

East Manchester Township
PLANNING COMMISSION MINUTES
October 24, 2023

At a regular meeting held at the Township Building, the following members were present: Edward Hewitt, Mike Scarborough, Herb Nix, and Troy Rentzel. Absent with prior notice: Chairman Mike McCowan. Also present: Engineer Laymon Mortorff, Zoning Officer Gary Mayfield, Recording Secretary, and two citizens. Attending via Zoom: Attorney Mike Roberts.

Vice Chairman Scarborough called the meeting to order at 7:00 p.m.

Minutes

One small correction to the minutes of the meeting of August 22, 2023: first page, 4th paragraph, it should read “permits” not “permissions.”

Motion by Rentzel, second by Hewitt, to approve the minutes of the meeting of August 22, 2023, as amended above. All members voted aye; motion carried.

Plans

Nothing this month.

Ordinance Review

The Planning Commission discussed the draft ordinance amending Chapter 255 of the code to provide for the regulation of wireless communications facilities.

Is the Township accepting these applications as a permitted use in some districts or special exceptions in other districts? Is this correct? Should this be a permitted use in all districts? Or a special exception in all districts?

Why are we discussing an amendment to the zoning ordinance? New regulations were issued by the state, plus the extension of the 5G network, and small wireless facilities can be placed in more locations. This ordinance is not requiring them to blend into the surrounding area. Should it? Any info on wildlife preservation?

Attorney Mike Roberts with Cohen Law Group, joined the meeting via Zoom. His firm specializes in tech matters for local governments. The Township hired his firm in July 2022 to address the changes that came through. Local governments cannot prohibit wireless facilities or apply regulations so stringent that the facility cannot be built. For tonight’s discussion, we’re talking about a small wireless facility, less than 50’ high, etc.

In 2021, PA issued Act 50, stating that facilities in the public ROW must be a permitted use. This Act precipitated the review of the Township’s ordinance and how to update it to include the small cell wireless communications facilities. There’s an amendment to the zoning ordinance as well as a stand-alone ordinance.

Co-located facility – on existing structure outside public ROW.

Tower based facility – standard cell tower outside ROW.

Small wireless facility – the next phase/type (discussing tonight)

This ordinance anticipates dealing with any small wireless application that might come up in this regard for the next several years.

The small wireless facilities are smaller and there are more of them than the larger facilities. Coverage and capacity are the important factors. The small facilities are intended to fill the gaps in coverage of the larger facilities and address the capacity problem as well. The small facilities assist the larger ones and vice versa.

In R1, 2 and 3 districts, it's a permitted use. In AO and Conservation, special exception. Mr. Roberts discussed why the distinction between the two. On Page 9, tower-based facilities – outside ROW by special exception in CO, Ag, AO, and Industrial. This will stay the way it is.

Question from audience, Dean Kohr, 1700 Canal Road, asked if companies can just come in and start putting antennae on existing poles in the ROW? Well, the company must apply and indicate its compliance with the design requirements.

Mr. Mortorff asked what if a proposal doesn't fit the definition? Mr. Roberts explained the standards across the districts, depending on the nature of the facility planned.

In residential zones, these facilities are permitted uses outside the public ROW. Yes? Yes, but the Township can limit if desired.

Mr. Nix noted that in the R1 district, there are many open fields. Let's be careful not to be too tight on the requirements that we're limiting the coverage/capacity of these small facilities. Mr. Scarborough asked about safety – if one of these facilities is mounted on a pole in a resident's yard, could it fall onto a residence? Mr. Roberts answered that there are setback requirements (height must be lower than (or close to) the total distance away from structure).

Tower-based facilities – since this amendment deletes specific requirements for these facilities – how does that help the Zoning Hearing Board to make a determination? Attorney Roberts said that the Township can absolutely amend the zoning ordinance as needed to make sure the ZHB is privy to the regulations.

On the chart of time requirements, 150 days might not be enough time for the tower-based project. A special exception requires a 30-day advertisement, then the 30-day appeal period, then the LDP process (not started until the SE is approved). Submit the LDP, then to staff, then to PC, then to BOS. Might not be enough time. Unfortunately, because the time frames are federally mandated, they cannot be changed. Federal law takes precedence over local, but it does permit the Township to grant an extension of time if need be. If a tower-based facility disturbs more than one acre of land, it will be required to file a land development plan, and that's an automatic 6- to 9-month time period. If an applicant files the application and doesn't have the proper parts to the application and permits, etc., within the specified time period, the Township can issue a letter to pause the time clock, so to speak.

Mr. Mayfield requested that, in the design manual, page 7, section 5, number 1, add “*and the Public Works Director*” to those who determine whether the design meets the specs.

Also, page 3, section 2, *renumber (there are two 4s)*.

Mr. Mayfield's other questions were answered, and he's confident that he has the information he needs.

Mr. Nix -- what if an eagle nests on one of these facilities? Is anything in place that protects the Township? Attorney Roberts: there's an environmental assessment at the beginning of the process, and the Township can add protections as well. Attorney Roberts can *add a section/sentence on environmental regulation*.

Mr. Kohr asked if there's an abandonment clause or requirement. Yes indeed. There's a 90-day time frame within which time to remove the facility after it becomes unneeded, obsolete, etc.

From Mr. Mortorff, regarding page 7, specific requirements for co-located facilities as permitted uses. What triggers the need for a land development plan? That depends on the intent of the underlying structure. Can regulate co-located facilities in the residential district if desired. That's why Mr. Scarborough wonders if it would be better to require them to obtain a special exception, rather than be classed as a permitted use.

Make sure to include the specific requirements for the ZHB to refer to (if the language is removed from the Zoning Officer). And make sure the permitted use option is specific enough in the various zones.

How would the maintenance be handled if a facility is mounted on a private property's roof and the roof needs to be replaced because of the facility's presence? Who handles that? There'd be an agreement between the company and the property owner, with access agreements, etc. Typically, the building owner takes care of the maintenance to his/her structure, and the company takes care of the facility's maintenance. So, if there are no poles in a residential development, then what? Attorney Roberts said that any underground requirements would apply to the wireless facility as well.

In the manual, in Item A, will the Zoning Officer have a list of items to be aware of to execute his duties for compliance? Yes, these would be available in public documents online. There'd also be engineering certifications and approvals for the facilities/applications.

Do property owners benefit? Yes, through a private lease agreement.

Motion by Nix, second by Hewitt, to send the amendments back to the attorneys to make the changes as noted above and re-submit them to the Planning Commission to see the documents again. All members voted aye; motion carried.

Mr. Roberts left the meeting at this point, 8:05 p.m.

Discussion was held on the height of the poles, the antenna to be placed, the box that's included, etc.

Mr. Nix noted that good cell service is important to the community, and the Township should take that into consideration. Mr. Scarborough noted that yes, it's important but the Township needs to proceed sensibly.

What if someone comes in next week and applies for the placement of a small wireless facility? Is what we have now good enough? We would defer to the current ordinance until this one was passed.

Additional New Business

Nothing at this time. Mr. Scarborough will not be at the November meeting.

Voting on the meeting time change at the next meeting. Voting to change time from 7pm to 6pm start.

Motion by Rentzel, second by Nix, to adjourn. All members voted aye; motion carried. The meeting adjourned at 8:18 p.m.

Respectfully submitted,

Julie B. Maher, Recording Secretary

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