

MINUTES of the Special Meeting of the
City Council of the City of Rye held in City Hall
on February 27, 1998 at 10:00 A.M.

PRESENT:

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

ABSENT: ROBERTA DOWNING
ARTHUR STAMPLEMAN

1. Roll Call

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

2. Discussion of wireless telecommunications and related issues

Mayor Otis said the purpose of this meeting is to hear a presentation from Mr. Lawrence Monroe, Monroe Telecom Associates, and Mr. Richard Comi, Comi Telecommunications Services, on a series of telecommunications, rights-of-way, and cable television issues.

Mr. Lawrence Monroe said that his and Mr. Comi's philosophy is to protect and to provide the community with a means and mechanism to be proactive so that the community makes its own choices and controls its own destiny to the extent allowable under law.

Telecommunications

Mr. Richard Comi focused on the following:

- Telecommunications Act of 1996 preserves state and local government powers.

Nothing in the act "shall limit or affect the authority of a local government over decisions regarding the placement, construction, and modification" of those facilities except for the following limitations:

1. Local government regulations may not prohibit or have the effect of prohibiting the provision of services.
 2. Local governments may not unreasonably discriminate among providers of functionally equivalent services.
 3. The local government must act on a request to construct or modify facilities “within a reasonable period of time after the request is duly filed”, taking into account the nature and scope of such request.
 4. Any decision to deny a request to construct or modify a facility must be in writing and supported by substantial evidence in a written report.
 5. No local government may regulate the placement, construction, or modification of facilities on the basis of the environmental effect of radio frequency emissions to the extent the facility complies with Federal Communications Commission’s requirements concerning such emissions.
- There is a proliferation of cellular carriers, therefore, there is the possibility that several carriers will try to set up in the community.
 - Two ways a municipality can prepare for the future of wireless technology are to adopt a local ordinance and create an application that adheres to that ordinance. He noted that the City of Rye has already adopted an ordinance.
 - A local ordinance should include the following:
 1. General Safety
 2. Certifications on emissions, structural design, grounding, etc.
 3. A priority list of preferred locations
 4. Minimum height requirement
 5. Lighting
 6. Shared use
 - 7.. Type of Tower
 8. Signage
 9. Screening
 10. Applicant’s submission of a long form SEQRA
 11. Public Use
 - 12.. Notification
 13. Bonds, fees, or escrow accounts for tower removal and consulting assistance

- During the application process, applicants should demonstrate to the City the needs and requirements (propagation studies showing coverage, power antenna configuration, and height). Area coverage maps should be provided, if required.
- Cities need to protect themselves on cellular tower installations, the same as they do on building subdivision approvals.
- Assessing a wireless facility has not been factually determined. Real Property Services (RPS) recommended that it be assessed on the value of the equipment.

In summary, the adverse effects of towers can be mitigated by (1) having a quality ordinance, (2) working with the applicants to have a consistent, documented, technically feasible application process that protects the community, while providing the necessary service and (3) handling leases and assessments in such a fashion that maximizes revenue to the city.

In response to the Council's questions, Mr. Comi clarified:

- The City has absolute responsibility and authority to ask providers of cellular services to look for an alternate site.
- It is important to have a consultant, who has the knowledge and background of wireless communications, to deal with application. Under SEQRA, the City has the right to engage a consultant and charge the consultant's fees to the applicant.
- The City can give an incentive to a carrier to do certain things, for example, applying wireless telecommunications facility to an existing building. Also, the onus can be on the applicant to prove that they cannot be applied to an existing structure.
- Application fees range from \$250 to \$10,000 in different municipalities.
- A model ordinance does not separate out an applied vs. roof mounted facility; it encompasses all structures in one definition.
- In the City of Rye's ordinance, there are six reasons why an application can be denied. A literal interpretation would indicate that unless it was one of the six, the Council could not deny the application.

Rights-of-way

Mr. Monroe made the following comments on the rights-of-way:

The New York State Constitution states it is illegal to give away or loan any property. The Constitution says that a municipality may not permit private, profit-making entities

to use and occupy the publicly owned and maintained rights-of-way without charging for such use and occupancy. The intent is for users and occupants to pay 'rent'.

The San Francisco formula sets down a fee each time a street is cut because it decreases the useful life of that street. The City could require the occupants of the rights-of-way to compensate the City every time they cut a street. This might be an incentive to use another form of technology, for example, boring.

In response to questions, Mr. Monroe clarified:

- A right-of way ordinance:
 1. enables the City to control who uses the rights-of-way and the terms and conditions of their use,
 2. codifies the City's right and authority to enforce safety, and
 3. creates a level playing field from a compensatory perspective.
- There are few issues or matters that will have as significant an effect on municipalities, either positively or negatively, over the next 5 to 8 years as the issue of local, publicly owned and maintained rights-of-way.
- The National Association of Regulatory Utilities Commissioners (NARUC), backed by the State Public Utilities Commission (PUC) and Public Service Commission (PSC), supports the state's usurping control over locally owned and maintained rights-of-way.

Mayor Otis informed the Council that at a recent NYCOM meeting, a spokesman from PSC said the commission has no intention of taking away municipal control of the rights-of-way. At another meeting, Mr. Monroe and Mr. Comi were told that PSC does not believe that municipalities should have future control of these rights-of-way. He said there is concern about these conflicting statements.

Mr. Monroe said that the New York State Thruway and OMNIPOINT Communications, Inc. have taken the combined position that they are not subject to municipal authority regarding the siting of the towers. There is no basis in law for this opinion. The danger is that if one community acts on this premise, the next operator will cry selective enforcement, discriminatory treatment, and a violation of their equal protection rights. If you have regulation, enforce that regulation or you will lose it.

Mayor Otis announced that there will be a public hearing on state and local regulation of wireless telecommunications on March 11, 1998 in Albany.

Cable Television

In response to Councilman Hutchings' question, Mr. Monroe said nothing prohibits the public access channel from soliciting corporate sponsorship to subsidize cable programs, as long as it does not solicit advertising. Cablevision's contribution is corporate sponsorship. Mr. Monroe said it is all right to acknowledge the sponsor but not to depict the product on the program. He said the best standard to follow is that of National Public Radio, which has corporate sponsors who are acknowledged throughout the program.

Mayor Otis expressed his appreciation to Mr. Monroe and Mr. Comi for their very informative presentation.

3. Adjournment

There being no further business to discuss, Councilwoman Larr made a motion, seconded by Councilwoman Cunningham and unanimously carried, to adjourn the meeting at 11:45 A.M.

Respectfully submitted,

Alice K. Conrad
City Clerk