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Rebuilding Yonkers: How Open Government Laws Are Helping Level the Playing Field in the City of Hills

By Debra S. Cohen

Introduction

For those familiar with the challenging topography of Yonkers, N.Y., it is understandable why New York State's fourth largest city is known as the "city of hills." In recent years Yonkers has tried to move past a more colorful and less flattering description some ascribe to it as "the city of hills where nothing is on the level." Nestled along the Hudson River just north of New York City, with a panoramic view from its downtown of the majestic Palisades, Yonkers has struggled to shed its reputation as a parochial and isolated fiefdom ruled with an iron fist by tough-talking politicians and power brokers. Rough and tumble politics, backroom deals, racially charged public debates over housing and school desegregation, and a series of investigations raising the specter of corruption and cronyism have kept Yonkers from realizing its potential and fully reaping the economic, social and cultural benefits of its unique location.

However, there are signs that Yonkers may be turning a corner. Although the city still grapples with many challenges and controversies, recently progress has been made to attract new residents, businesses and developers. Tentative steps have been taken to break down some of the longstanding barriers separating Yonkers' neighborhoods and unite its diverse residents around common goals and concerns.

If Yonkers has made progress in this regard, credit must be given to open government advocates who have developed a greater understanding of their rights under New York's Freedom of Information Law and Open Meetings Law and are finding ways to wield them as effective tools for positive change. People in Yonkers are beginning to see how transparency, vigorous and informed debate, and consideration of a diversity of opinions can lead to more, not less, effective decision-making on important issues facing the city. Although not without resistance in some quarters, more Yonkers officials are learning that "transparency and accountability" are not optional, but in fact are requirements of governance in a healthy democracy.

The first steps Yonkers officials have taken toward more open government were not taken voluntarily. Recent efforts to cure some of the dysfunction in Yonkers' public processes have been largely driven by a growing number of community members energetically, and sometimes creatively, exercising their right to meaningfully participate in the public decision-making process. Some have been willing to engage the legal system to enforce that right. The change in how Yonkers government operates has been "market driven" by taxpayers increasingly comfortable with invoking their "right to know" and then sharing what they learn with others. As open government advocates have become increasingly effective in obtaining and disseminating information about the activities of their local public officials, Yonkers government has begun to respond by initiating reforms to improve its transparency and accountability.

This article will explore some examples of how people in Yonkers have used FOIL and the Open Meetings Law as effective tools to level the playing field in the "city of hills" and, in doing so, help the city move in a more positive direction.

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The Yonkers Ballpark: FOIL and SEQRA

In April 2002, Yonkers Mayor John Spencer announced the city's intention to build a minor league ballpark in downtown Yonkers on the site of a municipal parking lot known as Chicken Island. The parking lot sits in the shadow of Yonkers City Hall and is adjacent to the city's historic business center at Getty Square. The site is bordered by a variety of businesses along New Main Street and Palisade Avenue, the city's fire department headquarters on School Street and a main thoroughfare—Nepperhan Avenue.

Mayor Spencer sent a letter inviting New Main Street business and property owners to City Hall to learn more about the project. They were shocked when told they would have to relocate immediately to make way for the ballpark. It was even suggested at this April meeting that they not place orders for Christmas because they would need to vacate their properties by October. The meeting at City Hall was the first time these business and prop-

erty owners had heard about the ballpark project. There had been no information publicly released nor any public review or approval process prior to the project being presented to them as a *fait accompli.*

Most of the business and property owners did not understand the review and approval process the law required for such a development proposal, including the requirements of New York's State Environmental Quality Review Act (SEQRA), or their rights under New York's eminent domain law. But Martin Goldman, the owner of one of the largest businesses and pieces of property that would be impacted, knew better. Mr. Goldman had opened the C.H. Martin Department Store, at the corner of New Main Street and Palisade Avenue in the heart of Getty Square, in 1978. He did so after being asked to open a store by the mayor of Yonkers after other retailers had abandoned this key downtown corner.

Mr. Goldman knew that the city could not just tell the businesses to "get out" or force property owners to accept whatever terms the city chose to offer. He had successfully fought a similar threat to one of his stores in New Jersey a few years earlier. He was prepared to fight again to protect his property, business, and rights. He and his son Harvey reached out to other concerned business and property owners and convinced them that working together they had a better chance to protect their interests than each standing alone. In July 2002, the group contacted attorneys they had been told had helped the City Park community in New Rochelle, N.Y. successfully deal with a similar threat to their neighborhood from a proposed IKEA superstore.

An unincorporated association of neighborhood businesses, property owners, residents and other concerned Yonkers residents was formed under the name Save Our Stores (SOS). Very little was known about what was actually being proposed. So as one of the attorneys for SOS, my first task was to try and learn as much as possible about the ballpark project. SOS members felt that if they were being told to close their businesses and give up their property, they were entitled to know what would be replacing them and why it was a better alternative for the city of Yonkers. Why had the city decided to put a minor league ballpark in the middle of a congested urban area? How was the Chicken Island site chosen? Who was going to build it? How was it going to be paid for? How many jobs and how much tax revenue would it produce? What would happen to the businesses and residents being displaced? What other options had been considered?

Requests for documents were filed pursuant to New York's Freedom of Information Law (FOIL) on July 23 and August 6, 2002 seeking feasibility and environmental studies, planning documents, property appraisals and other documents relevant to the project. The city ignored the requests. After no response was received, an appeal of the constructive denial of the requests was filed pursuant to N.Y. Pub. Off. Law § 89(3) on August 15, 2002. But the city continued to be unresponsive and non-compliant with its obligations under FOIL.

On September 10, 2002, the Yonkers City Council passed resolutions taking the first substantive public steps in the review and approval process required under the State Environmental Quality Review Act (SEQRA).[1] The City Council declared itself lead agency under SEQRA and scheduled a public scoping session for October 1, 2002. According to SEQRA, the primary goals of scoping are to "focus the EIS (Environmental Impact Statement) on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or non-significant."[2]

While not required under SEQRA, the lead agency has the option to conduct a scoping process prior to undertaking a draft EIS. If the lead agency chooses to undertake scoping, of significance to the members of SOS was the requirement that scoping *"must include an opportunity for public participation."* "The lead agency may either provide a period of time for the public to review and provide written comments on a draft scope or provide for public input through the use of meetings, exchanges of written material, or other means."[3]

Without prior access to the background information that SOS had sought in the two FOIL requests, it was clear that it would be impossible for SOS and other interested members of the public to participate in a meaningful way in the environmental review of the project. Communications with the city regarding the FOIL requests made it clear that the intention was to stonewall access to information until after the SEQRA process was well under way. The approval process for the ballpark project was being fast-tracked before public scrutiny could raise any questions that might delay it.

On September 19, 2002, SOS filed an Article 78 special proceeding, brought on by Order to Show Cause, in Supreme Court of Westchester County. Ostensibly the purpose was to enforce the city of Yonkers' compliance with FOIL. However, the larger goal was to challenge the city to do what was necessary to allow the people of Yonkers to exercise the "opportunity for public participation" that SEQRA requires.

The Order to Show Cause was signed by the Honorable Joseph K. West, and the parties were ordered to appear before the Court on September 24. The Order to Show Cause directed the city of Yonkers to either provide the documents sought or, in the alternative, stay the public scoping hearing scheduled for October 1, 2002 *"so that petitioner, as affected property owners, may meaningfully participate in said hearing."*[4]

On September 24, lawyers for SOS and from the Yonkers Office of the Corporation Counsel appeared before Judge West.[5] The city attorneys vehemently argued that

the Court could not stay a SEQRA proceeding for failure to comply with FOIL but, when queried by Judge West, could not cite any legal authority to support that position.

SOS argued that until FOIL was complied with, and documents about the project produced, the stay should remain in place. At the heart of SOS's argument was SEQRA's clearly stated requirement for public participation. Given Yonkers' failure to respond to requests for information, the stay was necessary to insure that members of the public would have a reasonable period of time for review of pertinent documents so that they could participate meaningfully in the SEQRA process, starting with the scoping session.

Judge West expressed concern that the city had failed to comply with its obligations under FOIL, characterizing its response to the SOS FOIL requests as "a runaround." He noted that FOIL was designed "so that we have an informed citizenry, so that we are able to get information so that they can take part in [a] public hearing knowledgeably, so that they can express their concerns based on facts."

Within a day of the initial hearing, the city of Yonkers provided access to a significant number of the withheld documents. Because SOS felt that there were sufficient documents to prepare for the October 1 scoping session, the Court was advised by SOS at the next court appearance on September 26 that the stay of the scoping session could be lifted.

Although the request for the preliminary injunction was withdrawn, the Court's involvement continued for another two months as the city continued to drag its feet while producing documents about the ballpark project. Over the next several months, as additional documents were slowly extracted from Yonkers, many issues of concern about the ballpark project, and other development activities in Yonkers, were discovered.

It came to light that city officials, through the Yonkers Industrial Development Agency (YIDA), had created several subsidiary corporations that were intertwined by overlapping board members and a series of questionable financial transactions. One of the corporations was a for-profit corporation created to develop the ballpark project. Initial attempts to obtain information about the corporation, Yonkers Baseball Inc. aka Yonkers Baseball Development Inc. (YBDI), were frustrated by another FOIL runaround by City officials, fueled by the claim that YBDI was a "private, for-profit corporation" and thus not subject to open government laws.

The Mayor, Deputy Mayor, and the city's Economic Development Director were all believed to be officers and directors of the corporation. Therefore, the initial FOIL request was directed to the city of Yonkers seeking any documents in its possession, custody or control about YBDI's activities.

After weeks of delay in responding to the request, the city's Records Access Officer finally advised that the request had been made to the wrong entity and that it should be sent to "Edward Sheeran or Dennis Lynch, in care of the Yonkers Industrial Development Agency, City Hall, 40 South Broadway, Yonkers, N.Y. 10701."[6] Among the documents requested were minutes of meetings, resolutions, funding proposals, budgets and tax returns of both YIDA and Yonkers Baseball. A FOIL request was then immediately sent to the YIDA. A handful of documents were made available for review by the YIDA, but SOS attorneys were told that a third and separate FOIL request would have to be made to YBDI, even though the YIDA was the sole shareholder of the corporation and all four of its directors were also directors of the YIDA.

Although the Open Meetings Law requires minutes of public meetings to be accessible to the public, it was almost four months before YIDA minutes were produced for review. Attorneys for the YIDA refused to provide copies of the minutes until they had an opportunity to review them for possible redactions. The minutes of one particular YBDI meeting were produced twice, in response to two separate FOIL requests made several months apart, leading to the discovery that the first set of minutes produced had been significantly edited to remove potentially embarrassing and controversial information. Eventually an Article 78 special proceeding had to be filed against the Yonkers Industrial Development Agency and several City and YIDA officials to obtain full disclosure of the information sought about the ballpark for-profit corporation.[7]

After several FOIL requests and time-consuming and costly litigation, thousands of pages of documents were finally obtained about the ballpark project and related development activities. As a result of the information obtained through FOIL, Yonkers Baseball Development, Inc. and other Yonkers development corporations became the subject of intense media scrutiny as well as audits and investigations by state and federal officials.

The New York State Comptroller determined that the YIDA had acted outside its legal authority forming the for-profit corporation and loaning it $670,000 to pay for the development costs of the ballpark project. The activities of other YIDA-created corporations were more closely examined and the activities of at least one, the Ridge Hill Development Corporation, are related to an ongoing federal investigation.

Statewide public awareness subsequently grew regarding the danger of the proliferation of public authorities operating as virtual shadow governments. The New York State Legislature enacted laws requiring greater transparency and accountability by Industrial Development Agencies. Ultimately the original ballpark project was abandoned after closer scrutiny of the project revealed it lacked economic viability and its financial structuring was called into question. Private developers

subsequently took over the development rights for the Chicken Island site and proposed more ambitious and comprehensive plans for redevelopment of the site that they say will not require the condemnation of property and will leave the C.H. Martin property intact. Unlike the first ballpark proposal, prior to undertaking the SEQRA process for their project, the developers vetted it publicly at numerous public meetings and have made SEQRA-related studies available on-line for public review. Although the new proposal is not without controversy, there is no doubt that the public has had far greater access to information necessary to meaningfully participate in the review and approval process without having to file a legal action to obtain it.

One Man, a Camera and the Open Meetings Law

One of the main reasons the people of Yonkers were able to more meaningfully participate in the review and approval process for the revised downtown development proposal is that meeting notices, agendas and minutes are now posted on the city's Web site and many meetings are televised on the city's public access station.[8] For people living in other municipalities, the ready accessibility of such information is likely taken for granted. For Yonkers, this is a recent and dramatic step forward. In all likelihood, a significant catalyst for this change has been an unassuming Yonkers resident named Martin McGloin. A film and video editor by profession, McGloin and his video camera have become a familiar sight in Yonkers City Hall and at public meetings throughout the city.

I was contacted by Mr. McGloin in January of 2005 after he had been prevented from videotaping a meeting of the City Council's Budget Committee with the explanation that it was "against Council protocol." At the time, no Council committee meetings, and few other official meetings, were televised and notices of meetings were posted only on the bulletin board outside the mayor's office or with a small public notice in the newspaper. Minutes of meetings could only be obtained by filing FOIL requests, which were either ignored or responded to in a notoriously slow fashion. The city government seemed to do what it could to keep the public from being informed and to discourage public participation in the government decision-making process.

McGloin did not let the matter drop. He contacted the New York State Committee on Open Government to better understand his rights. He then contacted me and asked for help. I sent a letter on his behalf to the Yonkers Corporation Counsel asking him to clarify whether any rules or regulations of the city of Yonkers prohibited or regulated the videotaping of meetings by members of the public. The case of *Csorny v. Shoreham-Wading River Central School District*,[9] where the court held that members of the public could not be prohibited from using video cameras to record public meetings, was brought to the city's attention, wherein the Appellate Division, Second Department, had determined that inherent in the rights granted by the Open Meetings Law was the public's right to videotape public meetings, with reasonable regulations to prevent disruption of the proceedings. It was noted that Mr. McGloin had no desire to interfere with the work of the City Council but simply wanted to exercise his right to accurately and effectively "memorialize local democracy in action," as recognized by the Court in *Csorny*. As a result, the Yonkers Corporation Counsel advised the City Council that although the Council could promulgate reasonable rules regulating the videotaping of meetings, it may not prohibit the videotaping of meetings by members of the public.

Martin McGloin began to regularly videotape not only City Council meetings, but other governmental meetings that previously had been rarely observed by the public, including the Yonkers Industrial Development Agency, the Community Development Agency, the Board of Contract and Supply and the Charter Revision Commission. He began to travel throughout the city recording various public meetings and soon became a welcome presence in community centers and meeting halls in all parts of Yonkers. Soon members of the public and the media knew to contact Martin if they were trying to locate a record that memorialized accurately what had occurred at a public meeting.

Through the lens of his video camera, he began to see how people in the diverse neighborhoods of Yonkers, who rarely had contact with each other, shared common concerns about the integrity, openness and transparency of the governmental decision-making process. He recognized the importance of government activities being more readily accessible to the people of Yonkers and the ability of technology to make that happen.

Technology, Access to Information and Community-Building

McGloin shared his observations with another concerned Yonkers resident, Deirdre Hoare. They recognized that one issue that was directly impacting people throughout Yonkers was economic development. The city had been trying to jump-start significant economic development projects for years in an attempt to rebuild the city's deteriorating finances and infrastructure. In addition to the controversial ballpark project, the West Side of Yonkers was considering several major proposals, including some along the Hudson River waterfront while the East Side was grappling with a proposal to build the Ridge Hill "village" along the New York State Thruway and an expansion of the Cross County Shopping Center. Suddenly people who thought they had little in common were grappling with similar concerns about the economic, environmental and quality-of-life impacts of development on their families and neighborhoods. They also shared a

fear that the projects would be pushed through without their concerns being seriously or adequately considered.

Hoare and McGloin formed Community First! Development Coalition (CFDC) to help people all across Yonkers meaningfully participate in the development process and support each other's efforts to influence government officials to be more responsive to their concerns. This was no small challenge in a city often seen as a conglomerate of fiercely independent neighborhoods, sometimes sharply divided over emotionally charged issues, rather than as one unified community.

CFDC was founded with a simple but powerful mission:

> We strive to provide accurate & timely information about development proposals and notification of opportunities for community participation in the development process. Our goal is to educate community members about our rightful role in economic redevelopment and to empower ourselves with the tools and resources we need to ensure that our voices are heard. We therefore advocate for greater public access to the public information necessary for citizens to make informed decisions about development, and monitor compliance with open government laws. In addition, we encourage community organization and mobilization efforts as well as community driven and designed development initiatives.[10]

McGloin and Hoare began to attend almost every meeting on development project proposals all over Yonkers. They met with community-based organizations and neighborhood associations throughout the city to learn about their concerns. CFDC became a conduit for community leaders to meet to discuss concerns they shared and to develop strategies for working together to make their voices heard. It quickly became a reliable source of information about the various development projects and how members of the public could participate in the review and approval process.

An e-mail network was developed of groups and individuals all across Yonkers with an interest in the city's development activities. Hoare and McGloin began to monitor City Hall for meeting announcements and disseminate meeting notices via email and post the information on the CFDC Web site.[11] If meetings were scheduled without complying with the notice provisions of the Open Meetings Law, they challenged them. If executive sessions were called, they demanded to know the grounds. When important issues were being discussed by the City Council, they insisted the public have timely access to documents to prepare ahead of time and then be allowed to express their views.

CFDC expanded with two additional Web sites. Yonkers TV posts McGloin's videotapes of public meetings which, although unofficial records, provide illuminating insights into the workings of Yonkers.[12] At the very least, Yonkers officials now know that their every action and word at public meetings is being captured on videotape and can be observed by anyone with access to a computer. Without any publicity or advertising, Yonkers TV has to date had almost 25,000 video views of the approximately 250 videos posted. As a result, the public discourse at City Hall has become more civil and at least the most egregious backroom deal-making is beginning to subside.

The other offshoot of the CFDC Web site is FOIL Yonkers, where documents obtained by Hoare, McGloin and others regarding development issues are freely shared.[13] FOIL Yonkers is used by the media, investigative authorities and concerned members of the public as a source of firsthand information about government deal-making, waste, ethics and other issues of public interest previously the purview of only a handful of insiders.

"Throughout the city more people are showing an understanding of how the review and approval process for development projects is supposed to work and their right to meaningfully participate in it."

Conclusion

The public demand for, and widespread impact of, these open government activities have not gone unnoticed by Yonkers officials. In the past few city elections, "transparency and accountability" of government have became key themes. The City Council has instituted new policies to make information more readily available to the public, allow for more public participation and comment during council meetings and televise more of the Council's activities. The city's Web site was revised and now posts timely information about scheduled meetings, including agendas and minutes. Documents that people once had to sue for are now more regularly available online as well, including budgets and development proposals. Although there are still too many FOIL requests not responded to properly and instances where the Open Meetings Law is not being complied with, the uniformly blatant and egregious violations have been significantly reduced.

The positive impact on Yonkers of people willing to use FOIL and the Open Meetings Law to exercise their "right to know," such as the Goldmans, Martin McGloin and Deirdre Hoare, is evident each time a new development issue emerges in Yonkers.

Throughout the city more people are showing an understanding of how the review and approval process for development projects is supposed to work and their right to meaningfully participate in it. The public's questions and comments are increasingly being listened and responded to. New coalitions and unlikely alliances are continuing to form around development and other issues critically important to the city's future.

Some naysayers contend that these changes have been bad for Yonkers—that decisions were made more quickly in the old days when information was locked down and people were put down. But a growing number of people in Yonkers say they will never let the city revert back to the old ways of doing business. Yonkers continues to be a city dominated by strong personalities and diverse points of view. It faces some serious social and economic challenges. But there is a growing and palpable feeling of energy and optimism about its future. Justice Brandeis observed that "sunlight is the best disinfectant." Most would agree that, at the very least, sunlight is a necessary ingredient for any healthy environment that wants to grow and thrive. Yonkers is no exception.

Endnotes

1. State Environmental Quality Review, 6 N.Y.C.R.R. § 617 (2000).
2. State Environmental Quality Review, 6 N.Y.C.R.R. § 617.8(a) (2000).
3. State Environmental Quality Review, 6 N.Y.C.R.R. § 617.8(e) (2000).
4. *Save Our Stores Association v. City of Yonkers, et al.*, Index No. 02-015508-2002 (S. Ct., Westchester Co.).
5. In an interesting twist, an attorney for six local business owners identifying themselves as American Minority Enterprise Network (AMEN) intervened to oppose the stay of the SEQRA scoping process with the representation that his clients, who would be relocated by the ballpark project, objected to the stay because it would cause them "irreparable harm." A few months after the initial hearing it was learned that the attorney also represented the Yonkers Industrial Development Agency and the for-profit corporation created by the YIDA to develop the ballpark project. *Id.*
6. Mr. Sheeran was serving simultaneously as the Yonkers Director of Economic Development and Executive Director of the Yonkers Industrial Development Agency. Mr. Lynch, counsel to the YIDA, was also the attorney representing the interveners in the FOIL action against the City of Yonkers opposing the stay of the Oct. 1 ballpark scoping session.
7. *Save Our Stores Association v. Yonkers Industrial Development Agency, et al.*, Index No. 03-005285-2003 (S. Ct., Westchester Co.).
8. *Making Government User-Friendly*, www.yonkersny.gov.com.
9. *Csorny v. Shoreham-Wading River Cent. Sch. Dist.*, 305 A.D.2d 83, 759 N.Y.S.2d 513 (2d Dep't 2003).
10. Deirdre Hoare & Martin McGloin, Co-founders, Community First! Development Coalition, http://communityfirstdevelopmentcoalition.blogspot.com.
11. Community First! Development Coalition, www.communityfirstdevelopmentcoalition.blogspot.com.
12. Yonkers TV, www.yonkerstv.blogspot.com.
13. FOIL Yonkers, www.foilyonkers.blogspot.com.

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