

The Edgemont Community Council, Inc.

Founded in 1947 to determine community opinion on civic matters and coordinate community action thereon and to plan and promote the general welfare of the community embraced within Union Free School District #6.

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December 23, 2011 – January 4, 2012

Greenburgh Town Supervisor Paul Feiner reached out to the ECC, specifically to its president, Geoff Loftus, for some help regarding NextG's proposal to place cell-phone antennas in residential neighborhoods, including Edgemont. A couple of the ECC's lawyer members were happy to lend their time and expertise to the problem, since they are no more eager for cell-phone antennas to be placed in residential areas of Edgemont than Mr. Feiner appeared to be.

The community has made it very clear – at least to the ECC, and probably to Mr. Feiner since he brought this up in the first place – that it can live with antennas in non-residential areas.

Below, the entire e-mail conversation (edited only for spelling and punctuation errors) makes it clear that the ECC wants to keep antennas out of residential areas and feels that the burden is (and should be) on NextG.

The Town only needs to apply its own law to protect its residents.

* * *

From: Paul Feiner

To: Geoff Loftus

Sent: Saturday, December 17, 2011 1:21 PM

Subject: requesting a legal opinion from lawyers who are involved with the ECC

Dear Geoff:

As you know, NextG has proposed placing antennas in residential areas. Some Edgemont constituents of mine have expressed some concerns – about the possible dangers from radiation.

Some people claim that federal law makes it very difficult for local governments to say no to the placement of antennas and that we cannot legally deny an application on the basis of health or safety. I am requesting that the ECC ask some of the attorneys who are involved in town issues to research the federal law and to help the town be as responsive as we can be to the concerns of Edgemont residents.

Speaking personally – if the town can legally keep antennas away from homes and if we can authorize them in non-residential areas – I would prefer that compromise option.

I have asked the Town Attorney's office to provide the Town Board with their interpretation of the law. A 2nd opinion from lawyers who live in the community would be very helpful.

PAUL FEINER

* * *

From: Geoff Loftus

Sent: Monday, December 19, 2011 2:14 PM

To: Paul Feiner

Subject: Re: requesting a legal opinion from lawyers who are involved with the ECC

Paul,

I did a quick check with some of our lawyer members and this is what they came up with:

This does not appear to be a problem of federal law. Greenburgh law, passed in 1998, controls. Here are the pertinent facts:

- Does **not** allow cell phone antennas in residential areas except by "special permit."
- To qualify for a special permit in Greenburgh, the applicant *must* demonstrate that "all reasonable measures" to site or co-locate such antennas in non-residential locations and thereby fill in the supposed "gap" in service for which these residential antennas are supposedly needed "have been exhausted or that technical or space limitations prevent location or collocation at those sites."
- There appear to be many non-residential locations along Central Avenue that are available.
- In addition, we understand a NextG competitor owns exclusive rights to install such antennas on telephone poles along Central Avenue.
- However, that fact alone does not excuse NextG from contracting with such competitor to locate or co-locate at such sites or at any other sites where coverage may be available. Indeed, federal law may actually **REQUIRE** competitors to make such essential facilities available. The fact that NextG would rather not pay a competitor, and would rather have exclusive rights of its own, which is what looks to be the case here, is not relevant under Greenburgh's code.
- Therefore, it appears to us that NextG cannot meet the needs test for a special permit and should not be granted one.

In short, the town already has the law in place necessary to control the situation. Furthermore, if NextG wants to demonstrate that it does meet the needs test, the Town should hire lawyers with the correct expertise to handle this – and do so at NextG's expense as provided for under Town Code 285-37A(26). If NextG is confident it can meet the Town's test, then the costs would be well within its self-interest to pay; but if the applicant is worried that it might lose control over the process, because it would be funding an independent look at the situation, then there might be problems.

In sum, the burden to prove that this intrusion into residential neighborhoods is necessary is on NextG. It looks to us that the Town of Greenburgh already has the law in place it needs to protect its residents. We hope it will do so.

Thanks, Geoff

* * *

From: Paul Feiner
To: Timothy Lewis; Town Board; Geoff Loftus
Sent: Tuesday, December 20, 2011 6:59 PM
Subject: requesting that NextG hire attorneys to demonstrate that it meets the needs test

TO: TIM LEWIS, Town Board,

I would like to request that we follow up on the recommendations of Geoff Loftus and advise NextG that we would like to hire lawyers with the correct expertise to address this matter. I have some concerns about the proposal by NextG and want to be responsive to the community. I am receiving a number of calls/e mails from constituents — who share the concerns.

PAUL FEINER

Included as a PS to Mr. Feiner's e-mail above:

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In sum, the burden to prove that this intrusion into residential neighborhoods is necessary is on NextG. It looks to us that the Town of Greenburgh already has the law in place it needs to protect its residents. We hope it will do so.

Thanks, Geoff

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From: Paul Feiner
To: Geoff Loftus
Sent: Thursday, December 22, 2011 2:42 PM
Subject: antenna

I just met with Tim Lewis. He advised me that NextG would be willing to meet with a handful of representatives from Edgemont to discuss possible compromises that the community could live with.

I am wondering if the ECC would designate 3 or 4 people, preferably with legal experience, who could help. The proposed dates: Jan 10 or the 17th — before the hearing.

PAUL FEINER

From: Geoff Loftus
Sent: Thursday, December 22, 2011 2:59 PM
To: Paul Feiner
Subject: Re: antenna

Paul,

I can think of only one adequate response to this: WHAT???

We're not interested in helping NextG come up with compromises. The existing town law says NextG (or any provider) can apply for a special permit, but they have to prove the need – NextG has to prove the need. Until they meet their burden of proof there's nothing for anyone to discuss.

The law is clear -- let's follow it.

Geoff Loftus

* * *

From: Paul Feiner
To: Geoff Loftus
Sent: Thursday, December 22, 2011 4:02 PM
Subject: RE: antenna

I think dialogue, rather than litigation, is always preferable. There are federal laws that apply to antenna's. We don't want to violate the laws. At the same time we want to try as hard as possible to keep the antennas away from residential areas.

If the ECC doesn't want to meet and have a discussion – I will contact the residents from Edgemont who contacted me about the siting of the antennas – I will invite them to have the dialogue.

Please be advised that I'm not asking you to agree to anything. Just to meet and see if an agreement that is acceptable to residents is possible. You might be surprised in a positive manner.

PAUL

* * *

From: Geoff Loftus
To: Paul Feiner
Sent: Thursday, December 22, 2011 4:19 PM
Subject: Re: antenna

Paul,

I'm already surprised. As we've discussed previously, Greenburgh's laws are controlling in this instance. Violation of federal law is a non-issue. So why do you keep returning to it as if it were? My guess is that you want to cite federal law because it won't stop NextG from placing antennas in residential areas. But Greenburgh law can stop exactly that, if it's followed. So why not follow it? Why do you need to discuss this – unless you are trying to give NextG what it wants instead of protecting your constituents?

It appears that you are hiding behind the "let's be reasonable" flag, instead of using the law the town already has. Do what you were voted in to do and protect Greenburgh's residents.

Geoff Loftus

* * *

From: Geoff Loftus
Sent: Friday, December 23, 2011 10:30 AM
To: Paul Feiner
Subject: Re: antenna

Paul,

We've posted a brief story on the ECC Facebook page with a link to your and my e-mail conversation regarding the antennas. I'm sorry to say I feel that once again, we started out in a cooperative mode, you subtly changed the rules of the game, and we now find ourselves in opposition to you.

I hope you and the members of the Town Board will compel NextG to adhere to the Town's own law, which will almost certainly keep cell phone antennas out of residential neighborhoods and keep your constituents safe.

Thanks, Geoff

* * *

From: Paul Feiner
To: Geoff Loftus
Sent: Friday, December 23, 2011 10:42 AM
Subject: RE: antenna

I am very disappointed. I have never said that I will not compel NextG to adhere to the town's own laws. All I wanted was to hold a meeting with leading members of the community (the ECC) and the NextG attorneys. Perhaps, NextG would come up with a new plan that you could agree with. A meeting does not mean that you have to agree to any compromise plans. It just means that we will all have a dialogue and see if we could all reach an agreement, protect the community—and avoid litigation. There is a federal statute involved. Remember, Fortress Bible? We have to be careful that we're complying with federal law.

PAUL FEINER

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From: Geoff Loftus
Sent: Friday, December 23, 2011 10:53 AM
To: Paul Feiner
Subject: Re: antenna

As we have said to you repeatedly, federal law is not at issue here. The only reason you can have for continuing to cite it is that you are looking for wiggle room -- so that you can say you had no choice but to approve NextG's antennas in residential areas. Greenburgh law allows you to say "no" to NextG and force them to use the cell towers already in place on Central Avenue.

Use the Town law. That's what it's there for.

Geoff

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From: Timothy Lewis
To: Geoff Loftus; Paul Feiner
Sent: Friday, December 23, 2011 1:44 PM
Subject: NextG Antenna Application

Mr. Loftus, my name is Tim Lewis and I am the Town Attorney. I met with Paul Feiner yesterday and advised Paul that I am attempting to schedule a meeting with NextG and Town representatives for Tuesday, January 17, 2012 at about 10:00 a.m. regarding NextG's application for a special permit. It was my suggestion to invite an ECC representative who might have some level of expertise regarding the Telecommunications Act of 1996 based upon a prior email indicating that the Town could deny NextG's application without issue. Although I am Town Attorney and am generally familiar with cell phone antenna applications and the applicability of Chapter 285-37 of the Town's Zoning Ordinance to such applications, I am certainly no expert

and will likely need assistance in advising the Town Board on this matter. Moreover, there are other issues (legal and non-legal) pertaining to the application that I need to address with the Town Board relating to the application.

Notwithstanding all of the emails going back and forth, it would be great if a member or members of the ECC (preferably an attorney with some expertise in this area) could attend the meeting that I am attempting to schedule so all involved could identify and narrow the issues. If any representative could make the meeting, I would appreciate it. If not, I understand.

Tim Lewis

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From: Geoff Loftus
Sent: Friday, December 23, 2011 2:51 PM
To: Timothy Lewis; Paul Feiner
Subject: Re: NextG Antenna Application

Dear Mr. Lewis,

In trying to be quick and courteously responsive, I find that once again, I've verbally tromped down the wrong path. I've had a chance to consult with "some of my guys" and am going to decline your invitation to the meeting. I would also suggest very strongly that you not meet with an applicant (and its legal representatives) when the applicant not only has an application pending before the Town, but the hearing on that application is still going on. All communications concerning such application must be on the public record and the meeting you're proposing is not.

Second, if you need guidance on any legal aspects of the application, the Town Code already gives the Town authority to hire counsel with appropriate expertise at NextG's expense. We already told you, Paul Feiner and the Town Board that.

Third, it seems highly inappropriate for you or any legal representative of the Town to insist on a meeting in order to advise the Town Board on certain unspecified "non-legal" issues, which sounds like a euphemism for efforts to strike a "compromise" that would be "acceptable to the community."

All communications with the applicant and its counsel should be on the public record as the hearing on this application is still open, and if the applicant wants to submit a revised application or otherwise modify its proposal, it should resubmit its application before the Antenna Review Board so that it may be reviewed in the ordinary course.

So, thanks but no thanks. And please reconsider yours and the town's participation in such a meeting.

Geoff

From: Paul Feiner

To: Geoff Loftus; Timothy Lewis

Sent: Friday, December 23, 2011 6:25 PM

Subject: RE: NextG Antenna Application my final comments for the week

I think your initial instincts were better. In the past--when we have had informal discussions with applicants and the community on controversial land use matters- we frequently were able to reach consensus and avoid litigation. Informal, off the record discussions does not commit the town or the neighborhood to take any action, it is less adversarial and more results oriented.

All of us want the same thing--we want to try to figure out a way to avoid costly litigation, avoid a court decision against the town that could be expensive and we want to be able to find ways to keep antenna's away from residential areas -if legally permissible. It is possible that your attorney may be mis-reading the law. It's also possible he is correct.

In the event that a meeting is held the only way a compromise would be reached is if the residents who attend agree to one. If no agreement is reached at the end of the meeting- we would proceed with the more formal hearings and deliberations.

I understand that at least one of the ECC leaders wants every issue to become a fight between Edgemont civic leaders and the town. I want to work with the community, I want to be responsive to the neighborhoods concerned about the antenna's. I strongly believe that a meeting between all parties would give the Edgemont community the best chance of getting the results you want.

I believe that most Edgemont residents who are honestly concerned about antenna sitings would prefer results instead of back and forth accusations.

I'm going on vacation. Will be back on December 31st so this will be my last e mail on the subject till I get back. Thank you for at least reflecting on the benefits of having a dialogue.

PAUL FEINER

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From: Geoff Loftus

To: Paul Feiner; Timothy Lewis

Sent: Thu Dec 29 10:35:04 2011

Subject: Re: NextG Antenna Application my final comments for the week

Dear Paul,

I know you're on vacation, but I thought I'd answer this letter while I had a few quiet moments to get to it. I was unable to answer it promptly because I was so surprised at your continued urging of informal, off-the-record meetings as the way to move issues forward.

You mentioned the Fortress Bible law suit in an earlier e-mail, something which has been a devastating loss to the town (and please don't kid yourself that the Town will win on appeal), and

which I believe was the result of one of these informal meetings. Public, on-the-record meetings are awkward, but they also protect everyone who participates in them. Not to mention that you get a fuller spectrum of information and opinion. In case you haven't noticed, the townspeople who pay attention to these things aren't happy with Greenburgh's history of informal meetings, or informal processes that result in contracts or agreements with very little public scrutiny. The most recent deals with Cablevision and the police seemed to pop out of nowhere, and many people I know (including me) were unhappy with the announced details of those agreements.

The recent budget process seemed to catch much of the Town Board by surprise, several council members went on record as having received the budget later than usual and finding themselves pressed for time to analyze it adequately, and the special budget committee worked on its report, but its members have said that they didn't see the full budget until late in the game. It would seem that you are now running the town's budget process in these informal meetings you like so much, and given the anger with which this budget was greeted, it's hard to rate it as a successful process. Had you worked the budget through the normal, public process you might have ended up with the same budget, but a better informed and more involved public would probably have been less angry.

Finally, there is already a law on the books, enacted by the Greenburgh Town Board, that covers NextG's application. My suggestion: Follow the law. And stop trying to make me sound unreasonable for suggesting that you follow the law.

Geoff

* * *

From: Paul Feiner
To: Geoff Loftus; Timothy Lewis
Sent: Friday, December 30, 2011 1:08 PM
Subject: Re: NextG Antenna Application my final comments for the week

I am personally opposed to placing antennas in residential areas. I continue to believe that informal meetings with the applicant and community leaders could have resulted in a better long term result for the neighbors-no litigation and no antennas in residential areas. The approach I'm recommending has worked most of the time. I probably will vote no on the application. Paul

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From: Paul Feiner
To: Geoff Loftus
Sent: Tuesday, January 3, 2012 11:15 PM
Subject: RE: NextG Antenna Application

Geoff: I understand that you are having a meeting on Thursday evening re: antenna. I have another meeting at 7:30 PM so won't be able to attend your meeting (if it is over early I will stop by).

I am writing because I want to make sure that my position on the NextG application is not misrepresented: I do not support the siting of these antennas in residential areas.

Some people believe that federal law supersedes local law on this matter. I have asked the members of the antenna board (including Michelle McNally from Edgemont—who is a member of the antenna board) to attend the meeting on January 25th. I am also forwarding, for your review, copies of a letter I am sending to all the Antenna Review Board members. And . . . copies of letters I am sending to citizens and elected officials in Long Island (they also had experienced a similar controversy). Am also forwarding copies of newspaper articles that appeared in LI publications. If any of your members have connections to residents/leaders in Long Island, I suggest that you consider inviting them to your meeting. [ECC Note: We did not include the letters from Mr. Feiner to the various people he named above in the interest of brevity.]

If you can think of anyone else who I should contact- please advise.

PAUL FEINER

* * *

From: Geoff Loftus
Sent: Wednesday, January 04, 2012 12:49 PM
To: Paul Feiner
Subject: Re: NextG Antenna Application

Dear Paul,

Thanks for your note. I will quote you at the beginning of tomorrow's special meeting this way: "I am writing because I want to make sure that my position on the NextG application is not misrepresented. I do not support the siting of these antennas in residential areas."

As far as we are aware, NextG has not succeeded anywhere in challenging a local law like Greenburgh's, which has ample space for the location of cell phone antennas in nonresidential areas. And the Long Island experience has no bearing on Greenburgh's situation, as it does not appear that either of the towns cited has antenna laws comparable to Greenburgh's.

Although you say you do not support siting the antennas in residential areas, your actions speak otherwise. Instead of enforcing existing Town law that may actually accomplish the goal of preventing placement of the antennas in residential Edgemont, you continue to (1) raise entirely irrelevant issues, such as federal law, state legislation and completely different situations on Long Island; (2) act as if NextG has been designated a "public utility" by the New York State Public Utility Commission and that, accordingly, it is exempt from local zoning requirements. However, based on the most recent filings by NextG last month with the PSC, they have only been given a "certificate of public convenience and Necessity." The PSC has informed the Town, in writing, by letter dated September 22, 2010, that such designation still requires compliance with local zoning requirements, and (3) insist on backroom dealing and secret negotiations with NextG.

If you are really opposed to the residential-area antenna placement, as you say, do something that has a basis in law in an open, public forum.

The fact that you continue to refuse to do so, and to deflect the issue to irrelevancies, indicates to

us that you are not, in fact, opposed, but see this as an opportunity to extract some sort of "benefit" from NextG to Edgemont in return for placement of the antennas near our homes and schools, and for which you can claim credit in order to gain political support in Edgemont.

The only issue therefore before the Town Board is whether to grant a special permit under the Town Code. If NextG wants to take the position that Federal law supersedes Greenburgh's law on this matter, it is certainly free to raise that issue in an appropriate forum, and we can assess whatever legal arguments it makes at that time. But it has not raised issues or made arguments yet. Answering an argument that has not yet been made is like boxing with shadows. It is pointless to do so.

As for the Antenna Review Board, Michelle McNally is drafting a letter to the Town Board stating that the Antenna Review Board believes that it erred in finding NextG's application to be complete. The Board is not comprised of experts on the federal law but are merely expert at making sure the applications are completed, and here they will acknowledge that they made an error. (Regarding the vacancy on this board and your invitation to us to nominate someone to fill it, it's my understanding that town policy is to announce publicly any vacancies on its boards -- no such vacancy has been announced for this board -- and that all nominees are interviewed by the town board before any decision is made. Once again, you seem to be ignoring the public process. Please don't. If and when the vacancy is announced we'll consider what we want to do about it, if anything.)

All of which brings us back to the point that I, on behalf of the ECC, have been making for the last few weeks:

- See that the Town law is enforced.
- Have the applicant (NextG) go through the legally prescribed process.
- Stop raising red herrings such as federal law.
- Stop using backroom meetings -- for this and all such dealings in Greenburgh.
- Do the job you were elected to do.

Thanks, Geoff

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From: Paul Feiner

To: Geoff Loftus

Sent: Wednesday, January 4, 2012 1:25 PM

Subject: RE: NextG Antenna Application

If Michelle McNally and the Antenna Review Board sends us a letter advising that the NextG application is not complete—I will not vote for the application and will recommend that we refer the matter back to the Antenna Review Board for further consideration and deliberation. It's my hope that the ECC will recommend someone who you have confidence in to join this Board and to review all applications for antenna's. I will be posting the vacancy shortly.

In recent weeks I have been doing my due diligence—gathering facts, researching experiences

other communities have had with NextG. Asking questions, having a dialogue is appropriate. You claim that “my actions speak otherwise” and I am not being responsive to your concerns. There is only one action that counts—it’s the way I vote.

PAUL FEINER

* * *

From: Geoff Loftus
To: Paul Feiner
Sent: Wednesday, January 4, 2012 2:15 PM
Subject: Re: NextG Antenna Application

Paul,

It's good to know that you will refer the matter back to the Review Board. And once you announce the vacancy officially and publicly, the ECC will take it under consideration.

Due diligence is always a good idea, as long as it supplements—but does not substitute for—the public process.

Finally, you're right that, in the end, only your vote counts. I'm sure all of Edgemont will wait for your vote.

Thanks, Geoff

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