

MINUTES OF THE MEETING OF THE COUNCIL OF THE BOROUGH OF ESSEX
FELLS, ESSEX COUNTY, NEW JERSEY

Held at the Essex Fells Municipal Building in said Borough on October 18, 2022 at 7:00 p.m.

Present

Mayor Edward A. Davis
Councilman BJ D'Avella
Councilman Greg Hindy
Councilman John King
Councilwoman Maggie O'Connor
Councilman William Sullivan

Absent

Councilman Michael Cecere

Also Present

Borough Administrator/Borough Clerk Francine T. Paserchia
Borough Attorney Robert Oostdyk

Mayor Davis called the meeting to order. He stated that in compliance with the Open Public Meetings Law (Chapter 231, Public Laws of 1975) notice of this meeting was transmitted to The Progress and The Star Ledger and was filed with the Borough Clerk and is posted on the Bulletin Board of the Borough Hall.

Mayor Davis led the Council in the Pledge of Allegiance and gave the Invocation.

Councilwoman O'Connor moved, Councilman Sullivan seconded approval of:

Junior Membership to the Essex Fells Volunteer Fire Department

- Michael O. Roppatte, 193 Roseland Avenue
- Jonas S. Himawan, 28 Maple Lane
- Madeline E. Shih, 82 Oldchester Road

And was carried on call of the roll:

Ayes

BJ D'Avella
Greg Hindy
Maggie O'Connor
William Sullivan

Nays

None

Absent

Michael Cecere

Abstain

John King

Mayor Davis asked the Clerk to report on written communications.

The Clerk reported receipt of the following:

A. Written:

September 2022 Department Reports:

- Construction Department Cash Receipt & Permit Fee Log Report
- Police Department and Municipal Court Report
- Edward P. Abbot, Correspondence

Mayor Davis said if there were no objections to the above, they will be placed on file. Hearing no objection, it was so ordered.

Mayor Davis announced a public hearing on second reading of Ordinance 2022-1066

The Clerk offered proof of publication of the ordinance, indicating that it was published in *The Progress* issue of September 29, 2022

The public hearing was held and AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE BOROUGH OF ESSEX FELLS, NEW JERSEY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ESSEX FELLS AS FOLLOWS:

SECTION 1. PURPOSE OF THE ORDINANCE

The Borough hereby grants to Comcast renewal of its non-exclusive Municipal Consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the municipality, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus and equipment as may be necessary for the construction, operation and maintenance in the Borough of a cable television and communications system. This consent is subject to the terms and conditions of this Ordinance and upon the condition that the Company accepts the provisions of this Ordinance, and confirms that it shall comply with the commitments contained herein.

SECTION 2. DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms is supplemental to those definitions of the Federal Communications Commission ("FCC") rules and regulations, 47 C.F.R. Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C. Section 521 et seq., as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 et seq., and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:

- a. "CITY/TOWNSHIP/BOROUGH" or "Municipality" is the Borough of Essex Fells, County of Essex, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of New Jersey II, LLC.
- c. "Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1, et seq.
- d. "FCC" is the Federal Communications Commission.
- e. "Board" or "BPU" is the Board of Public Utilities, State of New Jersey.
- f. "Office" or "OCTV" is the Office of Cable Television of the Board.
- g. "Basic Cable Service" means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.
- h. "Application" is the Company's Application for Renewal of Municipal Consent.
- i. "Primary Service Area" or "PSA" consists of the area of the Municipality currently served with existing plant as set forth in the map annexed to the Company's Application for Municipal Consent.

SECTION 3. STATEMENT OF FINDINGS

A public hearing concerning the consent herein granted to the Company was held after proper public notice pursuant to the terms and conditions of the Act. Said hearing having been held and fully open to the public, and the municipality having received all comments regarding the qualifications of the Company to receive this consent, and the representations of the Company that the Company possesses the necessary legal, technical, character,

financial and other qualifications and that the Company's operating and construction arrangements are adequate and feasible.

SECTION 4. DURATION OF FRANCHISE

The non-exclusive Municipal Consent granted herein shall expire 10 years from the date of expiration of the previous Certificate of Approval issued by the Board.

In the event that the Municipality shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Municipality shall have the right to petition the OCTV, pursuant to N.J.S.A. 48:5A-47, for appropriate action, including modification and/or termination of the Certificate of Approval; provided however, that the Municipality shall first have given the Company written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

SECTION 5. FRANCHISE FEE

Pursuant to the terms and conditions of the Act, N.J.S.A. 48:5A-30, the Company shall, during each year of operation under the consent granted herein, pay to the Municipality 3.5% of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Municipality or any higher amount permitted by the Act or otherwise allowable by law. The current franchise fee paid to the Borough is 3.5%.

SECTION 6. FRANCHISE TERRITORY

The consent granted under this Ordinance for the renewal of the franchise shall apply to the entirety of the Municipality and any property subsequently annexed hereto.

SECTION 7. EXTENSION OF SERVICE

The Company shall be required to proffer service to any residence or business along any public right-of-way in the Primary Service Area, as set forth in the Company's Application. Any extension of plant beyond the Primary Service Area shall be governed by the Company's Line Extension Policy, as set forth in the Company's Application. For purposes of this section and the Company's implementation of the LEP, a home shall only be counted as a "dwelling unit" if such home is within two hundred seventy-five (275) feet of the public right of way.

SECTION 8. CONSTRUCTION REQUIREMENTS

- a. Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as reasonably good a condition as existed prior to the commencement of said work.
- b. Relocation: If at any time during the period of this consent, the City shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the City, shall remove, re-lay or relocate its equipment, at the expense of the Company.
- c. Removal or Trimming of Trees: During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.

SECTION 9. CUSTOMER SERVICE

In providing services to its customers, the Company shall comply with N.J.A.C. 14:18-1, et seq. and all applicable state and federal statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service.

a. *The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of same to customers.*

b. *The Company shall continue to fully comply with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.*

c. The Company shall use every reasonable effort to meet or exceed applicable FCC customer service regulations.

d. Nothing herein shall impair the right of any subscriber or the Township to express any comment with respect to telephone accessibility to the Complaint Officer or impair the right of the Complaint Officer to take any action that is permitted under applicable law.

SECTION 10. MUNICIPAL COMPLAINT OFFICER

The Office of Cable Television is hereby designated as the Complaint Officer for the borough pursuant to N.J.S.A. 48:5A-26(b). All complaints shall be received and processed in accordance

with N.J.A.C. 14:17-6.5. The borough shall have the right to request copies of records and reports pertaining to complaints by borough customers from the OCTV.

SECTION 11. LOCAL OFFICE

During the term of this franchise, and any renewal thereof, the Company shall maintain a business office or agent in accordance with N.J.A.C. 14:18-5.1 for the purpose of receiving, investigating and resolving local complaints regarding the quality of service, equipment malfunctions, and similar matters.

SECTION 12. PERFORMANCE BONDS

During the life of the franchise the Company shall give to the municipality a bond in the amount of twenty-five thousand dollars (\$25,000.00). Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent incorporated herein.

SECTION 13. SUBSCRIBER RATES

The rates of the Company shall be subject to regulation as permitted by federal and state law.

SECTION 14. COMMITMENTS BY THE COMPANY

a. The Company shall provide courtesy cable television service on one standard installation and up to ten (10) outlet at no cost to each qualified existing and future school in the borough, public and private, elementary, intermediate and secondary, provided the school is within 200 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a material plus labor basis by the school requesting service.

b. The Company shall provide free standard installation, ~~internet service including a cable modem, and~~ courtesy cable television service at no cost on one (1) outlet to each qualified existing police, volunteer fire, first aid, emergency management facility, public works, community center that may be constructed in the future, public library and any other municipally owned building in the borough provided the facility is located within 200 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a material plus labor basis by the borough. Comcast shall provide the above referenced services to any future municipal facility upon written request.

c. The Company shall continue to provide courtesy Internet service, via high-speed cable modem, to one (1) non-networked personal computer in each qualified existing and future public school and public library in the borough, elementary, intermediate and secondary, at no charge provided the facility is located within 200 feet of active cable distribution plant. The Internet access service shall be installed on a personal computer that is accessible to the students and not for administrative use only. Comcast shall provide the above referenced services to any future such facility upon written request.

- d. Within one year of written request from the borough the Company shall provide at no cost to the municipality a dedicated local access channel, return line and necessary equipment for signal transmission. The channel shall be maintained by the Company and provided to the borough for the purpose of cablecasting non-commercial access programming in conformance with the Company's guidelines and applicable State and Federal regulations. The channel's origination site must be within 200 feet of active cable distribution plant.
- e. Within six months of the issuance of a renewal Certificate of Approval by the Board, the Company shall provide to the municipality a one-time PEG capital grant in the amount of \$10,000 for PEG access capital support.
- f. The Communications Act of 1934, as amended (47 U.S.C. §543(b)(4)), allows the Company to itemize and/or identify the amount on the monthly bill assessed to satisfy any requirements imposed on the Company by the cable franchise to support public, educational, and governmental channels, or the use of such channels or any other services required under the franchise. The Company reserves its external cost, pass-through rights to the extent permitted by law including the services set forth in this section.

SECTION 15. EDUCATIONAL AND GOVERNMENTAL ACCESS

- a. The Company shall continue to provide residents with a system-wide public access channel maintained by the Company. Qualified individuals and organizations may utilize public access for the purpose of cablecasting non-commercial access programming in conformance with the Company's published public access rules.
- b. The Company shall continue to provide a system-wide leased access channel maintained by the Company for the purpose of cablecasting commercial access programming in conformance with the Company's guideline and applicable state and federal statutes and regulations.
- c. The Company shall provide a dedicated local access channel maintained by the Company for the purpose of cablecasting non-commercial access programming in conformance with the Company's guideline and applicable state and federal statutes and regulations.

SECTION 16. EMERGENCY USES

- a. The Company will comply with the Emergency Alert System ("EAS") rules in accordance with applicable state and federal statutes and regulations.
- b. The Company shall in no way be held liable for any injury suffered by the municipality or any other person, during an emergency, if for any reason the Municipality is unable to make full use of the cable television system as contemplated herein.

SECTION 17. LIABILITY INSURANCE

The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of \$1,000,000 covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system, and an excess liability (or "umbrella") policy in the amount of \$5,000,000.

SECTION 18. INCORPORATION OF THE APPLICATION

All of the statements and commitments contained in the Application or annexed thereto and incorporated therein, and any amendment thereto, except as modified herein, are binding upon the Company as terms and conditions of this consent. The Application and other relevant writings submitted by the Company shall be annexed hereto and made a part hereof by reference provided same do not conflict with applicable State or Federal law.

SECTION 19. COMPETITIVE EQUITY

Should the Municipality grant a franchise or other authorization to construct, operate and maintain a cable television system to any other person, corporation or entity on terms

materially less burdensome or more favorable than the terms contained herein, the Company may substitute such language that is more favorable or less burdensome for the comparable provision of this Ordinance subject to the provisions of N.J.A.C. 14:17-6.7.

SECTION 20. SEPARABILITY

If any section, subsection, sentence, clause, phrase, or other portion of this Ordinance is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

SECTION 21. PROPRIETARY INFORMATION

The Company shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Township agrees to treat any information disclosed by the Company as confidential and only to disclose it to those employees, representatives, and agents of the Township that have a need to know in order to enforce this Ordinance Agreement and who agree to maintain the confidentiality of all such information.

The Company shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Company to be competitively sensitive. The Company may make proprietary or confidential information available for inspection but not copying or removal by the Municipality’s representative. In the event that the Municipality has in its possession and receives a request under a state “sunshine,” public records, or similar law for the disclosure of information the Company has designated as confidential, trade secret or proprietary, the Township shall notify the Company of such request and cooperate with Company in opposing such request.

SECTION 22. THIRD PARTY BENEFICIARIES

Nothing in this Franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

SECTION 23. NEW DEVELOPMENTS

The Municipality, for its part, shall endeavor to exercise reasonable efforts to require developers and utility companies to provide the Company with at least fifteen (15) days advance notice of an available open trench for the placement of necessary cable.

SECTION 24. EFFECTIVE DATE

This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU.

And was carried on call of the roll:

<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>
BJ D’Avella	None	Michael Cecere
Greg Hindy		
John King		
Maggie O’Connor	<u>Abstain</u>	
William Sullivan	None	

Councilman King moved, Councilman Sullivan seconded, approval of the following resolutions on consent:

WHEREAS, N.J.S.A. 40A:5-4 requires the governing body of every local unit to have made an annual audit of its books, accounts and financial transactions, and

WHEREAS, the Annual Report of Audit for the year 2021 has been filed by a Registered Municipal Accountant with the Municipal Clerk as per the requirements of N.J.S.A. 40A:5-6, and a copy has been received by each member of the governing body, and

WHEREAS, R.S. 52:27BB-34 authorizes the Local Finance Board of the State of New Jersey to prescribe reports pertaining to the local fiscal affairs; and

WHEREAS, the Local Finance Board has promulgated N.J.A.C. 5:30-6.5, a regulation requiring that the governing body of each municipality shall by resolution certify to the Local Finance Board of the State of New Jersey that all members of the governing body have reviewed, as a minimum, the sections of the annual audit entitled “Comments and Recommendation”, and

WHEREAS, the members of the governing body have personally reviewed as a minimum the Annual Report of Audit, and specifically the sections of the Annual Audit entitled “Comments and Recommendations”, as evidenced by the group affidavit form of the governing body, and

WHEREAS, such resolution of certification shall be adopted by the Governing Body no later than forty-five days after the receipt of the annual audit, pursuant to N.J.A.C. 5:30-6.5; and

WHEREAS, all members of the Governing Body have received and have familiarized themselves with, at least, the minimum requirements of the Local Finance Board of the State of New Jersey, as stated aforesaid and have subscribed to the affidavit, as provided by the Local Finance Board, and

WHEREAS, failure to comply with the promulgations of the Local Finance Board of the State of New Jersey can subject the members of the local governing body to the penalty provisions of R.S. 52:27BB-52 - to wit:

R.S. 52:27BB-52 - “A local officer of member of a local governing body who, after a date fixed for compliance, fails or refuses to obey an order of the director (Director of the Division of Local Government Services), under the provisions of this Article, shall be guilty of a misdemeanor and, upon conviction, any be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one year, or both, in addition shall forfeit his office”.

NOW, THEREFORE, BE IT RESOLVED, that the Borough Council of the Borough of Essex Fells, hereby states that it has complied with N.J.A.C. 5:30-6.5, and does hereby submit a certified copy of this resolution and the required affidavit to said Board to show evidence of said compliance.

2022-127

BE IT RESOLVED by the Council of the Borough of Essex Fells that the following Personnel action is hereby authorized;

1. The following probationary named person/employee of the Borough of Essex Fells, in the title, at the rate of pay, on the effective date set forth opposite his/her name:

Name:	Title:	Rate of Pay:	Effective Date:
Sean W. Callaghan	Utility Worker	\$40,000/annum	October 24, 2022

2022-128

WHEREAS, The West Essex First Aid Squad provides service to the residents of the Borough of Essex Fells; and

WHEREAS, N.J.S.A.40:5-2 authorizes municipalities to make contributions to volunteer first aid squads; and

WHEREAS, Essex Fells desires to donate to the West Essex First Aid Squad; and

WHEREAS, The Borough Council wishes to authorize a donation in the amount of \$6,619.83 which is proportionately equal to the sum that other communities contribute by way of LOSAP payments.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Essex Fells, in the County of Essex and State of New Jersey hereby authorizes the Borough Administrator and Borough Finance Officer to facilitate a Borough contribution to the West Essex First Aid Squad in Lieu of LOSAP in the amount of \$6,619.83.

2022-129

RESOLUTION AUTHORIZING THE DESIGN AND INSTALLATION OF THE PFOA WATER TREATMENT PROJECT AND DESIGNATING MAYOR DAVIS AS THE OFFICIAL RESPONSIBLE FOR THE ADMINISTRATION OF THE PROJECT

WHEREAS, the Borough of Essex Fells is required by the State of New Jersey Department of Environmental Protection to address a PFOA issue in the Borough drinking water system; and

WHEREAS, the Borough Council adopted Ordinance 2022-1057 authorizing the funding for the design and development of the Permanent PFAS Treatment (Main Facility) project, including the design and installation of a permanent GAC treatment system to remove PFAS from water supplied through our main water treatment plant (TP0001001) and ensure the water system's compliance with New Jersey's drinking water MCL standards; and

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Essex Fells, in the County of Essex and State of New Jersey that the Borough Council reiterates its authorization for the design and installation of a Permanent PFAS Treatment (Main Facility) project, including the design and installation of a permanent GAC treatment system to remove PFAS from water supplied through our main water treatment plant (TP0001001) and ensure the water system's compliance with New Jersey's drinking water MCL standards; and

BE IT FURTHER RESOLVED that the Borough Council hereby designates Mayor Edward Davis as the official responsible for the administration of the project with the authority to designate or delegate to the Borough's authorized professionals as appropriate. Mayor Davis is further authorized to take such actions as are necessary to advance the Borough's loan application to the New Jersey Water Bank (formerly NJ Environmental Infrastructure Financing Program) in connection with the above project.

2022-130

RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE BOROUGH OF ESSEX FELS AND SUBURBAN CONSULTING ENGINEERS, INC. – PFOA REMOVAL TREATMENT FACILITY CONSTRUCTION MANAGEMENT SERVICES

WHEREAS, there exists the need for professional engineering services in the Borough of Essex Fells in connection with construction management services for the PFOA removal treatment facility project; and

WHEREAS, the maximum amount of the contract is \$320,300.00

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the resolution authorizing the award of contracts for "Professional Services" without competitive bids and the contract itself must be available for public inspection; and

WHEREAS, the Chief Financial Officer has certified the availability of funds.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Essex Fells, in the County of Essex, and State of New Jersey, as follows:

Section 1. The Mayor and Clerk are hereby authorized and directed to execute an agreement with Suburban Consulting Engineers, Inc. for engineering services for the Borough of Essex Fells (construction management services for the PFOA removal treatment facility project) in an amount not to exceed \$320,300.00 as set forth in a revised proposal dated October 14, 2022 subject to final clarification of the scope of services by Borough representatives.

Section 2. This contract is awarded without competitive bidding as a "Professional Service" in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because the contract is for a service performed by a person(s) authorized by law to practice a recognized profession that is regulated by law.

2022-131

Authorization for Payment of Bills

BE IT RESOLVED by the Council of the Borough of Essex Fells that;

WHEREAS, the bill list as attached has been presented by the Chief Finance Officer for payment.

NOW THEREFORE BE IT RESOLVED by the Council of the Borough of Essex Fells that the bill list as presented is approved.

<u>Fund</u>	<u>Fund No.</u>	<u>Amount</u>
Current	1-01	\$326.18
Current	2-01	\$798,344.64
Borough Capital	C-04	\$3,875.70

Water	2-05	\$52,935.31
Grant	04	\$0
Water Capital	C-06	\$9,787.50
Animal Control	T-10	\$4.80
Trust	T-11	\$4,078.75
Payroll	T-13	\$17,074.47

And was carried on call of the roll:

<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>
BJ D'Avella	None	Michael Cecere
Greg Hindy		
John King		
Maggie O'Connor	<u>Abstain</u>	
William Sullivan	None	

On motion made by Councilman Hindy, seconded by Councilwoman O'Connor and approved unanimously by the Council, the meeting adjourned at 7:15 p.m.

Respectfully submitted,

Francine T. Paserchia
Municipal Clerk