

# Press release stirs debate over Open Meetings Law

*An announcement to end negotiations over a wireless Internet tower at the community center "contained poor choice of words."*

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A press release issued by the town of Penfield last week has stirred debate over whether the Open Meetings Law was violated.

The first sentence of a press release issued last Monday read, "Penfield Supervisor George Wiedemer and the Penfield Town Board have unanimously decided further pursuit of a 120-foot communications tower at the Penfield Community Center is not in the town's best interest."

Wiedemer was referring to an application for a wireless Internet tower at 1985 Baird Road. The Town Board also indicated it would not support an application for a tower in Greenwood Park.

Robert Freeman, director of the state Committee on Open Government, said "that statement suggests, at the very least, the Town Board made a decision. The town supervisor tells me that's not exactly the case."

After a public forum on Aug. 16 regarding communication towers, Wiedemer said he contacted the Town Board members as well as at least a dozen residents to seek their opinion before sending out the press release.

"It was my intent to send a clear signal that we were not interested in locating the towers on either one of the town's properties....," said Wiedemer. "I tried to communicate and it backfired," he said.

A resolution was submitted last week to rescind the Town Board's authorization for the supervisor to sign a lease agreement with Clearwire Communication for a tower at 1985 Baird Road, according to Town Clerk Cassie Williams.

"If that's so, what we're talking about is a press release that contained a poor choice of words or inaccurate information," Freeman said. "If it is true that the Town Board did not decide, that's the word that was used, then the Open Meetings Law, in my opinion, would not have been implicated."

The Town Board voted in May to grant Wiedemer the authorization to enter into contract negotiations with the wireless provider. The Town Board was expected to vote on the new resolution at the Wednesday, Sept. 5 meeting. The application Clearwire tower application is also tabled before the Planning Board.

Wiedemer said several factors may have led to the discrepancy with the Open Meetings Law.

The Town Board normally holds a work session on the final Wednesday of every month. Those meetings were canceled for July and August, so the Town Board members did not have a chance to discuss their decision in an open meeting. Instead, they talked about the decision by phone.

"The open meetings law defines a meeting as a gathering of the quorum of the public body," said Camille Jobin-Davis, assistant director of the state Committee on Open Government. "It permits gathering via video conferencing, but by not including telephone conferencing in the

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definition, the Legislature has made it very clear that that's not an appropriate mechanism for meeting and taking action."

In the end, though, Wiedemer said, the decision was his to make, based on the resolution the Town Board passed in May.

Last week, media erroneously reported that the Penfield Town Board and Wiedemer violated

the Open Meetings Law when they unanimously decided to end negotiations with Clearwire Communications over a 120-foot tower at the Penfield.

"I never use the word violated, because I'm not a judge," said Freeman.

Jobin-Davis said a court would have to make the final determination over whether or not the Town Board's action is illegal.

"We can give our legal

advice about what we think is keeping with the law or what's outside the law, but we can't make a judicial determination," she said. "Only a court can do that."

Wiedemer issued a statement earlier this week saying "It was never my intention to sidestep the procedural undoing of a resolution granting me permission to sign an agreement with Clearwire."

Looking back on the way

things were handled, Wiedemer said, he thinks the press release could have been worded differently. "I learned you have to be careful with press releases, that a word here or there can misconstrue things."

Freeman said, "the lesson is, when you put out a press release, every word is magic."

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