

TOWN OR MEREDITH  
PUBLIC HEARING  
Proposed Local Law #3 – 2008 “Telecommunication Tower and Facilities Law”  
September 2, 2008

The Town of Meredith Town Board Public Hearing was held on September 2, 2008 at the Meredith Town Hall. The following were in attendance:

Supervisor: Keitha Capouya

Council Members: Ronald Bailey  
Daniel Birnbaum  
Roger Hamilton  
Paul Menke

Clerk: Betsy Clark

Townspeople: 8

The supervisor called the meeting to order at 7:45 p.m. She announced this was a Public Hearing for public comment on the proposed Town of Meredith Telecommunication Tower and Facilities Law.

The Town Clerk read the public notice for the Public Hearing.

The Supervisor explained the Public Hearing was for public comment on the proposed Telecommunication and Facilities law. She said the time for each speaker would be 5 minutes. She then asked if anyone would like to make any comments.

**Delaware County Sheriff Tom Mills:**

Tom said he appreciated the opportunity to say a few things. He said he didn't know how many of the people here tonight are familiar with the County attempt to operate its communication system. A significant amount of money will be invested probably within the next five to ten years. Specifically in the next 3 years by the year 2012 the Federal Government mandated that we get off our present system of communications if we are still going to rely on microwaves. One of the things on page 10 of your law I'm a little concerned about. Number 11 talks about the equipment rooms, and support facilities, the county has been looking at these sea land containers refitted to be a communication building and I don't know whether that will be permitted or not, under Section 601-B #11 of the proposed law. Then in section 601-B # 12 it says Telecommunications Antennas due to their high visibility, dish and parabolic telecommunications antennas shall be located at the lowest elevation that will permitted. Microwave is point to point and sometimes the dishes or antennas have to be high up on the tower to get to the next mountain top to receive the signal. That's one of my concerns. The dish's are getting smaller, but it doesn't say in the law what size the dish has to be.

The next concern is Section 601-B #13 Utility Service. You say you want it underground but that adds cost to a system. As we speak about a system its probably going to cost, I don't know how much it's going to cost, but the study we had done two years ago the top cost was 32 million. So you're talking a significant amount of money. If we could go above ground it certainly would be helpful in keeping the cost down.

**Keitha:** I believe it just asks for an explanation if you want to do above ground.

**Tom:** "Okay, I also appreciate the fact that you left an area for the Town or County to use the tower. That's a good idea. I would like to try to get the high point because all that high point is where you can get over some of the mountains around here. Depending upon the frequencies we go with, it appears we will have to get off this VHF here at 156 is what we transmit on. We might have to go to 400, the State wide wireless we are talking 800. Which are ultra high frequencies. I don't know what the State wide wireless is going to do we were supposed to know by the end of August but we haven't heard yet. The County is a full participant in the State wide wireless, but if it's going thru or not I have no idea. One of the concerns that I have trying to address this is, we do have 7 towers in the county, but if we go to a higher frequency that means we will have to more towers. They do transmit clearer if set up properly. With the low band two towers covered most of the county. Now with the Federal regulations, they're taking frequencies away and we have to adjust by going to a higher frequency, it's better communications, it's clearer, but it's going to be more towers, so everybody's aware of these issues."

**Attorney Marc Goldberg:**

Marc introduced himself and stated he represents SBS. He proceeded to state in his opening remarks that he wanted to address first, before he gets specifically to some of the concerns in the letter that he drafted, the lack of the variance provision. "Given the removal of a variance prevision in the circumstance such as my clients pending application which has variances that are needed what is the process. Will you require the application to come before the Town Board or is the alternative to commence litigation because there is no variance procedure in the law. As a courtesy we need to know because we believe our application has certain issues that we believe are in conflict with the current law and as the letter indicates we are seeking a variance on some of the provisions. My first question is how do you address that issue, in the absence of discretion you are leaving the Planning Board absolutely no discretion what so ever but to deny an application."

**Keitha:** "We'll have another meeting after this one and we will discuss this."

**Marc:** He said "let me address more particularly one of the issues that's concerning is the Board made a decision in the last discussion that I was here that obviously political override sometimes is going to override the rule of law. You made a comment to me that if I felt so strongly about a provision that perhaps I should move to the Town of Meredith and run for the Town Planning Board."

**Keitha:** Keitha acknowledged with a yes

**Marc:** “What I’d asked the Board to do and I thought in our many discussions there was some reception to be objective, some reception to view the changes that were being proposed as to how they may actually play out. What I found is the agenda and subjectivity and need to have that agenda fulfilled seemed to override the objective rational concerns that were addressed our June 2, 2008 letter. Without going into thru each of the issues I would like to highlight that there are a number of provisions, a multitude of them that are in direct and unequivocal violation of the communications act. We’ve highlighted that, we point that out to you during each of the meetings; we pointed it out during the letter. For some unknown reason and with all due respect those concerns have been completely ignored. We addressed the concern about the height of the tower. We recognize that the Town has an underlying concern of not having huge monstrous towers in its beautiful lands and I recognize the concern to many facilities. But as the sheriff has eloquently stated the height of the tower may require heights in excess of a certain stated limit and the law again creates no exception what so ever. The municipalities have been given the prerogative to place a facility on a tower but that doesn’t mandate where on the tower that will be. Candidly is someone is paying a large some of money to rent on the tower they need to have the highest point. Their certainly not going to grant it to a municipality. Your intent to give them the space is going to be thwarted since you’ve limited the ability for the tower to be of a certain height that tower may never be built in a particular location. So your whole intent to have less towers and perhaps towers that have the capability of being efficient has been thwarted. I want to highlight some of the concerns very briefly and obviously I’ll differ to the June 2 letter. But I would like to take a brief moment and just point out to the Board the following: Section 103 definition of modification remains the unchanged. The Board talked about the need to address the collocation station, to address the issue of a significant change to a tower vs. minor change, and you did a good job in amending that. But by leaving the word modification broad you made no distinction for antenna slots or equipment modifications. It’s going to result obviously in applications, coast and expense. Candidly are just unnecessary. It’s going to delay upgrades because now anyone that’s going to have to have an upgrade is going to have to go thru the entire process because the word modification remains to broad and undefined and it will not expedite the process.

I address the issue of 1102 being redacted I think it’s probably the most concerning provision. It kind of thwarts the whole intent of having a Planning Board. You may be responsible in your determinations but you should allow the Planning Board the discretion they presumably have the expertise to make those decisions. Why you’ve removed that provision is quite concerning, but more importantly without any real understanding or explanation. Many of the provisions in the current law address issues of radio frequency. As indicated in both the June second and reference in my most recent letter their in direct violation of the communications act obviously the way those issues will be resolved over time is by litigation should a carrier be in conflict with one of those provisions. The only way their going to be able to overcome them given the lack of a variance is to bring an Article 78 proceeding. You indicated Keitha to me that the Board cannot be concerned about litigation. In a Town such as this in which residences are

hurting and money is limited the Town should be concerned. We don't propose those changes merely because we think it's in the best interest of our client, although many of them are, we propose them because it's in the best interest of the Town. We've been thru the process, we've obviously been to other Towns, we know the ramifications of certain provisions and we've seen how they play out. A lot of those issues were not taken out. I think of the 47 changes perhaps 37 of the 47 changes were completely ignored and not addressed. I will point out to you very briefly, perhaps you take notes and I do not want to take much more time because they are outlined in the letter but I will highlight the sections that remain unchanged and again reserve should you want to have further discussion I would be more than happy to elaborate on them. The definitions in section 103 first paragraph of Article II sections four and five, sections 501,502,503, 504, section 601 A1, A2c, A3, Section 601B1, 602B2, 601B4, 601b6, 601B8 section a, b of that section, 601 B9, B13, B17, B18, B19 & 20, I highlight the significant number of omitted changes or even to address those issues raise some grave concerns about the agenda that was perhaps motivated by the statute or perhaps just not taking it seriously in evaluating some of the concerns that are addressed in the letter. Section 701, 801, 802, 803, 804, 901, 902, 1001, 1002 I leave my comments obviously by addressing that not all of those provisions have a direct conflict with our direct current pending application but as I highlighted in my August 29<sup>th</sup> letter a number of them do at this juncture we ask obviously the Board to give us some guidance as to how the Board would like to proceed should this pass in it's current form. The Planning Board may be left with no choice but to deny the application simply because they have been given no discretion to deviate from the current provisions. If the Board were not to entertain the issue obviously it would leave our client no alternative but to have to commence litigation. We're hoping that becomes necessary, we're hoping that these issues are addressed, we would like a dialog. I know that you took exception when I suggested some proposals and you made it very clear that this was your legislation. I remind you it's the people's legislation it's neither mine nor yours and I believe that the people as they evaluate its actual application will have some issues. Because it will either A) thwart the development of technology which is what we hope will occur and more importantly it may actually invite litigation. Which candidly is not something the carrier never wants to embark in because of the cost and unnecessary delay. I thank you for your time and obviously I thank you for putting together a statute, but I believe that more work is required. I ask that rather than for political expediency that the rule of law control."

**Keitha** made some comments and there was some banter between the attorney and the Supervisor. Roger asked the floor to be closed to Marc that he had his five minutes but did ask that Marc remain for the meeting he would like to ask some questions since he had missed the two previous meetings.

**Will Outsen** a member of the Planning Board asked Keitha some questions on procedure of the law.

**Raymond Wojick:** "Where ever you go these days the media or the news, radio, or internet there is a lot of controversy about cell phone usage and cell towers in this country. I have an article here from an August 14<sup>th</sup> newspaper on Long Island where the

citizens of the Babylon are battling their government to tear down four cell towers that have in fact been resurrected. Those towers are providing the Town 125 thousand dollars a year of additional revenue. The L.A. school system has forbade the erection of cell towers on school property because they are concerned about the future health effects of children attending those schools. So the argument seems to be centered around three central points. One is visual pollution of big monstrous towers in the local neighborhood, decreased property values that result from the sighting of the towers, and these possible future adverse health effects. Do you believe all these articles and everything that is written? I don't know. I do know that the World Health Organization is doing a long range study called the international EMF project (Electro Magnetic Frequency Project) that is trying to gather the data from around the world to be able to answer this question. Germany says there's a three fold increase in cancer from cell tower propagation. Israel says there's a four fold increase. I don't know what the answer is. In this country the national research council has asked one of its subcommittee's to find out where the holes are. We need data to substantiate the question of yes or no on the question of long term adverse health effects. The International Association of Fire Fighters in 2004 pretty much propagated a letter that said no cell towers be put on fire property because they are concerned about the health effects. This status basically has not changed over the years that have intervened.

One of the things that the cell phone companies seem to rely on is the fact that all of these internet sights were pretty much created to cause fear in the population, that's why they exist. Remember too that the telecommunications industry lobbied congress with 36 million dollars to pass that 1996 Federal Communications Law that says you can't (inaudible) because of health reasons. At one of the Planning Board meetings the representatives of SBA stood up and said it's a moot point the law says you can't do it. But remember the government also told us that cigarettes, asbestos, thalidomide, and the air around the twin towers on 9/11 was all safe. It's the long range effect of these things over time that has in fact been discovered not to be what the government said. Now let me have a couple of comments about specifics in law based on that sort of a background. On page seven of the 16 pages where we talk about Section G there, for a proposed new tower a report shall provide an inventory of existing and proposed telecommunications systems within a radius of four miles. I would expand that, make it a wider circle perhaps even out to ten miles. Why so I say that, we've had a cell phone since 1996 because we travel, and that cell phone worked in 1996 but the tower at that time as, I envisioned it at that time, was on a ridge just south of Route 28, 23 out there in Oneonta. In looking at a proposed cell tower site the representatives from SBA, IT & T and their consulting companies all were talking at their cell phones on the site and I asked them why? They couldn't give me an explanation as to why they were able to complete a cellular communications call. So there's apparently a difference between a theoretical pattern put out by a cell tower and what occurs in reality. In that same section I might add a comment that would show for an applicant for a cell tower would have to show that the tower will fill an existing significant gap in coverage. And a second requirement that the applicant would have to prove that there are no technical alternatives to putting in this cell tower. Now there are alternatives, but the alternatives are more expensive. Distributive antenna systems Sprint proposed putting in California at one time, and what

it is, its cell phone antenna's on utility poles. Yeah, you have to put in more of them, you have to use fiber optic cable, but it's a capability that exists. Other capabilities would be shorter and sleeker towers. If you look at Section 601 B on page 10 we talk about a tower height of 180 feet. I did a quick look at Petersons field guide for the height of trees because on the previous page, page 9 where you talk about minimizing visual effects, you say that no tower shall be so located that more than half the total height of the tower appears to rise above the ridge tree canopy. Most of the trees that grow in this area an oak tree is 60 to 80 feet average, birch 70 to 80, white spruce 50 to 60, and Norway spruce does get up to about 90 feet. Red pine 50 to 80, basically 80 feet, so if you take double 80 feet that's 160 feet so I guess maybe the tower should be at a limit of 160 feet.

In Section 801 where we talk about insurance the discussion pretty much looks at personal injury, death, property damage, vehicular accidents, workers compensation and disability. That's all been covered correctly. I would like to see maybe two more categories entered there, property devaluation and these long term possibly adverse health effects. Why, because if a family with children is in the radiation power of the tower who does they turn to if in fact something results. I don't know; they probably don't have health coverage to do it. If the company wants a tower let them own up to the possibility that may be there, let them provide the health insurance coverage that people can go to. Thank you for your time."

**Keitha:** "Thank you Ray. You're right that the Telecommunications Law prohibits us from looking at health problems that might possibly be caused by this so of course we didn't deal with that. But that's the reason and this is the answer to part of your question that we ask for the radio frequencies that are being used. We are not regulating them, we are simply asking for information so that should one of these studies turn up problems we will know what frequencies people have been exposed to and if there are interference problems we will also know what frequencies are being used. There is no regulation that forbids us asking information and that's what we've asked for."

**Brenda Gessell:** "I don't know how many of you know my mother had cancer and she passed away at a young age of 54. A tower is potentially going up on my property so I certainly wouldn't sign up for that if I thought that it would cause cancer in my family. The American Cancer Society on their web site does show that there is no significant risk, health issues by having a tower on your property. I would just like to point that out. Also I would like to say that there are many people these days that only carry a cell phone; they don't have a phone on their wall. If you have a tower near your home that could potentially be a good thing because you have a signal there. For people that only carry a cell phone they will have a signal to use their cell phone. This is an age where many people use cell phones and having service near your home is not a bad thing."

**Marc Goldberg:** Marc gave some information on the evolution of cell phones, the problems not foreseen and the technology trying to catch-up with what has evolved.

**Robert Swantak:** "Personally I can't understand why it doesn't make sense, the neighborhood we're in with the hilly terrain we have, why we can't expect to have a little

taller towers than what you would say in Texas in a flat area. I'm not sure what the Board is trying to do here to protect the Town from ourselves."

**Keitha:** "I can tell you what the Board is trying to do."

**Robert Swantak:** "I would like to hear it."

**Keitha:** "It's trying to find some line of balance between having cell towers and cell phones; which we all want; and the problem of them being tall enough to be lighted, to be very visible where there is a good deal of feeling about that aspect of it as well. We're trying to have them at a low enough height that they're not terribly intrusive but high enough that they can expect to give reasonable service." There were more comments made along these lines."

**Robert Swantak:** "Route 28 the service is terrible down there. I have people at my business everyday that can't use a cell phone because there's no service."

**Ron Bailey:** Ron made some comments regarding Planning Board meetings he has attended concerning SBA's application and proceedings. He commented on various towers existing and proposed, that will cover the Route 28 corridor.

**Marc Goldberg:** Commented more on SBA's application and also some more points of law.

**Keitha:** "Let me just speak to two issues here, I don't want to have a lot of discussion in this meeting. First the work of the Planning Board is administrative, our work is legislative. For us to expect the Planning Board to take over our job is not quite fair. Our job really is, insofar as we can, to make a regulation that they can then administer." She made some more comments to Marc Goldberg.

**Roger Hamilton:** Roger made some comments regarding the need for variances and why they did not make it back in.

**Keitha** said perhaps we should adjourn the meeting and discuss this in a regular meeting.

**Roger** said he wants to hear more in a regular meeting.

**Keitha** asked if there was anybody else that would like to comment.

**Robert Swantak:** "I would just ask that the Board look out for the well being of the Town as a whole. We need cell service there's no question about it. I think we need to work with the companies that are willing to do this rather than pit them against us. This law is terribly restrictive."

**Dorothy Wojcik:** “I’m glad that the Town Board is looking at all sides of this because personally I have a lot at stake in this. All we’re asking is for the Town to the judgment that’s available and answer some questions.”

A discussion ensued about a proposed cell tower. The Board called the Public Hearing to a close.

A motion to close the Public Hearing was made by Paul Menke. The motion was seconded by Ron Bailey and passed. The Public Hearing was closed at 8:32 p.m. .

Respectfully submitted:

Betsy Clark  
Meredith Town Clerk