

BOROUGH OF WATCHUNG

ORDINANCE NO. OR:15/09

AN ORDINANCE ESTABLISHING SECTION 11-9, TITLED "RIGHTS-OF-WAY USE LICENSES", IN CHAPTER XI, TITLED "GENERAL LICENSING", OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF WATCHUNG AND CONSENTING TO LIGHTOWER'S USE OF THE RIGHTS-OF-WAY.

BE IT ORDAINED by the Mayor and Council of the Borough of Watchung, in the County of Somerset, State of New Jersey, establishing Section 11-9, titled "Rights-of-Way Use Licenses", in Chapter XI, titled "General Licenses", of the Revised General Ordinances of the Borough of Watchung as follows:

Section 1. The title of Section 11-9 shall be "Rights-of-Way Use Licenses."

Section 2. The text of Section 11-9 shall be as follows:

§11-9.1 Preamble.

Light Tower Fiber Long Island, LLC, d/b/a Lightower Fiber Networks ("Lightower") requested permission to install telecommunications cable in the public rights-of-way of the Borough of Watchung, New Jersey ("Borough") by attaching such cable to poles owned by public utilities located in the public rights-of-way of the Borough.

Lightower has been approved by the New Jersey Board of Public Utilities ("NJBP") to provide local exchange and interexchange telecommunications services throughout the State of New Jersey by Order of Approval in Docket Number TM08040212 on June 16, 2008. Pursuant to such authority granted by NJBP, Lightower may locate, place, attach, install, operate and maintain telecommunication facilities within the public rights-of-way for purposes of providing telecommunications services (the "Facilities").

The Borough desires, pursuant to N.J.S.A. 54:30A-124, to grant permission for such use of the public rights-of-way upon the terms and conditions in this Section 11-9.

§11-9.2 Grant of Consent.

Consent. Subject to obtaining the permission of the owner of any existing utility poles or conduits to be used, the Borough hereby authorizes and permits Lighttower, and its successors and assigns, to enter upon the public rights-of-way and to attach, install, operate, maintain, inspect, remove, reattach, reinstall, relocate or replace its Facilities in or on conduits or utility poles or other structures owned by public utility companies located within the public rights-of-way identified on Schedule A and as may be permitted by the public utility company or property owner, as the case may be.

§11-9.3 Limitation. The public rights-of-way shall not include rights-of-way under the jurisdiction of any other municipal, state, or federal government or department or agency, or any property owned by any person or governmental entity other than the Borough, except as provided by law or pursuant to an agreement between the Borough and any person or governmental entity.

§11-9.4 Term. The term of this Ordinance and the consent granted herein shall be 25 years from the Effective Date of this Ordinance and shall automatically renew for an additional 10 years (each, a "Term"), unless terminated earlier by: (i) an event of default under Section 11-9.9 of this Ordinance; or (ii) Lighttower upon thirty (30) days' prior written notice to the Borough of its intention to terminate this Ordinance. Lighttower shall bear the cost of removal of its Facilities upon termination of this Ordinance.

§11-9.5 Permitting. Lighttower provided the Borough Engineer, or such other Borough officer responsible for permitting use of the public rights-of-way, with a plan showing the route, location and manner of placement of Facilities upon, along, over or under the public rights-of-way attached as Schedule A. Lighttower shall be limited to the rights-of-way route identified on Schedule A and any modification of that route must be approved by the Borough Council. Lighttower shall comply with any and all reasonable requirements of the Borough Engineer, or other such Borough official as applicable, in connection with the construction or erection of Facilities that are imposed in accordance with the regulations and restrictions afore-mentioned in this Section 11-9.5 including any requirement for obtaining a road opening permit prior to any excavation work. Lighttower shall bear the cost and expense

for the construction or erection of its Facilities, and for the relocation of any of its Facilities as the Borough may require from time-to-time.

§11-9.6 Costs. Lightower's construction or erection, service and maintenance of Facilities pursuant to the permission and consent granted herein shall be subject to regulations and restrictions as may be adopted by the Borough from time-to-time on a non-discriminatory basis pertaining to the safety and convenience of persons or vehicles traveling on the public rights-of-way. To the extent provided under the regulations and restrictions aforementioned or as otherwise provided by law, Lightower shall reimburse the Borough for the Borough's costs and expenses incurred in connection with the permission and consent granted herein as provided by N.J.S.A. 54:30A-124, and shall obtain applicable permits and pay applicable permit fees. The Borough shall not unreasonably deny or delay the issuance of applicable permits to Lightower.

§11-9.7 Borough Facilities. The use by Lightower of any Borough Facilities for the construction or erection and placement of Lightower's Facilities and subsequent service and maintenance, shall be subject to the amendment to this Ordinance and upon such reasonable terms and conditions as mutually agreed. For purposes of this subsection, "Borough Facilities" means Borough-owned street light poles, lighting fixtures, electroliers, or other Borough-owned structures located within the public rights-of-way.

§11-9.8 Tree Trimming. Lightower represented to the Borough that the installation of the Facilities would not require any tree trimming and this Ordinance is conditioned upon Lightower not trimming any trees within the Borough.

§11-9.9 Indemnity.

A. Third Party Claims. Lightower agrees to indemnify and defend the Borough from all third party losses, claims, damages, judgments, penalties (including reasonable attorney fees) resulting from any bodily injury or property damage to the proportional extent caused by the direct fault or negligence of Lightower, and its employees, agents and subcontractors. The Borough shall provide prompt written notice of and furnish a copy of all written communications relating to any claim of indemnification covered hereunder. Lightower shall have the right to assume exclusive control of

dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the public right-of-way. Nothing in this Ordinance shall be deemed to grant, convey, create or vest in Lightower a real property interest in land, including any fee, leasehold interest, easement or any other form of interest or ownership now known or hereinafter devised.

§11-9.12 Governing Law. This Ordinance shall be governed and construed by and in accordance with the laws of the State of New Jersey.

§11-9-13 Assignment. The respective rights and obligations under this Ordinance shall inure to the benefit of and be binding upon the successors and assigns of Lightower. Except for assignment to an affiliate or successor to Lightower's business, as approved by the New Jersey Board of Public Utilities, Lightower shall not assign any interest in this Ordinance to any person or entity without the Borough's written consent.

§11-9.14 Waiver. The waiver by the Borough of any breach or violation of any provision of this Ordinance shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Ordinance.

§11-9.15 Headings. Section and subsection headings contained in this Ordinance are inserted for convenience of reference only, shall not be deemed to be a part of this Ordinance for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

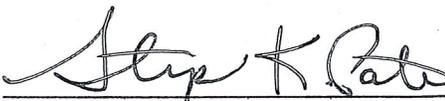
§11-9.16 Severability. If one or more of the provisions of this Ordinance shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Ordinance and shall not affect the legality, validity, or constitutionality of the remaining portions of this Ordinance. The Borough acknowledges that the NJBPU may impose additional terms and conditions under this Ordinance pursuant to its statutory authority. Either the Borough or Lighttower shall have the right to seek reconsideration or judicial review of the imposition of any such additional terms and conditions.

Section 3. This Ordinance shall take effect upon final adoption and publication according to law.

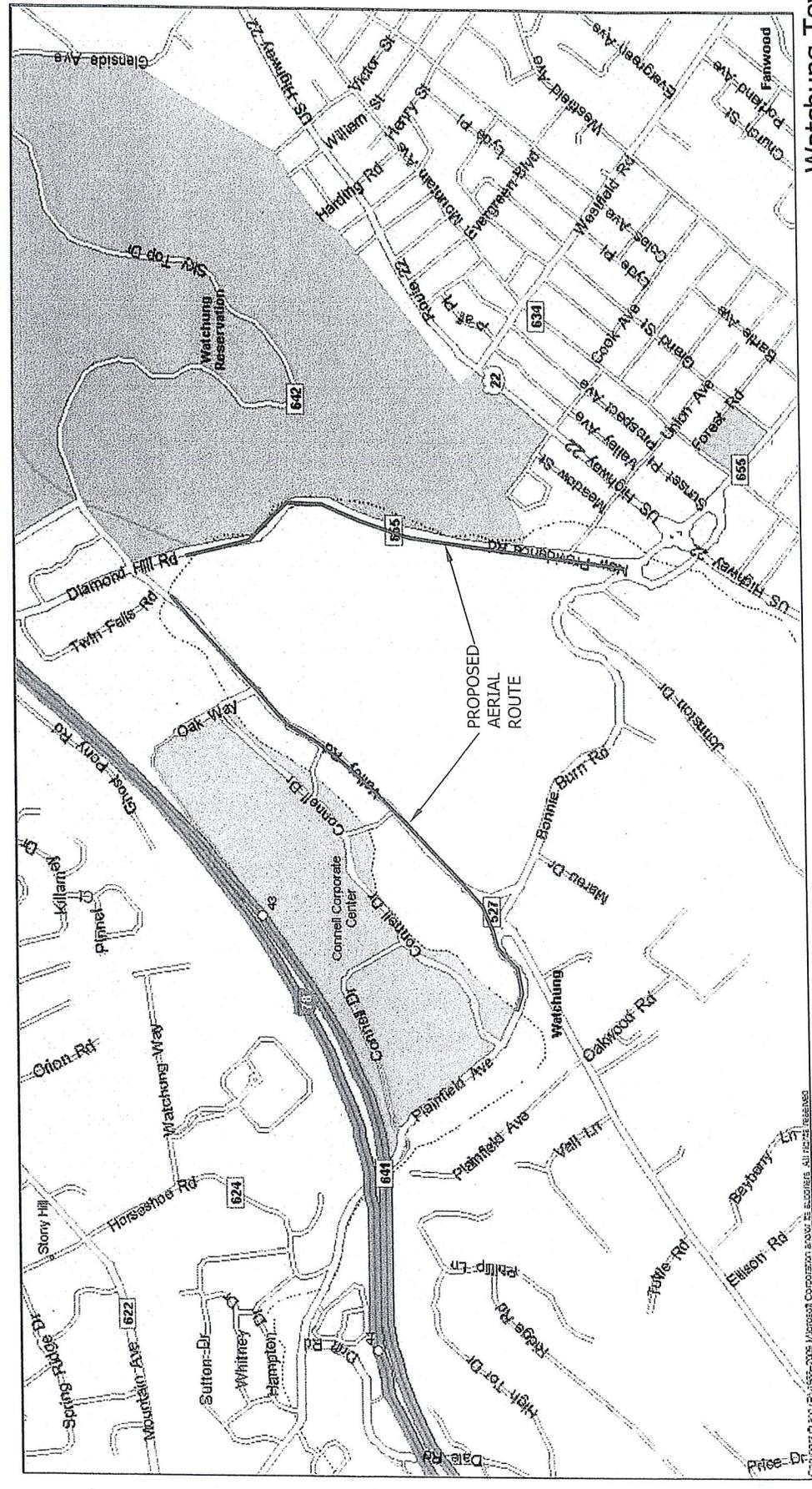
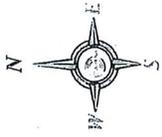
ATTEST:

BOROUGH OF WATCHUNG


Michelle DeRocco, Clerk

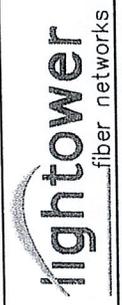
By: 
Stephen K. Pote, Mayor

Introduced by: Joren
Date: August 20, 2015
Published: August 27, 2015
Adopted: September 3, 2015



Watchung Township

ENG. BY: J.M.T.
 DRAWN BY: J.M.T.
 SCALE: N.T.S.
 DATE: 2/2/2015



Aerial Application

Watchung Township

DRAWING NO.

REI#: PROPOSED

SCHEDULE "A"