

**BOROUGH OF GREEN TREE
COUNCIL MEETING
JANUARY 11, 2016**

Call to Order / Silence for Meditation / Pledge of Allegiance

Green Tree Borough Council met on Monday, January 11, 2016 at 7:30 p.m. in the Green Tree Municipal Center, 10 West Manilla Avenue, Pittsburgh, Pennsylvania.

ROLL CALL

Members Present:

Edward A. Schenck, Mayor
Mark Sampogna, President of Council
Rino Lindsey
David Lorenzini
John Novak
Ron Panza
David Rea
Arthur Tintori

Also Present:

W. David Montz, Borough Manager
Deborah N. Gawryla, Stenographer

PUBLIC HEARING

Amendments to Chapter 420 - §420-176 and §420-177, Communication Towers and Antennas.

Mr. Sampogna opened the Public Hearing. Mr. Montz stated that the Public Hearing had been advertised according to MPC requirements. The Green Tree Planning Commission had reviewed and recommended the amendments to Council. The amendments had also been sent to Allegheny County Planning. Mr. Montz introduced Ms. Natausha Horton from the Cohen Law Group, who had written the amendment to the Communication Towers and Antennas ordinance that was before Council.

Ms. Horton said the Cohen Law Group specializes in communication law for municipalities, including those relating to franchise agreements, broadband providers, cable providers, and wireless work. She said she had drafted the proposed ordinance after speaking with Mr. Montz and Mr. Molinaro.

Ms. Horton stated that there have been substantial changes in technology over the past ten years. In 2003, cell phone providers dealt primarily with the ability to provide phone service for cell phones and large cell towers were used. Since that time, cell phones are being used for more than just phone calls, plus the use of wireless tablets occurred. These devices all connect to a wireless broadband service. With this change in technology, broadband expanded from providing merely coverage to requiring increased capacity. Capacity allows downloads to smart phones and tablets using wireless broadband. In order to provide increased capacity, the providers have changed technologies to small and more targeted methods. The providers have moved away from the traditional cell towers and are using distributing antenna systems (DAS) and small cells. These are generally located in public rights-of-way and installed by third party providers who have certificates of public convenience and necessity from the PUC. It gives these providers utility status. These small cells are generally installed on utility poles or traffic lights.

Ms. Horton said these advancements have created significant changes on the legal side. In 2009, the FCC passed rules dealing with timeframes for approving collocated facilities or adding to towers. When there is a tower application it no longer goes through MPC timing requirements. In 2014, the FCC issued an order that clarified definitions, collocation, etc. In 2012, the state legislature passed the Pennsylvania Wireless Broadband Collocation Act taking away some municipal rights, requiring no more than a building permit for installation, and allowing it if it meets several requirements. Additionally, a number of federal case laws were changed around this time.

Ms. Horton said the borough's current ordinance addressed traditional cell towers. When she drafted the revised ordinance, she addressed the advancements in technology, including the fact that most of the new facilities are now being placed in the public rights-of-way. The proposed ordinance amendment also addresses the changes in the law to help the borough deal with applications that would be coming in for both antennas and towers. Ms. Horton reviewed some of the details of the proposed ordinance.

Ms. Horton said she and Mr. Montz had reviewed the heights of various areas in the borough in the public rights-of-way and came up with a map of roadways where small antennas could be placed on existing infrastructure that would blend in with surroundings. She said that the newer technologies that providers have been moving to are smaller and more targeted with a signal radius between 1/3 of a mile to 3/4 of a mile, depending upon the topography. Enough roadways must be permitted for these installations so the borough will not be challenged as being too restrictive. Ms. Horton hoped that the ordinance would put the borough in a stronger position when addressing these types of applications. She noted that the ordinance exempts amateur radio operators.

Mr. Tintori asked if it could be amended in the future with the advent of new technologies. Ms. Horton replied that the ordinance could always be amended. She reviewed some of the details in the proposed ordinance and discussion continued regarding the way the mini-cell towers worked. Review of the map with the proposed locations for mini-cell towers continued. Mr. Montz said consideration had been given to utilizing areas in the borough where there are existing utility poles in the rights-of-way. It avoided those areas where there are underground utilities and areas where utility poles are located behind private residences. Mr. Montz said the map would need to be adopted separately by resolution.

Mr. Lorenzini asked if the mini-cell antennas could be installed on buildings, such as those in Foster Plaza. Mr. Montz said that they could be installed on those buildings. Ms. Horton said that any installations on buildings cannot exceed the maximum height requirements for the district. By allowing providers to place their antennas on commercial buildings allows them to be kept out of the public rights-of-way and can also provide an additional cash flow for the buildings' businesses. When asked, Ms. Horton said the ordinance only covers the physical location of the antennas and not the coverage area.

Mr. Montz said that with the passage of the revised ordinance before council, a mini-cell antenna provider would not be permitted to place a utility pole in an area where all the other utilities are underground. Mr. Lorenzini asked if providers would be able to install these mini-cell towers on residential homes. Ms. Horton said wireless facilities are prohibited from being placed on any residential properties. Mr. Montz said that based on the proposed coverage map

he felt that those areas that have underground utilities would still be able to receive coverage by means of the areas that would be permitted for these installations.

Mayor Schenck asked about indemnification for these installations. Ms. Horton replied that the indemnification provision in the proposed ordinance does not ask that they have to indemnify, but most of the companies that install these towers carry insurance and there is an insurance requirement. Ms. Horton felt that the indemnification provision in the proposed ordinance was sufficient. She said that Mr. Molinaro had reviewed the draft and agreed. She added that there is also a financial security provision. Discussion continued about the indemnification section and Mayor Schenck asked if it could be worded differently. Ms. Horton said she would work on revising the wording.

Mr. Novak asked if the companies that install the mini-cell towers conduct any routine inspections. Ms. Horton replied that the companies that request the installations, such as Verizon or AT&T, only tend to check them when there is a problem, but often when the mini-cell towers are owned by a third party, those companies will inspect them more frequently. She said it could be added to the ordinance and she has done it in the past, but does not always recommend it because it is often not practical for a company to perform such inspections.

Mr. Tintori asked if another Public Hearing would be needed if the changes that have been discussed – such as the indemnification and inspection recommendation – were made. Ms. Horton felt that the recommended changes were small. Mr. Sampogna did not feel they were substantive changes and would probably not warrant another Public Hearing, but felt that the Borough Solicitor would have to be consulted for his opinion. Mr. Montz suggested that Council take the information discussed at tonight's public hearing under advisement and that it would be placed on the agenda for a vote at the February Council meeting.

Mr. Sampogna pointed out a typographical error on page 10, second section, item (3) where the word "the" should be changed to "be" so it reads: "Required electrical meter cabinets shall **be** screened to blend in with the surrounding area to the satisfaction of the Borough."

Mayor Schenck asked if all of Planning Commission's eight recommendations to the ordinance had been made. Ms. Horton replied that they were all made except for the request to change the wording from a "building permit" to a "zoning permit." The Pennsylvania Wireless Collocation Act does not allow more than a building permit under the law. When asked, Ms. Horton said the proposed ordinance would be considered a zoning ordinance, and it must part of the borough's zoning ordinances in order to be effective under the Telecom Act of 1996.

Mr. Sampogna asked about the heights of poles permitted in the rights-of-way in the residential district. Ms. Horton said the poles for these installations in the residential district are capped at a maximum of 35 feet, in Residence A District on borough-owned property it is capped at 75 feet, and in the Commercial A-1 District it is capped at 125 feet. Discussion continued regarding height and setback requirements.

Mr. Montz stated that most of these installations tend to be placed on existing utility poles. He asked if an existing 40-foot pole in a permitted location could be replaced with a 75-foot pole. Ms. Horton replied that the height of the pole could not be changed. However, if the pole is owned by another utility other than a communication company, such as the electric company, replacement of the pole is not covered under this ordinance. Discussion continued regarding

regulations covering replacement of different types of utility poles and the status of a current pending application for the installation of a wireless mini-cell antenna.

Mayor Schenck asked if the term "Person" as listed on page 5 was defined in the borough's ordinances. Ms. Horton replied that she would check to make certain that it was defined in the borough's ordinances. Mayor Schenck recommended that if the term, "Person," is defined it should also be capitalized on page 5, item (j.).

Mayor Schenck asked how often an insurance certificate should be provided to the borough, and if the borough would be required to be listed as an additional insured. Ms. Horton said she would discuss it with the Borough Solicitor to see if he felt it should be added. If he felt it should be added, she would do so.

There being no other comments or questions, the Public Hearing was closed at 8:18 p.m.

HEARING OF THE CITIZENS

There was no one present who wished to be heard.

MAYOR'S REPORT - Mayor Schenck

- A. Mayor Schenck reported that there were 14 applicants for the police officer position and testing begins tomorrow. Results of the written test should be available in approximately two weeks.
- B. Mayor Schenck said he would be holding Mayor's Office Hours on Saturday, January 16 from 9:00 a.m. to 12:00 noon. Chief Cleary will also be present to field questions and comments at this time.
- C. Mayor Schenck said that Chief Cleary had provided Council with a list of recent deer/vehicle accidents on record in the borough.
- D. Mayor Schenck asked about the possibility of placing a referendum on the ballot regarding the handling of the deer population. Mr. Montz said that referendums are not addressed in the borough's charter. Discussion continued regarding how referendums would be handled and when the last time Green Tree had placed a referendum on the ballot.
- E. Mayor Schenck said he would be attending a meeting held by Chief Cleary where he would be meeting with all the officers.

REPORT OF BOROUGH COUNCIL COMMITTEES

A. STREETS & PUBLIC HEALTH - Mr. Novak

- 1. Mr. Novak reported that the Public Works Department used the brine machine on Sunday and used it again today for the anticipated snowfall. He said it should save the borough some time and money.

B. RECREATION & COMMUNITY AFFAIRS - Mr. Panza

- 1. Mr. Panza reported that the next Oktoberfest meeting would be held on January 18. He encouraged others to get involved with Oktoberfest since it is the 20th anniversary of the event.

2. Mr. Panza said he would be bringing up the deer population issue with the Recreation Committee of Council when they meet in the near future. He suggested that a task force of residents be created to discuss possible solutions to the deer population issue, come to a consensus and make a recommendation to Council.
3. Mr. Panza said he was waiting for a response from Congressman Bud Schuster about scheduling a visit to Green Tree to review the sound barrier issue. He asked the Mayor and President of Council to attend if Congressman Schuster visited.

C. PLANNING & ZONING - Mr. Lorenzini

1. When asked, Mr. Lorenzini said that Planning Commission is almost completed with the revised zoning ordinance and it should be ready to present it to Council shortly. There are some final details they are resolving. Mr. Montz has contacted Solicitor Molinaro regarding whether Council can do it in parts or if the zoning ordinance must be adopted as a whole document. He is waiting for a response. Mr. Montz felt it would be cumbersome for Council to review the entire zoning ordinance and he had asked the solicitor if it could be advertised once with language indicating that Council could adjourn to another next session to continue discussion without readvertising it. Discussion continued regarding how Council might conduct the zoning ordinance review.

D. PUBLIC PROPERTY & EQUIPMENT - Mr. Rea

1. Mr. Montz detailed a recent electrical problem that had occurred at the Green Tree Municipal Center as a result of a windstorm.

E. PUBLIC SAFETY - Mr. Lindsey

1. Mr. Lindsey reported that there are 14 applicants for the police officer position.

F. FINANCE - Mr. Tintori

1. Motion:

Mr. Tintori made a motion, seconded by Mr. Novak, to ratify the actions of the Borough Manager in paying the December 2015 invoices from the General Fund totaling \$27,516.42, Sanitary Sewer Bond Fund totaling \$3,274.84, and Capital Projects Fund totaling \$39,539.20.

Motion carried unanimously.

2. Ordinance #1748

Implementing and adopting terms, conditions, and hourly rates of pay and fringe benefits under a collective bargaining agreement between the Borough and Teamsters Union No. 249 for the period commencing April 1, 2014 and ending March 31, 2018 and authorizing the proper officers to execute said agreement.

Motion:

Mr. Tintori made a motion, seconded by Mr. Lindsey, to place Ordinance #1748 on first and final reading by title only.

Mr. Lindsey asked about page 19, item 9.5, Unpaid Leaves, and whether FMLA language should be inserted in this area. Mr. Montz said he would speak to the labor attorney about that. Mr. Lindsey felt it should be clarified.

Mr. Lindsey asked if there is a separate FMLA document provided regarding item 10.1 on page 20. Mr. Montz said the borough is bound under federal law with the agreement and there is not a separate document.

Motion carried unanimously.

Mr. Montz read Ordinance #1748 by title only.

Motion:

Mr. Tintori made a motion, seconded by Mr. Lindsey, to pass Ordinance #1748 by title only.

Roll Call Vote

Mr. Tintori	Yes
Mr. Lindsey	Yes
Mr. Lorenzini	Yes
Mr. Rea	Yes
Mr. Panza	Yes
Mr. Novak	Yes
Mr. Sampogna	Yes

Motion carried unanimously.

Motion:

Mr. Tintori made a motion, seconded by Mr. Lindsey, to authorize the proper officers to sign Ordinance #1748 and that it be advertised according to law.

Motion carried unanimously.

ADJOURNMENT

Motion:

Mr. Panza made a motion, seconded by Mr. Lindsey, to adjourn the meeting.

Motion carried unanimously.

Mark Sampogna, President

W. David Montz, Manager