

Town of Olive
Resolution #8 of 2024

Determining Applicability of the Town's Zoning Laws to Ulster County's Proposed Public Safety
Radio Tower in the Town

WHEREAS, Ulster County desires to construct a public safety radio tower ("PSRT") on property owned by the Tonche Mountain Association located at Pitcairn Estates/Mtn. Road in Olive New York, noted on the tax map as parcel SBL 37.1-5-12.412 consisting of approximately 35.3 acres of which the County is proposing to lease approximately 1.8 acres ("Project Site"); and

WHEREAS, the Ulster County proposal includes the construction of a 135 foot guyed tower and a 75' by 50' compound area with improvements to the existing access road, and

WHEREAS, the tower design provides for the ability to co-locate up to two (2) cellular carriers on the proposed tower, and

WHEREAS, there is an existing eighty (80') foot guyed tower that currently existing on the site and the County has explored additions to that tower concluding that even with additions to the structural strength of the tower the needed county communication facilities could not be supported, resulting in the need for a new tower; and

WHEREAS, the existing tower will be dismantled upon completion and activation of the new tower; and

WHEREAS, the Project Site resides in the Town of Olive Conservation Residential (CR) Zoning District; and

WHEREAS, under the Town Zoning Laws the proposed PSRT project is undefined as a permitted use given the Chapter 146 Section 4 of the code defines a telecommunication system as as being of a commercial nature and such definition is not consistent with the purpose of Project; and

WHEREAS, while the County proposal includes the future siting of up to two (2) cellular carriers the proposed height of the tower is controlled by the County's communication needs and no additional height is attributable to the cellular carriers; and

WHEREAS, Ulster County has requested that the proposed PSRT project on lands it is proposing to lease be granted immunity from the Town of Olive Planning and Zoning requirements including but not limited to Chapter 146 - Telecommunications of the Town Code, claiming exemption under New York common law; and

WHEREAS, pursuant to the decision of the New York Court of Appeals in *Matter of County of Monroe*, 72 N.Y.2d 338 (1988), a common law "balancing of public interests" is required to determine whether Ulster County would be immune from the zoning and land use regulatory jurisdiction of the Town and its agencies ("*Monroe Inquiry*"); and

WHEREAS, pursuant to Resolution No. 34 of 2022 the Town Board of the Town of Olive assumed the role of the decision-making body in respect to the Monroe Inquiry and conducted a public hearing on January 10th that remained open for several months giving the public the opportunity

to be heard; and

WHEREAS, comments received at the public hearing were positive with many first responders noting the need for improved communications in the area including cellular coverage; and

WHEREAS, the Town of Olive Town Board has reviewed and considered the Findings and Determination Regarding Immunity from Zoning in the Matter of the Application of the Ulster County Public Safety Radio Tower on the lands of the Tonche Mountain Association as presented to the Board; and

NOW THEREFORE BE IT RESOLVED, to the extent that the County has the authority to establish and maintain public safety radio tower in the Town Olive, and after due deliberation, it is hereby determined that the Town of Olive Town Board is the municipal entity legally entitled to conduct the *Monroe* Inquiry; and

BE IT FURTHER RESOLVED, that the Town of Olive Town Board hereby adopts the Findings and Determination Regarding Immunity From Zoning in the Matter of the Application of the Ulster County Public Safety Radio Tower on the lands of the Tonche Mountain Association as presented to the Board; and

BE IT FURTHER RESOLVED, that based upon the above-noted findings, and in accordance with the common law weighing of those findings as set forth in *Matter of County of Monroe*, Ulster County is hereby exempt from complying with the Town of Olive zoning laws and land use regulatory authority for its proposed Public Safety Radio Tower project on Tonche Mountain (SBL 37.1-5-12.412) and is thereby not required to apply for and receive a use variance from the Town of Olive Board of Appeals or site plan and special permit approval from the Town of Olive Planning Board; and

BE IT FURTHER RESOLVED, that the Town of Olive Town Board’s determination of exemption includes a requirement that Ulster County shall keep the Town Board advised of the project’s progress by, *inter alia*, providing copies of submissions and status updates; affording the Town of Board an opportunity to be heard should the Project, as proposed and considered here, be amended by the County.

AND MOVES ITS ADOPTION

Motion made by:

Seconded by:

A Vote was Duly Taken:

	Aye	Nay
Jim Sofranko, Supervisor	_____	_____
David Edinger, Board Member	_____	_____
Andrew Boggess, Board Member	_____	_____
Scott Kelder, Board Member	_____	_____
Victoria Read, Board Member	_____	_____

Dated this 12th day of March, 2024

Dawn Giuditta, Town Clerk