

**UPPER YODER TOWNSHIP SUPERVISORS
MAY 15, 2014**

**ZONING WORKSHOP MEETING
MUNICIPAL BUILDING**

MEMBERS PRESENT

EDWARD BARZESKI
ROY SHAFFER-ABSENT
ROBERT AMISTADI
WILLIAM HUSTON
SCOTT HUNT

OTHERS

KEN MESKO, TWP. ENGINEER
ROBERT SHAHADE, SOLICITOR
MARY KAY MAHER, TWP. SECRETARY

OTHERS – Mark Walker, David Mills, William Burns, John Onufro, John Knoll, L. Wm. Lonsinger

CHAIRMAN CALLED THE MEETING TO ORDER AT 6:00 P.M.

ELECTRONIC MESSAGE SIGNS

William Burns, Chairman of the Zoning Hearing Board, reviewed correspondence that had been issued to the Township Supervisors listing 18 items for consideration in regulating electronic signs that have become popular in recent years. (Correspondence attached.)

One main area of concern is the Goucher Street area where businesses are located wishing to erect the latest electronic signs. Adjacent to the Goucher Street “strip” are residential areas which are in close proximity. Also of concern are the setbacks from the Goucher Street right of way which are regulated by PennDot. It was noted the Township could be more restrictive than the state, but not less. The signs currently in place are grandfathered, but if they were to be replaced, they must comply with the latest regulations. Solicitor noted the current regulations for the Township for Signs is a setback of five (5) feet from the right of way for a free-standing sign. This applies to a C-1 district and a C-2 district.

Mark Walker inquired if the Supervisors wish to have these electronic signs erected in the Township. He pointed out Lower Yoder does not allow them. They have been asked to change their ordinance, which to date, they have not done.

The sign installed by St. Andrews was deemed a hardship case which is located in an M-1 Zoned area and was granted as an extension of a non-conforming use. The previous sign’s letters were no longer available for replacement. This sign and circumstance was a unique case. Mark pointed out once something is permitted; it’s hard not to allow others to do the same – it’s known as rezoning by variance. This can be changed by modifying the ordinance – to either allow the signs or not at this point.

The Zoning Hearing Board has continued two zoning hearings requesting the installation of the electronic signs, pending the Supervisors’ decision on whether to allow the signs or not. If they will be permitted, then restrictive regulations must be developed to aid the Zoning Hearing Board in their decisions.

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The major concern was the co-mingling of businesses and residents along the Goucher Street area. The dimming of the light or NITS from dusk to dawn was entertained, along with the brightness of the sign during daylight hours.

Dave Mills, consultant, explained at Richland Township, they differentiate between billboards and signs and have specific regulations for both. Billboards can only be allowed by Special Exception and must be spaced with a radius of 1,500 feet apart. Due to the constraints of the Goucher Street strip, this spacing may not be feasible. Dave also stated Richland Township regulates the electronic signs by regulating their brightness. He is a certified engineer and can borrow H.F. Lenz's luminance meter and bucket truck to test the brightness of the signs. The signs can be adjusted by sensors and/or computers to regulate their brightness and to put them on a timer to dim during evening hours. The maximum brightness or NITS is 10,000, but must be turned down to 700 NITS or to 7% in the evening. As Richland Township's Zoning officer, Dave stated he has a broad range of enforcement that he can exercise in regulating the various electronic signs and their brightness. Depending on the location, businesses or residents in the area surrounding the location, he can dictate what kind, size, brightness, etc. that would be allowed in that particular area to accommodate all within that vicinity. He uses discretion in allowing the signs so that all parties are satisfied.

Another issue is to regulate what can be advertised. The regulations could limit it to their specific business only, and/or public announcements – not third party advertisements. Dave also informed the Board that currently Richland Twp. charges a sign fee of \$1,000 and \$22.00 per thousand for the cost of the sign. This would cover all current and future inspections of the sign as long as it is in service. The signs must be re-certified to be in compliance every two years.

Mark Walker suggested separate regulations for bill boards and for electronic signs in all areas to facilitate enforcement.

CELL TOWER INSTALLATIONS

Correspondence from the Zoning Hearing Board addressed to the Supervisors concerning the regulation of cell towers in the Township was reviewed. (Correspondence attached.) Main topic of discussion was the setbacks of the tower and the obtaining of a bond from the owner of the tower, should it fail.

Dave noted that cell towers are only allowed in the Light Industrial or Manufacturing districts of Richland Township and are limited to a height of 90 feet. The set back is one foot for each vertical foot of structure plus 25 feet. Should it fail, it will not fall onto the adjoining property. The structure must be certified by a registered engineer to be structurally sound every two years. They are also required to submit an As-Built within 60 days of completion. If the owner requests a tower over 90 feet, then it goes to the Zoning Hearing Board. Richland does

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not require bonds. Most cell towers are monopoles that are essentially one piece, should they fall.

Solicitor stated all proposed amendments must be in final format prior to the holding of two required public hearings.

Next scheduled Zoning Workshop will be held at 7:00 p.m. on Thursday, May 29, 2014 at the Township Building.

Respectfully submitted,



Mary Kay Maher
Twp. Secretary

THE NEXT SCHEDULED MEETING WILL BE ON MAY 29, 2014 – AT 7:00 P.M. FOR THE ZONING WORKSHOP AND ANY OTHER BUSINESS BEFORE THE BOARD.

UPPER YODER TOWNSHIP ZONING HEARING BOARD

Cambria County
302 Elim Street
Johnstown, PA 15905
(814) 255-5243
Fax (814) 255-1805

April 14, 2014

Upper Yoder Township
Board of Supervisors
302 Elim Street
Johnstown, PA 15905

Re: Considerations for Amendments to Zoning Ordinance
Regarding Electronic Message Signs

Dear Township Supervisors:

The following are considerations regarding amendments to the current Zoning Ordinance regarding electronic message signs. It is recommended that the Board consider electronic message signs be permitted but give considerations to the following conditions:

1. Dimming capabilities and adjustment to the brightness of ambient light regardless of the time of day.
2. Prohibiting animated, flashing, rotating or scrolling messages and further prohibiting less than 8 second messages. This would also require instantaneous change.
3. Requiring that the messages be pertinent to the established business and not be a third party or non-business message.
4. That the brightness not exceed a certain amount of NITS and that they must be dimmed by a certain percentage of the daylight brightness at dusk. It is suggested this issue of nits, brightness, etc. be reviewed by an expert to determine the appropriateness of said items.
5. Possible complete blackening of signs during specific night time hours.
6. Limitation on the size of the electronic message sign, for example that no sign should exceed sixty (60) square feet.
7. That they comply with all Commonwealth of Pennsylvania and Upper Yoder Township regulations.
8. That any and all zoning violations must be corrected within a certain period of time, for example thirty (30) or sixty (60) days and that failure to comply may result in a certain fine per day or removal of the sign at the owner's expense.

9. The amount of an application fee; whether it is a onetime fee and dependent upon the size of the sign, for example a onetime fee of \$250.00 for a sign less than a certain amount of square feet and a onetime fee up to \$500.00 for a sign the size of the maximum of sixty (60) square feet.
10. The amount of a onetime permit or maintenance fee.
11. Whether or not a hearing before the Zoning Hearing Board would be required if the applicant met all conditions in the Ordinance.
12. Adjacent residential districts, right-of-ways, etc. and how close in proximity said signs could be to those residential districts, right-of-ways, etc.
13. That if in the event of sign failure that it turns to black.
14. Relation to the amendments in this specific portion to the Ordinance as a whole.
15. That the intent and purpose of the amendment be set forth in the Ordinance.
16. That it include a severability clause.
17. That the conditions as set forth in the Ordinance are not too vague, are well defined and do not include too much discretion.
18. That the Ordinance consider a message substitution clause as it may apply to the rights guaranteed under the First Amendment.

The above are considerations for your review in amending the current Zoning Ordinance to provide for electronic message signs. Should you require anything further, please do not hesitate to contact me.

Thank you kindly.

Very truly yours,



William Burns, Chairman
Upper Yoder Township
Zoning Hearing Board

WB/pl
Enclosure

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April 14, 2014

Upper Yoder Township
Board of Supervisors
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Johnstown, PA 15905

Re: Considerations for Amendments to Zoning Ordinance
Regarding Telecommunications Towers

Dear Township Supervisors:

Enclosed, please find considerations regarding an amendment to the current Zoning Ordinance to provide for telecommunications towers. It is recommended that prior to finalizing any amendment that this matter be reviewed by a professional engineer. Said engineer should consider appropriate setbacks from residential and commercial occupied structures as well as the applicant's requirement to maintain a bond of sufficient value to cover any potential damages as a result of the telecommunication tower.

Enclosed are considerations and guidelines for review regarding the amendment of the Ordinance as it applies to telecommunications towers. Should you have any questions or require anything further, please do not hesitate to contact me.

Yours very truly,



William Burns, Chairman
Upper Yoder Township
Zoning Hearing Board

WB/pl
Enclosure

K. Telecommunications towers.

(1) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

TELECOMMUNICATIONS TOWER

An elevated radio, television or microwave transmission or receiving tower which is used to transmit, receive, retransmit or otherwise convey radio, television or microwave signals.

(2) Tower regulations.

(a) Permitted by special exception. Cooling towers, fire towers, stacks, water towers, radio towers, television towers and telecommunications towers may be erected in the L Light Industrial and M Manufacturing Districts so long as they do not exceed feet, including antenna, and so long as such towers and stacks:

[1] Shall be located not less than feet from any lot line, and the required setback shall be increased by one foot for each vertical foot of structure that exceeds the allowable height for the district in which it is to be erected.

[2] Accessory appurtenant structures, support cables and other structures associated with any tower shall be located not less than feet from any lot line or any setback in that district.

[3] All towers, support cables and appurtenant structures shall be within a protective fence with locking gates. Such fences shall be feet in height with feet of barbed wire over that feet.

[4] All safety lighting shall be installed and maintained and all operations shall be conducted in accordance with Federal Aviation Administration (FAA), Federal Communications Commission (FCC) or other applicable regulations.

[5] All proposed towers and stacks must be certified in writing by a registered professional engineer, at the expense of the owner, to be structurally sound, as proposed, before construction may begin and, as constructed, within days of its completion.

[6] All towers and stacks exceeding feet in height must be certified as structurally sound by a registered professional engineer, every second year, at the expense of the owner, beginning on the first business day in June in the second year following their construction.

[7] All towers and stacks exceeding feet in height must be made structurally sound or removed at the property owner's expense within days of a written finding by the Township or its designate that they are not structurally sound.

[8] All towers and stacks must be removed and the site returned to a natural state, with all towers and appurtenances removed, at the owner's expense, and the use by special exception terminated within six calendar months of the discontinuance of their use as a tower or stack. The township must be notified of the abandonment of the use.

“Do’s” and “Don’ts” in Drafting a Wireless Telecommunications Facility Ordinance

Do’s

1. Do define relevant terms in the ordinance such as "Communications Antenna," "Communications Equipment Building," "Communications Tower" and "Height of a Communications Tower." In many existing ordinances, terms such as "Essential Services" are vaguely defined and could be argued to include telecommunications towers or antennas.

Such definitions should be amended to exclude wireless facilities so that their placement in the community can be reasonably controlled.

2. Do encourage the installation of antennas upon existing structures, including building rooftops, water tanks or existing towers, rather than the construction of new towers. If community residents raise aesthetic objections to wireless facilities, such objections are almost always directed at towers and rarely at antennas mounted on existing structures. The best way to encourage such "co-location" of antennas on existing structures is to make it easier and quicker for providers to obtain a building permit for co-location than for construction of a tower. Typically, this is accomplished by making co-location of antennas on existing structures a use by right (requiring only a building permit) while making construction of towers (at least in some districts) a special exception or conditional use requiring public hearings and satisfaction of specific requirements.
3. Do encourage the construction of towers in the community's least restrictive zoning districts by considering making construction of towers in such districts (e.g., industrial and manufacturing districts) a use by right. Another incentive would be to allow higher towers in the least restrictive zoning districts.
4. Do define height limitations specifically applicable to towers and to the permitted height of co-located antennas above the highest point on the building or other structure.
5. Do require the provider proposing to co-locate antennas to certify that the proposed installation will not exceed the structural capacity of the building or other structure.
6. Do require co-located antennas to meet applicable building codes and other regulations.
7. Do require that wireless facilities comply with all applicable standards established by the FCC governing human exposure to electromagnetic radiation.
8. Do establish reasonable setback requirements for towers and equipment buildings.
9. Do establish reasonable standards for communications towers in more restrictive districts as special exceptions or conditional uses, such as compliance with applicable FAA and Airport Zoning regulations.
10. Do require that access be provided to the tower by means of a public street or adequate easement with an improved cart way.
11. Do require that the base of a tower be landscaped to screen the tower foundation and base and the communications equipment building from abutting properties.

12. Do require that the provider certify that a tower will be designed and constructed in accordance with current national standards for steel towers. Such standards include the Structural Standards for Steel Antenna Towers and Antenna Support Structures published by the Electrical Industry Association/Telecommunications Industry Association.
13. Do require that a security fence be placed at least eight feet in height around a tower and equipment building.
14. Do require that a tower remaining unused for 12 months be dismantled and removed by the provider.
15. Do encourage the use of appropriate public property for communications facilities. Many such properties are less intrusive locations than privately owned property for wireless facilities, and the revenue benefits to the municipality can be significant.

Don'ts

1. Don't unreasonably limit wireless facilities to a small portion of the community.
2. Don't treat co-location and tower construction applications the same. Encourage co-location by simplifying the approval process.
3. Don't require unreasonable "fall zones" or setbacks from adjoining property lines or unreasonably large minimum parcel size. A properly constructed tower designed and built to current national standards will be at least as reliable as surrounding structures.
4. Don't establish local safety or environmental standards for human exposure to radio frequency emissions. The 1996 Telecommunications Act prohibits it.
5. Don't require providers to construct towers to accommodate several providers. This will probably result in towers unnecessarily tall and thick to accommodate such users.

Moratoriums

Some communities across the country have imposed moratoriums on wireless communications applications. These moratoriums take various forms from a delay in reviewing applications to a refusal to accept applications during the moratorium period. Moratoriums have been the subject of substantial litigation around the country with mixed results for municipalities.

The legality of moratoriums varies from state to state. In Pennsylvania, with the exceptions of Pittsburgh and Philadelphia only, the Municipalities Planning Code (MPC) 53 P.S. § 10101 *et seq.*, defines the zoning authority of local governments. The MPC provides no authority for the imposition of moratoriums in Pennsylvania. For additional reference, see the Pennsylvania Supreme Court's decision in *Naylor, et al v. Township of Hellam*, 773 A.2d 770 (Pa. 2001).

The MPC does provide for municipal curative amendments to a zoning ordinance. Section 609.2 of the MPC sets forth the procedure for initiating such an amendment and the limited protection afforded to a municipality under the procedure. If a municipality declares by formal action that its zoning ordinance,