YATES COUNTY LEGISLATURE
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Date: November 12, 2021

TO: Department Heads
    Legislators
    Press
    Municipalities Involved

FROM: Emilee D. Miller, Clerk of the Yates County Legislature

RE: Special Public Safety Committee Meeting

Please be advised there will be a special meeting of the Public Safety Committee in the Legislative Chambers located at 417 Liberty St., Penn Yan, NY 14527 on November 15, 2021 at 5:00 p.m. to receive input from municipalities in which public safety communication towers are proposed to be erected and to consider the following resolution.
WHEREAS, Yates County (the “County”) commissioned a public safety communications study in 2019 and received a Public Safety Systems Communications Study Recommendations Report (the “Report”) in 2020; and

WHEREAS, as a result of the study and Report, the County desires to install a new public safety communications system which shall include the construction of two (2) new emergency communication towers to be located in the Towns of Barrington and Italy and the potential construction of a tower in Benton; and

WHEREAS, by Resolution No. 401-21 dated November 8, 2021, the County modified the Project to also include the replacement or potential replacement of existing emergency communication towers located in the Town of Jerusalem and the Village of Penn Yan (collectively, the installation of new towers and replacement towers is referred to herein as the “Project”); and

WHEREAS, as applicable, the County wishes to acquire parcels of real property in the towns of Benton and Barrington (the “Acquisition Parcels”) to accommodate the installation and operation of County-owned communications towers; and

WHEREAS, the County wishes to ascertain whether its acquisition of the Acquisition Parcels and its intended construction, operation and use of the improvements thereon and at existing tower sites in the Town of Jerusalem and Village of Penn Yan (the “Existing Parcels”) are exempt from local regulations; and

WHEREAS, the local regulations being considered herein are namely the Town of Benton Zoning Law, Town of Benton Subdivision Law, Town of Barrington Zoning Law, Town of Barrington Subdivision Law, Town of Jerusalem Zoning Ordinance, Town of Jerusalem Land Subdivision Regulations, Zoning Law of the Village of Penn Yan, and Village of Penn Yan Subdivision Regulations (collectively, the “Local Regulations”); and

WHEREAS, in order to ascertain the same, the County wishes to apply the “balancing of interests test” established in Matter of County of Monroe v. City of Rochester, 72 NY2d 338 (1988);

NOW, THEREFORE, BE IT RESOLVED, that the Yates County Legislature makes the following findings with respect to the foregoing issue and each of the factors contained in the aforementioned “balancing of interests test”:

1) **The nature and scope of the instrumentality seeking immunity:** The County is a
municipal corporation, which through its offices and departments, coordinates the communications within the County of various government departments providing services that benefit the public.

2) **The encroaching government’s legislative grant of authority:** The County is permitted and expected to provide adequate communications to enable municipal offices and departments to service the public interest; including but not limited to: law enforcement, fire, emergency medical, emergency management and highway services.

3) **The kind of function or land use involved:** The provision of adequate coverage to service the public interest communications needs within the County. To this end, on each of the Acquisition Parcels and Existing Parcels the County wishes to construct, install and operate a communications tower, and construct and operate those improvements necessary to support the installation and operation of said tower, as well as place the necessary associated utilities thereon. The locations of the Acquisition Parcels have been chosen to most effectively meet engineering coverage requirements in this regard.

4) **The effect local land use regulation would have upon the enterprise concerned:** Upon information and belief, the Local Regulations require subdivision approval to divide an existing parcel and contain various requirements concerning the installation and operation of communications towers.

5) **Alternative locations for the facility in less restrictive zoning areas:** Upon investigation and evaluation of possible locations, the Acquisition Parcels and Existing Parcels are the County’s best alternative for the placement and operation of its own communications towers. To this end, the Acquisition Parcels and Existing Parcels are at a high enough elevation to ensure improved radio coverage, and are relatively cost effective when compared to the development of other potential sites or the continued rental of a communications tower servicing the area in question.

6) **The impact upon legitimate local interests:** Communications towers are not uncommon in the County as a whole. Any impacts, if at all, are minimal compared to the need for adequate communications benefitting the public.

7) **Alternative methods of providing the proposed improvement:** The County has investigated alternative site locations, and for the reasons set forth in Section (5) above determines that the Acquisition Parcels and Existing Parcels are the best locations for the proposed communications towers.

8) **The extent of the public interest to be served by the improvements:** The new communications towers located at the Acquisition Parcels and Existing Parcels would greatly benefit the public interest, by way of their enhancements to communications to allow for the proper rendering of the following services, all of which are vital to the public-at-large: law enforcement, fire, emergency medical, emergency management and highway, as well as interoperability with regional radios of other counties regarding such services. The County will use the proposed towers on the Acquisition Parcels and Existing Parcels to dispatch, receive and coordinate these vital communications. These important public needs outweigh any other impact
identified with the construction and operation of the proposed site.

9) **Intergovernmental participation in the project development process and an opportunity to be heard:** The towns of Benton, Barrington, Jerusalem and the Village of Penn Yan were verbally made aware by the County of its intentions to build communications towers at the Acquisition Parcels and to replace or potentially replace communication towers at the Existing Parcels. Via letters dated November 5, 2021 to the towns of Benton, Barrington, and Jerusalem, and to the Village of Penn Yan, each Town and the Village was put on written notice by the Yates County Attorney of the Project and the County’s intention to consider the issue of whether the Project is exempt from the Local Regulations, with such consideration to be done by way of application of the “balancing of interests test” established in **Matter of County of Monroe v. City of Rochester**, 72 NY2d 338 (1988). Moreover, pursuant to said letter, the County invited any and all comments and/or questions from the towns of Benton, Barrington, Jerusalem and the Village of Penn Yan regarding the subject land acquisition, the planned project and the project’s process of development; it being the intention of the County to keep the Towns and Village continually informed and give the Towns and Village an opportunity to be heard; with the request that the Towns and Village provide any comments or questions prior to November 15, 2021, to which none have been so provided. Furthermore, the Towns and Village were notified by the County Attorney of the applicable committee and full legislature meeting dates wherein the “balancing of interests tests” would be applied, wherein Town or Village representatives are welcome to attend and be heard on the issue at such meeting(s); and be it further

RESOLVED, that the Yates County Legislature hereby finds that the balancing of interests analysis weighs in favor of the acquisition of Acquisition Parcels and the planned Project and its process of development, all as more particularly described herein, being exempt from the Local Regulations; and be it further

RESOLVED, that copies of this resolution be forwarded to the towns of Benton, Barrington, Jerusalem and the Village of Penn Yan.