

Mount Joy Borough Planning Commission

December 14, 2016 Minutes



The December 14, 2016, Planning Commission meeting was called to order at 7:00 PM, by Vice Chairperson Wendy Sweigart. Commissioners Miller, Rebman, Deering and Gault were present. The Mount Joy Borough Zoning Officer, Stacie Gibbs was also present. Borough Manager Sam Sulkosky was also present.

MINUTES

On a motion by Miller and a second by Gault the November 9, 2016 minutes were approved with corrections. Motion carried 4-0 with Deering abstaining because he was not at the November meeting.

PUBLIC COMMENT

Ned Sterling questioned if someone was working on a Gateway sign project on E. Main Street. Gibbs advised that there is nothing going on to her knowledge. Gibbs advised that she did see a Donegal School District truck there the other day adding the new Field Hockey championship to their sign.

Sterling questioned if there was still going to be a Hiking and Biking Plan presentation. Gibbs said it is still being worked on. Gibbs advised that she emailed it to Gault for him to look over and review if and when he had time.

Sterling questioned if the Old Standby Park is on our Master Plan. Gibbs advised we do not have a Master Plan. Gibbs questioned if Sterling was referring to the Official Map. Sterling was referring to the Official Map. Gibbs advised she did not think parks were on the Official Map. Gault advised that parks are on the Official Map, and the next time there is a reason to update it that would be a good thing to add. Gibbs advised that at the beginning of the year, the Official Map will be on the agenda for review as Council previously requested each year.

UPDATES The Planning Commission was provided a copy of the Zoning and Code Officer report by email.

Gibbs advised that staff received an email on Tuesday, from David Smith, President at the Lancaster County Career and Technology Center (LCCTC) advising that their Joint Operating Board approved the proposal to pay for the design and engineering costs associated with the trail connection and sidewalk installation at Rotary Park and Old Market Street. Gibbs advised that this is great news. Gibbs advised that the Borough's Public Works Director will be obtaining some rough estimate numbers for the concrete work, and the Public Works Department will be doing the majority of the work. Gibbs advised that the Public Works Committee is receptive to this project.

Gibbs advised that the LERTA Ordinance will be on the County Commissioner's agenda for December 8, 2016. Gibbs advised that they do not foresee any issues. Gibbs further advised that she has 367 letters, ordinances and LERTA applications ready to be mailed on December 29, 2016. Gibbs advised these letters are going to each property owner who has a property on the LERTA property list. Gibbs advised that this is a great way to start marketing the LERTA.

OLD BUSINESS None.

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NEW BUSINESS

Sweigart advised that the Planning Commission was provided with a Memorandum and information regarding wireless facilities in the street rights-of-ways. Gibbs advised that the Planning Commission was also provided an attorney/client privilege letter which provides a legal opinion and cases regarding wireless facilities in the street rights-of-ways. Gibbs advised that there are vendors who are contracted by wireless companies such as Sprint and T-Mobile to survey municipalities to see if and where the best place would be to install their equipment. Gibbs advised that instead of a 2, 3 or a 4 g network, the network would be 5g. The vendor advised that there is not a lot of connectivity in residential development. Gibbs advised that the Planning Commission also received a copy of a news article featured in the Borough Newsletter. Gibbs advised this article goes into detail regarding some cons that wireless facilities present in the street rights-of-ways. Gibbs advised the Borough also received a letter from a company called Mobilitie and they have a Public Utility Certificate. Gibbs advised that the Public Utility Commission (PUC) granted this Utility Certificate which now allows the company to place their poles and equipment in the street rights-of-ways without being subject to any regulations a municipality may have in place. Gibbs advised they would still be subject to Street Opening Permits and Temporary Obstruction Permits.

Gibbs advised that she and Dennis Nissley met with the representative from Mobilitie on Farmview Lane where they are looking to place a utility pole. Gibbs advised there is no curb or sidewalk on the South side of Farmview Lane where the install is proposed to take place. Gibbs advised that she has seen articles and has been reading about wireless facilities in the street rights-of-ways over the last year. Gibbs advised she reached out to the Borough Solicitor to see if the Borough should take this time to amend the Zoning Ordinance to include regulations for wireless facilities in the street rights-of-ways. Sweigart advised that she read the Solicitor's letter and she was confused as to whether or not the Solicitor recommended we should or should not have regulations in place. Sweigart advised that it is a moot point the wireless company has a certificate. Sweigart advised that it seems the only time regulations would apply is if a company did not have a PUC certificate. Gibbs advised that is correct.

Sweigart advised that it does not seem as though the PUC is going to stop issuing these certificates any time soon. Gibbs advised that there are a lot of articles she left out of the packets. Gibbs advised that communities are going through a lot of problems because there are a lot of these vendors that do not have certificates that are installing wireless facilities in the rights-of-ways, and even in people's yards. Rebman questioned in what right-of-ways are they installing these facilities. Gibbs advised that they would be in the Borough's rights-of-ways. Rebman wanted to make sure they were not being installed in stormwater management facilities. Gibbs advised there have been issues with these facilities, including placement. Gibbs suggested that the Planning Commission go online and google the topic to review additional articles.

Gibbs advised that the Borough Solicitor provided Warwick Township's section of their zoning ordinance where wireless facilities are regulated. Gibbs advised their ordinance is a little different, and they require a conditional use be applied for wireless facilities in the rights-of-ways. Rebman questioned if it would be a hearing. Gibbs said yes. Rebman said he liked that idea. Gibbs advised that if the Commission wants to take the action that is on the agenda, this amendment can be included with the accessory free library amendment and the rezoning of the Cross Roads Church property.

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Sweigart questioned if Columbia Borough also had regulations in place for wireless facilities. Gibbs said they do. Sweigart wanted to make sure we had access to those ordinances. Sweigart advised that when she was reading the letter from Mobilitie, it sounded like they were going to install equipment at multiple sites, but then they only included one site. Gibbs said that is correct, there was only one site listed. Deering advised that he would assume there would be more to come. Sweigart questioned if this was our first experience or were there previous vendors. Gibbs advised this one is the first.

Rebman wanted to know what they have to do for PUC to to receive a certification. Gibbs advised that the newsletter article provided to the Commission by the Cohen Law Group, described their concern about the PUC issuing certificates to these vendors. Sweigart advised that it appears the Cohen Law Group has taken efforts, or is taking efforts to request the PUC cease and desist. Sweigart advised it appears that is unlikely. Sweigart advised that if all the vendors do not have a PUC certificate, it certainly makes sense to put regulations in place. Sweigart advised however, if everyone has this “blanket” certificate in place then it is probably an exercise in futility. Sweigart advised that if Gibbs is clarifying for her that not everyone has this certificate then we should do it. Miller advised that it seems like the PUC is issuing certificates to vendors who claim they are a utility. Sweigart advised that Lancaster City tried to put something in place that was struck down by the court and the only thing they can do is charge a fee. Gibbs believed that was with UGI. Gault advised that it was still utility related.

Gault advised that it is not worth creating a separate ordinance to advertise. Gault advised since we are amending the ordinance anyway, there is no harm in throwing it in. Gault advised that if there is ever a case to use it then we have it. Gault advised that the ones that will be the most difficult to deal with, probably will be the ones that have their ammunition stocked up and already have their PUC certificate. Gault advised that it will be very unusual to find someone that wants to put this in that isn’t smart enough to know that you just go to the PUC and you don’t have to follow any rules. Sweigart advised that was her understanding from reading the material. Sweigart advised that she agrees with Gault and that if we are going to be absorbing the cost to change the ordinance anyway, then we can add regulations for this. Deering advised that it can’t hurt to add something in case the need arises.

Gibbs referred the Commission to page 33 of the newsletter by the Cohen Law Group. Gibbs advised, “Other companies use even more aggressive tactics when municipalities go to amend their cell tower ordinance. Recently, one company launched a campaign in PA to try to persuade municipalities not to take legal and reasonable steps to update their zoning codes. In some instances they showed up at Borough Council meetings in which a proposed ordinance is on the agenda. Even though there is no facility proposed. Some even have crafted their own wireless facility ordinance and offered it to Borough’s and other municipalities. Surprisingly, the ordinance is one-sided.” Gibbs advised that the Zoning and Planning Department is trying to make sure they provide this information to Council and do what may be in the best interest of the Borough.

Miller advised that pursuant to the Telecommunications Act of 1996 all installation wireless facilities are subject to all zoning regulations. Gault advised that there is a conflict of law. Gault advised that the federal law states that telecommunication facilities are subject to municipal law. The state law which establishes the PUC provides public utilities with certain rights. Gault advised that he believes the loophole that these providers found is that when they go on private property they have to comply with zoning, and that is under the Telecommunications Act. Gault

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advised what they figured out is that if they call themselves a utility, and go into the public right-of-way then they can do what they want.

Sweigart advised that anybody with a PUC certificate has free will to do what they deem is best without any input from the Borough. Sweigart advised that what we want to do is protect ourselves from those that do not.

On a motion by Deering and a second by Miller, the Mount Joy Borough Planning Commission recommended Council authorize staff and the Borough Solicitor to draft an amendment to certain sections of the Zoning Ordinance for wireless facilities in the street rights-of-ways. *Motion carried 5-0.*

On a motion by Deering and a second by Miller, the Planning Commission adjourned. *Motion carried 5-0.*

Respectfully Submitted,

Stacie Gibbs, Zoning Officer