

Special Town Board Meeting
July 9, 2009

TOWN OF RIVERHEAD

Adopted

Resolution # ¹⁵ _____

COMMUNITY DEVELOPMENT AGENCY RESOLUTION

**AUTHORIZING LEASE AGREEMENT BETWEEN TOWN OF RIVERHEAD
COMMUNITY DEVELOPMENT AGENCY AND TOWN OF RIVERHEAD**

COUNCILWOMAN BLASS

offered the following resolution, was seconded by

COUNCILMAN DUNLEAVY

:

WHEREAS, the Town of Riverhead Community Development Agency by Resolution #18 adopted on July 7, 1998, set aside and designated a one acre site, expandable to 10 acres, to establish an aviation museum; and

WHEREAS, the Town of Riverhead Community Development Agency by Resolution #4 adopted on February 2, 1999 identified a one acre site to allow East End Aircraft Corporation to undertake design and engineering of the F-14 monument; and

WHEREAS, the Town of Riverhead by Resolution #959 authorized the Supervisor to enter into and execute an agreement between East End Aircraft L.I. Corp. and the Town of Riverhead in connection with the display of an F-14 aircraft leased by the United States Navy to the Town of Riverhead; and

WHEREAS, the Town of Riverhead Community Development Agency by Resolution # 12 adopted on May 6, 2003, agreed to expand the one area site to a total of 10 acres and authorized the execution of an amended Agreement to reflect the additional acreage; and

WHEREAS, East End Aircraft did improve a portion of the property with design and construction of F-14 pedestal and placement of the F-14 thereon, construction of the F-14 walk of honor, benches, lighting, off-street parking, landscaping and drainage; and

WHEREAS, pursuant to the terms of the agreement between the Town of Riverhead and East End Aircraft Corp., East End Aircraft Corp. would maintain the F-14 monument and such other improvements described above for a period of ten years commencing on November 1, 1999 and expiring on October 31, 2009 with an option to renew for an additional ten years; and

WHEREAS, approximately six months ago, East End Aircraft Corp. determined not to renew the agreement and sought to transfer all responsibility for maintenance and

upkeep of the 10 acre site to the Town of Riverhead and its Engineering and Building & Grounds staff; and

WHEREAS, East End Wireless, Inc. proposed a lease to the Town of Riverhead for an area approximately 75' x 75' in the vicinity of the F-14 memorial site for purposes of installation, operation, and maintenance of a wireless communication service system facility such that a portion of the revenues from said lease could be utilized by the Town of Riverhead to maintain the F-14 memorial site; and

WHEREAS, East End Wireless, Inc. proposed to use a flag pole design in keeping with and consistent with the tribute to the employees of Grumman that were responsible for the building of aircraft for the United States Navy; and

WHEREAS, the Town of Riverhead expressed its desire to reserve to itself four antenna mounts for purposes of serving the needs of communications systems for police, ambulance, fire and such other purposes benefiting the residents of the Town of Riverhead and East End Wireless, Inc. agreed to gratuitously install and provide said antenna and antenna mounts, and

WHEREAS, the Community Development Agency desires that the Town of Riverhead continue to maintain the F-14 memorial and make improvements as deemed required and beneficial to the public;

NOW, THEREFORE, BE IT RESOLVED, that the Community Development Agency, by this Resolution, grants a lease to the Town of Riverhead for the portion of the Calverton property being and intended to be the property described in the amended lease agreement authorized by Resolution # 12 adopted on May 6, 2003 less any portion thereof subject to contract for conveyance, by sale or lease, for purposes of economic development, and intended to include such additional acreage or portion thereof required to construct and locate a flagpole wireless communication service system facility (description of construction access and location of flagpole more particularly described in Schedule A and B annexed to lease agreement between Town of Riverhead and East End Wireless, Inc.); and

BE IT FURTHER RESOLVED that the Community Development Agency grants the Town of Riverhead the aforementioned lease for a period of time not to exceed 99 years and grants the Town of Riverhead the right to enter into a lease or sublease for a portion of the property in exchange for and conditioned upon the Town of Riverhead's commitment to maintain and improve the F-14 memorial site and policy of public access to the site. The agreement to lease the property to the Town of Riverhead includes a right to the Town of Riverhead to terminate the lease without penalty such that the lands under the lease revert to control and domain of the Community Development Agency. The assent to the terms shall be deemed complete upon a resolution of the Town Board of the Town of Riverhead authorizing a lease agreement between the Town of Riverhead and East End Wireless, Inc.;

RESOLVED that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

WOOTEN YES ___ NO BUCKLEY ~~___~~ YES ~~___~~ NO

DUNLEAVY YES ___ NO BLASS YES ___ NO

CARDINALE YES ___ NO

THIS RESOLUTION IS ___ IS NOT
DECLARED DULY ADOPTED

July 9, 2009

Adopted

TOWN OF RIVERHEAD

RESOLUTION # 693

**AUTHORIZES APPLICATION TO THE NEW YORK DEPARTMENT OF STATE
FOR BROWNFIELD OPPORTUNITY AREAS FUNDING
TO CREATE A PECONIC RIVER/NYS ROUTE 25 ECO-CORRIDOR**

COUNCILMAN WOOTEN offered the following resolution, which was
seconded by COUNCILWOMAN BLASS.

WHEREAS, the New York Department of State is soliciting applications from municipalities to participate in the Brownfield Opportunity Areas (BOA) Program for assistance in redeveloping brownfields, abandoned or vacant buildings and areas of economic distress by funding a range of pre-development activity necessary to attract investment to transform underutilized properties for new uses; and

WHEREAS, the BOA program is designed to assist communities foster redevelopment of dormant and blighted land into productive and catalytic areas while restoring environmental quality by providing the resources to address redevelopment planning, access to expert environmental and economic analysis, and environmental site assessment for strategic redevelopment parcels; and

WHEREAS, creation of a Peconic River/Route 25 Riverhead ECO CORRIDOR will call attention to the value of the Peconic River as a resource, and to educate, organize and motivate the public to realize an enhanced image and reputation of Riverhead, as an environmentally friendly community as well as an eco-recreation destination openly accessible to all that is user friendly and publicly accessible and connects a vibrant downtown riverfront center with nearby BlueWay and Greenbelt trails; and

WHEREAS, creation of a Peconic River/Route 25 Riverhead ECO CORRIDOR with BlueWay and Greenbelt trails along with a Peconic River will achieve the goals to foster economic growth, protect environmental resources, enhance public health, and plan for development; and

WHEREAS, the natural features, location, historic sensitivity, ecological significance, and ability to augment limited recreational facilities and public access opportunities has made the Peconic River Greenway a priority acquisition on local, county, state and regional acquisition lists [*see* New York State Open Space Conservation Priority Acquisition List (2006 & 2009), the Town of Riverhead Comprehensive Plan (2003), the Town of Riverhead Local Waterfront Revitalization Program (draft 2005), the Town of Riverhead Community Preservation Project Plan (1998-2001), the Town of Riverhead Priority Acquisition List (2004), and the Peconic Estuary Program Critical Lands Protection Strategy (CLPS) of the Comprehensive Conservation and Management Plan (CCMP)].

NOW, THEREFORE, BE IT RESOLVED, that the Riverhead Town Board hereby authorizes the Community Development Department to submit an application to the New York State DOS BOA program for funding in the amount of \$250,000.

BE IT FURTHER RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk

WOOTEN yes no

DUNLEAVY yes no

BLASS yes no

CARDINALE yes no

**THIS RESOLUTION is is not
DECLARED DULY ADOPTED**

07/09/09

Adopted

TOWN OF RIVERHEAD

Resolution # 694

ADOPTS A LOCAL LAW TO AMEND CHAPTER 108 ENTITLED, "ZONING" OF THE RIVERHEAD TOWN CODE (§108-175. and §108-179. - Pine Barrens Overlay District) AND ADOPTS AN OVERLAY DISTRICT MAP FOR EPCAL PURSUANT TO 108-179(A)(9)(a)

COUNCILWOMAN BLASS offered the following resolution, was seconded by COUNCILMAN DUNLEAVY.

WHEREAS, the Town Clerk was authorized to and did timely publish and post a public notice to hear all interested persons to consider a local law to amend Chapter 108 entitled, "Zoning" of the Riverhead Town Code more specifically sec 108-178 and 108-179 of said Town Code entitled Pine Barrens Overlay District"; and

WHEREAS, a proposed clearing limits map was considered simultaneously with the aforementioned local law, and

WHEREAS, a public hearing was held on the text of the local law on September 16, 2008 at 7:05 p.m, as the Wading River Congregational Church and additional joint public hearings were held on the text of the local law and the proposed clearing limits map on January 21, 2009 7:05 p.m., and on the 5th day of May, 2009 at 2:35 o'clock p.m. at Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York, the dates, times and places specified in said public notices, and all persons wishing to be heard having been heard; and

WHEREAS, the proposed local laws were referred to the Suffolk County Planning Commission in accordance with General Municipal Law §239-m, and

WHEREAS, the proposed local laws were approved by the Suffolk County Planning Commission pursuant to resolution dated July 1, 2009 subject to a condition, and

WHEREAS, the Town Board has complied with the condition set forth in the July 1, 2009 resolution of the Suffolk County Planning Commission in that is has considered the possibility of removing some of the designated non-clearing area around the eastern runway and replacing it with an equivalent area of forested or woodland contiguous to other non-clearing area, and

THE VOTE

Buckley	<u>yes</u>	<u>no</u>	Wooten	<input checked="" type="checkbox"/>	yes	<u>no</u>
Dunleavy	<input checked="" type="checkbox"/>	yes	Blass	<input checked="" type="checkbox"/>	yes	<u>no</u>
Cardinale	<input checked="" type="checkbox"/>	yes		<u>no</u>		

THE RESOLUTION WAS NOT THEREFORE DULY ADOPTED

WHEREAS, after due consideration the Town Board has declined to move the non-clearing area designated on the proposed map since the bulk of the non-clearing area identified by the Town Board is already forested or woodland area and since the Town Board believes it desirable to retain native Pine Barrens vegetation whether it consists of forested and woodland Pine Barrens vegetation or other vegetation and because the amendment proposed specifically authorizes the Town Board to amend the map in the future should an amendment be warranted, and

WHEREAS, the proposed non-clearing map is not a preservation map or conservation map, but rather a map limited to compliance with the Town's Pine Barrens Overlay District legislation for the EPCAL property, and

WHEREAS, extensive environmental review of the natural and social environments has taken place at EPCAL pursuant to NEPA and SEQRA review of the Comprehensive Reuse Strategy for EPCAL which resulted in the adoption of a Generic Environmental Impact Statement in 1997 and further extensive environmental review of any development project will require intensive site specific supplemental SEQRA review

NOW THEREFORE BE IT RESOLVED, that the proposed Local Laws are Type I actions pursuant to 6 NYCRR §617.4(b)(2) but that no further State Environmental Quality Review Act compliance is required because the adoption of the subject Local Laws are being carried out in conformance with the conditions and thresholds established for such action in the Generic Environmental Impact Statement prepared and accepted for the Central Pine Barrens Comprehensive Land Use Plan and its Findings Statement in 1995, and be it further

RESOLVED, that a local law to amend Chapter 108 entitled, "Zoning" of the Riverhead Town Code is hereby adopted as specified in the attached notice of adoption; and be it further

RESOLVED, that the proposed local law adopting a clearing limits map pursuant to 108-179(A)(9)(a) is hereby adopted as specified in the attached notice of adoption; and be it further

RESOLVED, that the Town Clerk be and is hereby authorized to publish the attached notice of adoption once in the News Review newspaper and to post same on the signboard at Town Hall; and be it further

RESOLVED, that the Town Clerk be and is hereby authorized to forward a certified copy of this resolution to the Riverhead Planning Board, the Riverhead Planning Department, the Riverhead Building Department and the Office of the Town Attorney.

**TOWN OF RIVERHEAD
NOTICE OF ADOPTION**

PLEASE TAKE NOTICE, that the Town Board of the Town of Riverhead adopted a local law to amend Chapter 108 entitled, "Zoning" (Pine Barrens Overlay District) of the Riverhead Town Code and adopted a non-clearing map pursuant to 108-179(A)(9)(a) at its special meeting held on July 9, 2009 as follows:

BE IT ENACTED
Chapter 108
ZONING
ARTICLE XXXV
Pine Barrens Overlay District

§108-175. Findings, legislative intent and purpose.

A. This Town Board finds and determines that the provisions of the Pine Barrens Overlay District were designed, in part, to protect the Pine Barrens Core and Compatible Growth areas.

This Town Board further finds that the provisions of the Pine Barrens Overlay District regarding land clearing must be clarified to insure that contiguous areas of land remain undisturbed to both protect habitats and to insure the continued proliferation of flora and fauna in the area.

This Town Board further determines that the needed clarification must be adopted before ownership of the affected lands pass from the Town of Riverhead to forestall any dispute over the intended meaning of the land clearing provisions.

This Town Board further finds and determines that the Long Island Pine Barrens Protection Act enacted by the State Legislature in 1993 recognized that the Towns within the Pine Barrens region are the natural guardians of the unique Pine Barrens land within the Town's jurisdiction through the exercise of their accepted zoning powers.

Therefore, it is the intent of this local law to enact certain clarifications of existing provisions to insure that the safeguards that the Town of Riverhead intended to impose regarding land clearing are observed.

B. A- In 1993, New York State adopted § 57-0119 of the Environmental Conservation Law ("ECL") entitled "Central Pine Barrens Joint Planning and Policy Commission." This Commission consists of five voting members: a member appointed by the Governor, the County Executive of Suffolk County and the Supervisors of the Towns of Riverhead, Brookhaven and

Southampton. This Commission was formed to implement, manage and oversee land use within the Central Pine Barrens area on Long Island. ECL 57-0119(6) (a) gives the Commission the power to prepare, adopt and insure implementation of the Comprehensive Land Use Plan. ECL Article 57 recognizes the importance of the three local towns in regulating the implementation of the plan within the Central Pine Barrens region. The authority to establish a Comprehensive Land Use Plan is contained in ECL § 57-01021. In conformance with ECL Article 57 and the Comprehensive Land Use Plan, the Town Board of the Town of Riverhead enacted § 108-175 of the Town Code of the Town of Riverhead entitled "Pine Barrens Overlay District."

The intention of the original legislation adopted in 1995 and the resulting plan was that the local planning board and zoning powers and authority to regulate land uses by local municipalities within the Central Pine Barrens area would not be affected by said legislation and plan.

B- C. It is the purpose of this article to provide consistency with the goals of the Central Pine Barrens Comprehensive Land Use Plan adopted by the Town Board on June 28, 1995, pursuant to the provisions of Article 57 of the New York State Environmental Conservation Law, as follows:

- (1) To protect, preserve and enhance the functional integrity of the Pine Barrens ecosystem and the significant natural resources thereof.
- (2) To protect the quality of surface water and groundwater.
- (3) To discourage piecemeal and scattered development, and to encourage the preservation of contiguous areas of open space and non-disturbed areas to the greatest extent practicable.
- (4) To promote active and passive recreational and environmental educational uses that are consistent with the Land Use Plan.
- (5) To accommodate development in a manner consistent with the long-term integrity of the pine barrens ecosystem and to ensure that the pattern of development is efficient and orderly.
- (6) To protect the pine barrens ecosystem from illegal activity within the boundaries of the Central Pine Barrens Area, in particular clearing of large tracts of land without the necessary approvals.

C- D. The particular objectives for land use with respect to the Central Pine Barrens Core Preservation Area include:

- (1) Preserving the pine barrens in their natural state thereby ensuring the continuation of the unique and significant ecologic, hydrogeologic and other resources representative of such environments.
- (2) Promoting compatible agricultural, horticultural and open space recreational uses within the framework of maintaining a pine barrens environment and minimizing the impact of such activities thereon.

- (3) Prohibiting or redirecting new construction or development.
- (4) Accommodating specific pine barrens management practices, such as prescribed burning, necessary to maintain the special ecology of the preservation area.
- (5) Protecting and preserving the quality of surface water and groundwater.
- (6) Protecting the pine barrens ecosystem from illegal activity within the boundaries of the Central Pine Barrens Area, in particular clearing of large tracts of land without the necessary approvals.

~~D.~~ E. The particular objectives for land use with respect to the Central Pine Barrens Compatible Growth Area include:

- (1) Preserving and maintaining the essential character of the existing pine barrens environment, including plant and animal species indigenous thereto and habitats thereof.
- (2) Protecting the quality of surface water and groundwater.
- (3) Discouraging piecemeal and scattered development.
- (4) Encouraging appropriate patterns or compatible residential, commercial, agricultural, and industrial development in order to accommodate regional growth influences in an orderly way while protecting the pine barrens environment from the individual and cumulative adverse impacts thereof.
- (5) Accommodating a portion of the development redirected from the Core Preservation Area.
- (6) Allowing appropriate growth consistent with stated natural resource goals.
- (7) Protecting the pine barrens ecosystem from illegal activity within the boundaries of the Central Pine Barrens Area, in particular clearing of large tracts of land without the necessary approvals.

~~E.~~ F. Although each of the zoning codes of the respective three towns contains penalty provisions for violations of the Code, no specific provisions are included for violations of regulations within the Central pine barrens area. Article 57 of the ECL does not specifically provide for an enforcement or penalty provision. The Towns of Riverhead, Brookhaven, and Southampton desire to discourage and prevent unauthorized and illegal land clearing activities, illegal dumping and other unauthorized uses within the core area and the compatible growth area of the Long Island Central Pine Barrens region. Any amendment to Article 57 of the ECL should be consistent with existing code enforcement provision in each of the three towns.

~~F.~~ G. This article, in addition to the purposes outlined above, is necessary to raise the potential penalties under the authority of the respective Town codes for unauthorized and illegal land clearing activities, as well as provide enforcement of other provisions of the respective Town code regarding the Long Island Central Pine Barrens region.

§ 108-179. Development within Compatible Growth Area.

A. Development within the Compatible Growth Area (CGA) shall comply with the following standards:

- (1) All development subject to the provisions of Article 6 of the Suffolk County Sanitary Code shall meet the applicable requirements of the Suffolk County Department of Health.
- (2) As determined by the State of New York or the County of Suffolk, any new public or private sewage treatment plant discharge shall be outside of the Core Preservation Area and shall be located north of the groundwater divide, as defined by the Suffolk County Department of Health Services, as site conditions permit.
- (3) All development shall comply with the provisions of Articles 7 and 12 of the Suffolk Sanitary Code.
- (4) All development involving significant discharges to groundwater and located proximate to public water supply wells shall require measures to mitigate impacts upon water quality as required under Article 17 of the New York State Environmental Conservation Law. The Suffolk County Department of Health Services' guidelines for private wells should be used for private wellhead protection.
- (5) Development proposals for sites containing or abutting freshwater wetlands shall be separated by a non-disturbance buffer area which shall be in accordance with Article 24 of the New York State Environmental Conservation Law, the Wild, Scenic and Recreational Rivers Act (the Rivers Act) and Chapter 107 of the Code of the Town of Riverhead, whichever is most restrictive. Distances shall be measured horizontally from the wetland edge as mapped by the New York State Department of Environmental Conservation, field delineation or local ordinance. Stricter buffer areas may be established for wetlands as appropriate. Buffer areas shall be delineated on development plans with conditions imposed to assure the preservation of the freshwater wetland resource. Said conditions shall be set forth in a declaration of covenants, conservation easement or similar instrument.
- (6) Development proposals for sites within the regulated area of the New York Wild, Scenic and Recreational Rivers Act shall conform to the standards of the Act. Variances from the Act shall meet all requirements imposed by the State of New York in order to be deemed to have met the requirements of this standard. Additional relief from the Town of Riverhead Zoning Board of Appeals shall not be required.
- (7) All stormwater generated by development shall be recharged on site unless surplus capacity exists in an off-site drainage system. In the review of development plans, the Town Board shall encourage the use of natural recharge areas or drainage system design which result in minimal disturbance of native

vegetation with the use of natural swales and depressions as an alternative to excavated recharge basins where feasible. Development plans should include the use of ponds only if such ponds are designed to retain stormwater and are not merely constructed for aesthetic purposes. Adequate measures should be employed to control soil erosion and stormwater runoff during construction, as per guidelines promulgated by the New York State Department of Environmental Conservation.

(8) ~~Clearance.~~ Clearing.

(a) The proposed disturbance to natural vegetation, combined with previously disturbed areas, shall conform to the following ~~clearance~~ clearing standards:

Zoning Use District	Maximum Site Clearance <u>Clearing</u> (percentage)
RB-80	53%
APZ	53%
IA	65%
IC	65%
Business CR	65%
<u>Property within EPCAL</u>	<u>in conformance with</u>
<u>LI, PIP, CO and PRP Districts</u>	<u>map filed in the</u>
	<u>Department of Planning,</u>
	<u>as set forth in subsection</u>
	<u>9 hereinafter</u>

(b) The applicable ~~clearance~~ clearing percentage shall be calculated over the area of the entire parcel, including but not limited to public highways, roadways, building sites, parking areas, drainage structures and recharge areas. Development plans shall delineate the existing naturally vegetated areas, shall calculate those portions of the site that are already cleared due to previous activities and shall contain calculations for the amount of disturbance of native vegetation and indicate the clearing limits thereof.

(c) To the extent that a portion of a site includes Core property, and for the purpose of calculating the clearing limits, the site shall be construed to be the combined Core and CGA portions. However, the Core portion may not be cleared without a hardship exemption.

(9) ~~Land subdivision maps and site plans shall be designed to encourage the preservation of large unbroken blocks that provide for contiguous open spaces to be established when adjacent parcels are developed. Applications for subdivision and site plan shall contain calculations for clearing, and these limits shall become part of the filed map or approved drawings. Non native vegetation species to be avoided are contained in Figure 5-2 of the plan.~~

- A. A map of the portion of Pine Barrens Overlay District within the fence line of the former Grumman facility now known as EPCAL, shall be adopted designating those areas of the EPCAL site where land clearing is prohibited. The areas where land clearing is prohibited shall constitute 35% of the overall site. Those areas contained on said map where land clearing is not prohibited may be cleared. The map may be modified from time to time by local law of the Town Board.
- B. Land subdivision maps and site plans outside of the EPCAL site shall also be designed to encourage the preservation of large unbroken blocks that provide for contiguous open spaces to be established when adjacent parcels are developed. Applications for subdivision and site plan shall contain calculations for clearing, and these limits shall become part of the filed map or approved drawings. Non-native vegetation species to be avoided are contained in Figure 5-2 of the Central Suffolk Pine Barrens Comprehensive Plan.
- C.
- Underline represents addition(s)
 - Overstrike represents deletion(s)

(Annex Non-Clearing Map adopted pursuant to 108-179(A)9(a)

Dated: Riverhead, New York
July 9, 2009

**BY ORDER OF THE TOWN BOARD
OF THE TOWN OF RIVERHEAD**

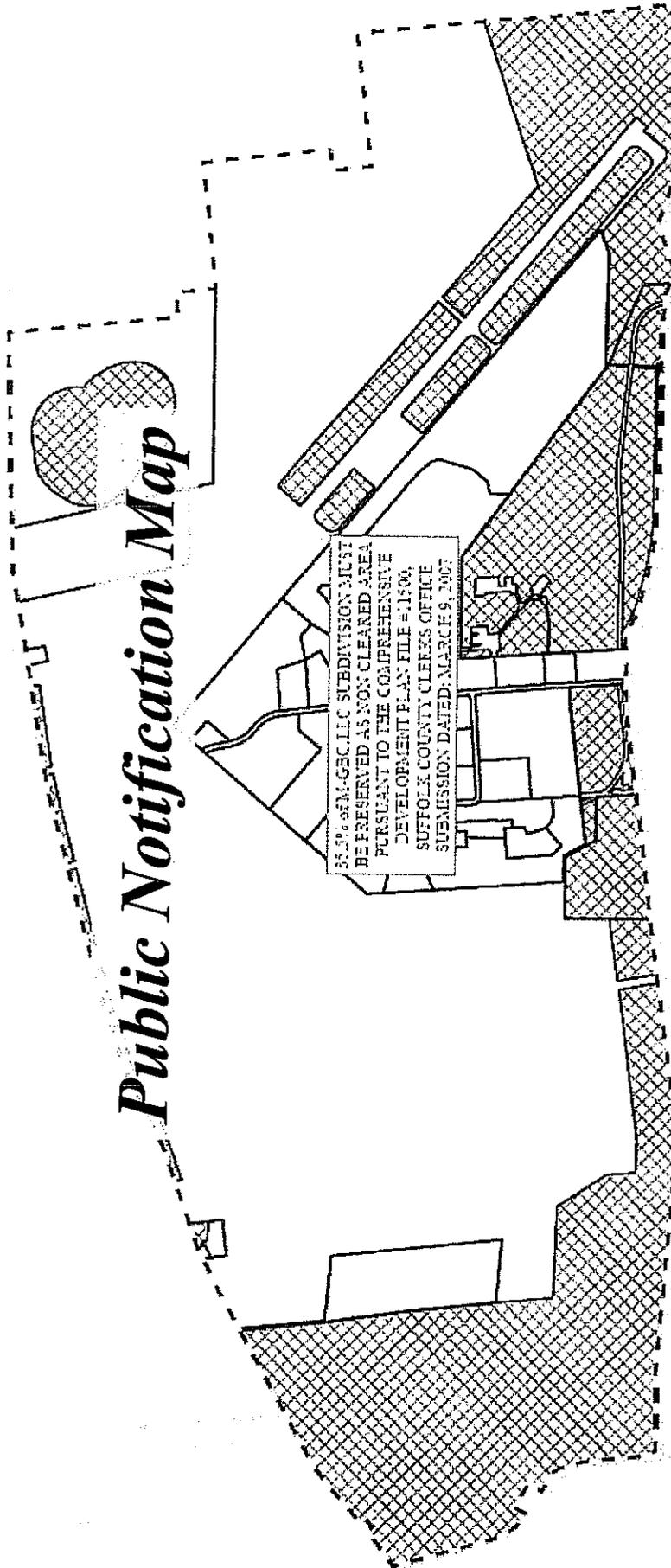
DIANE M. WILHELM, Town Clerk

LEGEND

-  Former Common Site Boundary
-  Non-Clearing Limits

map of
EPCAL
NON-CLEARING LIMITS

Public Notification Map



55.2% SEMI-RURAL SUBDIVISION MUST BE PRESERVED AS NON-CLEARED AREA PURSUANT TO THE COMPREHENSIVE DEVELOPMENT PLAN FILE # 1590A SUFFOLK COUNTY CLERK'S OFFICE SUBMISSION DATED: MARCH 9, 2007



Mr. Mark & Lisa
 Public Inquiry Case

10000 Riverhead Rd, Riverhead, NY 11901

Suffolk County Real Property Tax Service COPYRIGHT (c) 2009, COUNTY OF SUFFOLK, N. Y.

File No.	251000
Non-Clearing Area (Acres)	83.33
Reserved for V-580 S.I.C. Subdivision	13.25
Test Non-Clearing Area	134-BC
GRAND TOTAL 05 to	317.79

TOTAL SEMI-RURAL SUBDIVISION AREA: 500.74 ACRES
 15.00 ACRES EPCAL 134-BC



TOWN OF RIVERHEAD

Phil Cardinale, Supervisor
 200 Howell Ave.
 Riverhead, New York 11901

07/07/09

TOWN OF RIVERHEAD

Resolution # 695

ADOPTS A MAP DESIGNATING CLEARING LIMITS PURSUANT TO §108-179(A)9(a) OF THE PINE BARRENS OVERLAY DISTRICT (Riverhead Town Code Article XXXV) FOR THE FORMER NAVAL WEAPONS INDUSTRIAL RESERVE PLANT (NWIRP) NOW KNOWN AS ENTERPRISE PARK AT CALVERTON (EPCAL)

COUNCILMAN WOOTEN

_____ offered the following resolution,

COUNCILWOMAN BLASS

which was seconded by _____:

RESOLVED, that the Town Board hereby adopts the attached map designating clearing limits non-disturbance areas pursuant to the Pine Barrens Overlay District (Riverhead Town Code Article XXXV) for the former Naval Weapons Industrial Reserve Plan (NWIRP) now known as Enterprise Park at Calverton (EPCAL); and be it further

RESOLVED, that the Town Clerk shall provide a certified copy of this resolution to the Building Department; the Planning Board; the Planning Department and the Office of Accounting, New York State Department of Environmental Conservation, Central Pine Barrens Joint Planning and Policy Commission.

THE VOTE
Buckley yes no Wooten yes no
Dunleavy yes no Blass yes no
Cardinale yes no
THE RESOLUTION WAS WAS NOT
THEREFORE DULY ADOPTED

**TOWN OF RIVERHEAD
NOTICE OF ADOPTION**

PLEASE TAKE NOTICE, that the Town Board of the Town of Riverhead adopted a local law to amend Chapter 108 entitled, "Zoning" (Pine Barrens Overlay District) of the Riverhead Town Code at its special meeting held on July 9, 2009 as follows:

BE IT ENACTED

(insert map)

Dated: Riverhead, New York
July 9, 2009

**BY ORDER OF THE TOWN BOARD
OF THE TOWN OF RIVERHEAD**

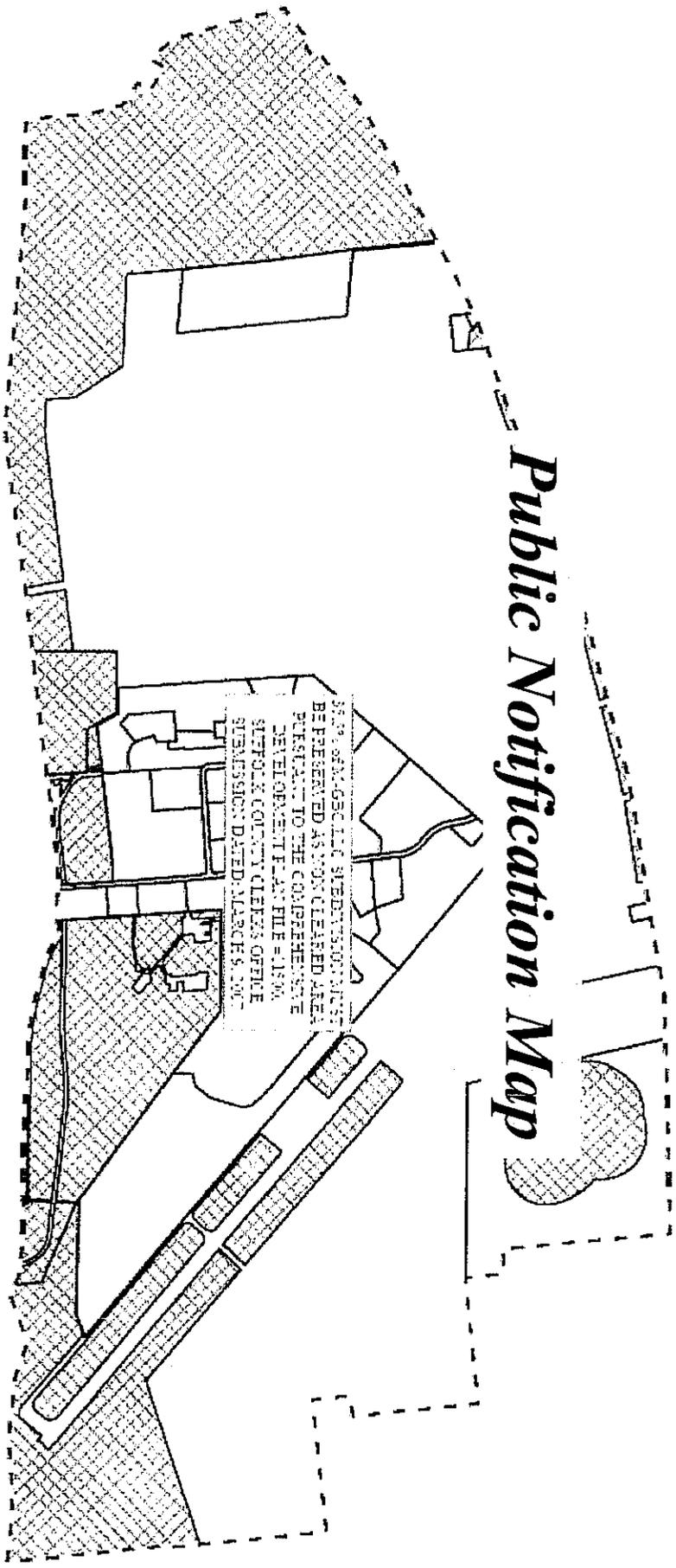
DIANE WILHELM, Town Clerk

LEGEND

 Erosion Control in Erosion
Non-Clearing Zone

map of
FPCA I
NON-CLEARING LIMITS

Public Notification Map



South County Road Department Tax Service CENTER 1100 SOUTH COUNTY OF STEPHENSON, NY

Project Name	Project No.	Project Date
55.0% Setback	2500000	03/05/07

TOWN OF RIVERHEAD
 Puff Candiano, Supervisor
 200 Howell Ave
 Riverhead, New York 11901

Adopted

TOWN OF RIVERHEAD

Resolution # 696

AUTHORIZES TOWN CLERK TO PUBLISH AND POST A PUBLIC NOTICE FOR A LOCAL LAW TO CONSIDER AMENDMENTS TO CHAPTER 108 OF THE CODE OF THE TOWN OF RIVERHEAD ENTITLED "ZONING"

COUNCILWOMAN BLASS

offered the following resolution, was seconded by

COUNCILMAN DUNLEAVY :

RESOLVED, that the Town Clerk be and is hereby authorized to publish the attached public notice once in the July 16, 2009 issue of the News Review, the newspaper hereby designated as the official newspaper for this purpose, and also to cause a copy of the proposed local law amending Chapter 108 entitled "Zoning", §108-3 of the Riverhead Town Code entitled "Definitions", to be posted on the sign board of the Town, and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

WOOTEN YES ___ NO DUNLEAVY YES ___ NO

BLASS YES ___ NO

CARDINALE YES ___ NO

THIS RESOLUTION IS ___ IS NOT
DECLARED DULY ADOPTED

**TOWN OF RIVERHEAD
PUBLIC NOTICE**

PLEASE TAKE NOTICE that a public hearing will be held before the Town Board of the Town of Riverhead, at the George Young Community Center, South Jamesport Avenue, Jamesport, New York, on the 18th day of August, 2009 at 7:05 o'clock p.m. to consider a local law amending Chapter 108 entitled "Zoning", §108-3 entitled "Definitions", of the Riverhead Town Code as follows:

CHAPTER 108
ZONING
ARTICLE I
General Provisions

§ 108-3. Definitions; word usage.

- B. For the purpose of this chapter, certain terms and words are herewith defined as follows:

~~FLOOR AREA, GROSS RESIDENTIAL -- The sum of the horizontal areas of all floors of a building, including interior balconies and mezzanines, but excluding uncovered exterior balconies, decks or porches. All horizontal dimensions of each floor are to be measured from the exterior faces of the walls of each such floor, including all roofed-over areas, or from the center line of party walls with any adjoining building. In computing gross floor area, attic space having a headroom of less than seven feet six inches, cellar and basement space, floor space used exclusively for mechanical equipment and building maintenance or service purpose, including but not limited to elevators, HVAC, required stairways and public rest rooms. Floor space used for off-street parking and loading purposes shall be excluded. Notwithstanding the foregoing, that portion of gross floor area comprising any covered plaza or similar pedestrian common area amenity which is not used directly for commercial purposes shall be excluded in calculating required off-street parking and loading spaces, except for any kiosk or similar commercial facility, the area of which shall be included.~~

The sum of the horizontal areas of all floors of a building, including interior balconies and mezzanines, but excluding uncovered exterior balconies, decks or porches. All horizontal dimensions of each floor are to be measured from the exterior faces of the walls of each such floor, including all roofed-over areas. In computing gross floor area, the following shall be excluded from computation, except when used or intended to be used for human habitation or service to the public: attic space having a headroom of less than seven feet six inches, cellar and basement space.

FLOOR AREA, COMMERCIAL - The sum of the horizontal areas of all floors of a building, including interior balconies and mezzanines. All horizontal dimensions of each floor are to be measured from the exterior faces of the walls of each such floor, including all roofed-over areas, or from the center

line of party walls with any adjoining building. In computing ~~gross~~ floor area, the following shall be excluded from computation, except when used or intended to be used for human habitation or service to the public; atriums, attic space having a headroom of less than seven feet six inches; cellar and basement space; uncovered exterior balconies, decks or porches; floor space used exclusively for building maintenance or service areas related to maintenance; elevators and elevator lobby areas; mechanical and electrical equipment and storage areas for mechanical equipment; laundry equipment, laundry chutes and laundry storage areas (this exclusion shall not apply to commercial business dedicated to laundry related services i.e. dry cleaning, laundromats); stairways and stairwells (this exclusion shall only apply to commercial establishments equipped with elevator or escalator service); and, public rest rooms. The floor area for hotel and country inns shall not include bathrooms; bathroom anterooms; closets; hallways; and, foyers. Notwithstanding the foregoing, that portion of floor area comprising any covered plaza or similar pedestrian common area amenity which is not used directly for commercial purposes or floor space used for off-street parking and loading purposes shall be excluded in computing floor area.

- Underline represents addition(s)
- Strikethrough represents deletion(s)

Dated: Riverhead, New York
July 9, 2009

BY ORDER OF THE TOWN BOARD
OF THE TOWN OF RIVERHEAD

DIANE M. WILHELM, Town Clerk

July 9, 2009

TOWN OF RIVERHEAD

Resolution # 697

Adopted

**Grants Special Use Permit Petition of
Atlantis Holding Company, LLC**

COUNCILMAN DUNLEAVY

offered the following resolution,

COUNCILMAN WOOTEN

which was seconded by _____

WHEREAS, the Riverhead Town Board is in receipt of a special permit petition from Atlantis Holding Company, LLC to allow the construction of a 120 room hotel with related improvements upon real property located at Route 25, Riverhead, New York; such property more particularly described as Suffolk County Tax Lot Number 0600-129-4-20, 21.1 and 21.2, and

WHEREAS, the environmental impacts of the proposed project were analyzed in the Generic Environmental Impact Statement (AKRF 2008) prepared to support the Update of the East Main Street Urban Renewal Plan, and

WHEREAS, the matter was referred to the Riverhead Zoning Board of Appeals and by Determination Number 09-31 relief was granted for off-street parking within the front yard, and

WHEREAS, the matter was referred to the Suffolk County Planning Commission for its report and recommendation; such Planning Commission conditionally approving the subject petition, and

WHEREAS, a public hearing was held on the matter on August 5, 2008, and

WHEREAS, the Riverhead Town Board has carefully considered the merits of the special use permit petition, the SEQRA record created to date, the report of the Riverhead Planning Department, the report of the Suffolk County Planning Commission the commentary heard at the relevant public hearing as well as all other pertinent planning, zoning and environmental information, now

THEREFORE BE IT

RESOLVED, that the Riverhead Town Board hereby declares itself to be the Lead Agency pursuant to 6NYCRR, Part 617 and further determines that the action will be carried out in conformance with the thresholds established by the Generic Environmental Impact and its adopted findings, and that therefore, pursuant to 617.10 (d) (1), no further SEQRA compliance is required, and

BE IT FURTHER

RESOLVED, that with respect to the special permit petition of Atlantis Holding Company, LLC, the Riverhead Town Board hereby makes the following findings:

- (i) That the subject real property lies within the DC-1 and DC-2 Zoning Use District, the Riverhead Parking District, and the Riverhead Water District;
- (ii) That the DC-1 Zoning Use District provides for hotel use by special use permit of the Riverhead Town Board;
- (iii) That the property is currently improved with a gravel parking area, three frame buildings and a marina;
- (iv) That by Determination No. 09-31, the Riverhead Zoning Board of Appeals granted relief from Section 300 B (4) allowing off-street parking within the front yard;
- (v) That the lot area is sufficient and adequate for the proposed hotel use;
- (vi) That adequate land area exists upon both property owned by the applicant and within the Riverhead Parking District to provide for the parking demand to be generated by the proposed use;
- (vii) That adequate access facilities for motor vehicles and pedestrians will be provided through application to the New York State Department of Transportation;
- (viii) That adequate provisions will be made for the collection and treatment of stormwater and sanitary flow to be generated by the hotel use; and

BE IT FURTHER,

RESOLVED, that based upon its findings, the Riverhead Town Board hereby grants the special use permit of Atlantis Holding Company, LLC, and

BE IT FURTHER,

RESOLVED, that the applicant shall complete all construction and commence the special use within three (3) years from the date of this approval, and

BE IT FURTHER,

RESOLVED, that a copy of this resolution be forwarded to Eric Russo, Attorney at Law, as agent for the applicant, the Building Department, the Town Attorney, the Fire Marshal, the Accounting Department and that a copy be scanned on to the Town Hall Share Drive for future reference.

THE VOTE

DUNLEAVY YES ___ NO BUCKLEY ___ YES ___ NO
BLASS ___ YES ___ NO WOOTEN YES ___ NO
CARDINALE YES ___ NO
THIS RESOLUTION WAS ___ WAS NOT
THEREFORE DULY ADOPTED

July 9, 2009

TOWN OF RIVERHEAD

Adopted

Resolution # 698

GRANTS SPECIAL PERMIT OF BERNARD J. KITO, JR.

COUNCILMAN WOOTEN offered the following resolution which
was seconded by COUNCILWOMAN BLASS

WHEREAS, the Riverhead Town Board is in receipt of a special permit petition from Bernard J. Kito, Jr., to allow the construction of 16,975 sq. ft. professional office complex upon real property located at Main Road, Aquebogue; such property more particularly described as SCTM 0600-85-3-1.8, and

WHEREAS, by Resolution Number 655 of 2007, the Riverhead Town Board did declare themselves to be the Lead Agency in the matter and did refer the special use permit petition to the Riverhead Planning Board for its report and recommendation; such Planning Board recommending the granting of the petition, and

WHEREAS, the petition was referred to the Suffolk County Planning Commission for its report and recommendation; such Planning Commission resolving the matter to be one of local determination, and

WHEREAS, a public hearing was held on the matter on June 2, 2009, and

WHEREAS, the Riverhead Town Board has carefully considered the merits of the petition, the SEQRA record created to date, the report of the Riverhead Planning Board, the report of the Suffolk County Planning Commission, the testimony made at the relevant public hearing as well as all other pertinent planning, zoning and environmental information, now

THEREFORE, BE IT

RESOLVED, that in the matter of the special use permit petition of Bernard J. Kito, Jr., the Riverhead Town Board determines the action to be Unlisted without significant adverse impacts upon either the natural or social environment and that an Environmental Impact Statement need not be prepared, and

BE IT FURTHER

RESOLVED, that in the matter of the special use permit petition of Bernard J. Kito, Jr., the Riverhead Town Board hereby makes the following findings:

- (i) That the real property lies within the Rural Corridor (RLC) Zoning Use District;

- (ii) That premises within the RLC Zoning Use District provide for professional office use by special permit of the Town Board provided that such premises are within one-quarter mile of the boundary of a Hamlet Center Zoning Use District Boundary, and
- (iii) That the subject premises lie within one-quarter mile of the boundary of a Hamlet Center Zoning Use District, and
- (iv) That the subject real property is particularly suitable for the location of the proposed use,
- (v) That the lot area is sufficient and adequate for the proposed use,
- (vi) That access to public highway is adequate to address generated motor vehicle trip ends and movements,
- (vii) That adequate off-street parking stalls have been provided to accommodate both patients and employees,
- (viii) That adequate buffer yards and screening have been provided where necessary to protect adjacent land uses,
- (ix) That adequate provision have been made for the management of both storm water and sanitary wastes,
- (x) That adequate provisions have been made for the collection disposal of municipal solid waste, and

BE IT FURTHER

RESOLVED, that based upon its findings, the Riverhead Town Board hereby grants the special use permit of Bernard J. Kito, Jr. to allow the construction of 16,975 sq. ft. professional office complex upon real property described as Suffolk County Tax Map Number 0600-85-3-1.8 conditioned upon the following:

- (1) That all office use shall be exclusively professional office use as defined by Section 108-3 of the Riverhead Zoning Ordinance
- (2) That the special use shall commence within two (2) years tolled from the date of this approval resolution.

BE IT FURTHER,

RESOLVED, that a copy of this resolution be forwarded William L. Jaeger II P.E. L.S., as agent for the applicant, the Building Department, the Town Attorney, the Fire Marshal, the Accounting Department and that a copy be scanned on to the Town Hall Share Drive for future reference.

THE VOTE

DUNLEAVY **YES** **NO**

BLASS **YES** **NO** **WOOTEN** **YES** **NO**

CARDINALE **YES** **NO**

THIS RESOLUTION **WAS** **WAS NOT**
THEREFORE DULY ADOPTED

July 9, 2009

Adopted

TOWN OF RIVERHEAD

RESOLUTION # 699

AUTHORIZES THE SUPERVISOR TO EXECUTE AN AGREEMENT WITH TROY & BANKS CONSULTANTS, LLC, FOR THE PURPOSE OF AUDITING THE TOWN'S CABLE FRANCHISE AGREEMENT WITH CABLEVISION

COUNCILWOMAN BLASS, offered the following resolution, which was seconded by COUNCILMAN DUNLEAVY.

WHEREAS, the Town of Riverhead renewed its cable franchise agreement with Cablevision in 2003; and

WHEREAS, the renewal franchise agreement affords the Town a franchise fee based upon a percentage of Franchisee's gross revenue up to the maximum of five per cent of the Franchisee's gross revenue; and

WHEREAS, the Town of Riverhead wishes to confirm that the Franchisee has provided the correct and proper franchise fee to the Town of Riverhead regarding fees that have been conveyed or will be conveyed to the Town of Riverhead; and

WHEREAS, Troy & Banks Consultants, LLC, is ready, willing and able to conduct a franchise fee compliance audit for the purpose of verifying the accuracy of the franchise fees paid or due to the Town of Riverhead.

NOW THEREFORE BE IT RESOLVED, that the Supervisor is hereby authorized to execute the attached agreement with Troy & Banks Consultants, LLC, for the purpose of conducting a franchise fee compliance audit for the purpose of verifying the accuracy of the franchise fees paid or due to the Town of Riverhead; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a copy of this resolution to Thomas T. Ranallo, 2216 Kensington Avenue, Buffalo, New York 14226; and the Office of the Town Attorney.

THE VOTE

Wooten Yes No Dunleavy Yes No Blass Yes No
Cardinale Yes No

The Resolution Was Was Not
Thereupon Duly Declared Adopted

CONSULTANT/PROFESSIONAL SERVICES AGREEMENT

This Agreement made the _____ of _____, 2009 between the TOWN OF RIVERHEAD, a municipal corporation organized and existing under the laws of New York, with its office located at 200 Howell Avenue, Riverhead, New York 11901 (hereinafter referred to as the "Town") and TROY & BANKS, a corporation existing under the laws of the State of New York with a principal place of business at 2216 Kensington Avenue, Buffalo, New York 14226 (hereinafter referred to as "Consultant").

In consideration of the mutual promises herein contained, Town of Riverhead and Consultant agree as follows:

1. SCOPE OF SERVICES

During the term of this Agreement, Consultant shall furnish the services set forth in the schedule attached hereto and made a part hereof. These services are to be rendered by Consultant as an independent contractor and not as an employee of Town.

2. TERM OF AGREEMENT

The Agreement shall commence on _____ and terminate upon completion of the subject audit, recovery and refund, if any, of underpayments.

3. PAYMENT

For these services, Town will pay Consultant at the rates set forth in the attached schedule. The Town shall not have any liability for any other expenses or costs incurred by Consultant except for expenses expressly provided for in the attached schedule. Consultant shall not incur any expenses in Town's behalf except for those items expressly provided for in the attached schedule. Invoices for services and reimbursable expenses shall contain the following statement signed by Consultant, or if this Agreement is with a firm, an officer or authorized representative of the firm: "I hereby certify, to the best of my knowledge and belief, that this invoice is correct, and that all items invoiced are based upon actual costs incurred or services rendered consistent with the terms of the professional services agreement." Each invoice for reimbursable expenses shall be supported by: (a) an itemized description of expenses claimed; (b) pertinent information relative to the expenses; and (c) attached receipts. Invoices shall reference this Agreement or otherwise be identified in such a manner as Town may reasonably require.

4. RIGHTS TO DOCUMENTS OR DATA

All information and data, regardless of form, generated in the performance of, or delivered under this Agreement, as well as any information provided to Consultant by Town, shall be and remain the sole property of Town. Consultant shall keep all such information and data in confidence and not disclose or use it for any purpose other than in performing this Agreement, except with Town's prior written approval. In the event that the legal right in any data and information generated in the performance of this Agreement does not vest in Town by law, Consultant hereby agrees and assigns to Town such legal rights in all such data and information. Final payment shall not be due hereunder until after receipt by Town of such complete document and data file, or a certification that there is no such information created by the services performed under this

Agreement, and receipt of all information and data which is the property of Town. These obligations shall survive the termination of this Agreement.

5. PUBLICITY

Consultant shall not, without the prior written consent of Town, in any manner advertise or publish the fact that Town has entered into this Agreement with Consultant. Consultant shall not, without the prior written consent of the Town, provide, release or make available for inspection any documents, data, written material of any kind without the prior written consent of at least three members of the Town board or by resolution of the Town Board.

6. ASSIGNMENT AND SUBCONTRACTING

Performance of any part of this Agreement may not be subcontracted nor assigned without, in each case, the prior written consent of at least three members of the Town Board or by resolution of the Town Board.

7. TERMINATION

This Agreement may be terminated at any time by either party upon 30 days written notice to the other party. In the event of such termination, Town shall have no further obligation to Consultant except to make any payments which may have become due under this Agreement.

8. RECORDS

Consultant shall keep accurate records of the time spent in the performance of services hereunder. The Town shall, until the expiration of seven years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of Consultant involving transactions related to this Agreement.

9. CHANGES

The Town, by resolution of the Town Board or written request by at least three members of the Town Board, within the general scope of this Agreement, may, at any time by written notice to Consultant, issue additional instructions, require additional services or direct the omission of services covered by this Agreement. In such event, there will be made an equitable adjustment in price and time of performance, but any claim for such an adjustment must be made within 15 days of the receipt of such written notice. In the event that the Consultant determines that a change order is required, Consultant shall obtain written approval of the Town, by resolution or written consent of at least three members of the Town Board, and if the change shall require the payment of additional compensation, Consultant must obtain the written approval of three members of the Town Board or resolution of the Town Board for the additional compensation prior to commencement of work regarding the change order. It is agreed and understood that no oral agreement, conversation, or understanding between the Consultant and the Town, its departments, officers, agents and employees shall effect or modify any of the terms or obligations of this Agreement or schedules annexed hereto and made a part hereof.

10. NOTICES

Any notice shall be considered as having been given: (i) to Town of Riverhead if mailed by certified mail, postage prepaid to Town of Riverhead, Attention: Daniel P. McCormick, Town Attorney's Office, 200 Howell Avenue, Riverhead, New York 11901; or (ii) to Consultant if

mailed by certified mail, postage prepaid to Troy & Banks, 2216 Kensington Avenue, Buffalo, New York 14226.

11. COMPLIANCE WITH LAWS

Consultant shall comply with all applicable federal, state and local laws and ordinances and regulations in the performance of its services under this Agreement. Consultant will notify Town immediately if Consultant's work for Town becomes the subject of a government audit or investigation. Consultant will promptly notify Town if Consultant is indicted, suspended or debarred. Consultant represents that Consultant has not been convicted of fraud of any other felony arising out of a contract with any local, state or federal agency. In carrying out the work required hereunder, Consultant agrees not to make any communication to or appearance before any person in the executive or legislative branches of the local, state or federal government for the purpose of influencing or attempting to influence any such persons in connection with the award, extension, continuation, renewal, amendment or modification of any contract or agreement. Consultant may perform professional or technical services that are rendered directly in the preparation, submission or negotiation activities preceding award of a Town agreement/contract or to meet requirements imposed by law as a condition for receiving the award but only to the extent specifically detailed in the statement of work. Professional and technical services are limited to advice and analysis directly applying Consultant's professional and technical discipline.

12. INSURANCE, INDEMNITY AND LIABILITY

Consultant shall carry Comprehensive General Liability Insurance and, if applicable, worker's compensation insurance. Consultant hereby indemnifies and holds the Town, its departments, officers, agents and employees, harmless against any and all claims, actions or demands against Town, its departments, officers, agents and employees and against any and all damages, liabilities or expenses, including counsel fees, arising out of the acts or omissions of Consultant under this Agreement.

13. CONFLICT OF INTEREST

Consultant hereby represents and covenants that neither it nor any of its employees or representatives has or shall have, directly or indirectly, any agreement or arrangement with any official, employee or representative of the Town of Riverhead which any such official, employee, representative shall receive either directly or indirectly anything of value whether monetary or otherwise as the result of or in connection with any actual or contemplated application before any department of the Town, contract with the Town for sale of any product or service. Consultant further represents and covenants that neither it nor any of its employees or representatives has offered or shall offer any gratuity to the Town, its officers, employees, agents or representatives with a view toward obtaining this Agreement or securing favorable treatment with respect thereto. Consultant further represents that it will not engage in any activity which presents a conflict of interest in light of its relationship with Town.

14. DISCLOSURE

The Town shall have the right, in its discretion, to disclose the terms and conditions of this Agreement (as it may be amended from time to time), including but not limited to amounts paid pursuant hereto, to agencies of the local, state and federal government.

15. DISPUTES

If Consultant fails to perform any of its obligations hereunder in accordance with the terms hereof, then after reasonable notice to Consultant not to exceed thirty (30) days, and an opportunity for Consultant to cure such failure (except in case of emergency), the Town may (but shall not be obligated to) cure such failure at the expense of the Consultant, and the amount incurred by the Town on demand. Notwithstanding the above, any dispute arising under this Agreement which is not settled by Agreement of the parties may be settled by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this Agreement, Consultant shall proceed diligently with the performance of this Agreement in accordance with the decision of Town.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Town of Riverhead

Troy & Banks Consultants, LLC

By: _____
Phil Cardinale, Town Supervisor

By: _____
Thomas T. Ranallo, Manager

Town of Riverhead
200 Howell Avenue
Riverhead, New York 11901
631-727-3200

Troy & Banks Consultants, LLC
2216 Kensington Avenue
Buffalo, New York 14226
716-839-4402

Schedule A

A. Scope of Services

Troy & Banks shall conduct a cable television franchise fee compliance audit for the purpose of verifying the accuracy of the franchise fees paid or due to the Town of Riverhead.

Audit- Troy & Banks shall identify what specific sources of revenue are subject to franchise fees, examine relevant accounting data, examine franchisee accounting data and supporting documentation, identify all revenue sources by classification, and verify calculations. Troy & Banks shall also evaluate allocation methodology with respect to non-subscriber revenue, conduct a search for unreported revenues and examine the cable operators' database to determine if all active addresses within the Town's boundaries were included in the franchise fee remittance.

B. Compensation

1. Town of Riverhead agrees that Troy & Banks will receive as its compensation for this service a contingency fee of the underpayments identified and actually recovered under its franchise agreement and/or federal law or state law or regulations. The Contingency fee shall be in accordance with the following schedule:
 - a. Thirty-Five percent (35%) of identified and actually recovered amounts of underpayments up to and including \$100,000.00; plus an additional
 - b. Thirty percent (30%) of identified and actually recovered amounts of underpayments in excess of \$100,000.00 up to and including \$500,000.00; plus an additional
 - c. Twenty percent (20%) of identified and actually recovered amounts of underpayments in excess of \$500,000.00.
2. Troy & Banks has made and makes no guarantee or assurance that the audit will produce a refund due to franchise fee underpayments.
3. **If there is no actually recovered underpayment identified for the benefit of the Town of Riverhead, Troy & Banks acknowledges that there will be no fee payable to Troy & Banks nor payment for any other charges of any kind or nature.**
4. The Town of Riverhead agrees to assist Troy & Banks in collection of identified recoverable amounts by enforcing the related provisions of its franchise agreement with the cable television operator.

Town of Riverhead

Troy & Banks Consultants, LLC

By: Phil Cardinale, Town Supervisor

By: Thomas T. Ranallo, Manager

Town of Riverhead
200 Howell Avenue
Riverhead, New York 11901
631-727-3200

2216 Kensington Avenue
Buffalo, New York 14226
716-839-4402

Adopted

TOWN OF RIVERHEAD

Resolution # 700

AUTHORIZES A LEASE AGREEMENT BETWEEN TOWN OF RIVERHEAD AND EAST END WIRELESS, INC. SUBJECT TO PERMISSIVE REFERENDUM

COUNCILMAN DUNLEAVY

offered the following resolution, was seconded by

COUNCILMAN WOOTEN

:

WHEREAS, an agreement has been proposed between the Town of Riverhead and East End Wireless, Inc. wherein East End Wireless, Inc. desires to use a portion of premises leased by the Town of Riverhead from the Community Development Agency on the Calverton property being and intended to be the same property formerly subject to an agreement with the Town and East End Aircraft Corp. for the purposes of constructing an F-14 monument and memorial site, less any portion thereof subject to contract for conveyance, by sale or lease, for purposes of economic development, and said proposed lease premises intended to include such additional acreage or portion thereof required to construct, install, maintain and operate a wireless communications service system facility; and

WHEREAS, East End Wireless, Inc. seeks to lease from the Town of Riverhead approximately 75'x 75' and such area required as and for a buffer to locate and maintain a wireless communications service system facility which will include four whip antennae for municipal use. A description of the property to be leased is more fully described in Exhibit A of proposed lease agreement annexed hereto and access for construction of the wireless communications service system facility is described in Exhibits B and C annexed to the lease agreement. It is noted that the areas described in Exhibits A, B and C, have not been improved as part of the memorial site nor have said areas been made accessible by the public but instead are located in the vicinity of the F-14 memorial site; and

WHEREAS, the specific terms and conditions have been reduced to writing and are contained in a certain proposed lease agreement which is attached hereto and which is also on file with the Riverhead Town Clerk and available for review during normal business hours;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Supervisor to execute a lease agreement between the Town of Riverhead and East End Wireless for approximately five thousand six hundred and twenty-five square feet of

space adjacent to Grumman Memorial Park located in Calverton, New York; and be it further

RESOLVED that the Town Clerk is hereby directed to forward a copy of this Resolution to East End Wireless, Inc., 99 West Main Street, East Islip, New York 11730; and be it further

RESOLVED that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

RESOLVED, that this resolution is subject to permissive referendum as provided in Article 7 of the New York State Town Law and that the Town Clerk is directed to publish notice hereof.

WOOTEN YES ___ NO BUCKLEY ~~___~~ YES ~~___~~ NO
DUNLEAVY YES ___ NO BLASS YES ___ NO
CARDINALE YES ___ NO
THIS RESOLUTION IS ___ IS NOT
DECLARED DULY ADOPTED

OPTION AND LAND LEASE

This Option and Land Lease, hereinafter referred to as "Lease", is made the last day executed below by and between Town of Riverhead, a municipal corporation having an address of 200 Howell Avenue, Riverhead, New York 11901, Federal Tax ID No. _____, hereinafter referred to as "Lessor", and East End Wireless, Inc., a New York Corporation having an office at 99 West Main Street, East Islip, New York 11730, hereinafter referred to as "Lessee".

1. The Option.

(a) For the sum on one hundred dollars (\$100.00) (the "Option Fee"), to be paid to Lessor by Lessee upon execution of this Lease and other good and valuable consideration, Lessor hereby grants to Lessee the exclusive and irrevocable option for six (6) months from the date hereof (the "Initial Option Period"), to lease the Leased Space (as defined below) on the terms and conditions set forth below (the "Option"). The Option may be extended for an additional six (6) months upon written notification to Lessor by Lessee, accompanied by the payment of an additional one hundred dollars (\$100.00) (the "Additional Option Fee"), delivered to Lessor prior to the end of the Initial Option Period. The Initial Option Period, as it may be extended, is referred to herein as the "Option Period".

(b) During the Option Period, and any extension thereof, and during the term of this Lease, Lessor agrees to cooperate with Lessee in obtaining, at Lessee's expense, all licenses, permits and/or authorizations for Lessee's use of the premises, from all applicable federal, state or local authority, including zoning and land use authorities, the Federal Communications Commission ("FCC") and the Federal Aviation Administration ("FAA"). Lessee, at no cost to Lessor, may obtain title report, zoning approvals, variances and land use permits and Lessor, subject to any rights under license agreement with East End Aircraft Corporation, grants Lessee the right of access to the subject property to perform surveys, soil tests and other engineering procedures or environmental investigations on the property necessary to determine that the Lessee's use of the property will be compatible with Lessee's engineering specifications, system design, operations and government approval. Notwithstanding the foregoing, Lessee may not change the zoning classification of the property without obtaining Lessor's consent to do so. Lessee shall have the right to enter the Owner's property to conduct tests and studies, at Lessee's expense, to determine the suitability of the Leased Space for Lessee's intended use. The tests may include, without limitation, surveys, soil tests, environmental assessments and radio wave propagation measurements.

(c) Lessee may exercise the Option by delivery of written notice to Lessor in accordance with the Notice Provisions specified herein. Upon Lessee's exercise of the Option, the Lease which follows will take effect.

2. Leased Space and Premises. Upon Lessee's exercise of the Option, Lessor shall lease approximately five thousand six hundred and twenty five square feet of space as depicted in Exhibit A attached hereto (the "Leased Space" depicted on

amended site plan dated May 12, 2009 and approved on June 16, 2009) and as may be modified as required by the Planning Department of the Town of Riverhead and/or Town of Riverhead. Lessor also hereby grants to Lessee the right to survey the Leased Space at Lessee's cost. As set forth above, the Planning Board of the Town of Riverhead may require modification of the location of the subject premises and easements for legal access and utilities. At the time of submission of the special permit and any such other approvals required by the Town of Riverhead, Lessee shall provide survey and metes and bounds description depicting the subject premises as approved by the Planning Department of the Town of Riverhead. The Leased Space shall include a construction and access and utility easement set forth in Exhibits B and C annexed hereto. In the event of any discrepancy between the description of the Leased Space contained herein and the survey, the survey will control. The Leased Space will be utilized to construct, support and operate a wireless communications facility, including a communications tower, antennas, cables, and related structures and improvements (the "Structures"), including the uses as permitted and described in Section 11 of this Lease. In addition, Lessee agrees to construct, locate and affix, up to four municipal or quasi-municipal whip antennae at the top of the flagpole at no cost to the Town and subject to request and approval of the Town Board of the Town of Riverhead.

3. Term. The initial term of this Lease will be five (5) years from the "Commencement Date" specified below (in no event shall this date be earlier than the date on which Lessee exercises the Option) and shall automatically renew for up to five (5) additional terms of five (5) years each unless Lessee notifies Lessor of its intention not to renew prior to commencement of the succeeding renewal term. The initial term and each successive renewal term shall be referred to herein as the "Term".

4. Rent. On or before the tenth of each month, the Town of Riverhead will receive fifty percent (50%) of the total gross rent that East End Wireless, Inc. has received from its customers on the rental space at the aforementioned location, with a minimum rental due of four thousand five hundred dollars (\$4,500.00) per month. A payment of fifty thousand dollars (\$50,000.00) will be paid to the Town of Riverhead within ten (10) days of issuance of certificate of occupancy for the aforementioned location. A second payment of twenty five-thousand dollars (\$25,000.00) shall be paid to the Town of Riverhead six (6) months from the issuance of a certificate of occupancy for the aforementioned location, and a third payment of twenty five-thousand dollars (\$25,000.00) shall be paid to the Town of Riverhead twelve (12) months from the issuance of a certificate of occupancy for the aforementioned location.

5. Ingress and Egress. Lessor hereby grants to Lessee an easement (the "Easement") for ingress, egress and regress over the Premises adjacent to the Leased Space for construction and operation of the Structures on the Leased Space, and for installation, construction and operation of underground and above ground telephone, telegraph and power lines, in connection with its use of the Leased Space. The term of this Easement will commence upon exercise of the Option and will continue until the last to occur of (i) expiration of the Term, or (ii) removal by Lessee of all of its property from the Leased Space after expiration of the Term. The location and configuration of the Easement will be agreed upon by the parties within thirty (30) business days after the latter of Lessee's exercise of the Option and submission of requisite applications to the Town of Riverhead for location of the tower on the subject premises. The Easement(s)

and dimensions thereof are fully described in Exhibits B and C, and may be included in any recorded Memorandum or Short Form of this Lease. In addition, at Lessee's request and expense, this Easement will be set forth in a separate Easement Agreement which Lessor and Lessee agree to execute and which Lessee will have recorded as an encumbrance on the property of Lessor. In all events, the Easement and this Lease shall be binding upon all subsequent owners, successors and assigns.

Lessee agrees that Lessor may, at Lessor's expense, relocate the above described easements to another comparable location on the Premises provided that: (a) Lessee receives no less than sixty (60) days prior written notice thereof; (b) Lessee approves the proposed new location of the easement, which approval will not be unreasonably withheld or delayed; (c) Lessee's access and beneficial use and enjoyment of the Leased Space is not interrupted, obstructed or materially affected; and (d) the utility services to the Leased Space are not interrupted.

6. Title and Quiet Possession. Lessor represents and covenants that Lessor owns the Leased Space in fee simple terms, free and clear of all liens, encumbrances and restrictions of every kind and nature, except for license agreements that the Town of Riverhead may enter into for the maintenance or improvements of the F-14 memorial site.

Lessor represents and warrants that there are no matters affecting title that would prohibit, restrict or impair the leasing of the Leased Space except for license agreements with East End Aircraft Corporation or use or occupancy thereof in accordance with the terms and conditions of the Lease. Lessor represents and warrants to Lessee that Lessor has the full right to make this Lease and that Lessee will have quiet and peaceful possession of the Leased Space subject to license agreements set forth above throughout the Term.

7. Subordination, Non-disturbance and Attornment.

(a) Lessee agrees that this Lease will be subject and subordinate to any mortgages or deeds of trust now or hereafter placed upon the Leased Space and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust, provided that the holder of any such instrument agrees in writing that Lessee's possession of the Leased Space will not be disturbed so long as Lessee will continue to perform its duties and obligations under this lease and Lessee's obligation to perform its duties and obligations under this Lease and Lessee's obligation to perform the duties and obligations will not be in any way increased or its rights diminished by the provisions of this paragraph. Lessee agrees to attorn to the mortgage, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser in a sale pursuant to the foreclosure thereof, provided that Lessee's possession of the Leased Space will not be disturbed so long as Lessee will continue to perform its duties and obligations under this Lease. Lessee's obligations hereunder are conditioned upon receipt by Lessee, within ten (10) business days after Lessee's notice of its intent to exercise the Option, or within ten (10) business days after the date of creation of any future mortgages or deeds of trust, of a Subordination, Non-disturbance and Attornment Agreement in a form reasonably acceptable to Lessee, from any holder

of a mortgage, deed to secure debt or deed of trust to which this Lease is, or will become, subordinate.

(b) Lessee may from time to time grant to certain lenders selected by Lessee and its affiliates (the "Lenders") a lien on and security interest in all assets and personal property of Lessee located on the Leased Space, including but not limited to all accounts receivable, inventory, goods, machinery and equipment owned by Lessee (the "Personal Property") as collateral security for the repayment of any indebtedness to the Lenders. The Lender may, in connection with any foreclosure or other similar action relating to the Personal Property, enter upon the Leased Space (or permit their representatives to do so on their behalf) in order to implement a foreclosure or other action without liability to Lessor provided, however, that (i) Rent is paid to Lessor during occupancy by or on behalf of the Lenders for any purpose, (ii) the Lenders pay for any damages caused by the Lenders or their representatives in removing the Personal Property from the Leased Space, and (iii) the Lenders otherwise comply with the terms of this Lease. Lessor hereby agrees to subordinate any security interest, lien, claim or other similar right, including without limitation, rights of levy or distraint for rent, Lessor may have in or on the Personal Property, whether arising by agreement or by law, to the liens and/or security interests in favor of the Lenders, whether currently existing or arising in the future. Nothing contained herein shall be construed to grant a lien upon or security interest in any of Lessor's assets. To the extent required by the terms of this Lease, Lessor consents to any grant by Lessee to any Lenders of a lien on Lessee's leasehold interest in this Lease. In the event Lessor gives Lessee any notice of default or termination of this Lease (or commences any legal proceedings relating thereto), Lessor will endeavor to simultaneously give a duplicate copy thereof to the Lenders but shall incur no liability due to Lessor's failure to give such notice and the failure to give such notice shall not limit Lessor's ability to exercise any remedies available to Lessor under this Lease. Lessor agrees to accept performance on the part of any of the Lenders or their agents or representatives as though performed by Lessee to cure any default or condition for termination. The terms of this paragraph may not be modified, amended or terminated except in writing signed by the Lenders. Lessor has been made aware that Lessee has entered, or may enter into a certain loan agreement, and such Lender shall be considered the Lender for purposes of this paragraph and is, together with its successors and assigns, intended third party beneficiaries hereof and any notices to any Lenders required or desired to be given hereunder shall be directed to such lender or Lessee shall designate, in writing, or at such other address as such party shall specify.

8. Governmental Approvals and Compliance. During the Term, Lessee will make reasonable efforts to comply with all applicable laws affecting Lessee's use or occupancy of the Leased Space, the breach of which might result in any penalty on Lessor or forfeiture of Lessor's title to the Leased Space. Lessee will not commit, or suffer to be committed, any waste on the Leased Space. Lessor agrees to fully cooperate with Lessee in order to obtain the necessary permits for construction and use of the Leased Space for a communication tower ("The Tower") site, including but not limited to zoning approvals/permits and building permits. Lessor agrees not to take any action that may adversely affect Lessee's ability to obtain all of the necessary permits required for construction of the site. Lessee will obtain any necessary governmental licenses or authorizations required for the construction and use of Lessee's intended

Tower (the "Tower") and other structures on the Leased Space and will furnish copies of same to Lessor as same are issued.

9. Assignment and Subleasing. Lessee may sublet all or part of the Leased Space for the purpose of siting wireless providers. Lessee must obtain the approval of Lessor to assign or transfer this Lease in whole or in part. Upon such assignment, Lessee shall be relieved of all future performance liabilities and obligations under this Lease.

10. Notices. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to this Lease will be in writing, signed by the notifying party, or officer, agent or attorney of the notifying party, and will be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight service or by overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Lessor: Town of Riverhead
200 Howell Avenue
Riverhead, New York 11901
Attn: Office of the Town Attorney
(631) 727-3200

To Lessee: East End Wireless, Inc.
99 West Main Street
East Islip, New York 11730
Attn: Site Administration
Phone # - (631) 581-8105

The address to which any notice, demand or other writing may be delivered to any party as above provided may be changed by written notice given by the party as above provided.

11. Lessee Improvements. Lessee has the right, at its sole expense, to make the improvements on the Leased Space as it may deem necessary, including any improvements necessary for the construction and operation of the Tower and the other Structures, subject to all Town Code requirements. Lessee will be responsible for the cost of any site preparation work necessary to prepare the Leased Space to support the Structures. All Lessee's improvements, including but not limited to the Tower, prefabricated buildings, generators, fencing and any other Structures will remain the property of the Lessee. The Tower and Structures may be used for the transmission, reception and relay of communication signals, including, without limitation, radio frequency signals. Upon termination of this Lease, Lessee will, to the extent reasonable, restore the Leased Space to its original condition at the commencement of this Lease, except for ordinary wear and tear and damages by the elements or damages over which Lessee had to control. Lessee and Lessor agree that it will not be reasonable to require Lessee to remove any improvements contemplated hereunder which are permanent in nature, including but not foundations, footings, concrete, paving, gravel, vegetation and utilities.

12. Insurance. Lessee – Lessee, at all times during the term(s) of this Lease, will maintain in full force a comprehensive public liability insurance policy covering all of its operations, activities, liabilities and obligations on the Leased Space, having limits not less than two million dollars (\$2,000,000.00). Lessee's liability certificate shall name Lessor as an additional insured. On or before the commencement date, Lessee will give Lessor a certificate of insurance evidencing that such insurance is in effect. Lessee shall deliver to Lessor a renewal certificate evidencing that such insurance is in effect within ten (10) business days of Lessor's request for such certificate. The insurance policy shall be issued by an insurance company authorized to do business in the state in which the Leased Space is located and shall provide thirty (30) days prior written notice to the Lessee of any cancellation of such policy. Any insurance required to be provided by Lessor may be provided by a blanket insurance covering the Leased Space and other properties by Lessor provided that such blanket insurance policy complies with all of the other requirements with respect to the type and amount of insurance. Lessor reserves the right at three year intervals to require reasonable increases in charges in coverage based upon the changing conditions and upon a review and evaluation by Lessee's insurance agent.

13. Operating Expense. Lessee will pay for all water, gas, heat, light, power, telephone service, and other public utilities furnished to the Leased Space and used by Lessee throughout the Term hereof, and all other costs and expenses of every kind whatsoever in connection with the use, operation and maintenance of the Leased Space and all activities conducted thereon.

14. Taxes. Lessee will pay any personal property taxes assessed on or any portion of the taxes attributable to the Structures. Lessor will pay when due all real property taxes and all other fees and assessments attributable to the Leased Space. However, Lessee will pay, as additional Rent, any increase in real property taxes levied against the Leased Space which is directly attributable to Lessee's use of the Leased Space, and Lessor agrees to furnish proof of the increase to Lessee.

15. Maintenance. Lessee will use best efforts to maintain the Leased Space in good condition and state of repair. Except insofar as Lessee is made responsible by this Lease, Lessor will maintain the premises surrounding the Leased Space in good condition and state of repair.

16. Hold Harmless. Lessor will be held harmless by Lessee and Lessee shall defend and indemnify from and against any and all claims, demands, payments, suits, actions, recoveries, judgments, costs and expenses, including without limitation, attorney's fees in connection therewith, of every nature, including but not limited to claims for bodily injury or death, by any third party, and by or on behalf of the contractors, agents, servants or employees, arising out of or in connection with Lessee, its agents, servants or employees. Lessor will be held harmless by Lessee and Lessee agrees to defend and indemnify Lessor for property damage, including damage to the Leased Space, unless the damages are caused by, or are the result of, the misconduct or negligence of Lessor or any of Lessor's agents, servants, employees, licensees or invitees. Notwithstanding any provisions herein to the contrary, it is understood and agreed that all property kept, installed, stored or maintained in or upon the Leased

Space by Lessee will be so installed, kept, stored or maintained at the risk of Lessee. Lessor will not be responsible for any loss or damage to equipment owned by Lessee which might result from tornadoes, lightning, wind storms or other Acts of God, provided however, Lessor will be responsible for, and agrees to hold Lessee harmless from any liability (including reimbursement of reasonable legal fees and all costs), for damages to any person or any property in or upon the Leased Space arising out of the misconduct or negligence of Lessor or any of Lessor's agents, servants, employees, licensees or invitees. Except for willful misconduct, neither Lessor nor Lessee will in any event be liable in damages for each other's business loss, business interruption or other consequential damages of whatever kind or nature, regardless of the cause of the damages, and each party, and anyone claiming by or through them, expressly waives all claims for the damages.

17. Termination Rights.

(a) Lessee may terminate this Lease, at its option, after giving Lessor not less than sixty (60) days prior written notice to cure if (i) any governmental agency denies a request by Lessee for a permit, license or approval which is required for Lessee to construct or operate the Structures on the Leased Space or any such permit is revoked, (ii) Lessee determines that technical problems or radio interference problems from other antennas or from nearby radio transmitting facilities, which problems cannot reasonably be corrected, impair or restrict Lessee from using the Leased Space for Lessee's intended purpose, (iii) Lessee determines that it does not have acceptable and legally enforceable means of ingress and egress to and from the Leased Space, (iv) Lessor does not have legal or sufficient ownership of or title to the Leased Space or Premises or the sufficient ownership of or title to the Leased Space or Premises or the authority to enter into this Lease, (v) utilities necessary for Lessee's contemplated use of the Leased Space are not available, (vi) the Leased Space is damaged or destroyed to an extent which prohibits or materially interferes with Lessee's use of the Leased Space or Lessee's equipment and attachments thereto, (vii) the Premises now or hereafter contains a Hazardous Material, (viii) Lessee is unable to obtain a Subordination, Non-disturbance and Attornment Agreement, (ix) a material default by Lessor occurs, (x) Lessor fails to perform any of the material covenants or provisions of this Lease or if any representation or warranty contained herein is found to be untrue, (xi) the Leased Space is the subject of a condemnation proceeding or taking by a governmental authority, or a quasi-governmental authority with the power of condemnation, or, if the Leased Space is transferred in lieu of condemnation (rent will be abated during the period of condemnation or taking), (xii) the use of the site will not sufficiently benefit Lessee economically or commercially, (xiii) if Lessee determines, in its sole discretion, that it will not be viable to use the site for its intended purposes, or (xiv) if Lessee determines, in its sole discretion, that it will be unable to use the site for any reason. IN the event of termination by Lessee or Lessor pursuant to this provision, Lessee will be relieved of all further liability hereunder. Any rental fees paid prior to the termination date will be retained by Lessor. In the event Lessor fails to perform its obligations under this Lease for any reason other than Lessee's breach, Lessee may pursue all remedies available at law and in equity. Lessor hereby acknowledges that Lessee will incur significant expenses in reliance on this Lease, and therefore agrees to pay Lessee for all consequential damages which Lessee will suffer as a result of Lessor's breach.

(b) Lessor may terminate this Lease, at its option, in the event of a material default and/or Lessee's failure to pay rent when due, if such default or failure is not cured within thirty (30) days after Lessee's receipt of written notice of such default. **In the event the Lessor shall determine, by a duly-adopted resolution of its Board, that the Leased Space is required for a legitimate municipal purpose, the Lessor shall, at its sole cost and expense, relocate the Lessee's Structures to another location on the Premises and this Lease shall remain in full force and effect.**

18. **Exclusivity.** During the Term, neither Lessor, nor its successors or its assigns, will use or suffer or permit another person, corporation, company or other entity to use the Premises for the uses permitted herein or other uses similar thereto.

19. **Binding on Successors.** The covenants and conditions contained herein will apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto. Further, this Lease will run with the land and all subsequent purchasers will be subject to the terms and conditions specified herein.

20. **Access to Leased Space/Premises.** Lessee shall have at all times during the Term the right of access to and from the Leased Space and all utility installations servicing the Leased Space on a 24 hours per day/7 days per week basis, on foot or by motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits and pipes over, under and along the right-of-way extending from the nearest accessible public right-of-way.

21. **Governing Law.** The parties intend that this Lease and the relationship of the parties will be governed by the laws of the State in which the Leased Space is located.

22. **Entire Lease.** All of the representations and obligations of the parties are contained herein, and no modification, waiver or amendment of this Lease or of any of its conditions or provisions will be binding upon a party unless in writing signed by that party or a duly authorized agent of that party empowered by a written authority signed by that party. The waiver by any party of a breach of any provision of this Lease will not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition of the Lease.

23. **Survey and Testing.** Lessee will have the right during the Term of this Lease (and the Option Period, if applicable) to survey, soil test and make any other investigations necessary to determine if the surface and subsurface of the Leased Space are suitable for construction and operation of the Tower and other Structures. If Lessee, prior to completion of the Structures determines that for any reason the surface or subsurface of the Leased Space is not suitable to construct and operate the Tower or other Structures, this Lease, upon written notice given to Lessor prior to completion of the Structures, will become null and void, provided that at Lessee's sole expense, the Leased Space will be promptly restored to the extent contemplated by the Lessee Improvements section above and provided further that Lessee will deliver copies of all soil tests and investigation reports to Lessor.

24. Oil, Gas and Mineral Rights. Lessor does not grant, lease, let or demise hereby, but expressly excepts and reserves here from all rights to oil, gas and other minerals in, on or under and that might be produced or mined from the Leased Space, provided however, that no drilling or other activity will be undertaken on or beneath the surface of the Leased Space or Easement Area to recover any oil, gas or minerals. This Lease is given and accepted subject to the terms and provisions of any valid oil, gas and mineral lease covering the Leased Space or any part thereof, now of record in the Office of the County Clerk, provided however, that any future oil, gas or mineral lease covering the above-described lands or any part thereof will be in all respects subordinate and inferior to the rights, privileges, powers, options, immunities and interests granted to Lessee under the terms of this Lease.

25. Hazardous Waste.

(a) The term Hazardous Materials will mean any substance, material, waste, gas or particulate matter which is regulated by the local governmental authority where the Leased Space is located, the State in which the Leased Space is located or the United States Government, including but not limited to, any material or substance which is (i) defined as a "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste" or "restricted hazardous waste" under any provision of state or local law; (ii) petroleum; (iii) asbestos; (iv) polychlorinated biphenyl; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to Section 31 of the Clean Water Act, 33 U.S.C. 1251, et seq. (33 U.S.C. 1317); (vii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. (42 U.S.C. 6903); or (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq. (42 U.S.C. 9601). The term Environmental Laws will mean all statutes specifically described in the foregoing sentence and all applicable federal, state and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Materials.

(b) Lessor represents and warrants that, to the best of Lessor's knowledge (i) the Leased Space has not been used for the use, manufacturing, storage, discharge, release or disposal of hazardous waste; (ii) neither the Leased Space nor any part thereof is in breach of any Environmental Laws; (iii) there are no underground storage tanks located on or under the Leased Space; and (iv) the Leased Space is free of any Hazardous Materials that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability. If any such representation is in any manner breached during the Term of this Lease (collectively a "Breach") and if the Breach gives rise to or results in liability (including but not limited to a response action, remedial action or removal action) under any Environmental Laws or any existing common law theory based on nuisance or strict liability, or causes a significant effect on public health, Lessor will promptly take any and all remedial and removal action as required by law to clean up the Leased Space, mitigate exposure to liability arising from, and keep the Leased Space free of any lien imposed pursuant to any Environmental Laws as a result of the Breach.

(c) In addition, Lessor agrees to indemnify, defend and hold harmless Lessee, its officers, partners, successors and assigns from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, attorneys' fees, damages, liabilities, demands, interest, fines, penalties and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by Lessee and its grantees as a result of (a) any Breach; or (b) any matter, condition or state of fact involving Environmental Laws of Hazardous Materials which existed on or arose during the Term of this Lease and which failed to comply with (i) the Environmental Laws then in effect; or (ii) any existing common law theory based on nuisance or strict liability.

(d) Lessor represents and warrants to Lessee that Lessor has received no notice that the property or any part thereof is, and to the best of its knowledge and belief, no part of the Premises is located within an area that has been designated by the Federal Emergency Management Agency, the Army Corps of Engineers or any other governmental body as being subject to special hazards.

(e) The covenants of this Section will survive and be enforceable and will continue in full force and effect for the benefit of Lessee and its subsequent transferees, successors and assigns and will survive the Term of this Lease and any renewal periods thereof.

26. Mechanic's and Landlord's Liens. Lessee will not cause any mechanic's or materialman's lien to be placed on the Leased Space, and Lessee agrees to indemnify, defend and hold harmless Lessor from any such lien from a party claiming by, through or under Lease. Additionally, Lessor disclaims and waives any now existing or hereafter arising Landlord's lien or other statutory or non-communication facilities, equipment, improvement, fixtures or other property.

27. Headings. The headings of sections and subsections are for convenient reference only and will not be deemed to limit, construe, affect, modify or alter the meaning of the sections or subsections.

28. Time of Essence. Time is of the essence of Lessor's and Lessee's obligations under this Lease.

29. Severability. If any section, subsection, term or provision of this Lease or the application thereof to any party or circumstance will, to any extent, be invalid or unenforceable, the remainder of the section, subsection, term or provision of the Lease or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, will not be affected thereby and each remaining section, subsection, term or provision of this Lease will be valid or enforceable to the fullest extent permitted by law.

30. Real Estate Broker. Lessor and Lessee represent and warrant that Lessor has not signed a listing agreement, dealt with or otherwise agreed to pay a broker's commission, finder's fee or other like compensation to anyone in connection with the lease of the Leased Space or the transaction contemplated by this Lease and

both parties agree to indemnify and hold Lessee harmless from and against any such claims or costs, including attorneys' fees, incurred as a result of the transaction contemplated by this Lease.

31. Further Assurances. Each of the parties agree to do such further acts and things and to execute and deliver the additional agreements and instruments (including, without limitation, requests or applications relating to zoning or land use matters affecting the Tower or such other Structures required to store equipment necessary to operate the communications system) as the other may reasonably require to consummate, evidence or confirm this Lease or any other agreement contained herein in the manner contemplated hereby. If Lessor fails to provide requested documentation within thirty (30) days of Lessee's request, or fails to provide any Non-Disturbance Agreement required in this Lease, Lessee may withhold and accrue the monthly rental until such time as all such documentation is received by Lessee.

32. Right to Register or Record. Lessee may request that Lessor execute a Memorandum of Option and Land Lease, Memorandum of Land Lease or Short Form of Lease for recording in the public records. Lessor agrees and authorizes Lessee to attach and/or insert a certified legal description of the Leased Space, once complete, to the Memorandum of Land Lease and record same in the public records.

33. Interpretation. Each party to this Lease and its counsel have reviewed and had the option to revise this Lease.

34. Date of Lease. The parties acknowledge that certain obligations of Lessor and Lessee are to be performed within certain specified periods of time which are determined by reference to the date of execution of this Lease. The parties therefore agree that wherever the term "date of execution of this Lease" or words of similar import are used herein, they will mean the date upon which this Lease has been duly executed by Lessor and Lessee, whichever is the later to so execute this Lease. The parties further agree to specify the date on which they execute this Lease beneath their respective signatures in the space provided and warrant and represent to the other that such a date is in fact that date on which each duly executed his/her name.

COMMENCEMENT DATE: The date that Lessee exercises its Option.

Intentionally left blank. Signatures on following page.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the last day and year specified below.

Lessor: Town of Riverhead,
a New York Municipal Corporation

Lessee: East End Wireless,
a New York Corporation

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Witness: _____

Witness: _____

Print Name: _____

Print Name: _____

Witness: _____

Witness: _____

Print Name: _____

Print Name: _____

Notary Public:

I do hereby certify that _____, who is personally known to me, or has proved by sufficient evidence to be the person named herein, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2009

Notary Public:

I do hereby certify that _____, who is personally known to me, or who has proved by sufficient evidence to be the person named herein, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2009

Notary Public

Notary Public

EXHIBIT A

Current Sketch/Survey of the Leased Space within the Premises

(Lessor and Lessee agree that a leased area legal description and access and utility easement can be substituted as soon as it becomes available)

SEE AMENDED SITE PLAN DATED MAY 12, 2009 AND APPROVED ON JUNE 16, 2009

Initials: _____

Initials: _____

EXHIBIT "B"

John C. Ehlers Land Surveyor
6 East Main Street
Riverhead, N.Y. 11901

Legal Description 10' Access Easement Through F-14 Park

Tie from a concrete monument set at the intersection of the Easterly line of Wading River Manor Road and the Southerly line of State Route 25 AKA Middle Country Road

Commencing at the Point of Beginning said Point being on the southerly line of N.Y.S. Route 25 the following bearings and distances from the intersection of the easterly line of Wading River - Manorville Road and the southerly line of N.Y.S. Route 25;
N53°57'26"E 153.37 ft, Curve to the Left Radius: 5769.65 ft Arc Length: 407.82 ft
thence N49°54'26"E 880.00 ft, Curve to the Right Radius: 1392.69 ft Arc Length:
254.39 ft thence N60°22'23"E 2370.70 ft, Curve to the Right Radius: 5689.65 ft Arc
Length: 304.56 ft thence N63°26'24"E 345.60 ft, Curve to the Right Radius: 2252.01 ft
Arc Length: 276.39 ft thence N70°28'19"E 874.40 ft, Curve to the Left Radius: 5769.65
ft Arc Length: 758.55 ft thence N62°56'21"E 537.40 ft, Curve to the Right Radius:
1870.08 ft Arc Length: 273.06 ft thence N71°18'19"E 484.30 ft, Curve to the Right
Radius: 5689.65 ft Arc Length: 334.34 ft. thence N74°40'19"E 2552.80 ft, Curve to the
Right Radius: 5689.65 ft Arc Length: 622.32 ft thence N80°56'20"E 1229.51 ft to the
Point of beginning: Commencing from the Point of Beginning; along the Southerly line
of State Route 25 North 81°04'15" East, a distance of 10.00 feet; thence South
08°55'45" East, a distance of 114.32 feet; thence South 81°28'50" West, a distance of
193.00 feet to the beginning of a curve tangent to said line; thence westerly,
southwesterly and southerly a distance of 23.70 feet along the curve concave to the
southeast, having a radius of 15.00 feet and a central angle of 90°32'28"; thence South
09°03'38" East tangent to said curve, a distance of 279.46 feet; thence South 27°25'26"
West, a distance of 130.96 feet; thence South 80°56'22" West, a distance of 3.19 feet;
thence North 09°03'38" West, a distance of 12.50 feet; thence North 27°25'26" East, a
distance of 119.51 feet; thence North 09°03'38" West, a distance of 301.40 feet; thence
North 81°28'50" East, a distance of 188.02 feet to the beginning of a curve tangent to
said line; thence easterly, northeasterly and northerly a distance of 31.56 feet along the
curve concave to the northwest, having a radius of 20.00 feet and a central angle of
90°24'35"; thence North 08°55'45" West tangent to said curve, a distance of 84.10 feet
to the Southerly line of Route 25 and the Point of Beginning.

John C. Ehlers Land Surveyor
NYS Lic. # 50202

EXHIBIT "C"

John C. Ehlers Land Surveyor
6 East Main Street
Riverhead, N.Y. 11901

Legal Description 20' Access Easement and 75' Easement

Tie from a concrete monument set at the intersection of the Easterly line of Wading River Manor Road
and the Southerly line of State Route 25 AKA Middle Country Road

Commencing at the Point of Beginning said Point being on the southerly line of N.Y.S. Route 25 the following bearings and distances from the intersection of the easterly line of Wading River - Manorville Road and the southerly line of N.Y.S. Route 25; N53°57'26"E 153.37 ft, Curve to the Left Radius: 5769.65 ft Arc Length: 407.82 ft thence N49°54'26"E 880.00 ft, Curve to the Right Radius: 1392.69 ft Arc Length: 254.39 ft thence N60°22'23"E 2370.70 ft, Curve to the Right Radius: 5689.65 ft Arc Length: 304.56 ft thence N63°26'24"E 345.60 ft, Curve to the Right Radius: 2252.01 ft Arc Length: 276.39 ft thence N70°28'19"E 874.40 ft, Curve to the Left Radius: 5769.65 ft Arc Length: 758.55 ft thence N62°56'21"E 537.40 ft, Curve to the Right Radius: 1870.08 ft Arc Length: 273.06 ft thence N71°18'19"E 484.30 ft, Curve to the Right Radius: 5689.65 ft Arc Length: 334.34 ft. thence N74°40'19"E 1767.00ft to the Point of beginning;

Commencing at said Point of Beginning running along the southerly line of State Route 25 North 74°40'19" East, a distance of 20.00 feet to land of the Riverhead Community Development Agency; running thence through the land of the Riverhead Community Development Agency the following courses and distances, South 15°19'41" East, a distance of 22.88 feet to the beginning of a curve tangent to said line; thence southerly, southeasterly, easterly and northeasterly a distance of 86.29 feet along the curve concave to the north, having a radius of 40.00 feet and a central angle of 123°36'27"; thence North 41°03'53" East tangent to said curve, a distance of 86.34 feet; thence North 75°05'22" East, a distance of 632.63 feet; thence North 77°32'49" East, a distance of 620.46 feet; thence North 80°56'22" East, a distance of 949.48 feet; thence South 09°03'38" East, a distance of 91.31 feet; thence South 09°03'38" East, a distance of 30.19 feet; thence South 09°03'38" East, a distance of 367.97 feet; thence North 80°56'22" East, a distance of 27.50 feet; thence South 09°03'38" East, a distance of 75.00 feet; thence South 80°56'22" West, a distance of 75.00 feet; thence North 09°03'38" West, a distance of 75.00 feet; thence North 80°56'22" East, a distance of 27.50 feet thence North 09°03'38" West, a distance of 429.47 feet to the beginning of a curve tangent to said line; thence northerly, northwesterly and westerly a distance of 62.83 feet along the curve concave to the southwest, having a radius of 40.00 feet and a central angle of 90°00'00"; thence South 80°56'22" West tangent to said curve, a distance of 888.88 feet; thence South 77°32'49" West, a distance of 619.44 feet; thence South 75°05'22" West, a distance of 619.96 feet to the beginning of a curve tangent to said line; thence westerly and southwestwesterly a distance of 11.88 feet along the curve concave to the southeast, having a radius of 20.00 feet and a central angle of 34°01'29"; thence South 41°03'53" West tangent to said curve, a distance of 111.40 feet to the beginning of a curve tangent to said line; thence southwestwesterly, westerly, northwesterly and northerly a distance of 86.29 feet along the curve concave to the north, having a radius of 40.00 feet and a central angle of 123°36'27"; thence North 15°19'41" West tangent to said curve, a distance of 60.18 feet; to the southerly line of State Route 25 and the Point and or Place of Beginning.

John C. Ehlers Land Surveyor NYS Lic. # 50202

7/9/08

Adopted

Town of Riverhead

Resolution # 701

Authorizes the Submission of an "Edward Byrne Memorial Justice Assistance Grant (JAG) FY 2009 Local Solicitation Program" Grant Application

COUNCILMAN WOOTEN

offered the following resolution,

which was seconded by **COUNCILWOMAN BLASS**:

WHEREAS, the Town of Riverhead is eligible to receive funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) FY 2009 Local Solicitation Program in the amount of \$17,442;

WHEREAS, the Police Department has received a donation of a Mobile Command Unit from the Riverhead Fire Department;

WHEREAS, the Police Department has identified technological needs to make the Mobile Command Unit more efficient; and

WHEREAS, the Riverhead Town Board commits up to \$1,000 towards said enhancements.

THEREFORE, BE IT RESOLVED, that the Riverhead Town Board hereby authorizes the submission of this application to U.S. Department of Justice.

THEREFORE, BE IT FURTHER RESOLVED, that the Town Clerk shall provide a copy of this resolution to the Community Development Department and to Captain Richard Smith.

THE VOTE

Buckley yes no Wooten yes no

Dunleavy yes no Blass yes no

Cardinale yes no

THE RESOLUTION WAS WAS NOT

THEREFORE DULY ADOPTED

July 9, 2009

Adopted

TOWN OF RIVERHEAD
Resolution # 702

AUTHORIZES TOWN CLERK TO PUBLISH AND POST A PUBLIC NOTICE FOR A LOCAL LAW TO CONSIDER AMENDMENTS TO CHAPTER 108 ENTITLED "ZONING" OF THE RIVERHEAD TOWN CODE
(Section 108-152 – Open Space Conservation District Schedule of Dimensional Requirements)

COUNCILWOMAN BLASS

_____ offered the following resolution, was seconded by

COUNCILMAN DUNLEAVY :

RESOLVED, that the Town Clerk be and is hereby authorized to publish the attached public notice once in the July 16, 2009 issue of the News Review, the newspaper hereby designated as the official newspaper for this purpose, and also to cause a copy of the proposed local law amending Chapter 108 entitled "Zoning", Section 108-152- Open Space Conservation District Schedule of Dimensional Requirements of the Riverhead Town Code, to be posted on the sign board of the Town, and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Blass Yes _____ No Dunleavy Yes _____ No
Wooten Yes _____ No
Cardinale Yes _____ No

THIS RESOLUTION WAS _____ WAS NOT THEREFORE DULY ADOPTED

**TOWN OF RIVERHEAD
PUBLIC NOTICE**

PLEASE TAKE NOTICE that a public hearing will be held before the Town Board of the Town of Riverhead, at Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York, on the 4th day of August, 2009 at 2:40 o'clock p.m. to consider a local law amending Chapter 108 entitled "Zoning", Section 108-152 entitled "Open Space Conservation District - Schedule of Dimensional Requirements ", of the Riverhead Town Code.

Dated: Riverhead, New York
July 9, 2009

**BY ORDER OF THE TOWN BOARD
OF THE TOWN OF RIVERHEAD**

Diane M. Wilhelm, Town Clerk

ZONING
FOR Attachment --
Town of Riverhead
Open Space Zoning Districts Schedule of Dimensional Regulations
Amended 10-5-2004, 10-12-2004, 10-21-2004, 11-3-2004, 11-16-2004 by L.L. Nos. -- 2004

Zoning Use District	Min. lot area (square feet)	Min. lot width at front street (feet)	Building lot coverage (footprint)			Floor area ratio (FAR)			Side yards, interior lots			Side yards, corner lots				
			Maximum without sewer (%)	Maximum with sewer (%)	Maximum Transfer of Develop. Rights (%)	Maximum without sewer	Maximum with sewer	Maximum Transfer of Develop. Rights	Minimum front yard depth (feet)	Min. depth for each side (feet)	Min. combined depth for 2 sides (feet)	Min. front yard depth (feet)	Min. depth facing side street (feet)	Min. combined depth for 2 sides (feet)	Minimum rear yard depth (feet)	
Natural Resources Protection District (NRP)	160,000	200	5	5	NA	15	35	0.05	0.05	NA	100	50	100	100	150	100
Open Space Conservation District (OSC)	160,000	200	5	5	NA	15	35	0.05	0.05	NA	100	50	100	100	150	100