

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES JANUARY 8, 2024

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on January 8, 2024. Mr. Costello called the meeting to order at 7:30 p.m.

Those present:

Planning Commission: Tony Bush, Chair
 Tejinder Gill, Vice Chair
 Colin Coyle, Secretary
 Adrian Costello, Member
 John DeLorenzo, Member

Others: Dan McLoone, Planner
 Barbara Kirk, Township Solicitor
 John Lewis, Supervisor Liaison

REORGANIZATION

Mr. Bush nominated Mr. Gill as Vice Chair; however, Mr. Gill declined due to other commitments.

Mr. Coyle moved, Mr. Gill seconded and it was unanimously carried to elect Mr. Bush as Chair of the Planning Commission for 2024.

Mr. Coyle moved, Mr. Costello seconded and it was unanimously carried to elect Mr. Gill as Vice Chair of the Planning Commission for 2024.

Mr. Costello nominated Mr. DeLorenzo as Secretary; however, Mr. DeLorenzo declined.

Mr. Costello moved, Mr. Bush seconded and it was unanimously carried to elect Mr. Coyle as Secretary.

APPROVAL OF MINUTES FROM THE 12/11/23 MEETING

Mr. Costello moved, Mr. Gill seconded and it was unanimously carried to approve the Minutes of December 11, 2023 as written.

DISCUSSION AND MOTION ON AMENDMENT TO ORDINANCE AMENDING THE DEFINITION OF OPEN SPACE

Ms. Kirk stated it was requested that the definition be updated and amended. Since then a copy was sent to the Environmental Advisory Council who provided some information which resulted in the final version that the Planning Commission has been provided.

Ms. Kirk stated some of the Supervisors were concerned with the wording of the original definition used in the two Ordinances amending the Open Space Ordinance as well the SALDO version. She stated they wanted to have it updated and clarified as to what type of vacant land could be considered as open space.

Mr. Costello stated there is a definitely a delineation between recreational space and open space in the way we are defining it. Mr. Bush stated the last time the Planning Commission discussed this, there was discussion about recreational space including Five Mile Woods and other passive recreation.

Mr. Costello noted the second sentence states, “resource-protected lands and has unpaved gravel or appropriate surface pathways,” which he feels would include Five Mile Woods. He stated basketball courts, tennis courts, and the Pool would not be considered open space. He asked if soccer goal posts were put up in an open field in a development would that mean it was no longer considered to be open space. Mr. Bush noted Big Oak Bend where there is an open field owned by the Township that has been open for decades although it is supposed to be recreation land, and he asked if they could put soccer fields there. Mr. Costello stated a future developer could delineate a rectangle with room for two soccer fields for the neighbors. He asked at what point does it become a recreational facility and not open space, and if they would not be allowed to do that. Ms. Kirk stated she cannot answer that question since the possibilities are endless in the interpretation of the definition.

Mr. Costello stated the Planning Commission had previously discussed who would be allowed to use the open space, and it was discussed that a neighborhood Association could limit that access to the land just to those in the neighborhood and not to all residents. Mr. Costello stated what is before them says “residents,” and he asked what that means.

Mr. Bush stated this issue was discussed by the Planning Commission seven times in 2023, and he felt that they had come to a consensus; but then it came back again to the Planning Commission in December.

Mr. Costello stated he feels that it should be clarified now before a development comes in, so that there is agreement among the Commission members.

Ms. Kirk stated she thought that the definition that was drafted in both the Zoning Ordinance and the SALDO Ordinance addressed all of these issues. She stated this was something that was presented by one of the Supervisors that came to the Township Administration, and that Supervisor wanted an amendment to the Open Space definition to address some of these issues. She stated she was not privy to those conversations.

Mr. McLoone stated he recalls that Mr. Coyle had previously indicated that he was going to speak to Mr. Grenier. Mr. Coyle stated there was some confusion as to whether or not the Open Space definition was separately addressed, although he believes that we have a new definition from that work on the various Ordinances. He stated if the goal is to clarify in plain language that you cannot build on open space, he is fine with the language as it came back from the EAC. He stated that he likes that they clarified in the definition that a walking trail is permitted to encourage the development of a walking trail.

Mr. DeLorenzo stated they are saying that you cannot build on it, but an exception to building on it is a trail; and by saying that you are almost saying nothing else is acceptable. Mr. Bush again noted Big Oak Bend and there is a parcel of land in that townhouse development that was designated as recreation space when the development was built, but it has never been built on. He stated the Township now considers it open space; but it could be built on, and soccer nets could be put up, and it would then be recreational space. Mr. DeLorenzo asked why soccer nets could be put up, and Mr. Bush stated the Township designated it as recreational space thirty years ago. Mr. DeLorenzo stated going forward we would not do that if we did not want it.

Mr. Costello stated he wants clarity on the record as to what is recreational space. He stated we may have to look at this again in the future, but we would then have on the record as to what was discussed when this was considered.

Mr. Gill asked if something should be included about a change of surface and that blacktop could not be put in. He stated he does not have an issue if someone were to put in soccer nets. Mr. Costello stated something could be included that permanent structures could not be put in. Mr. DeLorenzo stated if a soccer net were put in, it would be for recreation. Mr. Coyle stated that the language that is before the Planning Commission for consideration says “recreational facilities,” and he stated a facility and an area may not necessarily be the same thing.

Mr. Costello stated if the Torbert Farm were developed and there was a twenty-acre open field, and kids were playing there, he does not feel that would compromise the definition of open space; and it would be a natural resource area. He stated at some point that neighborhood association could do something to that field which “might be too much.” Mr. Costello stated he would not have an issue if someone were to put up soccer nets in an open tract of grass in a development. He stated the goal is to have less houses and more grass. Mr. Bush stated he feels that the way this is worded, it would allow for someone to put up soccer nets. He stated it indicates “open space shall not include streets, recreational facilities,” and it defines what they are. Mr. Costello stated any impervious surface would not be considered as open space, and Mr. Bush stated that is how the language reads.

Mr. Coyle stated if he were a developer, he feels he would be able to build a playground with a rubber play surface/imitation gravel. He asked if that is something we would want to support under the definition of what is allowed as open space. He stated he feels this Ordinance would permit that. Mr. Bush stated he feels that would be permitted under this Ordinance. Mr. Coyle stated while he is comfortable with that use, he wanted to know the feelings of the rest of the Commission and if we should craft language to protect against that. Mr. Costello stated he would be in favor of such a use. He added that he feels that open areas which residents can enjoy but do not have “modern facilities” put in would be in the spirit of open space.

Mr. DeLorenzo stated he feels the intention is to have less building and more open space and not a restriction on what you can do on the open space.

Mr. Costello moved, Mr. Gill seconded and it was unanimously carried to recommend approval to the Board of Supervisors.

DISCUSSION AND MOTION ON AMENDED WIRELESS COMMUNICATIONS FACILITIES ORDINANCE

Mr. Joel Winston, attorney, from Cohen Law Group was present. He stated their law firm works exclusively with Municipalities in Pennsylvania, New York and surrounding States. He stated they do not represent any wireless companies or telecommunication companies. He stated the framework of the Wireless Law comes from a Federal Law of 1996 that preserved the local Zoning authority over the placement, construction, and modifications of wireless facilities but provided that the Zoning authority is not used to prohibit or have the effect of prohibiting wireless services. He stated in 2019, the FCC issued some Regulatory Orders about a new classification of cellular facilities called small cellular facilities; and these are the 5G facilities that everyone has been talking about for the past few years. He stated this represented a major Regulatory change, but it also touched on the definition of what it means to prohibit or have the effect of prohibiting wireless services.

Mr. Winston stated his firm was contacted by the Township in relation to Verizon's Application to site a facility within the Township. He stated they conducted a review of that; and in concert with that, they have worked to revise the Regulation in the Township's Zoning Ordinance with respect to wireless facilities to update it for all classes of facilities and to try to incorporate the new FCC regulations that were issued at the Federal level. Mr. Winston stated at the same time that they were doing this, there was a Federal Appellant Court Ruling in relation to the FCC Regulations.

Mr. Bush asked Mr. Winston if the draft Ordinance addresses the issues and concerns given the recent Federal Court ruling. Mr. Winston stated it does to the extent possible start to address them. He stated underlying the issue is the Township Zoning Map, and there is a Radio and Telecommunications Facilities Overlay. Mr. Winston stated the Federal Law says that the Township can exercise its Zoning authority provided it does not prohibit or have the effect of prohibiting wireless service. It stated it is the "effect of prohibiting wireless service" that has become an issue. Mr. Winston stated they would normally look for provide wireless coverage throughout a Municipality greater than 50% or 60%. He stated that does not mean that towers can go everywhere. He stated looking at the existing Zoning Map and the Telecommunications Overlay District, he estimates that it only covers about 10% of the Township. He stated under the current Ordinance, it is only within that 10% that wireless facilities are allowed to be sited. He stated the draft Ordinance does not address that or change the Map, but it does update the Township Zoning Ordinance.

Mr. Winston stated within the updated Ordinance, they classify all types of wireless facilities “as they come to the Application counter of the Township, which will fit into one of three categories.” He stated the first is a tower-based facility which is the typical lattice tower or monopole tower. He stated the second is a non-tower-based facility, which is an antenna that is attached to any type of fixed structure that is not a monopole or a lattice tower. He stated the third type is the new type – the small cell facilities/5G. He stated the first two, the tower and the non-tower, will always be on private property because they are too large to be on the public right-of-way. He stated with respect to the third type, the small cell facilities, the FCC Regulations now stated that they have the presumptive right to be sited in the public right-of-way provided that the size of the facility/antenna itself fits into the Regulatory definition of what it means to be a small cell facility. He added the FCC put certain timeframes on Municipalities to respond to these Applications, and they cap the amount of Application Fees and Annual Renewal Fees that can be charged unless the Municipality does an extra demonstration of the costs that they have incurred in managing the right-of-way. He stated these small cell facilities can sit on private property, but they will mostly be in the public right-of-way. He stated they sit on top of an existing utility pole as a cap on top of the pole and are sometimes designed to look like a mailbox. He stated they have a presumptive right to be in the public right-of-way anywhere in the Municipality where there is a utility pole in a public right-of-way, and you cannot discriminate against these wireless facilities and prohibit them from that area. Mr. Winston stated in the last couple of years Pennsylvania passed State Legislation that essentially mirrors what the FCC did Federally.

Ms. Kirk stated that about fifteen years ago there were groups coming out with what were called distributive antenna systems, and they were getting regulated by the PUC as utilities in order to go into the public rights-of-way. She asked if the 5G small cell facilities are replacing those. Mr. Winston stated he does not know if they are fully replacing them or if they have just updated the technology in terms of allowing that type of facility and now they are calling them something different. Ms. Kirk stated the reason she asked is if the Township is now going to have to face dealing with locations of 5G and DAS facilities. Mr. Winston stated typically they do not see DAS being deployed unless it is a private network.

Mr. Winston stated apart from Verizon and AT & T and other mobile operators, there are also a whole group of companies which build the infrastructure – the towers, the networks, and then the major providers rent space on those towers. He stated one of them, Crown Capital, achieved Regulatory Certification as a public utility. He stated they get treated differently from a normal operator.

He stated Verizon is also a telephone company so they have a public utility status; but they will typically appear, as they have done in this Application, as Verizon Wireless, which is a little bit separate.

Mr. Winston stated as to the issue of the placement of these small cell facilities whether or not the Township updates its Zoning Ordinance now, the State law and the Federal regulation are already acting to allow these facilities in the public rights-of-way. He stated with the existing “shot clocks,” which is when the Applicant properly files an Application with the Township, there are shot clock deadlines that the Township has to review and render a determination on these facilities. Mr. Winston stated what they have drafted incorporates all of those types of requirements.

Mr. Winston stated that under the FCC regulations for small cell facilities, there is also an additional component that they have drafted and submitted called the Small Cell Design Manual. He stated this allows a Municipality that implements reasonable design regulations and publishes them in advance to impose additional design regulations. He stated these include stealthing, camouflaging, preferential use of certain types of fixtures, requirements to match local street lights, and other types of design components that can be used in the review process to provide some oversight on the look and localized placement of these facilities.

Mr. Winston stated the way they have drafted the Ordinance, in any area or any District where the utilities are required to be underground, it has been written in the requirements that the small cell facilities also have to be underground. He stated this is a technical impossibility because you cannot place a wireless facility underground; but as they draft it, they typically try to provide coverage in those areas from one of the other two types of facilities – a tower-based or a non-tower facility because they are sensitive to the issue of the 5G towers starting to appear on streets or in places where there are no existing utility poles.

Mr. Bush stated because it is impossible to put these underground, is that void on its face or is that something that will be upheld. Mr. Winston stated it is not void, and you can prohibit a certain type of facility provided that you allow wireless coverage from other types of facilities. He stated in the Residential Zone, if within one to three miles there are other Zones where tower facilities are allowed, and those tower antennas can reach into those Residential areas which are more commonly non-tower facilities like an antenna array which can be placed on top of condo buildings, designed within Church steeples, or

could be placed on top of schools, that is a way to avoid a claim of complete prohibition of wireless services because you can provide coverage through other types of facilities. He stated that has been acceptable, and wireless companies have been willing to cooperate and work within those parameters.

Mr. Bush asked Mr. McLoone how much of the Township has communities with all of the utilities underground; however, Mr. McLoone was not sure. Mr. Bush stated he feels that is an important question as it relates to the Map that needs to be adjusted. Mr. McLoone agreed to look into this.

Mr. Coyle asked Mr. McLoone if there is a copy of the SARF, the Search Area for RF, that is being used by Verizon to propose the location of the tower; and Mr. McLoone stated he can look into that. Mr. Winston stated he does not feel that they will have a satisfactory map that he is looking for. Mr. Coyle stated he has a potential concern since while it can be indicated that they have to put these facilities underground in areas where the utilities are underground, there will be a problem if there is no other valid place for Verizon to place infrastructure. He stated we want to make sure that is not the case. He stated he knows a lot of the buildings in that area in that area are one-story and would not be suitable to provide significant coverage from a non-tower-based system.

Mr. Winston stated typically in their Applications, Verizon will provide propagation maps; but they are usually very general, and there will be just “red blobs” of coverage before and after of where they are. He stated getting down to the actual District level of existing coverage for many Municipalities it is a challenge to be able to locate where the existing facilities are in the Municipality, what type of facilities they are, and what type of coverages they are providing in relation to the Residential and working population of the Municipality.

Mr. Bush asked how tall the small cell facilities are. Mr. Winston stated under the FCC’s Regulatory definition to meet the criteria of being considered a small wireless communication facility the structure on which the antenna facilities are mounted is 50’ or less in height or no more than 10% taller than other adjacent structures.

Mr. Lewis stated the Telecommunications Act of 1996 predates small wireless facilities so there is nothing in that about small wireless facilities. He stated our previous Ordinance was before the small wireless facilities. He asked if the 2021 Act 50 only sets the shot clock and rules around small wireless facilities and not monopoles. He asked if there is anything in that which would

limit the Township in how to deal with monopoles versus what we could have done previously. Mr. Winston stated Pennsylvania Act 50 deals with small wireless facilities. Mr. Lewis stated the shot clocks do not work for monopoles, and those are still governed by the Telecommunications Act of 1996. Mr. Winston stated they do have shot clocks, but the clocks are different. Mr. Lewis stated there is also a different fee structure.

Mr. Lewis stated the roll out of high-speed 5G from a customer perspective has been relatively slow and disappointing even by the major carriers. He asked if there is a way that we could incentivize them to use small wireless facilities instead of monopoles or are there things that we can do to drive them to install newer, state-of-the-art equipment instead of old-school monopole towers. Mr. Winston stated a lot of the hype over 5G got ahead of what they were able to roll out, and then the Pandemic hit and impacted their plans. He stated these utilities work extremely well, but they are limited as they have to be clustered, and they have to provide some density. He stated in addition the wireless network has to be hooked up to their distribution wires. He stated 80% of a wireless network is actually wired. He stated they were planning to build in areas where they already had those back-boned connections, but people then stopped commuting into those denser areas and have been working remotely. He stated Act 50 indicates that depending on the size of the Municipality, you can submit up to 50 of these small-cell Applications at one time; and they were expecting a huge rush that never fully arrived. He stated they have continued to update the tower-based and the non-tower-based antenna facilities and to improve those antennas to provide additional coverage. Mr. Winston stated they have found that in places where the Ordinances are updated to provide to reflect both the Act 50 and the FCC, it is welcoming for the carriers because they can at least see that the Municipality has a process, that they respect the shot clock, they follow along with the Fees; and that will help because to deploy these small facilities, you need multiple of these facilities where you only have to do a single tower to cover a broader area.

Mr. Winston stated the Ruling that came through in the midst of their working on this changes the calculation, and he is not sure exactly how the wireless companies are going to respond and what they are going to change. He stated it essentially overturned twenty years of precedent as to how Municipalities and wireless operators have worked back and forth to identify a location for a tower. He stated they have introduced new factors, some of which the FCC spelled out, and some of which the Court completely “made up.” He stated they are still waiting to see what Cases come up and how this transpires.

Mr. Lewis stated Mr. Winston had indicated that our Overlay covers only 10% of the property in Lower Makefield where a monopole could be placed. Mr. Winston stated that is his rough calculation looking at the Map. He stated they have provided a separate legal analysis related to Verizon's claim that it would be insufficient to defend against a claim of prohibition of wireless services because as it is written all tower-based and non-tower facilities and even small cell facilities are to be in the Telecom Overlay District. Mr. Lewis stated by revising this we are okay with the small wireless, but not necessarily good on the large monopoles, and there could be a case on that. Mr. Winston stated there are still issues related to how the Facility Overlay District addresses the placement of those.

Mr. Lewis stated he has received questions multiple times from residents as to wireless service causing cancer or causing other health-related concerns, and he asked Mr. Winston his opinion as to those concerns. Mr. Winston stated as an attorney he cannot answer any health questions. Mr. Lewis asked if there have been any successful cases involving those health questions. Mr. Winston he has not seen any successful case where any individual claimant made a successful lawsuit for damages against any wireless carrier or operator to his knowledge; although if there is one, he would review and stand corrected. He stated the FCC is the sole arbiter of the standards of RF emissions. He stated there has recently been a case brought against the FCC to do an additional review and update their standards. He stated he could provide links to the FCC page as well as the carrier-operator pages. He stated the Municipality cannot set any regulations related to the RF standards without running afoul of the requirement that you cannot prohibit or have the effect of prohibiting.

Mr. Winston stated what the Municipality can do, and what they have written into the Ordinance, is that any Applicant must provide a certified report from a Pennsylvania Licensed and Registered engineer certifying that the facility complies with the FCC's RF requirements. He stated they have also built in that any facilities operators have to re-certify every two years that they are still within the emission requirements; and if at any point that there is any concern by the Township that any facility is producing RF emissions in excess of what those FCC standards are, that the Township does have authority under the Ordinance to seek Certification from the operator that their facility is within compliance. He stated if it is not in compliance, then the Township can remove the Permit.

Mr. Lewis stated he asked this because the Township has received this comment many times. He added that his review of literature from the American Cancer Society indicates no significant risk as does his review of EU studies in this area as it relates to a significant risk to humans although there are questions about birds and small, flying insects for impact although that has not been fully studied.

Mr. Lewis stated there is not much that can be done to inspire them to give us the smaller, wireless facilities. He asked if there is any feature of State or Federal Law that gives us power that we do not have access to with this revised Ordinance, and he asked if there is anything that we could do to either increase or decrease the ability of a wireless provider to put facilities in LMT that we have not explored and do not have in this Ordinance recognizing that we are limited by the FCC as to what we can do.

Mr. Winston stated to the maximum extent possible this provides oversight ability to the Township to regulate the Application, the operation, the maintenance, and the removal of these types of facilities.

Mr. Lewis asked if there is anything we can do to mandate a certain level of service or tracking of coverage from the carriers. Mr. Winston stated there is not, and he added that pricing is also an area that the Township has no legal authority to control. Mr. Lewis stated as it relates to broadband carriers, there is a loophole in the FCC that gives Municipalities privacy authority, but there is nothing similar as to wireless carriers. Mr. Winston stated he is not familiar with the loophole that Mr. Lewis has mentioned, but there is no extra authority to be found in the area of privacy for the Municipality.

Mr. Coyle asked if the current Overlay Map defines completely the areas within the Township where we permit the construction of any wireless communications facilities, and Mr. Winston agreed. Mr. Coyle stated absent the adoption of a new Ordinance, you can still only put a small facility in the existing Overlay areas according to the Township Ordinances. Mr. Winston stated as far as this Ordinance is concerned, that is correct; however, because of the FCC regulation and Pennsylvania Act 50, he believes that someone could submit an Application and go through the process, and if they were denied, they could make a claim and seek a Permit that way.

Mr. Coyle stated in order to gain any influence over where small facilities can be placed through the crafting of this Ordinance, we would additionally have to update the referenced Wireless Facility Map that overlays our Zoning Map. Mr. Winston agreed that the Map does need an update.

Mr. Coyle read from Page 12, Section 195.4.2.a.2 adding he feels that language is trying to encourage the adoption of a small wireless facility over a monopole or other structure, and he asked if that is correct. Mr. Winston stated when they discussed the Federal Law, there is a prohibition against prohibiting or having the effect of prohibiting wireless service. He stated what the Courts had interpreted in a precedential case when they issued the ruling about twenty years ago was that in order to show that there was a prohibition the test was that the Applicant had to show that there was a gap in coverage where they were trying to place a facility and that the facilities that they were using and the places they were proposing were the least-intrusive means to fill that gap.

Mr. Coyle stated the language “least-intrusive means” comes from that Court decision, and Mr. Winston agreed. Mr. Coyle stated he was looking at that as a mechanism to encourage the use of small facilities over towers. Mr. Winston stated that with regard to the case of Verizon and the area where they want to put the tower, under the old precedential case, the Municipality would argue that the tower is not the least-intrusive means because Verizon could use a series of small cell facilities atop existing utility poles, and they could fill any gap in coverage or capacity that way. Mr. Coyle stated that provided that we have existing utility poles, existing infrastructure, and public right-of-way, we could make that as a counter-argument to that Application. Mr. Winston stated previously that is the argument that could be made, and it was often successful, and the least-intrusive means was tilted in favor of the Municipality; however, the Regulatory Order that the FCC issued and the Court’s new case essentially overturned what was this previous test, and they started to apply a new test. He stated the new test is much more favorable to the wireless operator, and it is no longer a gap in coverage, it is a materially-inhibit standard whether or not a Municipality is materially inhibiting, which means that a wireless company can argue that they need to increase capacity and densify a network or test out new services, and they do not have to show that there is a gap in coverage anymore. He stated they can argue that even where there is coverage, that a Municipality is prohibiting service if they will not allow them to increase the necessary coverage.

Mr. Coyle asked Mr. Winston if he knows as a general standard what the range of a small wireless communication facility is for 5G. Mr. Winston stated it is typically about one quarter of a mile, but it is highly dependent on any other things that may be blocking it in the line of sight such as trees, buildings, etc. Mr. Coyle stated if you are a Township that heavily favors trees, you may end up with a less-effective range. Mr. Winston stated the topography, the weather, and a lot of things go into the calculation.

Mr. Gill asked if there could be multiple of these facilities put up within the quarter mile range if there are issues with trees or other objects, and Mr. Winston stated they could do that. He added there is language included in the Ordinance about separation and there are requirements that they could not be put right next to each other, but you could fill them in together in a way to densify it. Mr. Gill asked how many of these facilities would be put up in Lower Makefield, and he asked if the Township were to heavily favor Verizon versus some of other carriers, is there a limitation as far as how many users there could be for this antenna. Mr. Winston stated the number of users would be limited to whatever is the local reach of the antenna/the individuals in the area; but there is no limit to the number if they wanted to put multiple of these in adding that you need multiple of them to make it an effective network. He stated they will use them together and they will also use them in individual locations to supplement existing high-traffic coverage.

Mr. Coyle stated any strength the Township has in encouraging the use of small facilities over towers is going to come from our Map, and how permissive we are with providing coverage via an updated Map more so than any words in the document given the means test that Mr. Winston has referenced. Mr. Winston stated this Court Ruling has upended what the typical understanding was of the interaction and what the test was. He stated there are ways to encourage the development of these small cell facilities, but there is no way to preferentially favor these facilities over towers. He stated if you can provide the best that the Township can in terms of where such facilities would be located, that would help. He stated the Court also wrote in some information about some tests about the Wireless Applicant's cost which is not in the FCC language. He stated with regard to the small cell facilities, the wireless companies now have a cost-based argument to try to argue that it may be cheaper to just deploy one tower. He stated this is speculative since they are not sure how it will be handed down since it is a fresh ruling.

He stated what he has included in the Ordinance are the standards from the previous Court Case – the gap in coverage and the least-intrusive means, and he has also written information such that if a Wireless Applicant submits an Application, we are requiring them to submit any other information related to documents, spreadsheets, and anything related if they want to make a claim that the Municipality is prohibiting or having the effect of prohibiting wireless services, and that they have to substantiate that claim. He stated if they want to make the claim that they need a particular facility because they need to density their network or they need to introduce new services, they are going to have to submit that information. He stated one of the hardest things for a Municipality is to know the data and understand the actual true wireless maps of what the operators have and where these facilities are intended to go.

Mr. Coyle asked if we can provide a faster shot clock response for small facilities than for tower-based or non-tower. Mr. Winston stated the small facilities do have a shorter shot clock, but it would be possible to shorten that if the Township wanted to do so. He stated they can be shorter, but not longer. Mr. Winston for a tower-based and a non-tower-based, it is 150 days from the receipt of a completed Application. He stated for a new small wireless facility requiring a new wireless support structure/new pole it is 90 days, and for a small wireless facility where they are putting the antenna on an existing pole it is 60 days. He stated they also have to have the permission of the pole owner, and that is usually a process that is external to the Township.

Mr. Coyle stated he would not want to publish 73 pages of new Ordinances that do not effectively give us any new tools. Mr. Winston stated he feels that there are new tools included in terms of the requirements of the Application and new requirements in terms of Bonding and insurance coverage. He stated there is also the Small Wireless Facilities Design Manual.

Mr. Coyle stated he would ask that they look again to see if there is anything that can be done to let the Ordinances further encourage the use of the small facilities through whatever means are available to us within the constraints of the Law.

Mr. Bush noted the new Court Case referenced and the standard now being materially inhibiting coverage, and he asked if there is any objective definition of that or is that just the phrase that the Court used. Mr. Winston stated that is the new phrase that they have used. He stated while there is some language around it, there are no technical standards. Mr. Bush asked

if any Party has Appealed that Decision, and Mr. Winston stated he does not believe so. He stated from this point it would only be Appealable to the Supreme Court. He stated it was the Circuit that covers Pennsylvania that issued the original opinion about the gap in coverage that was the first to address it. He stated there may be other Circuits; and if there is any kind of discrepancy as to how another Circuit interprets the FCC rules, it might be Appealed; but as of now he is not aware of any Appeals.

Mr. Coyle noted Page 7 the language for “prior-approved design” is in the Definitions of the Ordinance, but it appears not to be used or referenced in the document itself. Mr. Winston stated he believes that it is referenced in the Design Standards document. Mr. Coyle stated he is looking for anything that can be used to encourage Verizon to put these on existing poles. He asked if the design document has language to the effect that if you have already had the design approved once, it is a faster, easier process. Mr. Winston stated it does not have fast-track language. He added he does not know if there are any existing small cell facilities in the Municipality. Mr. Coyle stated there are not. Mr. Winston stated there is a manufacturer and model of pole that certain towns prefer. He stated there are requirements for getting these approved and mounted including a check of the utilities, a check of the sidewalks and sewers, and possibly a Road Permit. He stated within the confines of the Law and the design guidelines, a Municipality can have as much or as little oversight as it wants in terms of the look and feel of the facilities.

Mr. Winston stated most Municipalities do not know where their existing facilities are or where their telecommunications infrastructure is because a lot of this was installed before there was any common mapping software, and there is no central data depository of all of this. He stated for the benefit of the Township and any Wireless Applicant and operator, if the Township were aware of the existing facilities and what the wireless propagation looked like, where the existing poles are in the Municipality, and who owns them, that information is helpful for making it easy for wireless operators to prepare and submit an Application, and then to operate a facility.

Mr. Coyle stated besides updating the Ordinance for good governance, we are trying to prevent large towers from being constructed in the Township. He stated there is a stretch of road of about 3 miles where there are a lot of dead spots near Stony Hill Road. He stated if we are going to have an Ordinance, he wants to include something that clearly

indicates to the telecommunication companies what we would prefer. He stated if prior, approved design is a way to get that done so that a wireless company can drop a certain number of small facilities atop existing poles to cover one particular coverage area now to fill an important gap, and that later they could do it in another part of the Township, their paperwork would be easier.

Mr. Winston stated the design for a small wireless communications facility that has been reviewed and approved would help. Mr. Coyle stated he would recommend including some language to that effect in one of these documents.

Mr. Mike Petty stated he lives in Hidden Oaks across from where the tower is proposed. He stated he does not think anyone is not acknowledging that there is not a dead spot, but they do not want these large towers in their community that they moved into that did not have all of this. He stated they do not want to look at it. He stated when he looks out his front door where the proposed tower was in the back, it is now toward the front. He stated he will walk out his front door and see it. He stated with regard to the cancer piece, and value “he does not care what it really is, it is the perception that is out there that will impact the investment in his home and in his community” which is what he is concerned about. He stated he feels the Commission members would feel the same if it was outside of their front door, and they would be pushing back as well because they would not want it either. He asked that they find other alternative solutions to make it work. He stated when they put up the crane up a few weeks ago, it was “right in his face,” and he does not think the Commission would want that out their front door either.

Mr. Lewis stated he has it outside of his front door. He stated when he goes down his driveway and looks to the left he sees a whole series of cell towers. He stated he lives in Clearview Estates. He stated he did move in knowing that the towers were there. He stated his first thought was whether this would interfere with antenna reception because it was over twenty years ago. He stated he has not had any interference and his cell connectivity is pretty good. He stated he understands peoples’ preference and the trade-offs around that; however, the limits placed on the Township by State and Federal Law make it hard. He stated we want to be proactive, but he is not sure they can change Verizon’s behavior. Mr. Petty stated he agrees that the Laws are written for the benefit of the communication companies and not benefitting the common person or the Township.

Mr. Lewis stated prior to Cohen Law Group getting involved in this, the Township had gotten guidance that with Act 50 there was not much that we could do; and that guidance has been changed in terms of what we can and cannot do with regard to large poles, but we might not have the legal authority to override or stop a particular pole. Mr. Petty stated they are trying to avoid having what the Township Building has in its back yard with the big tower.

Mr. Bush stated they are not unsympathetic. He stated it is different when you move into someplace that already has a tower compared to when you move into a place where there is no tower and now there is the possibility of a 150' tower outside your front door, and that is not what anyone wants to see. He stated they are trying to find out if there is some way of structuring this to steer it a certain way.

Mr. Petty stated he understands that they are trying to find something that is acceptable to Verizon and to the residents. He stated he has lived in his home for thirty years and he purchased there because it is an "area that they were trying to keep nice." He stated when "this stuff starts popping up all over the place, if he wanted to live with all this stuff he would live in North New Jersey." He provided the Planning Commission with pictures of a tower on Aquetong Road near the Washington Crossing/New Hope area. Mr. Coyle stated what has been shown appears to be more in the range of the 50' small communications facility as opposed to a 150' tower, and that is what we are trying to do here.

Mr. Petty stated he understands that the owners of the property are interested in this because it is income for them. He asked if the Township ever thought of putting it in an area like the Five Mile Woods, and the Township could get the income from it which would benefit the taxpayers. Mr. Coyle stated he is not a member of the Synagogue; and in their defense it is not solely revenue, it is a safety issue for them as well since they are in the coverage dead spot, and they have concerns about cell phones working if they would need them.

Mr. Petty stated he agrees with the safety piece but he added in all safety plans, you have a Plan A, B, and C; and if Plan A is not working, you have a Plan B. He stated he has a Plan B which would be a landline. He stated if it is that much of a concern for them, they should put a landline in. He stated people in his community are following that option as well.

Mr. Coyle moved, Mr. Costello seconded and it was unanimously carried to recommend to the Board of Supervisors to direct the consultants to provide language which more strongly incentivizes the adoption of small wireless communication facilities within the Township and adjust any necessary Overlay Maps to do the same.

DISCUSSION AND MOTION ON 2023 ANNUAL REPORT

Mr. McLoone stated this Report is provided in part to satisfy the requirements of Section 207 of the Pennsylvania Act 247 Municipalities Planning Code. He stated these are available on the Township Website going back to 2012, and it is a summary of what the Planning Commission did for the past year. He stated it includes how many times the Planning Commission met, who attended the meetings, and provides a summary of what was reviewed including Ordinances that were discussed. He stated it gives a breakdown of each meeting. He stated he can make any edits the Planning Commission would like to see, and it will then be placed on the Township Website so that the public can see what the Planning Commission did this past year.

Mr. Coyle stated it was indicated that there was a listing of who had attended the meetings, and he asked if that was for each meeting or was it just who was on the Planning Commission during that time. Mr. McLoone stated the meeting dates discuss what was on the Agenda, but at the top it just lists the members of the Planning Commission. He stated he also included the three months that Ms. Stern served at the beginning of the year.

Mr. DeLorenzo stated he feels there is a better language that could be in the first paragraph with regard to how often the Planning Commission met. Mr. McLoone stated he could revise this to indicate just the number of times the Planning Commission met.

Mr. Costello moved and Mr. Gill seconded to approve placement of the 2023 Annual Report on the Township Website.

Mr. Costello asked if they are sure that everything that was done by the Planning Commission this year has been included. Mr. McLoone stated he had asked Mr. Majewski to review this tomorrow to make sure that he did not miss anything. He stated he can add anything that anyone feels has been missed.

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Mr. Bush stated the Motion is therefore subject to changing the first paragraph regarding the number of meetings held as recommended by Mr. DeLorenzo and further review by Mr. McLoone and Mr. Majewski to make sure everything has been included.

Motion carried unanimously.

There being no further business, Mr. Gill moved, Mr. Costello seconded and it was unanimously carried to adjourn the meeting at 9:00 p.m.

Respectfully Submitted,

Colin Coyle, Secretary