Southern Tier Central
Regional Planning & Development Board
Training Seminar
at
Corning Community College
Corning, NY

April 5, 2018

Local Government Regulation of Wireless Facilities II

Andrew J. Campanelli
Campanelli & Associates, P.C.
Attorneys and Counselors at Law
1757 Merrick Avenue, Suite 204, Merrick, NY 11566
(516) 746-1600
About The Author

Andrew J. Campanelli

Since commencing his legal career more than 25 years ago, Mr. Campanelli has handled a cumulative total of more than 5,000 civil matters in federal courts, state courts and before city, county, village and town boards, zoning boards of appeals, and planning commissions.

Mr. Campanelli’s practice includes, among other things, the handling of wireless facility regulatory matters and litigation nationwide. From coast to coast, Mr. Campanelli has been providing services to local governments, civic associations and others who seek to enact, implement or apply wireless ordinances within their respective jurisdictions, and/or to represent them in the context of federal or state actions commenced by wireless companies seeking to challenge a local ordinance, or the denial of an application to install a wireless telecommunications facility.

Court Admissions
United States Supreme Court
United States Court of International Trade

United States Circuit Courts of Appeal
United States Court of Appeals for the First Circuit, United States Court of Appeals for the Second Circuit, United States Court of Appeals for the Fifth Circuit, United States Court of Appeals for the Sixth Circuit, United States Court of Appeals for the Seventh Circuit, United States Court of Appeals for the Eighth Circuit, United States Court of Appeals for the Ninth Circuit, United States Court of Appeals for the Eleventh Circuit, United States Court of Appeals for the Federal Circuit

United States District Courts
United States District Court, Eastern District of Arkansas; United States District Court, Western District of Arkansas; United States District Court, District of Colorado; United States District Court, Northern District of Illinois; United States District Court, Central District of Illinois; United States District Court, Southern District of Illinois; United States District Court, District of Nebraska; United States District Court, Northern District of New York; United States District Court, Southern District of New York; United States District Court, Eastern District of New York; United States District Court, Western District of New York; United States District Court, District of North Dakota

State Courts
State of New York
State of Connecticut

(Pro hac vice admissions have been omitted)
# Table of Contents

I. Introduction to The Zoning of Wireless Facilities ........................................... 1  
   (a) Lack of Regulatory Oversight ................................................................. 2  
   (b) Singular vs Redundant Infrastructure .................................................... 2  
   (c) The Basic Conflict between Site Developers and Community Interests ........ 4  

II. Potential Adverse Impacts of Wireless Facilities .......................................... 6  
    (a) RF Radiation Exposure ................................................................. 6  
    (b) Physical Safety Concerns ............................................................ 9  
       (i) Structural/Equipment Failures .................................................. 10  
       (ii) Ice Fall ................................................................. 11  
       (iii) Debris Fall ............................................................. 11  
    (c) Aesthetics and/or Adverse Community Impacts .................................... 13  
    (d) Reduction in Property Values .......................................................... 14  

III. The Telecommunications Act of 1996 (the “TCA”) 47 USCA §332(c)(7)(b) ........... 15  
     (a) Preservation of Local Zoning Authority .......................................... 15  
     (b) The Five (5) Constraints Under the TCA ........................................ 15  
        (i) Discrimination Among Providers .............................................. 16  
        (ii) Prohibiting Wireless Services .............................................. 16  
        (iii) Reasonable Time “The Shot Clock” ..................................... 18  
        (iv) Substantial Evidence/Written Record ..................................... 19  
        (v) Constraint Against Considering Health Impacts ........................ 19  
     (c) The Non-Risks of Litigation ........................................................... 20  

IV. Deceptions and Tactics Commonly Employed Against Local Zoning Authorities .... 22  
    (a) False Proffers of FCC Compliance ............................................... 22  
        (i) Proffer of Compliance Under the Wrong FCC Standard ............. 23  
        (ii) The Distance Game ......................................................... 25  
        (iii) Powering Up ............................................................... 26  
    (b) False Representations of Need ....................................................... 26  
        (i) The Bait & Switch ........................................................... 27  
        (ii) Massaging the Numbers ..................................................... 28  
    (c) The Employ of “Soft Targets” to Circumvent Zoning Regulations .......... 28  
    (d) The Employ of Height Increase Immunity under the Tax Relief & Job Creation Act ................................................................. 29  
    (e) Stealth Installations ........................................................................ 30  
    (f) False Mapping ................................................................................. 31  
    (g) The Postage Stamp Game ................................................................... 32
V. Most Significant (Albeit Common) Mistakes in Local Wireless Ordinances
   (a) You Decide or Federal Courts Will Do It For You .......................... 33
   (b) Lack of Meaningful Disclosure Requirements ............................... 34
   (c) Failure to Accept Public Participation as a Resource .................... 34
   (d) Lack of FCC Compliance Requirements ......................................... 35

VI. How Local Governments Can Maximize Their Regulatory Powers
     Within the Constraints of the TCA ............................................... 36

   (a) Adopting/Implementing a Fact-Finding Process and Standards .......... 36
   (b) Enacting Full Disclosure Requirements ...................................... 37
   (c) Embracing Public Participation as a Free Resource ..................... 38
   (d) Implementing Measures to Ensure FCC Compliance ....................... 39

Conclusion ......................................................................................... 40