required shall be as set forth in the Town's Schedule of Fees.
- N. **Deposit Required Prior to Work on Application.** An Applicant must deposit the estimated cost of the Town's legal or other expert assistance with the Town prior to any work being done related to an application or an anticipated or intended application. Notwithstanding the preceding,

inquiries totaling up to one (1) hour of time may be made prior to the required deposit being in place at no cost to the Applicant.

- O. *Return of Unexpended Amount of Deposit.* Any unexpended amount submitted in compliance with the preceding §(M) of this Section remaining after the issuance of a Certificate of Completion shall be promptly returned to the Applicant upon written request.
- P. *Street opening, street cutting, curb and sidewalk cutting Fee:* Any person or entity proposing to cut or break the integrity of the surface of a paved street, sidewalk, pedestrian or bicycle way, or who proposes to cut any curb shall.
- 1) pay to the Town a fee(s) as set forth in the Town's schedule of fees prior to the issuance of any permit(s); and
 - 2) obtain a permit for the proposed type of work.

Section 12. New and Replacement Poles within Rights-of-Ways – Required Design Characteristics.

- A. Required Design Characteristics. Pursuant to the Town's Right-of-Way regulations, the following shall govern new poles and other support structures in the Rights-of-Way.
- a. Wireless installations shall be consistent throughout the Town limits and the extraterritorial jurisdiction (ETJ);
 - b. Wireless installations shall only be inert, non-conductive poles or structures;
 - c. All antennas shall not be easily recognizable as an antenna by an average person from 250 feet away;
 - d. Wireless installations shall utilize a "concealed" design, including all cabling being inside a hollow pole;
 - e. All radios, network equipment and batteries will be enclosed in a pedestal cabinet near the pole, or in a pole-mounted cabinet or under a pole-mounted shroud or other location deemed appropriate under the facts and circumstance that is not technologically impracticable;
 - f. Cabinets, if used, should be consistent in size and no larger than standard DOT streetlight signal cabinets;
 - g. Unless proven unfeasible by clear and convincing evidence, in lieu of installing new poles, any wireless installation in the PROW shall replace a pre-existing distribution pole, secondary pole or streetlight;
 - h. Wireless installations shall be on poles that meet or exceed current NESC standards and wind and ice loading requirements of ANSI 222 Version G;
 - i. ; and
 - j. To avoid unsightly rust and corrosion, any new or replacement pole installed shall not be made of metal or concrete.

Deleted: ~~<#>New and replacement installations of a given type shall be consistent throughout the Town limits, and any extraterritorial jurisdiction (ETJ) where this ordinance is of effect;¶~~
~~<#>¶~~
~~<#>All new or replacement poles shall be of non-wooden, non-conductive and non-corrodable materials;~~

- B. Antennas attached to new poles or structures in the PROW shall be of a type that disguises the fact that they are antennas, unless for reasons proven by verifiable clear and convincing evidence

that to do so is technologically impracticable, in which case a Best Case type of camouflaging shall be used;

- C. Where not technologically or Commercially Impracticable, equipment attached to poles in the PROW shall utilize a "concealed" design, including all cabling and any antennas being placed inside the pole or support structure;
- D. So as to avoid an Applicant having to bear the cost of doing an Environmental Assessment and report as otherwise required by FCC Rule 14-153, any ground-mounted equipment enclosures shall be i) no larger than is technologically Necessary, but in no case larger than seventeen (17) cubic feet in volume for all users of the equipment shelter cumulatively; ii) of a color determined by the Town Administrator to be harmonious with the particular area; iii) located as near the pole as applicable safety codes allow; and iv) screened with evergreen shrubbery of sufficient size to hide the equipment shelter and, v) if the PROW is landscaped with decorative vegetation, of the same species, color, size and shape as is used to landscape the PROW in the neighborhood of the pole or enclosure;
- E. Pole-mounted cabinets shall be as small as possible, but no larger than is technologically Necessary and reasonably possible, and shall be shielded from view in both directions parallel to the PROW by decorative, non-commercial banners or under a pole-mounted shroud;
- F. Unless proven to be physically unfeasible or Commercially Impracticable by verifiable clear and convincing evidence, any person proposing a new attachment to an existing wooden primary electrical distribution pole, wooden secondary electrical distribution pole or wooden streetlight in the PROW shall, instead, replace the existing pole with a pole as described in this subsection;
- G. All new poles shall meet or exceed current NESC standards and wind and ice loading requirements of the latest version of ANSI 222 Version G;
- H. Any new poles installed shall be "green", not made of wood, and not leach any volatile organic compounds or toxic materials into the ground; and
- I. To avoid unsightly rust and corrosion, any new pole installed shall not be made of metal, concrete or cement.

Section 13. Mailbox Obstructions

The Town shall not be responsible for the repair or replacement of any mailbox placed within any PROW. However, to alleviate the possibility of damage due to snow removal and vehicular traffic, the following guidelines shall be complied with:

- A. Mailboxes shall be erected so that the front of a curbside box is set back at least 12 inches from the face of the concrete curb and the structure supporting the box must not encroach on this setback distance.

- B. The bottom of a mailbox must be between 42 inches and 48 inches above the finished road surface.
- C. Mailboxes and the standards or posts upon which they are erected must be designed and installed to withstand the impact of snow hurled from a passing snowplow.
- D. Mailboxes shall not overhang a public sidewalk or pedestrian way.

Section 14. Relief

- A. Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance shall address and identify such at the Pre-Application meeting and the relief or exemption shall be contained in the submitted Application. Requested relief may be temporary or permanent, partial or complete in nature.
- B. The burden of justifying the Need or appropriateness of the requested relief, waiver or exemption shall be solely on the Applicant.
- C. The Applicant shall bear all costs of the Town in considering the request for the relief, waiver or exemption.
- D. Relief, waiver or exemption shall be based on the Applicant’s demonstrated Need or appropriateness as evidenced by verifiable clear and convincing evidence satisfactory to the Town Administrator that, if granted, the relief, waiver or exemption will have no significant negative effect on the health, safety or welfare of the Town, its residents and other Users of the PROW, the Town Administrator must find the following:
 - (1) The proposed special use conforms to the character of the neighborhood, considering the location, type and height of existing buildings or structures and the type and extent of vegetation on the site.
 - (2) The proposed use will not cause undue traffic congestion or create a traffic, pedestrian or bicycle hazard.
 - (3) Adequate utilities are available.
 - (4) The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.
 - (5) The proposed Facility and use shall not impede the orderly development and improvement of surrounding property for uses permitted within the applicable zoning district.
 - (6) The new structure or modification will not reasonably be expected to substantially diminish the value of adjoining or abutting property.
 - (7) The proposed use is consistent with the officially adopted plans and policies of the Town.

Section 15. Termination

In addition to all other rights and powers reserved by the Town, the Town reserves the right to terminate a permit and all rights and privileges of a permit holder for any of the following reasons:

- A. A permit holder fails or refuses, after 30 days' prior written notice, to comply with any of the material provisions of the permit or this Ordinance.
- B. A permit holder becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.
- C. All or part of a permit holder's facilities are sold under an instrument to secure a debt and are not redeemed by the permit holder within 90 days from such sale.
- D. A permit holder attempts to or does practice any fraud or deceit in its conduct or relations with the Town under the permit.
- E. The Town condemns all of the property of a permit holder within the Town by the lawful exercise of eminent domain.
- F. The permit holder abandons its facilities and does not use them for the intended purpose for which Authorization was granted for ninety (90) consecutive calendar days.

Section 16. Severability

- A. If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance, 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 Ordinance, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.
- B. If any word, phrase, sentence, part, section, subsection, or other portion of any Franchise or License issued pursuant to this Ordinance, 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 the Franchise or License, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

Town of Middletown - Energy Reduction Plan Outline

I. LETTER FROM THE LOCAL GOVERNMENT VERIFYING ADOPTION OF THE ERP

Attach here or in the appendix.

II. EXECUTIVE SUMMARY

- **Narrative Summary of the Town:**

The Town of Middletown, a 2016 Sustainable Maryland Certified community, is largely a residential community within the agriculturally dominated Middletown Valley in Frederick County. Middletown was founded in 1767, and encompasses a land area of 1,142 acres. The Town is home to approximately 4300 residents, and is part of the Heart of the Civil War Heritage Area. Middletown is committed to the sustainability of the community, and concentrated on decreasing electricity consumption for the long-run as this outline indicates.

- **Summary of Municipal Energy Uses:**

The Town has 21 accounts with Potomac Edison and five of those accounts have multiple structures. Ten of the accounts are included in net metering with the town's solar array. Meter energy consumption of the 21 meters is summarized within the energy baseline summary below with 2015 being used for the baseline.

- **Summary of Energy Use Baseline and Plans for Reductions**

Summary of Buildings Reduction Goals

Total Electricity in Baseline Year (kWh)	95,626
Gross Square Feet (SQFT)	18,680
Electricity Intensity Baseline (kWh/sqft per year)	5.119
15 % Electricity Intensity Baseline (kWh/sqft per year)	0.768
Reductions 15 % (kWh – assuming building sqft constant)	14,346

Summary of Total Reduction Goals - Including Waste Water Treatment Plants

Total Electricity in Baseline Year (kWh)	1,368,421
Gross Square Feet (SQFT)	40,140
Electricity Intensity Baseline (kWh/sqft per year)	34.091
15 % Electricity Intensity Baseline (kWh/sqft per year)	5.113
Reductions 15 % (kWh – assuming building sqft constant)	205,263

III. ENERGY USE BASELINE INVENTORY

- Identification of the Baseline Year:

Baseline Year = FY2015

- Local Government Energy Consumption for the Baseline Year

Building Type and Address	Building Size	Electricity - Conventional (purchased)	Electricity - Renewable Energy (produced on site)	Electricity Total	Electricity Consumption Intensity
	Square Feet	kWh	kWh	kWh	Total kWh/SF
Town Office	12,500	73000		73000	5.84
Food Bank -301 W. Main	3,700	18732		18732	5.06
Reservoir & Wells	710	19067		19067	26.85
East WWTP -7320 Holter	7,400	523584		523584	70.75
Franklin St.-Mem.Park flags	0	1		1	0
West WWTP	1,350	325914		325914	241.42
Brookridge S. WTP & PS	0	46264		46264	0
Foxfield PS	250	23720		23720	94.88
Water Tank	2,300	12524		12524	5.45
Memorial Park Bathrooms	3,000	2241		2241	0.75
Franklin Street ballfield	0	0		0	0
Original Spring	0	387		387	0
Remsberg Park	1,500	0		0	0
Signal Beacon – Franklin St.	0	4174		4174	0
Cone Branch Park	180	1653		1653	9.18
Booster Station – 715 Main	6,610	126624		126624	19.16
Cone Branch PS	640	95897		95897	149.84
Subtotal for Buildings	40,140	1,273,782	0	1,273,782	31.73
Well #'s 1 & 2 – Hollow Rd	0	14558		14558	
Wells 6-13 – Hollow Road	0	58043		58043	
Well #14 – 200 Mina Dr.	0	21829		21829	
Well #17 – 104 Smithfield	0	209		209	
Total	40,140	94,639	0	94,639	

IV. ELECTRICITY REDUCTION PLAN

- **Narrative Summary**

- **Identify Areas of Least Efficiency/Greatest Waste**

According to the baseline, of the buildings in Middletown, the West Wastewater Treatment Plant is the least efficient building with an energy intensity of 241.2 kwh/sqft. From the overall baseline, the wastewater treatment plants and the pump stations are the largest energy wasters.

- **Overview of Goals for Years 1-3**

The town of Middletown is looking to install motion-sensor switches in all appropriate rooms and hallways (17) of the Municipal Center. Currently, only the three bathrooms have motion sensors. The estimate for this work is \$4,750.

The Town also plans to convert and replace the central heating boiler in the Municipal Center building from fuel oil to natural gas. This project is scheduled for 2018.

As a benefit to the community and the motoring public along our Main Street, the Town intends to install two electric vehicle charging stations in the parking lot of the Municipal Center.

- **Overview of Goals for Years 4-5**

Once the Town has purchased the town streetlights from Potomac Edison, the Town will implement a LED replacement program. The Town will also explore options to upgrade pumps and motors at the wastewater treatment plants.

- **Getting to a 15% Electricity Use Reduction Within the 5 Year Period of the Baseline Year**

- Because of the energy efficiency programs the Town has implemented over the last few years, we have substantially achieved the 15% energy efficiency goal. (?????) Aside from insulation upgrades, sealing ductwork, and new heating system in the town-owned Food Bank building, the overhead office lights in the Municipal Center were upgraded to LED's. The annual fuel oil consumption reduction at the Food Bank building is 53 gallons, and the electricity consumption reduction for the Municipal Center is 7.41 Mwh. MEA staff will confirm this as we move forward with the grant.
 - Middletown expects to install motion sensors in the Municipal Center to reduce electricity consumption in that building, and will implement a LED replacement program for the streetlights in the coming years.

- **Program Management Plan for Implementation, Monitoring, and Oversight**

Middletown Staff:

Chief Administrative Officer- Drew Bowen

Streets/Electric-JR Hawkins

Water-Bruce Carbaugh

WWTP – Bruce Carbaugh

o Summary of Energy Audit(s) or Other Sources for Projected Energy Savings

Project/ Type	Status	Projected Annual Electricity Savings (kWh)	Projected Annual Cost Savings (\$)	Total Installed Cost (\$)	Utility Incentives (\$)	Net Cost (\$)	Funding Source(s) for Net Costs	Source for Projected Savings
<i>For Town Office and/or Food Bank</i>								
HVAC upgrades	TBD	TBD	TBD	TBD	TBD		Misc	TBD
Lighting upgrades	TBD	TBD	TBD	TBD	TBD		Misc	TBD
Insulation upgrades	TBD	TBD	TBD	TBD	TBD		Misc	TBD
<i>For WWTP</i>								
Pump and motor upgrades	TBD	TBD	TBD	TBD	TBD		Misc	TBD
TOTAL								

o Electricity Conservation Measures, demonstrate how your projects reach your goal

Total Electricity (kWh)	1,368,421
15 % (kWh – assuming building sqft constant)	205,263
Total Project Savings (kWh)	TBD
Remaining Reductions (kWh)	

• Summary of Long-Term Energy Reduction Goals –Beyond 5 years

The Town of Middletown will rely on future energy audits to direct its efforts for upgrading the energy efficiency of its buildings and wastewater infrastructure. Funding will rely on a mixture of capital improvements, grants, and incentives.

Regarding the renewable energy objective, staff envisions meeting this objective in the following manner. We propose soliciting bids to enter into a Power Purchase Agreement (PPA) with a solar provider. A PPA would basically contract with a solar provider to construct and operate a solar project on Town property. There would be no cost to the Town pertaining to this PPA. The Town would benefit from this arrangement by paying a reduced rate on the electricity produced by the solar project that is constructed.

The baseline that would be used to determine the renewable energy goal would be _____ kWh. Twenty percent of this is _____ kWh, which becomes the 2022 goal. The Town currently produces _____ kWh with the solar project that we currently have constructed. Therefore subtracting our current production of _____ kWh from the _____ kWh goal means this project will need to generate _____ kwh to meet the 20% objective established by this grant.

Staff foresees the Town-owned Municipal Center property located at 31 West Main Street as an appropriate location for this solar project.

APPENDIX

- References: websites, documents, and outside tools
- Adoption Letter
- Baseline Data
- Calculations

Adoption

The Burgess and Commissioners adopted Resolution #17-03 on September 11, 2017 declaring the Town of Middletown's intent to take a leadership role in reducing electricity consumption and generating renewable energy, partner with the Maryland Energy Administration (MEA), and enroll as a Maryland Smart Energy Community (Appendix A).

Resolution 17-04 includes an energy policy to reduce conventional centralized electricity generation serving Town buildings by meeting 20 percent of those buildings' electricity demand with distributed, renewable energy by 2022. It also states that the Town will develop and initiate a Renewable Energy Action Plan to map out how the community will reach its Renewable Energy goal.

Resolution 17-05 includes an energy policy to establish the goal of reducing per-square-foot electricity consumption in Town buildings by 15 percent relative to a baseline within five years of the baseline year. It also states that the Town will establish an Energy Reduction Action Plan to outline the process and include a timetable of execution by which the Town will accomplish designated tasks in order to reach its goal. The plan will include the electricity baseline and identification of potential cost-effective energy projects and practices to meet the energy efficiency and renewable energy goals.

The Town of Middletown will make a good faith effort to implement, where practicable, energy efficiency and renewable energy projects and practices to meet the MSEC policy goals and will use the reporting required by MEA to track the results of this plan, which in turn will inform future programming and funding. Nevertheless, the ability of the Town to meet these ambitious goals will depend on the amount of grant funding available from MEA each fiscal year; how the Town prioritizes capital projects and other programs that compete for limited Town funds in each fiscal year; and the feasibility and success of proposed renewable energy systems and energy efficiency projects outlined in the Energy Action Plan.

Approval:

John D. Miller, Burgess

Date

Attest:

Andrew J. Bowen, Town Administrator

Date

ANNEXATION AGREEMENT

This Annexation Agreement is made this ____ day of _____, 201____, by and among **MEMAR CORP.**, a Maryland corporation, [formerly known as "Admar Construction, Inc." which changed its name to "Memar Corp." by Articles of Amendment dated March 10, 2006 filed with the Maryland State Department of Assessments and Taxation on March 15, 2006] (the "Owner"), and the **BURGESS AND COMMISSIONERS OF MIDDLETOWN**, a body politic and corporate of the State of Maryland (the "Town").

Deleted: 2017.

RECITALS

WHEREAS, Owner is the owner of a parcel of unimproved real estate consisting of 93.9380 acres of land, more or less, which it acquired in its former name of "Admar Construction, Inc." by deed dated September 21, 2001 recorded in the Land Records of Frederick County, Maryland at Liber 2956 folio 1159. Said unimproved real estate (hereinafter referred to as "the Subject Property") is located in Frederick County, Maryland and adjoins and is contiguous to the corporate boundaries of the Town of Middletown; and

WHEREAS, Owner has submitted a Petition for Annexation to the Town requesting that the Subject Property be annexed into the corporate limits of the Town of Middletown and be made a part thereof; and

WHEREAS, the Town and Owner desire to provide for the orderly development of the Subject Property consistent with the Town's future plans and in an aesthetically pleasing manner, and the Town is not willing to support or approve the requested annexation of the Subject Property unless certain conditions regarding its future development are made a part thereof; and

WHEREAS, the parties have reached an agreement concerning the terms and conditions of the annexation with respect to such development issues such as provision of sewer and water,

open spaces, rights-of-way for future streets, zoning, implementation of town taxes, payment for offsite utility extensions, use of Town water system, and payment of expenses with respect to the annexation and development process.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, the Town and Owner, for themselves and for their successors and assigns hereby agree as follows:

1. **RECITALS.** The recitals set forth above are incorporated herein by reference.
2. **THE PROPERTY:** The "Subject Property", as referred to herein and in the Owners' Annexation Petition, is defined as that real property consisting of 93.9380 acres of land, more or less, which was conveyed to Owner in its prior name of "Admar Construction, Inc." by Deed dated September 21, 2001 recorded in the Land Records of Frederick County, Maryland at Liber 2956, folio 1159. A metes and bounds description of the Subject Property prepared by Catocin Mountain Surveys is attached to this Annexation Agreement as Exhibit "A". The Subject Property is further shown on a plat entitled "Annexation Plat for Lands of Admar Construction, Inc." prepared by Catocin Mountain Surveys, Inc. dated May 2003 which plat is attached to this Annexation Agreement as "Exhibit B". Both Exhibit "A" and Exhibit "B" are incorporated by reference herein.

3. **EFFECTIVENES CONTINGENCY.** This Annexation Agreement is expressly contingent on the enactment of a Resolution (hereinafter "the Annexation Resolution") by the Town annexing the Subject Property into the Town of Middletown and upon the Annexation Resolution becoming effective either after the passage of the statutorily-required time period or, if the Annexation Resolution is petitioned to Referendum, then upon approval of the Annexation

Resolution after the Referendum. In the event that the Annexation Resolution is not enacted or, if enacted, fails to become final and effective, then this Annexation Agreement shall be deemed void *ab initio*, and shall be of no force and effect as if it had never been executed.

4. **RESERVATION OF LEGISLATIVE AUTHORITY.** The execution of this Annexation Agreement neither implies nor guarantees either legislative or voter approval or passage of the Annexation Resolution. This Annexation Agreement shall not be deemed to inhibit or affect the ability of the Town or its officials from properly performing their legislative functions, including but not limited to, the rejection of and decision to deny approval of the Annexation Resolution.

5. **GENERAL CONCEPT PLAN.** Owner has undertaken preliminary efforts to establish a general concept plan for the eventual development of the Subject Property. Attached hereto as Exhibit "C" is a schematic drawing of the general concept plan which identifies the proposed development as "Foxfield Section 6". The parties acknowledge and recognize that this is a concept plan only, that it is only to be used as a general reference in this Annexation Agreement, and that the final plans will be subject to further review and approvals in accordance with the Town's subdivision regulations and other ordinances, laws, resolutions and rules.

6. **ZONING.** In its Petition, Owner seeks to have the Subject Property classified for zoning purposes in the Town's R-20 (Residential) District under Title 17 of the Middletown Municipal Code. The Town and Owner recognize, however, that the R-20 zoning classification would allow development of the Subject Property for land uses substantially different than the authorized use and at a substantially higher density than would be allowed under the Frederick County zoning laws and regulations. Because of this inconsistency, *Local Government Article, §4-416(b)*, Annotated Code of Maryland requires that, for 5 years after the effective date of the

Deleted: " "

Annexation Resolution, no development will be allowed on the Subject Property for land uses substantially different than the authorized use, or at a substantially higher density, not exceeding 50%, than could be granted for the Subject Property under the Frederick County zoning laws and regulations. However, pursuant to *Local Government* Article, §4-416(c), the Frederick County Council may waive this restriction and give its express approval to permitting the increased level of development.

The Owner and Town, therefore, agree that, concurrent with the adoption of an Annexation Resolution approving the annexation of the Subject Property, the Town shall classify the Subject Property in the Town's R-20 (Residential) District under Title 17 of the Middletown Municipal Code; provided, however, that if the Frederick County Council fails or declines to give its express approval to waive the inconsistency restrictions of *Local Government* Article, §4-416(b), then for five (5) years from the effective date of the Annexation Resolution, no development will be allowed on the Subject Property for land uses substantially different than the authorized use, or at a substantially higher density, not exceeding 50%, than could be granted for the Subject Property under the Frederick County zoning laws and regulations.

The Town represents that it will not take a position with the Frederick County Council to either support or not support the waiver of the zoning inconsistency or the County Council's express approval of the new zoning classification.

Deleted: The Town agrees that it will / will not support a request by Owner that the Frederick County Council waive the inconsistency restrictions and expressly approve of the new zoning classification for the Subject Property pursuant to *Local Government* Article, §4-416(c) ¶

7. **TRAFFIC IMPACT STUDY.** After the effective date of the Annexation Resolution annexing the Subject Property into the Town, a traffic impact study of the Subject Property and the proposed development thereon shall be conducted by a qualified transportation engineer. Owner shall provide a general plan, including the concept plan attached as Exhibit [C] for the eventual development of the Subject Property and for the purpose of determining the

Deleted: Prior to

Deleted: scheduling

Deleted: a public hearing on

Deleted: "

level of service on the supporting road networks which will service the development on the Subject Property. The traffic impact study must conclude that the proposed development plan achieves a level of service grade of "C" or better before Owner may proceed further with its development plans.

Deleted: the Town will schedule a public hearing for consideration of the proposed Annexation Resolution.

Town shall select the engineer or engineering firm to conduct the traffic impact study through its usual bidding process. Upon the Town receiving an estimate for the cost of the study from the engineer or engineering firm selected, Owner shall provide funds in the amount of the estimate to the Town which will hold said funds in escrow pending completion of the traffic impact study. The Town will be solely responsible for paying the engineer or engineering firm for the work performed. In the event that further analysis of revised development plans is required in order to establish a level of service grade of "C" or better and which increases the cost of the estimate, Owner shall provide to the Town additional funds to be held in escrow to cover the additional cost estimate.

8. **DENSITY AND OPEN SPACES.** Owner proposes to develop the Subject Property primarily for residential purposes for active adults. A maximum of One Hundred Forty-eight (148) residential units will be permitted on the Subject Property all of which shall be Adult Active units as defined in Section 17.04.030 of the Middletown Municipal Code as may be amended from time to time.

Deleted: |

Deleted: oneeen (114)

Deleted: 1
(1) Eighty (80)

Deleted: and
(2) Thirty-four (14) shall

Deleted: single family homes

These numbers of units are acknowledged by the parties to be maximum numbers, and the eventual number of permitted units may be less as determined to be appropriate by the Town or its reviewing agencies, boards and commissions based upon various development factors such as traffic, water and sewer issues. As part of the development, Owner shall design and construct an Active Adult Community Center for the sole use of the residents of the subdivision which

shall be no less than fifteen hundred (1500) square feet in size, no more than two (2) stories, with at least one interior space or room to hold a maximum of one hundred fifty (150) persons in satisfaction of fire code requirements, a kitchen facility and all appropriate plumbing and lighting fixtures.

Deleted: [redacted]
Deleted: [redacted]
Deleted: [redacted]

The development on the Subject Property shall include Open Space of at least 9.3 acres which will not include those areas which are wetlands, stormwater management facilities, or forest conservation areas. These Open Spaces shall include pathways and walking trails at least _____ feet in width and surfaced in _____.

9. **WATER IMPACT STUDY.** After the effective date of the Annexation

Resolution annexing the Subject Property into the Town, a water hydraulic impact study of the Subject Property and the proposed development thereon shall be conducted by a qualified hydrologist. The purpose of the impact study is to determine the impact that the development of the Subject Property will have on water pressure and fire flow to the Subject Property and to neighboring and adjacent properties. The results of the study must determine and conclude that, upon completion and full occupancy of the development, the units in the development and in all neighboring and adjacent properties serviced by the Town municipal water system will have at least fifty (50) pounds per square inch (psi) of water pressure and that any lesser pressure is not or will not be causally related to the development of the Subject Property. Owner may modify its proposed development plans in order to obtain such result; however, until such time as the water impact study determines that this requirement will be met, Owner may not proceed further with its development plans.

Deleted: Prior to
Deleted: scheduling
Deleted: a public hearing on

Deleted: no public hearing on the proposed Annexation Resolution will be scheduled.

Town shall select an engineering firm to conduct the water impact study by its usual bidding process. Upon the Town receiving an estimate for the cost of the study from an

engineering firm with significant experience in water system modeling, Owner shall provide funds in the amount of the estimate to the Town which will hold said funds in escrow pending completion of the water impact study. The Town will be solely responsible for paying the hydrologist for the work performed. In the event that further analysis is required in order to determine whether the water pressure requirements can be met and which increases the cost of the estimate, Owner shall provide to the Town additional funds to be held in escrow to cover the additional cost estimate.

10. **WATER WELLS.** There are six (6) high-yield production wells located on the Subject Property with the following well tag identification numbers: FR-94-3449, FR-94-3450, FR-94-3451, FR-94-3452, FR-94-5112, and FR-94-5129 (hereinafter referred to as "the Existing Wells"). To the extent not already completed, Owner shall develop the Existing Wells in accordance with applicable County, State and Federal laws and regulations so as to establish and produce a potable high-yield water supply from the Existing Wells. Owner shall apply for and obtain all necessary permits from the Maryland Department of the Environment and any other governmental entity or agency as may be required for such wells. At Owner's expense, the Existing Wells shall be connected to the Town's public water system by appropriate pipes, lines, valves and other typical equipment necessary for such connections. Town shall be entitled to receive all of the water from the Existing Wells for incorporation into the Town's public water supply.

Owner shall subdivide an area of land on which each of the Existing Wells are located of approximately twenty feet by twenty feet (20' x 20') in size and convey such land and the improvements thereon, in fee simple, to the Town. The precise location of the area of land to be conveyed shall be as agreed to by and between the parties. In addition, Owner shall grant to the

Town any easements across the Subject Property that may be necessary for access, ingress and egress to and from the Existing Wells and for construction, installation, maintenance, replacement and removal of water lines and other equipment between the Existing Wells and the water lines of the Town's system. Owner shall execute such written and recordable Deeds of Easement to evidence such easements. Owner shall complete and have available for use such well(s) ~~prior to the installation of utility improvements on the Subject Property.~~ No building permits for development of the Subject Property may be granted until the Existing Wells are operational, connected to the Town's water supply system, and all Deeds of Easement have been fully executed and delivered to the Town.

Deleted: within _____ months of the effective date of the Annexation Resolution

11. **SEWER.** The sanitary sewer disposal systems and lines on the Subject Property shall be connected to the Town's municipal sanitary sewer system. ~~The Subject Property shall be developed using gravity-flow sewer service only, and no sewer pump stations, grinder pumps or similar types of mechanical pumping equipment shall be used in connection with sewer service on the Subject Property except as provided by the Town.~~ Owner shall be solely responsible for obtaining any required easements that may be necessary to connect the sewer lines and system on the Subject Property to the Town's municipal sanitary sewer system.

12. **ROADS.** As shown on the attached Concept Plan (Exhibit "C"), Owner anticipates having a road constructed along the southern portion of the Subject Property to extend from Coblenz Road on the east to the western boundary of the Subject Property. The parties acknowledge that the precise location of this road will be determined as part of the development process; however, regardless of the eventual location of this road, Owner agrees that it will construct a road to Town standards which will traverse the Subject Property and that it will complete the road, including paving, curb and gutter, the entire distance from Coblenz Road

Deleted: " ".

to the western boundary of the Subject Property. The Town anticipates that, in the future, this road will be extended from the western boundary of the Subject Property and across adjacent property to connect with Route 17 to the west. Consequently, the purpose of having the road fully constructed is to establish visibly that a road extends the entire distance to the western boundary and does not terminate at a point of intersection with one or more other roads to be constructed on the Subject Property.

The aforementioned road shall be constructed with a dual entrance at Coblenz Road such that there is one lane of road from which to enter the Subject Property and one lane of road from which to exit the Subject Property, each lane divided by a vegetative median strip of at least twenty (20) feet in width. The dual entrance shall extend from Coblenz Road into the Subject Property a distance of no less than sixty (60) feet.

Deleted: [REDACTED]

Deleted: [REDACTED]

13. **PROPERTY TAXES.** Pursuant to Section 8-209 et seq. of the Tax Property Article of the Annotated Code of Maryland, the Town agrees to assess the Subject Property as agricultural land for all portions of the Subject Property for which site plans have not been submitted.

14. **COST AND EXPENSES OF ANNEXATION.** The parties agree that the costs and expenses of annexation, including the Town's attorney's fees and advertising with respect to the annexation of the Subject Property, shall be the sole cost and expense of the Owner and at no cost to the Town.

15. **AMENDMENT.** This Agreement may be amended only in writing and with the mutual agreement of the Town and the Owner.

16. **ENFORCEMENT.** This Agreement is enforceable by any legal or equitable means available or applicable, including but not limited to, an action for specific performance, injunction, declaratory judgment or other equitable means or by an action for damages.

17. **ENTIRE AGREEMENT.** This Annexation Agreement constitutes the entire agreement between the parties, and no other agreement shall be binding upon the parties unless in writing and signed by the respective parties.

18. **WITHDRAWAL OF ANNEXATION.** Owner reserves the right to withdraw the annexation petition for the Subject Property at any time prior to the effective date of the Annexation Resolution.

19. **BINDING EFFECT.** This Agreement shall bind and inure to the benefit of parties hereto, their respective heirs, personal representatives, successors and assigns. The provisions of this Agreement shall be binding upon any subsequent Owners of the Subject Property and shall run with the land.

WITNESS the hands and seals of the parties hereto by their respective authorized representatives.

ATTEST:

MEMAR, CORP.
a Maryland Corporation
[formerly known as Admar Construction, Inc.]

By: _____ [SEAL]
Farhad Memarsadeghi, President

ATTEST:

**BURGESS AND COMMISSIONERS
OF MIDDLETOWN**
a body politic and corporate of the

State of Maryland

Andrew J. Bowen, Town Administrator

By: _____ [SEAL]
John D. Miller, Burgess

DRAFT

December 13, 2017

Mr. Kevin Krenzler
Milani Construction, LLC
2001 MLK Jr. Ave, SE
Washington DC 20020

RE: Contract No. FR3505184
F.A.P. No. AC-NIIPP-G-225-1 (11) E
US 40 Alternate (Main Street)
From Ivy Hill Drive to Middletown Parkway in
Frederick County
Lane Shift

Mr. Krenzler:

The Maryland Department of Transportation State Highway Administration (MDOT SHA) acknowledges receipt of Milani Construction, LLC's (MC) letter dated September 7, 2017, requesting a lane shift during installation of the Phase 1 & 2 waterline from Station 152+40 to 160+40.

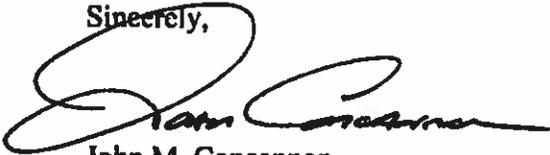
MDOT SHA is approving this request, as detailed in MC's submittal, with the following conditions:

- The length of the lane shifts on both ends need to satisfy the equation $L = W \times S^2 / 60$. For a shift of 8-ft. at 30 MPH, this would equate to a 120-ft. long shift.
- By pushing traffic to the north side of US 40 Alt. parking on that side will be eliminated. This needs to be coordinated with and approved by the Town.
- By pushing traffic to the north side of US 40 Alt. the right-turn from southbound MD 17 to westbound US 40 Alt. becomes tighter and more difficult for trucks. The stop line on the west leg may need to be pulled back farther in order to accommodate right-turning trucks. However, stop lines shall not be positioned more than 180-ft. from the signal indications (currently 150-ft. today).

Milani Construction, LLC
December 13, 2017
Page 2

Further, a written response from the Town of Middletown, agreeing to this lane shift, must be acquired by MC and presented to MDOT SHA. If further information is needed, please contact Eddie Poffenberger MDOT SHA's Area Engineer, at 301-624-8203 or toll free 800-635-5119.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Concannon", written over a large, loopy scribble.

John M. Concannon
District Engineer

cc: Gerald Burgess, Project Engineer, MDOT SHA
Neil Haines, Assistant District Engineer – Construction, MDOT SHA
Eddie Poffenberger, Area Engineer, MDOT SHA



CORPORATE HEADQUARTERS

2001 Martin Luther King Jr. Avenue, S.E. Washington, DC 20020

Phone: 202.610.9856 Fax: 202.610.9857 Email: milaniconstruction@milaniconstruction.net

September 7, 2017

Maryland Department of Transportation
State Highway Administration, District 7 Office
5111 Buckeystown Pike
Frederick, MD 21704

Attn: John Concannon
Acting District Engineer

Re: Contract No.: FR3505184
F. A. P. No.: AC-NHPP-G-225-1(11)E
US 40 Alt, (Main Street) from Ivy Hill Drive to Middletown Parkway, Urban
Reconstruction in Middletown, MD; Frederick County

Milani Project M-146; Letter No. 059

Subject: **MOT Lane Shift Plan**

Dear Mr. Concannon:

In an effort to more effectively and safely install Phase 1 & 2 of the waterline from Sta. 152+40 to 160+40, Milani proposes a lane shift. This lane shift plan will add time to the work shift and reduce the obstruction to traffic. We believe this plan will minimize impacts to businesses in the work area. Once work is complete, lanes will be restored to their existing condition. Applicable line items used to implement this plan include:

<u>Item</u>	<u>Description</u>	<u>Quantity</u>
1020	Temporary Traffic Signs	128 SF
1009	5" White Waterborne Pavement Marking Paint	465 LF
1008	5" Yellow Waterborne Pavement Marking Paint	680 LF
1010	12" White Waterborne Pavement Marking Paint	8 LF
	Removal of Existing Pavement Line Markings	1301 LF

The lane shift will take place in two phases. The attached sketch shows phase 2 as an example. We anticipate the lane shift as a 24-7 operation until the phase work is complete.

Should you have any questions regarding the above mentioned, please do not hesitate to contact the undersigned at 240-338-8439.

Very truly yours,

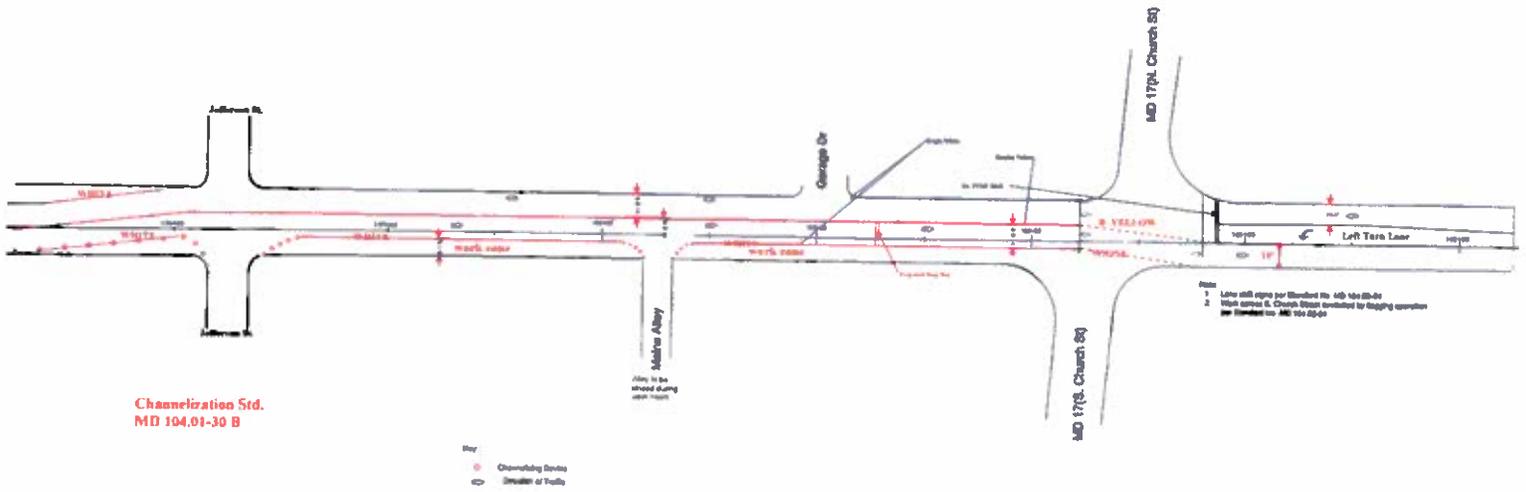
A handwritten signature in cursive script, appearing to read "Kevin Krenzler".

Kevin Krenzler
Project Engineer
MILANI CONSTRUCTION, LLC

cc: Neil Haines (SHA ADE – Construction)
Eddie Poffenberger (SHA Area Engineer)
Gerald Burgess (SHA Project Engineer)

Contract No.: FR3505184
 F. A. P. No.: AC-NHPP-G-225-1(11)E
 Urban Reconstruction on US 40 AIL (Main St.) from
 Ivy Hill Dr. to Middletown Pkwy., Frederick County

MOT LANE SHIFT



TEMPORARY TRAFFIC CONTROL TYPICAL APPLICATION

IMPORTANT:
THIS DRAWING SHALL BE USED IN COMBINATION WITH THE GENERAL NOTES NO 104.00-01 - NO 104.00-10 AND STANDARD DETAILS NO 104.01-01 - NO 104.01-01

NOTES:

REFER TO MD 104.01-27 FOR GUIDANCE ON PAVEMENT MARKINGS THROUGH LANE SHIFTS.

THIS TYPICAL SHALL BE USED FOR ANY LANE SHIFT WHICH SATISFIES EITHER CONDITION 'A' OR 'B':

► **CONDITION 'A':**
LANE SHIFT IS 'ABRUPT' - SHIFT HAS A TAPER LENGTH LESS THAN THE VALUE SPECIFIED IN THE TAPER LENGTH CRITERIA TABLE REFER TO MD 104.01-00

► **CONDITION 'B':**
PREVAILING SPEEDS CANNOT BE MAINTAINED THROUGH THE SHIFT.

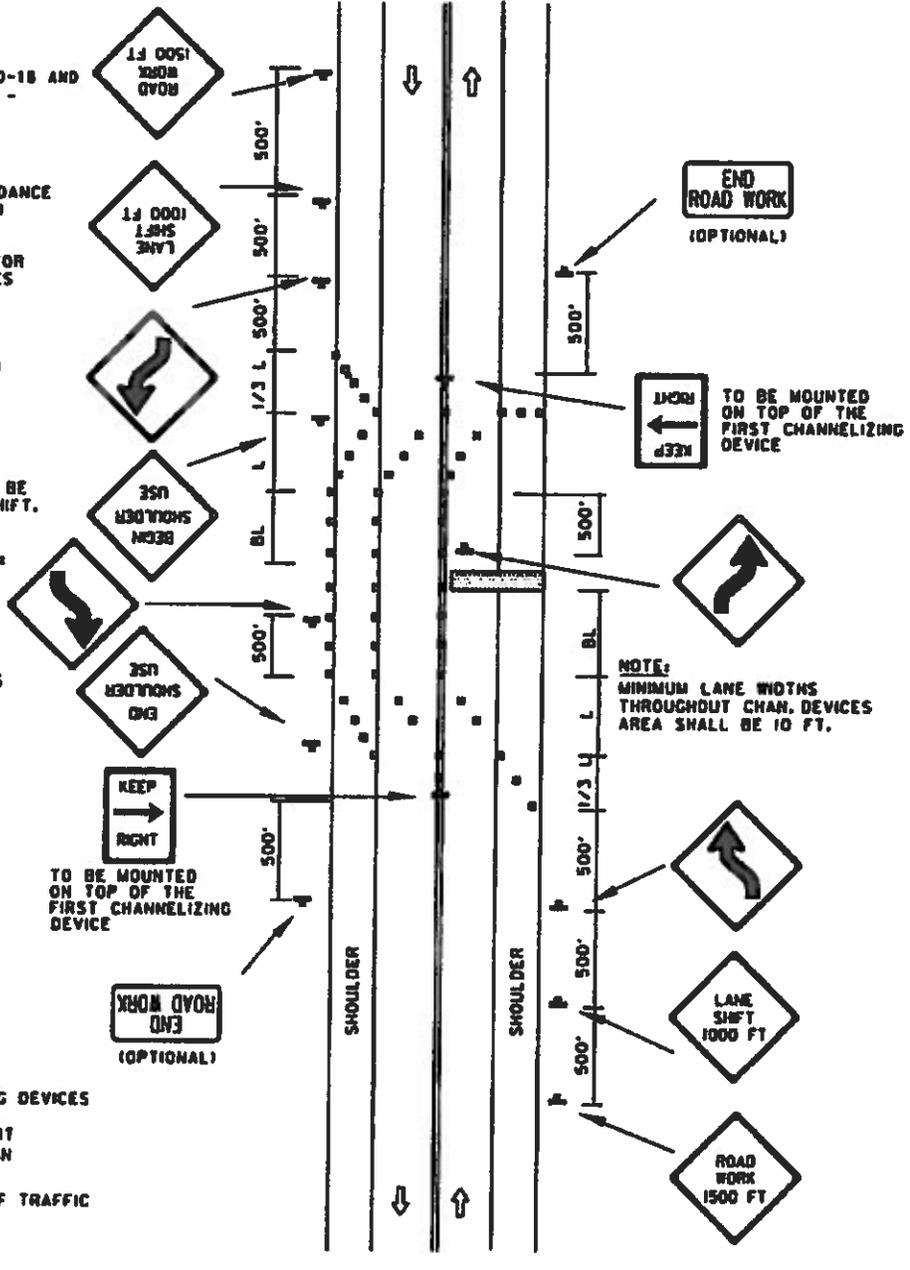
FOR LANE SHIFTS WHICH DO NOT SATISFY ABOVE CONDITIONS:

► DELETE 'REVERSE CURVE' WARNING SIGNS, AND

► REPLACE 'LANE SHIFT' SIGNS WITH 'ROAD WORK XXX' SIGNS OR OTHER APPROPRIATE SIGNS AS SHOWN IN TEMPORARY TRAFFIC CONTROL TYPICAL APPLICATIONS.

THERE SHALL BE A MINIMUM OF SEVEN CHANNELIZING DEVICES IN THE SHOULDER TAPER.

THE ENGINEER SHOULD CONSIDER ADDITIONAL, ADJACENT LANE CLOSURES WHEN THE POSSIBILITY OF UNPLANNED TRAVELWAY ENCROACHMENTS EXISTS.



KEY:

- ■ CHANNELIZING DEVICES
- SIGN SUPPORT
- FACE OF SIGN
- ↑ DIRECTION OF TRAFFIC
- ▨ WORK SITE

SPECIFICATION 104	CATEGORY CODE ITEMS	
APPROVED	 DIRECTOR - OFFICE OF TRAFFIC AND SAFETY	
SHA State Highway Administration	APPROVAL - SHA	APPROVAL - FEDERAL HIGHWAY ADMINISTRATION
	APPROVAL 8-30-03	APPROVAL 9-23-03
	REVISED 8-11-10	REVISED 10-5-10
	REVISED	REVISED
	REVISED	REVISED

Maryland Department of Transportation
STATE HIGHWAY ADMINISTRATION
STANDARDS FOR HIGHWAYS AND INCIDENTAL STRUCTURES
LANE SHIFT RIGHT OR LEFT SIDE/2-LANE,
2-WAY EQ/LESS THAN 40 MPH/15 MIN -
12 HRS. OR DAYTIME ONLY

STANDARD NO.

MD 104.02-04

TEMPORARY TRAFFIC CONTROL TYPICAL APPLICATION

IMPORTANT:
THIS DRAWING SHALL BE USED IN COMBINATION WITH THE GENERAL NOTES NO 104.00-01 - NO 104.00-10 AND STANDARD DETAILS NO 104.01-01 - NO 104.01-01

NOTES:
DRUMS, 36" CONES OR TALL WEIGHTED CONES • SHOULD BE USED IN THE MERGING TAPER.

DRUMS, 36" CONES OR TALL WEIGHTED CONES SHOULD BE USED ADJACENT TO THE WORK AREA.

PROTECTION VEHICLE, WITH FLASHING LIGHTS, SHOULD BE USED TO PROTECT THE WORK AREA, AS SHOWN IN THE FIGURE, WHILE ALLOWING FOR THE ROLL AHEAD DISTANCE ANTICIPATED WITH IMPACTS.

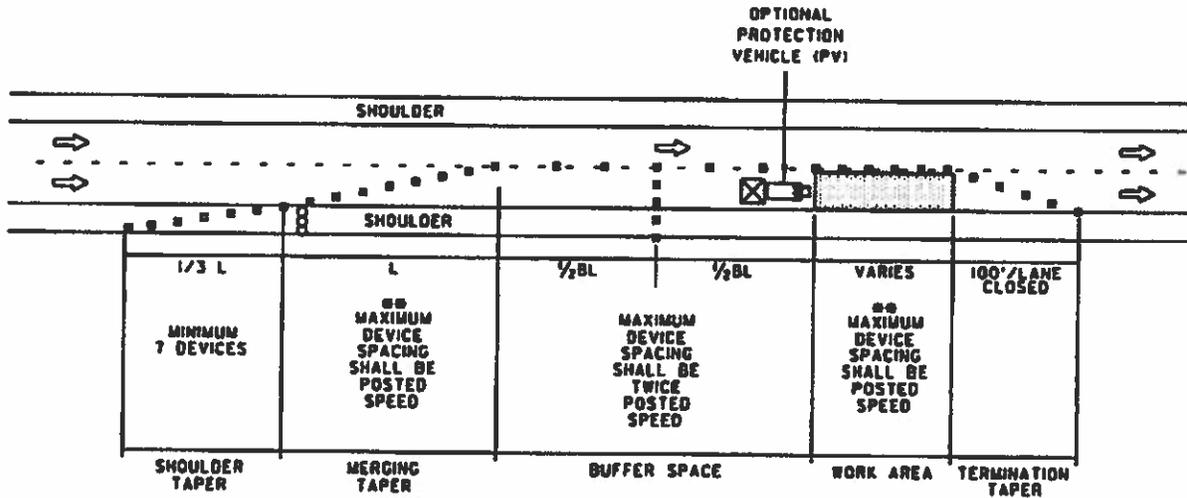
REFER TO GENERAL NOTE 7.8 FOR GUIDANCE ON USING CHANNELIZING DEVICES TO DELINEATE THE EDGE OF THE ROADWAY.

• TALL WEIGHTED CONES - CONES 42" TALL WITH A NARROW, WEIGHTED BASE. SEE STANDARD SPECIFICATION 104.14.

THIS TYPICAL APPLICATION DOES NOT APPLY TO PAVING OPERATIONS, BUT CAN BE USED AT THE DISCRETION OF THE ENGINEER.

KEY:

- CHANNELIZING DEVICES
- ↑ DIRECTION OF TRAFFIC
- ▨ WORK AREA
- ⇨ ARROW PANEL
- ⊗ TRUCK OR TRAILER-TRUCK MOUNTED ATTENUATOR
- M APPROVED VEHICLE SAFETY LIGHT



•• DRUMS, 36" CONES OR TALL WEIGHTED CONES SHOULD BE USED

SPECIFICATION	CATEGORY CODE ITEMS
APPROVED	 DIRECTOR - OFFICE OF TRAFFIC AND SAFETY
	APPROVAL • SHA REVISIONS
	APPROVAL • FEDERAL HIGHWAY ADMINISTRATION
	APPROVAL 7-1-09
	APPROVAL 7-27-09
	REVISION 8-11-10
REVISION 7-29-10	
REVISION	REVISION
REVISION	REVISION

Maryland Department of Transportation
STATE HIGHWAY ADMINISTRATION
 STANDARDS FOR HIGHWAYS AND INCIDENTAL STRUCTURES

CHANNELIZATION DEVICE SPACING
EQ/LESS THAN 40 MPH

STANDARD NO.

MD 104.01-30 B



MEMORANDUM

DATE: December 21, 2017

TO: Burgess and Commissioners

FROM: Andrew J. Bowen, Town Administrator

SUBJECT: Maintenance of Subdivision Signs

ISSUE

Should the Burgess and Commissioners maintain subdivision signs that were installed prior to the change in the Town Code that requires all subdivision signs to be low/no maintenance?

BACKGROUND

The Town has sixteen (16) subdivision signs throughout Town. Some are on Town owned easements, others are on private property. Of the sixteen (16) subdivision signs, seven (7) were approved and installed prior to the adoption of the Subdivision and Community Identification Signs section of the Town Code in 2010. The code requires that all subdivision and community signs be of a permanent nature and needing little to no maintenance. Meaning stone or brick construction.

Some of these signs, before the 2010 Town Code changes, have needed repairs and/or replacement. Historically the Town has both paid for and required developers to repair and/or replace these signs. There has not been a consistent policy.

RECOMMENDATION

Staff is asking for direction for the Town Board for future maintenance of subdivision signs that are not of a permanent material.

ATTACHMENTS

Town Code Section 17.36.090 – Subdivision and Community Identification Signs
PowerPoint Presentation of existing subdivision signs

- **17.36.090 - Subdivision and community identification signs.**

Subdivision and community identification signs are permitted in the right-of-way of monumented, public streets or in locations approved by the Middletown Planning Commission. In addition, the following conditions shall be met:

- A. Signs shall not be positioned or located in such a manner as to obstruct or otherwise interfere with the sight of motorists or pedestrians and their ability to safely enter or exit the premises or traverse the rights-of-way nor shall they be located within utility easements or in a location which will adversely impact utility lines; the planning commission shall have the authority to approve the location and orientation of the sign;
- B. The sign shall be of a permanent nature, such as brick, stone or concrete, and shall be kept in good repair and in safe, neat, clean and attractive condition by the community association, if existing;
- C. If a sign is located in a median strip or monumented island, no portion of the sign may be located within ten (10) feet of any end of the median strip or monumented island;
- D. Subdivision and community identification signs shall not exceed seventy (70) square feet in size, four (4) feet in height, and shall be subject to any other restrictions within individual zones.

(Ord. No. 15-12-03, § II, 12-14-2015; Ord. No. 10-11-01, § I, 11-8-2010)

Subdivision Sign Locations

Before Subdivision Ordinance

Brookridge Estates
Foxfield (4 signs)
Walnut Pond
Creamery Row

After Subdivision Ordinance

North Pointe (2 signs)
Cone Branch Estates
Glenbrook (2 signs)
Middletown Glen (2 signs)
Lands of Lancaster
The Villages at Foxfield

ORDINANCE NO. _____

AN ORDINANCE TO AMEND SECTIONS 4.16.050, 4.20.030 AND 4.20.050 OF THE MIDDLETOWN MUNICIPAL CODE TO PRECLUDE A FORMER BURGESS OR FORMER MEMBER OF THE BOARD OF COMMISSIONERS FROM ASSISTING OR REPRESENTING ANOTHER PARTY FOR COMPENSATION IN A MATTER THAT IS THE SUBJECT OF LEGISLATIVE ACTION FOR ONE CALENDAR YEAR FROM THE DATE OF LEAVING OFFICE; TO PROVIDE THAT THE ETHICS COMMISSION OR OFFICE DESIGNATED BY THE COMMISSION MAY NOT PROVIDE PUBLIC ACCESS TO A PORTION OF A FINANCIAL DISCLOSURE STATEMENT THAT IS FILED AFTER JANUARY 1, 2019 AND THAT INCLUDES AN INDIVIDUAL'S HOME ADDRESS THAT THE INDIVIDUAL HAS IDENTIFIED AS THE INDIVIDUAL'S HOME ADDRESS; TO ADOPT THE DEFINITION OF THE TERM "INTEREST" FOR PURPOSES OF FINANCIAL DISCLOSURE STATEMENTS AS STATED IN THE MARYLAND STATE ETHICS LAW.

SECTION I. BE IT RESOLVED, ORDAINED AND ENACTED by the Burgess and Commissioners of Middletown that Title 4, Section 4.16.050, Section 4.20.030 and Section 4.20.050 of the Middletown Municipal Code be, and hereby is, amended as follows. Language being deleted is designated by being ~~[in brackets and stricken through.]~~ New language is designated by being in **BOLD CAPITAL LETTERS OR NUMBERS**:

TITLE 4 – Ethics

Chapter 4.16 - Conflicts of Interest

Section 4.16.050 - Post-employment limitations and restrictions.

A. A former official or employee may not assist or represent any party other than the town for compensation in a case, contract, or other specific matter involving the town if that matter is one in which the former official or employee significantly participated as an official or employee.

B. ~~[Until the conclusion of the next regular session that begins after the elected official leaves office, a]~~ A former burgess or former member of the town board of commissioners may not assist or represent another party for compensation in a matter that is the subject of legislative action **FOR ONE CALENDAR YEAR FROM THE DATE THE FORMER BURGESS OR MEMBER LEAVES OFFICE. THE LIMITATION UNDER SUB-PARAGRAPH B. OF THIS SECTION ON REPRESENTATION BY A FORMER**

BURGESS OR MEMBER OF THE TOWN BOARD OF COMMISSIONERS DOES NOT APPLY TO REPRESENTATION OF A MUNICIPAL CORPORATION, COUNTY, OR STATE GOVERNMENTAL ENTITY.

Chapter 4.20 - Financial Disclosure—Local Elected Officials and Candidates to be Local Elected Officials

4.20.030 - Public record.

A. The commission or office designated by the commission shall maintain all financial disclosure statements filed under this chapter.

B. **EXCEPT AS PROVIDED IN SUB-SECTION C. OF THIS SECTION,** financial disclosure statements shall be made available during normal office hours for examination and copying by the public subject to reasonable fees and administrative procedures established by the commission.

C. **THE COMMISSION OR OFFICE DESIGNATED BY THE COMMISSION MAY NOT PROVIDE PUBLIC ACCESS TO A PORTION OF A FINANCIAL DISCLOSURE STATEMENT THAT IS FILED AFTER JANUARY 1, 2019 AND THAT INCLUDES AN INDIVIDUAL'S HOME ADDRESS THAT THE INDIVIDUAL HAS IDENTIFIED AS THE INDIVIDUAL'S HOME ADDRESS.**

D. If an individual examines or copies a financial disclosure statement, the commission or the office designated by the commission shall record:

1. The name and home address of the individual reviewing or copying the statement; and
2. The name of the person whose financial disclosure statement was examined or copied.

~~D.~~ E. Upon request by the official or employee whose financial disclosure statement was examined or copied, the commission or the office designated by the commission shall provide the official with a copy of the name and home address of the person who reviewed the official's financial disclosure statement.

4.20.050 – Contents of statement.

IN THIS SECTION, “INTEREST” SHALL HAVE THE SAME MEANING AS THAT TERM IS DEFINED IN THE MARYLAND STATE ETHICS LAW, GENERAL

**PROVISIONS ARTICLE, SECTION 5-101(T), ANNOTATED CODE OF MARYLAND,
AS AMENDED.**

A - H {*Unchanged*}

SECTION II. BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect twenty (20) calendar days following its approval by the Burgess and Commissioners.

INTRODUCED ON THE _____ DAY OF _____, 201__
PASSED ON THE _____ DAY OF _____, 201__
EFFECTIVE DATE: _____, 2018

ATTEST:

**BURGESS AND COMMISSIONERS
OF MIDDLETOWN**

Andrew J. Bowen, Town Administrator

By: _____
John D. Miller, Burgess



Municipal Center
31 West Main Street
Middletown, MD 21769
P. 301-371-6171
F. 301-371-6474

Town of Middletown Maryland

PLANNING, ZONING AND ADMINISTRATIVE FEE POLICY

As of 2018, the payment process for residential and commercial building permits, subdivision and development plan reviews, recordation, routing services, annexation petitions, and various administrative procedures are as follows:

Deleted: May 1

Deleted: 4 (with revisions effective August, 30, 2015)

PERMITS

Under the Administration and Enforcement Chapter (17.08) of the Middletown Municipal Code, ALL structural alterations or improvements and/or new uses created or placed on any property, must first obtain permit approval from the Town of Middletown.

All residential and commercial zoning certificates will be processed and paid for through the Town of Middletown with building permits being processed through the Frederick County Department of Permits and Inspections office. The Fee Schedule adopted by the Burgess and Commissioners of Middletown consists of permit fees that include, but are not limited to:

Residential- internal, external, new single, new multi-family and demolition \$25.00-200.00

Commercial- internal, external, conversion, demolition, and use change \$50.00-500.00

Deleted: 25

New Commercial- construction \$500.00

Miscellaneous- There will be a \$25.00 minimum charge for any fee issued.

Home Occupation Questionnaire- all home business applications \$50.00

All requirements for zoning certificates, permits, and questionnaires are subject to determination of the Town of Middletown and Frederick County Permits and Inspections Department.

CONSTRUCTION FEE

All applicable construction fees, as designated by the Fee Schedule adopted by the Burgess and Commissioners of Middletown, shall be made payable to the Town of Middletown. These fees must be paid upon approval of Construction Inspection before any consideration and/or action in the issuance of construction permits are granted. These fees include but are not limited to:

- **Construction Inspection-** 1% of Total Construction Cost Estimates; SWM, Sediment & Erosion, and Public Improvements must be made payable to the Town of Middletown, prior to issuance of grading permit.

ADMINISTRATIVE PROCEDURES

All applicable administrative fees, as designated by the Fee Schedule adopted by the Burgess and Commissioners of Middletown, shall be made payable to the Town of Middletown. Applicant must also pay advertising fees and fixed legal and/or engineering fees outlined for each service to partially defray cost of the Town utilizing contracted consultants for review of documents/plans. These fees must be paid upon submission of the appropriate applications and/or materials for review, before any consideration and/or action in the approval process is granted. These administrative fees include, but are not limited to:

Board of Appeals

- **Variance-** application must be obtained through the Middletown Municipal Center w/ fee of \$100.00 for non-principal structure and \$200.00 for principal structure + an advertising fee of \$100.00, made payable to the Town of Middletown, upon completion and submission of the application. All legal fees accrued by the Town must be paid by the applicant prior to final approval.
- **Special Exception-** application must be obtained through the Middletown Municipal Center w/ fee of \$300.00 + an advertising fee of \$100.00, made payable to the Town of Middletown, upon completion and submission of the application. Special exception applications for residential purposes (residential uses in the GC district, restricted vehicles in residential districts, fences, and freestanding solar collection systems in residential districts), shall pay a fee of \$150.00 + an advertising fee of \$100.00. All legal fees accrued by the Town must be paid by the applicant prior to final approval.
- **Administrative Error-** application must be obtained through the Middletown Municipal Center w/ fee of \$200.00 + an advertising fee of \$100.00, made payable to the Town of Middletown, upon completion and submission of the application. All legal fees accrued by the Town must be paid by the applicant prior to final approval.

Deleted:

Text Amendment

- **Text Amendment-** applicant must submit proposed text change w/ fee of \$300.00 + an advertising fee of \$200.00 + \$200 legal fee, made payable to the Town of Middletown, to the Middletown Municipal Center for review and recommendation by Planning Staff, and forwarding to applicable commissions.

Deleted: 150

Rezoning Fee

- **Rezoning-** applicant must submit proposed zoning change w/ fee of \$400.00 + \$20.00/acre + an advertising fee of \$200.00, made payable to the Town of Middletown, to the Middletown Municipal Center for review and recommendation by Planning Staff, and forwarding to applicable commissions for

approval process. All legal fees accrued by the Town must be paid by the applicant prior to final approval.

Annexation Fee

- **Annexation-** applicant must submit proposed annexation w/ fee of \$1,000.00 + \$50.00/acre + \$200 advertising fee and \$200 legal fee, made payable to the Town of Middletown, to the Middletown Municipal Center for review and recommendation by Planning Staff, and forwarding to applicable commissions for approval process.

Deleted: 150

Water & Sewer Master Plan

- **Map Amendment-** applicant must submit a proposed map amendment w/ fee of \$500.00 + \$200 engineering fee for consideration of changes to the Water/Sewer Master Plan Map that is not in sequence with the regular six-month review process for change in services.

Deleted: 100

Recording Fee

- **Plats-** applicant must submit plats (5 mylars) to be recorded w/ fee of \$75.00 made payable to the Town of Middletown and a \$5.00 fee per sheet made payable to Frederick County Clerk of the Court, to the Middletown Municipal Center for recordation procedures conducted by Middletown Planning Staff.
- **All other Documents-** applicant must include a fee of \$50.00/document, made payable to the Town of Middletown, upon submission to the Middletown Municipal Center for all other miscellaneous services conducted by Middletown Staff.

Public Works Agreement Review Fee

- **PWA Review-** applicant must submit a Public Works Agreement w/ standard fee of \$225.00 + \$200 legal fee for each PWA, made payable to the Town of Middletown, to the Middletown Municipal Center for review and recommendation by Middletown Staff, and forwarding to applicable commissions and agencies for approval process.

Deleted: 150

Home Owners Association Document Review Fee

- **HOA Review-** applicant must submit a HOA Document w/ standard fee of \$225.00 + \$200 legal fee, made payable to the Town of Middletown, to the Middletown Municipal Center for review and recommendation by Middletown Staff, and forwarding to applicable commissions and agencies for approval process.

Deleted: 150

PLAN REVIEW

All review fees for plans submitted to the Middletown Planning staff for review and approval will be assessed by the Town of Middletown, based on the Fee Schedule adopted by the Burgess and Commissioners of Middletown. Those fees considered applicable including engineering consultant review fees, as well as fees for all other agencies, will be directly collected by the Town of Middletown, and made payable to the appropriate agency. These fees must be paid upon submission of the appropriate applications and/or materials for review, before any consideration and/or action in the approval process is granted. These fees include, but are not limited to:

Concept Plan Fee

- **Concept Plan-** applicant must include a standard fee of \$250.00 + \$400 engineering fee + \$300 consultant base fee + CFI (additional consultant fees invoiced if needed), made payable to the Town of Middletown, upon submission of Plans to the Middletown Municipal Center for review services conducted by Middletown Planning Staff. **Four (4)** printed copies, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.

Deleted: 200

Deleted: Three

Deleted: 3

Site Plan Fee

- **Residential-** applicant must include a standard fee of \$250.00 + \$10.00/unit + \$300 consultant base fee + CFI (additional consultant fees invoiced if needed), made payable to the Town of Middletown + all applicable County fees, upon submission of Plans to the Middletown Municipal Center for review services conducted by Middletown Planning Staff, **(4)** printed copies, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.
- **All Other-** applicant must include a standard fee of \$350.00 + \$50.00/acre + \$400 engineering fee + \$300 consultant base fee + CFI (additional consultant fees invoiced if needed), made payable to the Town of Middletown + all applicable County fees, upon submission of Plans to the Middletown Municipal Center for review services conducted by Middletown Planning Staff. **Four (4)** printed copies, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.
- **Alteration-** Any change made to an approved Site Plan one year after approval, will be considered a New Site Plan, with all fees being applicable.

Deleted: agency

Deleted: Nine

Deleted: 9

Deleted: 200

Deleted: agency

Deleted: Nine

Deleted: 9

Preliminary Plan Fee

- **Subdivision-** applicant must include a standard fee of \$350.00 + \$50.00/lot + \$400 engineering fee + \$300 consultant base fee + CFI (additional consultant fees invoiced if needed), made payable to the Town of Middletown, + all applicable County fees, upon submission of Plans to the Middletown Municipal Center for

Deleted: 200

Deleted: agency

review and routing services conducted by Middletown Planning Staff. Four (4) printed copies, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.

Deleted: Nine
Deleted: 9

Mass Grading Plat Fee

- **Subdivision and Site-** applicant must submit a standard fee of \$250.00 + \$400 engineering fee + \$300 consultant base fee + CFI (additional consultant fees invoiced if needed), made payable to the Town of Middletown + all applicable County fees, Computations, and Cost Estimate to the Middletown Municipal Center for review and routing services conducted by Middletown Planning Staff. Upon approval of the cost estimate by the Town of Middletown and Frederick County DPW, applicant will be billed by the Town of Middletown and Frederick County DPW for all review services w/ checks to be made payable to the appropriate review agencies. Four (4) printed copies, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.

Deleted: 200

Deleted: agency

Deleted: Nine
Deleted: 9

Improvement Plan Fee

- **Improvement Plans-** applicant must submit a one time fee of \$300.00/page + \$400 engineering fee + \$300 consultant base fee + CFI (additional consultant fees invoiced if needed), made payable to the Town of Middletown, + all applicable County fees, upon submission of Plans, Computations, and Cost Estimate to the Middletown Municipal Center for review and routing services conducted by Middletown Planning Staff. Upon approval of the cost estimate by the Town of Middletown and Frederick County DPW, applicant will be billed by the Town of Middletown for Frederick County DPW, for all review services w/ checks to be made payable to the appropriate review agencies. Four (4) printed copies + 1 copies of SWM computations, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.

Deleted: 200

Deleted: agency

Deleted: Nine
Deleted: 9
Deleted: 5

Wireless Telecommunications Structures and Facilities

- **New Tower or Support Structure or Substantial Modification** – applicant must include a standard fee of \$5,000 + CFI (consultant fees invoiced), made payable to the Town, upon submission of Plans to the Middletown Municipal Center for review and routing services conducted by Middletown Staff. Any application or draft document received for which all fees or deposits have not been paid at the time of receipt of the applicant or draft document shall be deemed incomplete and no work shall be done related to the processing and/or review of the applicant until all fees and deposits have been paid in full.
- **Eligible Facility (any co-location or Non-Substantial Modification)** - applicant must include a standard fee of \$1,000 + CFI (consultant fees invoiced), made payable to the Town, upon submission of Plans to the Middletown Municipal Center for review and routing services conducted by Middletown Staff. Any

application or draft document received for which all fees or deposits have not been paid at the time of receipt of the applicant or draft document shall be deemed incomplete and no work shall be done related to the processing and/or review of the applicant until all fees and deposits have been paid in full.

- **Amendment or Waiver Request** - applicant must include a standard fee of \$200 + CFI (consultant fees invoiced), made payable to the Town, upon submission of Plans to the Middletown Municipal Center for review and routing services conducted by Middletown Staff. Any application or draft document received for which all fees or deposits have not been paid at the time of receipt of the applicant or draft document shall be deemed incomplete and no work shall be done related to the processing and/or review of the applicant until all fees and deposits have been paid in full.
- **Final Inspection** - applicant must include a standard fee of \$200 + CFI (consultant fees invoiced), made payable to the Town, upon submission of Plans to the Middletown Municipal Center for review and routing services conducted by Middletown Staff. Any application or draft document received for which all fees or deposits have not been paid at the time of receipt of the applicant or draft document shall be deemed incomplete and no work shall be done related to the processing and/or review of the applicant until all fees and deposits have been paid in full.

Forest Plan Review Fee

- **Simplified Forest Plan-** applicant must include a standard fee of \$200.00 made payable to the Town of Middletown upon submission of Plans to the Middletown Municipal Center for review and routing services conducted by Middletown Planning Staff. Three (3) printed copies, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.
- **Preliminary Forest Plan-** applicant must include a standard fee of \$200.00 + \$4.00/gross acre, made payable to the Town of Middletown upon submission of Plans to the Middletown Municipal Center for review and routing services conducted by Middletown Planning Staff. Three (3) printed copies, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.
- **Final Forest Plan-** applicant must include a standard fee of \$200.00 + \$4.00/gross acre, made payable to the Town of Middletown upon submission of Plans to the Middletown Municipal Center for review and routing services conducted by Middletown Planning Staff. Three (3) printed copies, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.
- **Inspection-** 1% of total cost estimate must be made payable to the Town of Middletown prior to signature of approved Forest Plan. There is a \$50.00 fee for EACH inspection conducted by the Town during the 2 year maintenance period.

Final Plat Review Fee

- **Combined Prelim/Final Plat-** applicant must include a standard fee of \$250.00 + \$50.00/lot + \$400 engineering fee, made payable to the Town of Middletown, + all applicable agency fees, upon submission of Plans to the Middletown Municipal Center for review and routing services conducted by Middletown Planning Staff. Four (4) printed copies, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.
- **Correction Plat-** applicant must include a standard fee of \$100.00 + \$10.00/lot, made payable to the Town of Middletown, + all applicable agency fees, upon submission of Plans to the Middletown Municipal Center for review and routing services conducted by Middletown Planning Staff. Four (4) printed copies, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.
- **Addition Plat-** applicant must include a standard fee of \$100.00 + \$10.00/lot, made payable to the Town of Middletown + all applicable agency fees, upon submission of Plans to the Middletown Municipal Center for review and routing services conducted by Middletown Planning Staff. Four (4) printed copies, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.
- **Final Plat-** applicant must include a standard fee of \$300.00 + \$25.00/lot + \$200 engineering fee, made payable to the Town of Middletown + all applicable agency fees, upon submission of Plans to the Middletown Municipal Center for review and routing services conducted by Middletown Planning Staff. Four (4) printed copies + 5 mylars for signature, plus an electronic copy and a \$15/sheet electronic filing fee are to be submitted.

Deleted: 200

Deleted: 100

Resubmission Fee

- **Resubmission of Plans-** applicant must include 50% of standard fee + 25% of legal and/or engineering fee + CFI (consultant fees invoiced), made payable to the Town of Middletown, upon EACH resubmit of all Plans to the Middletown Municipal Center for review and routing services conducted by Middletown Planning Staff. All resubmissions must include the same number of copies of plans as originally submitted plus an additional copy for each agency being addressed as well as Computations and response letters, where applicable.

Soil Conservation District

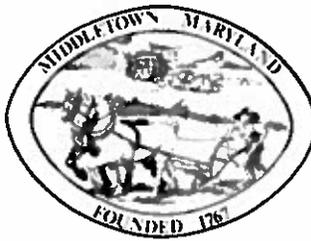
- **All Plans-** applicant must submit all plans and applicable fees to the Town of Middletown for submittal to Catocin & Frederick SCD for review and approval.
- Any response comments from the applicant and SCD must be forwarded to the Town.

PLANNING & ZONING

All Plans and Fees submitted for review and approval by the Middletown Planning Commission **MUST** be received at the Town Office of Middletown no later than **NOON** on the Monday two weeks before the monthly Middletown Planning Commission meeting, which is the third Monday of every month, at 7:00 P.M.

To partially defray the expense of administering various Planning and Zoning services, these fees shall be paid to the Town of Middletown as specified in each section of this Fee Policy. The amount of the fees shall be as established, from time to time, by resolution of the Burgess and Commissioners of the Town of Middletown. Any and all action required by the Town will not be conducted until all applicable fees have been paid in full, unless otherwise waived by the Town.

Consultant Fees Invoiced (CFI): Any town consultant fees invoiced to the town above the consultant base fee collected with the initial application will be invoiced to the applicant to be paid prior to final approval from the town.



MEMORANDUM

DATE: December 21, 2017

TO: Burgess and Commissioners

FROM: Andrew J. Bowen, Town Administrator

SUBJECT: Application for Future Water Appropriation Permit from MDE

ISSUE

Should the Burgess and Commissioners make application for a future water appropriation permit from MDE for the AC Jets property?

BACKGROUND

MDE now requires that all review of well capacities for future inclusion to a public drinking water system must have an application filed by the future water system that would be granted the appropriation permit.

AC Jets has completed additional testing on their wells and is requesting the Town file application with MDE for a review of the wells sustainable capacities. This information is required by the Board for any annexation review. Specifically, how much water is available from the proposed property for development. AC Jets is requesting that MDE, through the Town's requested application, be considered for water allocation under the Brinkley Bill.

The Brinkley bill allows MDE to consider granting water allocation within an over-allocated aquifer under certain conditions. Most of the AC Jets property, including one of their wells, are within the Hollow Creek Aquifer, which is currently over-allocated. Without consideration of the Brinkley bill, no water allocation can be granted from wells within the Hollow Creek Aquifer. If the Town Board should decide to send the request and if the request is granted by MDE this could provide substantially more water allocations than previously determined.

RECOMMENDATION

Staff has no recommendation as this is policy decision to be determined by the elected officials. The Burgess is going to recommend to the Board that the Town not send this request. It should be noted that the Town did make application for the Memar Property back in 2008. However, the Memar Property is not in an over-allocated aquifer.

ATTACHMENTS

Letter from Earth Data, consultant for AC Jets, with draft letter and application.



December 7, 2017

Mr. Andrew Bowen
Town of Middletown
31 W. Main Street
Middletown, MD 21769

RECEIVED

DEC 12 2017

TOWN OF MIDDLETOWN, MD

SUBJECT: AC Jets – GAP Application

Dear Mr. Bowen:

Attached please find a draft application and draft cover letter for an appropriation of groundwater for the AC Jets property. We understand that you will have to complete and sign the actual application. Information under “How will the water be used” also needs to be added. A blank application is enclosed if you need to make other changes.

Frederick County Environmental Health will also have to sign the application before it is forwarded to the Maryland Department of the Environment. I would be glad to hand deliver the official application to Mr. Barry Glotfelty for his approval and signature and send it on to MDE if that would help expedite the process.

Please contact me if you have any questions.

Sincerely,

Tucker Moorshead.

Tucker Moorshead
Senior Hydrogeologist

cc: Barry Glotfelty
Andrew Mackintosh
Jim Mackintosh

- BURGESS
- ADMINISTRATION
- PUBLIC WORKS
- PLANNING & ZONING
- WATER & SEWER

For Town of Middletown Stationery

December 7, 2017

Mr. John Grace, Chief
Maryland Department of the Environment
Water Supply Program
1800 Washington Blvd., Suite 450
Baltimore, MD 21230-1708

SUBJECT: GAP Application for AC Jets Property

Dear Mr. Grace:

Please find the enclosed application for a groundwater withdrawal from the AC Jets property here in Middletown. As the preliminary development plan indicates the final rates are subject to additional analysis and the Town's annexation approval.

While extensive test pumping and sampling was completed in 2005 as part of an earlier GAP application process (FR2005G003/1), we would like to resample Well 8 as part of the present application process. We would like to discuss the details concerning the resampling with you at a later date.

Using the Brinkley protocols Well 8 would be the preliminary source of the withdrawal with Wells TW-1, TW-3, and TW-5 available for back-up, meeting peak demands and /or monitoring.

A comparison of water levels made in 2005 and 2017 shows little if any affect of pumping from County and other Town wells on the wells on the AC Jets property. Recent testing of County and Town wells with recorders in the AC Jets wells reached a similar conclusion.

We would therefore like to proceed with the application process. If you have any questions, please do not hesitate to contact me.

Sincerely,

Drew Bowen
Town Administrator

cc: Kevin Demosky – Frederick County
Barry Glotfelty – Frederick County
Andrew Mackintosh
Tucker Moorshead – Earth Data Inc

MARYLAND DEPARTMENT OF THE ENVIRONMENT
 Water Management Administration – Water Supply Program
 1800 Washington Blvd, Baltimore MD 21230
 410-537-3590 * 1-800-633-6101 * fax 410-537-3157

APPLICATION TO APPROPRIATE AND USE WATERS OF THE STATE

Type of Application New Renewal Modification Existing Permit Number: _____

APPLICANT INFORMATION (PERSON TO WHOM PERMIT WILL BE ISSUED)

Business Name: TOWN OF MIDDLETOWN
 Contact Name: ANDREW J. BOWEN
 Mailing address: 31 W. MAIN STREET
 City: MIDDLETOWN State: MD ZIP Code: 21769
 Phone: 301-371-6171 Mobile: 240-674-8937 EMAIL: ABOWEN@CI.MIDDLETOWN.MD.US

Is the applicant the: Water User Land Owner Both

Permit is to be issued to Individual Business MUNICIPALITY

LAND/PROPERTY OWNER INFORMATION (IF DIFFERENT FROM APPLICANT)

Name: AC SETS LLC
 Mailing Address: 262 W. PATRICK ST.
 City: FREDERICK State: MD ZIP Code: 21701
 Phone: 301-662-0155 Mobile: 301-748-3641 EMAIL: ANDYTM@ACSHOMES.COM

CONSULTANT OR OTHER CONTACT INFORMATION

Name: TUCKER MOORSHEAD
 Mailing Address: 131 COMET DR
 City: CENTREVILLE State: MD ZIP Code: 21617
 Phone: 410-258-8160 Mobile: 410-490-1048 email: TMOORSHEAD@EARTHDATA INC, COM

REQUESTED APPROPRIATION OR USE

Avg. daily use in gallons (total annual use/365) Surface Water: na Groundwater: 83,785
 Groundwater - Avg. during month of maximum use in gallons(highest month/30): 108,921
 Surface water - Maximum daily use in gallons (highest day of year): na

HOW WILL THE WATER BE USED? (Please check all that apply and describe)

- Community Water Supply PWSID: _____ Pop. served: _____ No. of connections: _____
- Potable Water Supply No. of connections: _____
- Commercial/Institutional No. regular customers: _____ Sq. footage: _____
 Type/Name of business: _____
- Subdivision on indiv. wells No. of lots (based on full buildout): _____
- Industrial/Mining Describe uses: _____
- Power Generation Describe uses: _____
- Non-agricultural irrigation No. of acres: _____
- Other (describe) _____

LOCATION OF WITHDRAWAL (Attach additional sheets if necessary)

Street address and/or location description: 4239 OLD NATIONAL PIKE
 Subdivision/Town MIDDLETOWN County: FREDERICK
 Tax map/grid/parcel/lot: 0065/0005/0012 Lat/Long: 39°26'24.71"N 77°31'17.08"W

Please attach a map of the existing and proposed water withdrawal locations (wells, ponds, streams, etc).

All applications must include location map. Subdivision applications must include plat.

SURFACE WATER SOURCE

Source (check all that apply) Stream/River Lake Pond Bay

Name of source: _____ Location of intake: _____

GROUNDWATER WATER SOURCE(S) (Attach additional sheets if necessary)

Source (check all that apply) Well Spring Groundwater Pond Other(describe)

Total no. of wells: 4 No. of new wells: _____ No. of existing wells (not abandoned): 4

Well tag number	Well name/description	Depth (ft)	Diameter (inches)	<input type="checkbox"/> New	<input checked="" type="checkbox"/> Existing
FR-94-4563	TW-8	300	8	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FR-94-4112	TW-1	300	6	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FR-94-4114	TW-3	425	6	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FR-94-4483	TW-5	425	6	<input type="checkbox"/>	<input checked="" type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>

WASTEWATER DISPOSAL (check one)

- Public Sewer Groundwater Spray irrigation
- Groundwater Subsurface (tilefield, seepage pit, etc) Groundwater Other (please explain): _____
- Surface water Name of stream: _____

DISCHARGE PERMIT NUMBER: _____

CONSERVATION EASEMENTS

Is there a conservation easement on any part or all of this property? Yes No

If yes, who holds the easement? _____

Have you notified the holder of the easement of your intent to use the water? Yes No N/A

PRIVACY NOTIFICATION

This Notice is provided pursuant to § 10-624 of the State Government Article of the Maryland Code. The personal information requested on this form is intended to be used in processing your application. Failure to provide the information requested may result in your application not being processed. You have the right to inspect, amend, or correct this form. The Maryland Department of the Environment ("MDE") is a public agency and subject to the Maryland Public Information Act. This form and the information provided on this form may be made available on the Internet via MDE's website and is subject to inspection or copying, in whole or in part, by the public and other governmental agencies, if not protected by federal or State law.

SIGNATURE

I certify and affirm under penalty of perjury that all of the information I am providing on this date is complete, true and accurate to the best of my knowledge. I am aware that submitting false, inaccurate or incomplete information may result in the denial or revocation of the permit, or be subject to any other sanctions allowed under Maryland Law.

Signature of Applicant: _____

Name(please print): _____

Title: _____ Date: _____

REVIEW BY COUNTY ENVIRONMENTAL HEALTH OR DESIGNATED AGENCY

This section is required only for NEW and MODIFIED applications - Not required for renewals

This section not to be completed by applicant

Is project consistent with county water and sewer plan and local planning and zoning?

Yes No (explain) _____

Signature of county representative: _____

Title: _____ Date: _____

Preliminary Development Plan

While it is premature to provide a conceptual layout and plan for the subdivision the demand for water was calculated as follows:

275	housing units x	250	gpd =	68,750	gpd
	commercial demand (estimated) =			15,035	gpd
	Total average daily demand			83,785	gpd

Average during month of maximum use:

$$1.3 \times \text{average monthly use} = 108,921 \text{ gpd}$$

Notes:

These demand numbers are subject to change based on the actual number of units approved by the Town of Middletown.

The amounts may also be adjusted based on a water budget analysis for the Hollow Creek watershed using the Brinkley protocols.

A re-evaluation of pumping distribution and withdrawal rates from the existing wells on the AC Jets property may also change the final rates.

Under no anticipated circumstance will the amounts indicated above be exceeded.

650000 ft US

645000 ft US

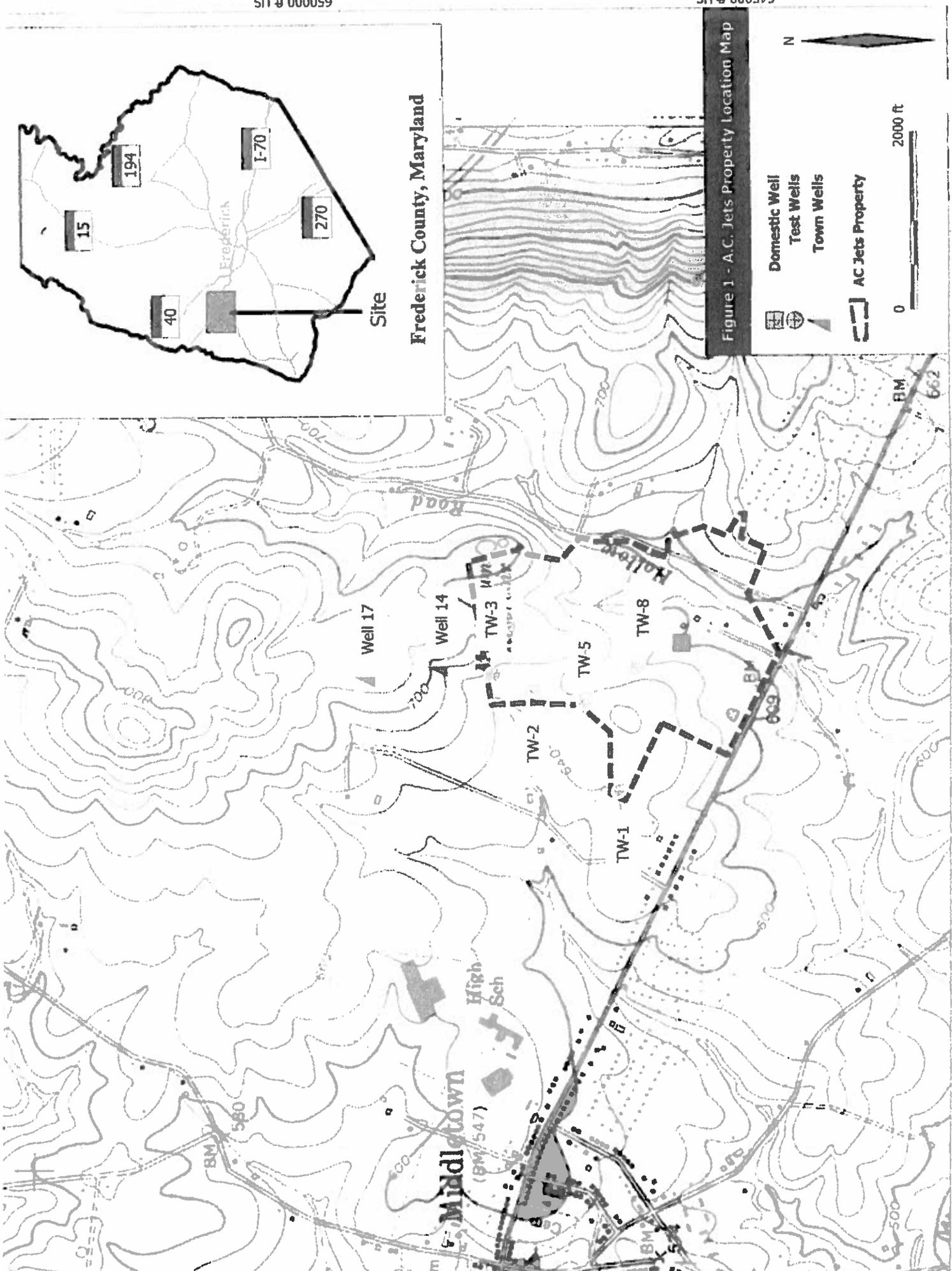


Figure 1 - A.C. Jets Property Location Map

- Domestic Well
- Test Wells
- Town Wells
- AC Jets Property

0 2000 ft

N

1170000 ft US

1165000 ft US

1160000 ft US

650000 ft US

645000 ft US

MARYLAND DEPARTMENT OF THE ENVIRONMENT

Water Management Administration – Water Supply Program

1800 Washington Blvd, Baltimore MD 21230

410-537-3590 * 1-800-633-6101 * fax 410-537-3157

APPLICATION TO APPROPRIATE AND USE WATERS OF THE STATE

Type of Application New Renewal Modification

Existing Permit Number:

APPLICANT INFORMATION (PERSON TO WHOM PERMIT WILL BE ISSUED)

Business Name:

Contact Name:

Mailing address:

City:

State:

ZIP Code:

Phone:

Mobile:

Fax:

Email:

Is the applicant the: Water User Land Owner Both

Permit is to be issued to Individual Business

LAND/PROPERTY OWNER INFORMATION (IF DIFFERENT FROM APPLICANT)

Name:

Mailing Address:

City:

State:

ZIP Code:

Phone:

Mobile:

Fax:

Email:

CONSULTANT OR OTHER CONTACT INFORMATION

Name:

Mailing Address:

City:

State:

ZIP Code:

Phone:

Mobile:

Fax:

Email:

REQUESTED APPROPRIATION OR USE

Avg. daily use in gallons (total annual use/365) Surface Water: Groundwater:

Groundwater - Avg. during month of maximum use in gallons(highest month/30):

Surface water - Maximum daily use in gallons (highest day of year):

HOW WILL THE WATER BE USED? (Please check all that apply and describe)

Community Water Supply PWSID: Pop. served: No. of connections:

Potable Water Supply No. of connections:

Commercial/Institutional No. regular customers: Sq. footage:

Type/Name of business:

Subdivision on indiv. wells No. of lots (based on full buildout):

Industrial/Mining Describe uses:

Power Generation Describe uses:

Non-agricultural irrigation No. of acres:

Other (describe)

LOCATION OF WITHDRAWAL (Attach additional sheets if necessary)

Street address and/or location description:

Subdivision/Town

County:

Tax map/grid/parcel/lot:

Lat/Long:

Please attach a map of the existing and proposed water withdrawal locations (wells, ponds, streams, etc).

All applications must include location map. Subdivision applications must include plat.

SURFACE WATER SOURCE

Source (check all that apply) Stream/River Lake Pond Bay

Name of source: _____ Location of intake: _____

GROUNDWATER WATER SOURCE(S) (Attach additional sheets if necessary)

Source (check all that apply) Well Spring Groundwater Pond Other(describe)

Total no. of wells: _____ No. of new wells: _____ No. of existing wells (not abandoned): _____

Well tag number _____ Well name/description _____ Depth (ft) _____ Diameter (inches) _____

New Existing

New Existing

New Existing

New Existing

New Existing

WASTEWATER DISPOSAL (check one)

Public Sewer

Groundwater Spray irrigation

Groundwater Subsurface (tilefield, seepage pit, etc)

Groundwater Other (please explain): _____

Surface water Name of stream: _____

DISCHARGE PERMIT NUMBER: _____

CONSERVATION EASEMENTS

Is there a conservation easement on any part or all of this property? Yes No

If yes, who holds the easement? _____

Have you notified the holder of the easement of your intent to use the water? Yes No N/A

PRIVACY NOTIFICATION

This Notice is provided pursuant to § 10-624 of the State Government Article of the Maryland Code. The personal information requested on this form is intended to be used in processing your application. Failure to provide the information requested may result in your application not being processed. You have the right to inspect, amend, or correct this form. The Maryland Department of the Environment ("MDE") is a public agency and subject to the Maryland Public Information Act. This form and the information provided on this form may be made available on the Internet via MDE's website and is subject to inspection or copying, in whole or in part, by the public and other governmental agencies, if not protected by federal or State law.

SIGNATURE

I certify and affirm under penalty of perjury that all of the information I am providing on this date is complete, true and accurate to the best of my knowledge. I am aware that submitting false, inaccurate or incomplete information may result in the denial or revocation of the permit, or be subject to any other sanctions allowed under Maryland Law.

Signature of Applicant: _____

Name(please print): _____

Title: _____

Date: _____

REVIEW BY COUNTY ENVIRONMENTAL HEALTH OR DESIGNATED AGENCY

This section is required only for NEW and MODIFIED applications - Not required for renewals

This section not to be completed by applicant

Is project consistent with county water and sewer plan and local planning and zoning?

Yes No (explain) _____

Signature of county representative: _____

Title: _____

Date: _____