

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS
SEPTEMBER 17, 2015

The Board of Supervisors of Upper Merion Township met for a Special Meeting on Thursday, September 17, 2015, in in the Township Building in King of Prussia. The meeting was called to order at 6:00 p.m., followed by a pledge to the flag.

ROLL CALL:

Supervisors present were: Greg Waks (arrived late), Erika Spott, Bill Jenaway and Carole Kenney. Also present were: David Kraynik, Township Manager; Sally Slook, Assistant Township Manager; John Walko, Township Solicitor's Office; Christopher H. Schubert, Riley Riper Hollin & Colagreco; John Tallman, Vice Chairman, Zoning Hearing Board. Supervisor Philips was absent.

DISCUSSIONS:

DAS (Distributed Antenna Systems) Ordinance

Mr. Kraynik stated staff has been working on the draft ordinance with the Solicitor's Office, the Media Communications Advisory Board and Chris Schubert who is representing a DAS provider interested in proposing a DAS network for Upper Merion Township. He indicated Mr. John Walko will provide an overview of the draft ordinance and some of the issues raised by the Media Communications Advisory Board.

Mr. Walko indicated John Tallman, Vice Chairman, Zoning Hearing Board, was at the meeting with the Media Communications Advisory Board and was very active in the discussions.

Mr. Walko stated while the county has a model DAS ordinance many feel it is particularly inadequate for a place like Upper Merion with certain mixed use zoning districts and not straight commercial/residential zoning. For this reason there needs to be more attention to where DAS facilities and wireless communication facilities (WCF) can go. The goal is to protect residents from having towers put in for what they think is their front yard without their knowledge and without an opportunity to voice that concern or have it not go in at all.

Mr. Walko explained the difference between tower-based wireless communication facilities and non-tower communication facilities and how they are regulated within the public rights-of-way and outside the public rights-of-way. It was noted the heart of the ordinance is under §2 on page 7 which breaks down wireless communications facilities into 10 different categories based upon whether it is a tower or non-tower and whether it is based in a right-of-way or not

in a right-of-way. Tower-based wireless communication facilities not included within a right-of-way are prohibited in pretty much all of the pure residential districts.

Mr. Schubert provided an example of a non-tower DAS system with the equipment located on the telephone pole with an antenna on the top. Other installations would include a cantenna. The cantenna looks like a large coffee can placed on top of the telephone pole.

Mr. Walko noted the definition of a tower is any structure that exceeds 10 feet in height and built for the purpose of wireless communication services.

Mrs. Spott commented tower-based wireless communication facilities in the right-of-way would be permitted in a residential. Mr. Walko responded it could but you would never know it is there since it would go onto an existing pole. Non-tower based are permitted by right in all zoning districts.

Mrs. Spott asked what is considered non-tower. Mr. Walko responded an example of a non-tower is the cantenna on an existing telephone pole. Mr. Schubert indicated it could also be on an existing structure like a roof top that does not require putting in a new telephone pole or new tower. Mr. Walko explained the resident would not come out and find a new tower, however, the tower that is there may have something attached to the top. That example would not be tower based. Putting in the actual pole to have it on top is a tower because you are creating a structure more than 10 feet high.

Mrs. Spott said her understanding from the previous discussion is that tower-based WCF's are permitted in residential if the tower/pole is erected in the right-of-way. Mr. Tallman indicated one of his comments was that should be a conditional use. Mr. Walko noted §2, number 6 which states "tower-based WCF's located within a right-of-way are permitted in the following districts...unless all utilities are located underground within one hundred feet (100') of the proposed tower or base station...."

Mrs. Spott indicated if someone does not have underground facilities one of the WCF's could go in front of their house in the right-of-way and they could not do anything about it. Mr. Walko noted the Comment [A5] from the Media Advisory Board indicating the desire to make all new towers done by conditional use. He said this would give the applicant the opportunity to appear in front of the Board of Supervisors and it would be the Board's decision whether or not the tower should go up.

Mrs. Spott questioned why the Board of Supervisors would ever go against a resident that does not want it in front of their house. Mr. Walko said it might be more palatable if stealth technology is utilized so it does not look like a tower but rather a nice lamp post and lighting is needed on the road.

Mr. Schubert commented on the application of stealth technology that was done in Pittsburgh in a historic district. He said because you cannot get big towers in some residential areas people do not get the coverage they need for their cell phones. In the Pittsburgh historic district they designed a gas light with all the equipment at the bottom of the light. It was a functional light with a concealed antenna on the top and unidentifiable as a DAS node installation. The applicant in Pittsburgh had to go to the Architectural Review Board, the Historic Review Board and also the Planning Commission to get approval on that design.

A discussion followed about architectural and aesthetic standards during which Mr. Walko mentioned stealth technology and landscaping design is covered under §5 of the draft ordinance. He said there was talk at the Media Advisory Board about having the Planning Commission review any stealth.

Mrs. Spott commented the Board of Supervisors has been putting a lot of effort and emphasis into creating nice streetscapes in the township because it helps everyone's property values. In addition to landscaping Mrs. Spott favors the idea of going through some architectural review. She noted with the Pittsburgh example the architectural review was already existing since it was in a historical district, but asked what about Upper Merion that does not have a historical district.

Mr. Kraynik asked if there are design standards in other parts of Pittsburgh. Mr. Schubert responded in the negative. He said in other parts of the city if it was going to be on any township infrastructure such as a traffic control light, the applicant had to enter into an agreement and that is one of the ways the municipality could have some control. He said he is not sure it would be specifically applicable if we are talking about a Verizon, Telco or Peco pole, but if we are talking about a new installation in a residential area he did not believe the company he represents would have any problem going through a conditional use process. He noted the stealth requirement in the ordinance would be open for discussion and it would be the applicant's burden to come forward to the township supervisors with their proposal. They could not just put in a telephone pole that would show the equipment; they would have to come up with some design for a new pole if it was going to be in a residential neighborhood.

Mr. Walko noted the resident would see what the pole would look like at the conditional use hearing. Mr. Schubert said it would also be subject to planning commission review before it got to the supervisors. He said he would imagine the planning commission would have some input with regard to the design and color and if the equipment should be on the pole or under the pole, etc.

Mrs. Spott noted the Board of Supervisors spent a lot of time on zoning for

the new Mixed Use District and there are some specific provisions in the ordinance from an aesthetic standpoint.

Mr. Schubert stated from the standpoint of giving the supervisors the most flexibility with a conditional use process where stealthing was an obligation, it would be the applicant's burden to show the different stealthing options. If the applicant is triggered into a conditional use process they would have to go before the planning commission and obtain some consensus before moving on to the actual hearing.

Mr. Jenaway asked how many companies might come to the Board of Supervisors to do something in a particular area. Mr. Schubert responded right now there are Crown, American Tower and ExteNet. Mr. Tallman indicated there are four wireless carriers. Right now Verizon is doing DAS and the rest of them will have to do it. Sprint is planning on doing it, and AT&T and T-Mobile are going to have to do it as well.

Mr. Jenaway indicated the purpose of his question is if we have Verizon and ExteNet and others coming to the Board of Supervisors for multiple locations in the same general neighborhood how does the architectural design process work so there is consistency among all of the companies. Mr. Schubert responded they are doing the cantenna right now in Newtown Square, Radnor and Westtown areas and those carriers are able to utilize the same antenna and equipment they just have different equipment in the cabinet that sits on the pole, but the antenna is the same antenna.

Mr. Jenaway mentioned the fire house antenna. Mr. Tallman commented at the fire house three carriers have used the pole to place their own antennas. He said Mr. Schubert is describing technology where the antenna itself will get four feeds so that four carriers can use the antenna.

Mr. Jenaway commented when the map was shown of the projected locations at the last meeting he recalled there was an extensive number of locations from Valley Forge Road down to the river over to the industrial park which would actually be in a residential neighborhood. Mr. Schubert responded in the affirmative that it was all primary residential neighborhoods. He noted most of it is utilizing existing telephone polls. Five areas were identified where new polls would have to go in, one of which would be across the street from the middle school where Volpe Park is located. Mr. Schubert said he believes the ordinance provides that if it is on township property that would be something the township could allow. If it [DAS] was going to be on township property the applicant would have to enter into an agreement with the township. Because of the new pole the applicant would have to go through a conditional use process.

Mr. Jenaway stated in that area there are at least five developments with homeowner associations and in all of these developments the homeowner

association would present the request. He said there are easements for utilities but in none of those developments are there poles because everything is underground.

Mr. Tallman indicated he lives in one of those developments and everything is underground. He said someone brought up the idea if all or substantial utilities are underground it would immediately trigger conditional use. Mr. Schubert stated it would anyway because it is a new tower-based wireless communications facility.

Mrs. Kenney referred to the map shown at the previous meeting indicating how many [WCF's] would be on already existing poles and how many would be new poles throughout the township. Mr. Schubert responded for Verizon purposes where they are trying to get the coverage in the residential areas they are talking about 26 of these nodes, 21 of which would utilize either existing or replacement poles and 5 new ones that do not currently exist.

Mrs. Kenney asked if those figures are township-wide. Mr. Schubert responded it would just be in the one area previously discussed [Valley Forge to the river].

Mr. Tallman stated if 26 covered that section and all four carriers could use it that would pretty much be the end of it in that section to the river from Valley Forge, from PA 23 to the river and from the industrial park to the river. Realistically it might be about 100 through the whole township.

Mr. Walko indicated what he is hearing is conditional use for residential. He asked if conditional use for industrial, commercialized areas is desired for a new tower.

Mr. Schubert again brought up the example of the King of Prussia Mall where a lot of people are using cell phones, especially during the holidays. Providers are looking to get additional coverage in these areas. He noted one of the other technologies is to build small cell sites which are not the DAS nodes, but their own independent functioning cell sites that do not depend upon and feed back to a larger cell site. The small cell sites are placed in parking lots at shopping centers. There are one or two antennas that would be attached to a pole about 30 feet in height with some ground equipment. The ground equipment is essentially the size of a small refrigerator and placed on a two foot by two foot pad surrounded by vegetation and could be stealthed as a parking lot light. It was noted this type of commercial technique could also go through conditional use or by right as long as it is not over 35 feet in height.

Mr. Walko stated he received the comment [from the Media Board] if the tower is over 40 feet than it is conditional use; however, if it is under 40 feet it is by right.

Mr. Waks indicated he believes there should be conditional use for apartments. He explained an area such as Crooked Lane has a heavy industrial area backing up to residential houses. If someone wants to put their 35 foot tower there by right it would make sense to have everything conditional use for new towers. Mr. Schubert commented another fix would be if [the proposed tower] is within a certain number of feet it would trigger conditional use. Mr. Waks reiterated because there are so many heavy industrial areas backing up against residential houses he wants to have conditional use for new towers in all zones township-wide. Mr. Walko asked if this should also include township property. Mr. Waks responded in the affirmative.

Mr. Walko stated that would cover [§2] 1 thru 8 [for tower-based]. With regard to non-tower WCF's the way it is drafted they are permitted by right in all zoning districts within the right of way. He asked if the supervisors are fine with that.

A discussion followed about the impact of DAS technology and related equipment on the visual environment.

Mrs. Kenney asked why WCF's are needed in areas that do not have a reception problem. Mr. Schubert responded it is not coverage, but a capacity issue, particularly with more young people moving into the township who are heavy wireless technology users.

Mr. Walko summed up the discussion indicating for new towers conditional use no matter where. He said that brings up if the question if they are replacing an existing tower, for example, if a pole is already there and they want to put in a tower that is substantially similar to the tower that is being replaced. It is a new tower but the way this is drafted it that would not require conditional use because it is not something new.

Mr. Tallman said his reading of that provision is if the poll is not strong enough to hold the equipment they need to replace it.

Mr. Walko said if that is something the supervisors want there are two definitions – one being replacement and the other a provision of swapping out towers which means if you need to take down a telephone pole and transfer the equipment to another pole it would have to be within a 5-foot radius of the old pole. This would still not be considered a new tower. Mr. Walko asked the supervisors if they want that to be considered a new tower for consideration at a conditional use hearing.

Mrs. Spott said she would like to be able to have some ability to look at everything that is new or being replaced to keep the integrity of the neighborhood intact.

Mr. Schubert provided the likely scenario of an applicant coming before the Board of Supervisors with one conditional use application for six new poles or one application for six swap-out poles at one time thereby lessening the workload impact for the Board of Supervisors.

Mr. Tallman commented under this ordinance there is a setback of a half mile being considered and recommended by the Media Advisory Board if an applicant is proposing putting up two new small cell sites – two new poles or mini towers they will have to justify in the conditional use process as to why they would have to be within a half mile of one another.

Mrs. Kenney asked if a telephone pole is being replaced does the electric company have any say as to what kind of pole is installed. Mr. Schubert responded in the affirmative. He noted if it is a Peco-owned pole or Bell Telephone-owned pole they are not going to agree to a fancy street light.

Mr. Walko stated there are a couple of important drafting considerations in moving forward from this meeting. He noted the recommendation would be to have the planning commission review plans prior to the conditional use hearing. He asked if the referral to the planning commission should be done as a courtesy to get their feedback or as a requirement.

Mr. Jenaway commented the planning commission definitely has an interest and would have an opinion.

Mr. Jenaway foresaw one issue the planning commission could bring up. He said many of the developments in the primary area have electric lines actually running between properties not on the street. The question then becomes if one of these [WCF's] are to be installed are they going to simply go to that telephone pole between the two properties or are they going to propose coming out and placing them in the front yard.

Mr. Walko stated he will have the planning commission review stealth technology, landscaping designs, and provide options for screening towers. He said another question concerns guidewires and whether they should be banned completely or if they are necessary it would trigger a conditional use. It was noted by a member of the group that there is no current technology requiring a guidewire unless a 1,000 foot tower is built so they could all be self-supported, especially the heights being discussed in Upper Merion Township. It should be a conditional use for any guidewire.

A discussion followed regarding guidewires and some of the circumstances when they might be needed by utilities.

Mr. Walko stated it [guidewires] could just be part of the same conditional

use application. If banning outright is not desired for safety reasons it could be done by conditional use and that is what he will be redrafting in the requirements. Everyone was in agreement.

Mrs. Kenney asked about neighborhoods with sidewalks and if they [WCF's] would be placed in front of the house between the sidewalk and the street or if they would be located in the back yard. Mr. Schubert responded that would be something that would be reviewed in conditional use if they are putting in a new pole, but typically there is a green spot between the curb and the sidewalk not on the lawn.

Mrs. Kenney asked about areas that do not have sidewalks. Mr. Walko responded it would be where there is a right-of-way that is designated on that property where the sidewalk could go in.

Mr. Walko stated he will redraft the ordinance and circulate it to everyone, including the Media Advisory Board.

ADJOURNMENT:

There being no further business to come before the Board, it was moved by Mr. Jenaway, seconded by Mrs. Kenney, all voting "Aye" to adjourn the meeting. None opposed. Motion approved 4-0. Adjournment occurred at 7:18 p.m.

DAVID G. KRAYNIK
SECRETARY-TREASURER
TOWNSHIP MANAGER

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Minutes Approved:
Minutes Entered