

Pledge of Allegiance

Present:

Present at the meeting: Ryan Lemke, Robert Mitall, Jayne Hoy, Ed Patrick, James Olszewski and Council Liaison Carl Stepanovich. Also in attendance was Chief Administrator Jim Morrison, Attorney Charles Hergenroeder (on behalf of Villa Ciano) and Attorney Joseph Cortese (regarding the small cell wireless facilities).

Absent:

Minutes: Mr. Patrick moved to approve the minutes of the February 18, 2020 meeting. Ms. Hoy seconded. All present voted aye. Motion approved.

Public Comment: None.

Old Business:

- 1. A discussion concerning legal services for the development of an ordinance regulating small cell wireless facilities – Joe Cortese, Sittig & Cortese.**

Mr. Cortese explained that he had been contacted by Mr. Morrison with a request to develop a small cell ordinance, along with rights-of-way guidelines to be consistent with the FCC Order adopted in September 2018. The Order was enacted to promote existing infrastructure within rights-of-way for wireless companies and infrastructure providers to provide critical and essential service to the communities across the country. It was designed to provide for 4G and 5G technology. He noted that wireless devices were originally utilized as luxury items, but are now becoming necessities in everyone's lives, more so today because of the Corona virus. Because so many people are working from home, there is a need for wireless service closer to homes and businesses. By issuing its declaratory ruling in the court, the FCC made all existing infrastructure within the public rights-of-way available to those companies that wish to attach.

Mr. Cortese developed an ordinance for Murrysville, consistent with other ordinances across the country, that allow for providers to attach to existing infrastructure, and in some cases replace existing infrastructure if it's not suitable for pole attachment purposes. Mr. Cortese explained that Murrysville has existing infrastructure largely throughout the community and in areas where there is no infrastructure, there is control over the placement of additional poles in those areas where it's not necessary. He assured that the ordinance is consistent with Federal and State law and provides for the review administratively, within the right-of-way, provided the applicant can meet certain criteria. He stated that this is not a zoning ordinance but it's more appropriate to be regulated by the Municipality through its right-of-way guidelines. He said the important thing is that the Municipality cannot regulate this in a discriminatory basis, but must follow consistent guidelines issued by the Federal government and adopted by the states. He said another item of importance to consider is aesthetic

guidelines. There are right-of-way design guidelines that will largely give staff the ability to regulate pole attachments consistent with what is currently in the field. He said that he believes that in those areas where there will be the most activity is on Route 22 and the larger corridors and most people won't know that there are attachments to the poles in the right-of-way because they will look like the existing poles already in the field.

Mr. Cortese noted that there are some very important definitions in the ordinance that are critical to protecting the interest of the Municipality but making sure they comply with Federal guidelines. He said that all technology must be approved through the FCC; there won't be any pole attachments for companies that aren't regulated by the Federal government; signals will be provided consistent with whatever license they have; and there may be companies that are regulated by the PUC.

Mr. Patrick noted that one company indicated that it didn't want to be forced to lease space from an existing utility and wanted to put in its own pole. Mr. Patrick's concern is that there will be an excessive number of poles being put in. He also asked about a note in the ordinance about the diameter of the device and cubic footage and believes there should be some height restriction as well. Mr. Cortese said the ordinance does regulate the height and is contained in Section 2.3(d), where it talks about the maximum height. Mr. Cortese said these are not like traditional towers that want to have significant height, but this is a lower signal strength and a much smaller area to cover. The poles will be in the area of 35-50 feet. Mr. Mitall asked if there is a minimum distance from the ground level which it cannot be lower than. Mr. Cortese said it probably shouldn't be lower than 20 feet. There is also a line of sight concern.

Mr. Morrison said that the only utility poles along Rt. 22 are Windstream or West Penn Power. He said what he likes about the ordinance is that it made provisions that if neighborhoods or subdivisions are developed with underground utilities, they can't go underground unless technologically feasible and then the Municipality will have to deal with that going forward. He agreed with Mr. Cortese in that trying to minimize the number of poles and keeping them along the main thoroughfares is in the best interest of the community.

Ms. Hoy said she didn't note anything in the ordinance about how close or far away from schools or day cares the poles can be. Mr. Cortese said there is not and he believes it would be problematic from a Federal law. He added that most schools like them to be close because the schools are using the technology and, in some cases, may even want to locate on campus. He mentioned Upper St. Claire high school, which has multiple providers located on campus. He said that there are always concerns about health effects associated with this type of technology but his home is within a few hundred yards of a communication tower and he wouldn't have built there if he or his wife thought it would be a problem.

Mr. Patrick said that in residential communities, taking topography and line of sight into consideration, it wouldn't be possible to get a 5G signal off of the towers. Mr. Cortese said that is the intention of the FCC ruling. There are limitations on which signal can propagate and it's for the carriers to design. His task was to make sure Murrysville is compliant with Federal law where there are challenges and the engineering groups are going to have to figure

out how to penetrate those areas, especially in new subdivisions. He said he believes this ordinance as drafted is consistent with Federal law and would withstand any challenge.

Mr. Olszewski noted there were several documents provided (Next Century Cities/Cohen and Associates) regarding 5G and recommendations on how to deal with it from a Municipality standpoint and asked if the recommendations in those documents have been considered for inclusion in the Murrysville ordinance. Mr. Cortese said not particularly from those studies, but he is familiar enough with the industry that he believes the ordinance is in conformance.

Mr. Morrison said he has received emails from residents taking a health position on this issue and he believes that as the Municipality goes through the process, their voices will be heard. The information he has found thus far doesn't indicate any significant health issues connected with this issue and noted that the Municipality still has to deal with the requirements of the FCC and Federal government.

Mr. Mitall said the next step would be to advertise the ordinance and schedule a public hearing. Mr. Morrison agreed but said he doesn't see that happening until the seclusion order is lifted. Mr. Mitall suggested to the Commission members that this be tabled until a suitable date can be found for a public hearing. Ms. Hoy moved that the pending ordinance for small cell wireless facilities be tabled until such time as it can be advertised and have a public hearing. Mr. Patrick seconded. All present voted aye. Motion approved.

Mr. Morrison asked if the Commission members found the proposed ordinance and guidelines to be acceptable in the format as presented. There was a general consensus that it is. Mr. Mitall suggested that, when a public hearing is scheduled, Mr. Cortese be present. Mr. Cortese said he would be happy to attend.

2. A discussion concerning senior housing as defined under the Housing for Older Persons Act (HOPA).

Mr. Morrison had provided background information to the Commission on HOPA in the drop box. He advised that a company from St. Louis was looking at property near Respironics for a three-story unit for senior housing. He said there are no provisions in Murrysville's ordinance to accommodate this type of development, although it has been discussed for some time. This discussion would be to initiate the efforts to look at the zoning ordinance, if Planning Commission desires, or addressing it through the ordinance to provide for these types of opportunities to the community. Options included amending by zoning district or text amendment to the existing ordinance that provides for the use in certain districts. If that is how the Commission would like to proceed, the districts would have to be identified and then, in particular, develop requirements for this type of housing (i.e. elder housing may not need as many parking spaces as may be required for similar uses); the activity as far as traffic generation may be reduced. Those types of regulations that pertain to other developments may have to be looked at if the Commission wants to go down that road.

Ms. Hoy asked how a 55 and older development would differentiate from the multi-family developments and asked if a multi-family development produced a traffic study would suffice.

Mr. Morrison said it could but staff would be looking beyond apartments and looking to accommodate the ordinance for single-family dwellings also.

Mr. Mitall said that the whole concept of over-55 housing, which can take many forms, must be addressed. The current proposal is for an apartment building, but there is a lot of demand for single-family, duplexes, multi-family, etc. He said Federal guidelines are queer as to what constitutes an over-55 community, and must be incorporated into any ordinance. There are issues of density, required parking. His opinion is that an over-55 community does not have the same impact on the community as a typical residential development. People typically commute during different hours so the impact is less, there is no impact on the schools and there is not as great a demand on some types of services. Mr. Mitall continued by stating that traditionally, in Murrysville, the problem with building any type of project like this is always density and Murrysville's density regulations are very stringent.

Ms. Hoy asked how the density for this proposed building is going to be any different from the building on School Road South (Marquis Place). Mr. Mitall said it's going to be a lot different because Marquis Place was limited by the number of units and the acreage so there was a density factor that they had to adhere to. Looking at the proposed plan, the density is much higher and does not fit into any category. Ms. Hoy asked if the plan was in the drop box so that she could review it. Mr. Mitall said it is. Mr. Morrison said there are a couple issues with this particular plan: (1) the regulations don't accommodate the acreage of the parcel, (2) the property needs to be rezoned (currently zoned B). He said he thinks there is a need in the community to take a look at denser subdivision developments for the 55-plus population. Ms. Hoy said she is in agreement but doesn't think it should be limited to only certain areas. She would rather see it be left open, depending on what a developer may see as an opportunity, but regulations need to be in place to see if it would fit into a category. Mr. Morrison said multi-family can't be put in a B-district and that is something that would have to be considered. It's very difficult to create a subdivision and make it profitable for the developer in an R-1 or R-2 district because of the density requirements. The heart of the issue is taking a look at zoning districts and, if the Municipality wants to accommodate this type of housing, deciding what needs to be done to accomplish that. Ms. Hoy said she would like to see a map showing the larger parcels available for development and in which zoning districts they are located. Mr. Mitall said the Commission might want to consider an overlay district where it could go wherever the best site might be, rather than limiting it to one or two zones. He said he doesn't think there is much ground available in R-2 or R-3.

Mr. Stepanovich asked how this would differ from the multi-story building near Ferri's grocery store (Brookside). Ms. Hoy said she doesn't know the density on that building. Mr. Mitall said that's a pretty big site (pond, parking lot) and believes it was developed as an R-3 standing. Ms. Hoy said that's straight multi-family. Mr. Patrick asked what the objection was to having the proposed development in the B-district. Ms. Hoy said it is currently now allowed. Mr. Patrick asked what the rationale was for not including it. Mr. Mitall said the rationale was that residential housing is not put in business districts.

Mr. Mitall asked if staff is looking for some direction that this is something the Planning Commission would like to explore. Ms. Hoy said she thinks they should. Mr. Morrison said

the developer from the St. Louis area on this project stays in contact with him pretty regularly and would like an opportunity to make a presentation. Mr. Morrison advised him the Commission is in the beginning stages of reviewing this issue. Mr. Morrison said he could produce a map (as requested by Ms. Hoy) and asked what minimum acreage they would like to see. It was decided 5 acres would be sufficient. Mr. Patrick said the idea of creating an overlay district would make sense. Mr. Lemke added that way one single district wouldn't have to be defined but could be moved around based on the availability to develop. Ms. Hoy agreed and noted that there is not a big surplus of lots available.

Mr. Mitall asked the members if they would like to staff to start exploring this as an ordinance and see a map to consider doing it as an overlay district with some appropriate regulations and densities. Ms. Hoy asked if there were any other locales in the area that have similar 55 and over ordinances. Mr. Morrison said that most have done it by text amendment if their ordinances haven't been amended since 1995 because there are regulations that fit into a particular zoning district. Ms. Hoy said if Murrysville does this as an overlay, it would be unique. Mr. Morrison said he has not seen one in an overlay. Mr. Lemke noted that there were other developments by this company in Greensburg, Bethel Park, Crafton, and Oakdale and asked if copies of their ordinances could be obtained. Mr. Morrison said Bethel Park's is in the drop box and Greensburg's has since been converted to student housing. Mr. Mitall asked that staff search for some ordinances that might be helpful to the Commission.

3. A discussion concerning amendments to the sign ordinance.

Mr. Mitall said it is his understanding that the concern is the degree of brightness of the signs at night; what looks good during the daylight becomes troublesome once the sun goes down. He said the man who sold signs and was familiar with their regulations indicated that there were ordinances that require a dimming at night; Murrysville's ordinance does not. Mr. Mitall asked Mr. Morrison if this was a simple fix. Mr. Morrison said it is and that the existing ordinance only permits amber. Mr. Mitall said if there are other colors, that doesn't bother him, but it needs to be toned down at night, particularly if there are multi colors. There was discussion in trying to determine when someone presented to the Commission. Mr. Patrick said one of the concerns was if the sign had a lot of animation or flow, which would be a distraction to drivers. Mr. Morrison said he would search the minutes to try to find the name of the presenter (approximately 2 years ago).

New Business:

1. A discussion concerning S-1-20 – Shag Bark Lot Consolidation – Lots 6, 10.

Mr. Morrison advised this is a request to consolidate to lots of 4.45 acres and 3.61 acres. Mr. Mitall said he doesn't think there is anything wrong with the plan but had a concern about the condition of the road. Ms. Hoy asked if the road is a lane that services other houses but private to those two lots. Mr. Morrison said it is a private lane coming off Shag Bark Road Court, which is paved. Ms. Hoy asked for confirmation that the lane will only service the one lot (once consolidated). Mr. Lemke said the plan indicates that it is existing asphalt and the proposed private drive is proposed to be a 20' wide gravel drive. Mr. Mitall asked if the

paved portion of Shag Bark Court is private or maintained by the Municipality. Mr. Morrison said those roads have not yet been accepted because it hasn't met the 75% threshold.

Mr. Mitall asked if this was to be voted on tonight. Mr. Morrison said it was up for discussion and can be brought back at the next meeting for a vote. Ms. Hoy said she has no problem with the consolidation and wouldn't want to hold it up unnecessarily and would be prepared to vote. Other members were in agreement but would like a condition regarding the road. Ms. Hoy moved to recommend approval of S-1-20 – Shag Bark Lot Consolidation – Lots 6, 10, with the condition that Mr. Morrison check out the road situation to the satisfaction of Council. Mr. Lemke seconded. All present voted aye. Motion approved.

2. A discussion concerning SP-2-20 – 4001 Partners site.

Mr. Lemke is recusing himself from discussion on this issue as he represented the partnership in the acquisition of the property and set up the entity; he is not sure what other legal work might be requested of him.

Mr. Morrison brought representatives to the room to discuss the project. Mr. Mitall asked if there was also a subdivision request along with the site plan. Mr. Morrison said there was no subdivision. Bruce Conley introduced himself and explained that they will be using the existing front of the Weyerhauser building (the inside was renovated in 2005) but changing it and add a mezzanine and glass across the front. He explained that the lighter-colored areas will be using IMPs (insulated metal panels), which look like stucco. He further noted the use of stone and glass on the building and indicated where the new 80 x 200 building would begin. He explained that the whole front of the building is all sales and has a door that will enable them to pull in cars to display in the showroom. The new building will include a 60 x 40 detail area, an approximate 9,000 sf service area, with the rest being used as a warehouse for high-end vehicles. Mr. Mitall asked if they checked the glazing requirements and was told the front exceeds the requirement but he didn't have the other information. He said he would make that available to Mr. Morrison. The elevation drawings were provided and discussion held about the glazing; they will be asking for a variance on the percentage of glazing. Mr. Mitall said it isn't a variance but a modification.

Mr. Hewitt then discussed the site plan, including the paving, site access, demolition of and existing building and the loading dock. Phone caller said the shed that's behind the old Enterprise building is an eyesore and he wants to remove it but wants to leave the other existing sheds (along the ballfield) alone. Mr. Conlin further discussed the particulars of the site plan (rain garden, sewage, utilities, landscaping). Ms. Hoy noted a type on the parking requirements – shows 87 but she believes it should be 78. That will be corrected. There was a question about parking spots and display area, which was explained by Mr. Hewitt. Ms. Hoy asked if cars being driven into the building display area would have to be driven over the ADA parking spaces. She was told they would, but those cars would be sitting in the showroom for several months at a time. Referring to the display area, Mr. Mitall asked how a handicapped person would be able to access the handicapped spot. Mr. Hewitt said the area could be striped. Ms. Hoy asked if the area is paved and was told it is paved with asphalt and some patches of concrete. Mr. Mitall noted the display area and asked what the rest of the site

would be used for. Mr. Conley said there is no plan for the rest of it but might consider future development, which was why a subdivision was originally considered. Curt Rueger was having trouble dialing in but pointed out there will be approximately 12,000 sf in the remainder of the building being built for indoor storage. With that space, 40-50 cars could be fit inside in the rear of the structure. Based on current inventory, there will be plenty of space for display and sale of vehicles, as well as storage for potential repairs. Mr. Mitall said he has a concern with a future problem when stacking cars on the rest of the site. Mr. Conley said he has already had discussions with Mr. Morrison about this and they are aware that this is a prohibitive matter.

The grading plan was explained, as well as roof drain collectors. Mr. Mitall asked about car carriers delivering to the site. Mr. Conley said they don't have car carriers delivering vehicles and explained the procedure regarding cars purchased at auction. Mr. Conley advised that everything required by the Conservation District has been completed. There was additional explanation of utility plan, rain garden, oil/water separator, floor drains, chain link fence dumpster enclosure, signage details, inlets, concrete wash-out, storm water, landscaping, lighting, etc. Ms. Hoy commented, for reference, that she added up all sides of the building and the glazing averages 16.95%. Mr. Patrick said that the Commission has not had any issues in the past in providing relief of glazing requirements on sides of buildings that are not facing anything or seen by anyone. Mr. Mitall said the applicant has to make a formal request for modification.

Ms. Hoy moved that SP-2-20 be tabled until the next meeting; Mr. Patrick seconded. All present voted aye. Motion approved.

3. A discussion concerning FRPD 1-19 – Villas Ciano PRD.

Charles Hergenroeder advised the members that this is a 10-year-old preliminary approval that is now looking for final approval and is as 23 lot PRD. This comes back to the Commission under the Development Permit Extension Act, which was amended in 2013. Because the plan is so old, a lot of work has been done to ensure that those things that were part and parcel of the approval process 10 years ago have been checked and re-checked.

Rich Terret, Jr. made some comments but his microphone wasn't working properly and his comments were garbled. There was some discussion between Mr. Terret and Mr. Morrison about the plan which was issued on January 14, 2020 and the review letter issued on February 14, 2020. The applicant's representative said he has not seen the letter in question. Mr. Morrison said the comments in the letter had to do with storm water. Mr. Mitall asked if the County has reviewed the storm water. Mr. Terret said they were told it was ok. He made additional comments but, again, his microphone was garbled. Commission members were having difficulty hearing Mr. Terret and he then moved closer to the front of the room. Mr. Terret and Mr. Morrison discussed the comment letter and which issues were still outstanding. Mr. Mitall said that, since the plan is so old, he asked Mr. Terret to bring the members up to speed as to what the plan consists of.

Mr. Terret explained that the plan consists of 22 lots off of Pine Hollow Road, which have remained the same since the original plan. He indicated a few lots for which waivers were requested (15' minimum side yard, 35' minimum rear yard, 30' minimum front yard, and the lot size down to 20,000 sf). Issues regarding sight distance have been resolved. Mr. Terret discussed the storm water plans and several different drawings/maps were provided and said that everything that needs to be done has been done, except for storm water. Mr. Hergenroeder said that it was his understanding that the galleries were going to be part and parcel of a lot, with a note on the plan, but also a requirement in the deed, that the individual homeowners maintain those galleries or not change them in any way and asked if that is still what the Municipality wants or is that requirement has been changed. Mr. Morrison said it is staff's recommendation that the only storm water facilities that the Municipality would accept are those in the public right-of-way. Mr. Patrick asked how that would be enforced. Mr. Hergenroeder said there is always a problem with that but a covenant on a deed basically runs with all the homeowners in the plan and further explained, by way of example, this issue. Mr. Mitall asked if the individual lot owner would be responsible or if it would be the responsibility of the Homeowners' Association. Mr. Hergenroeder said it would depend on how it is structured and suggested that the best way would be to make the individual homeowner own the swale and be responsible for its maintenance. Mr. Mitall said the galleries discharge into what appears to be open space, for which the HOA is responsible. He said there is a potential erosion problem off of the individual property owner's lot into the common space. Mr. Hergenroeder said the common space would probably be owned by the HOA, but the HOA, if incorporated, has the right to sue individual owners if they have improperly discharged the water or done something that would cause significant problems or erosion.

Mr. Patrick said that, in looking at the soils and topography issues, this is a case of trying to make a silk purse out of a sow's ear. He thinks the problem is that it's a catch-22 issue. The one problem is that HOAs may disappear, so that says that if people fail to maintain the facilities and erosion happens – then it just happens, which seems like a problem. Mr. Hergenroeder said it is a more powerful tool to put the responsibility on the homeowners rather than the HOA. He said if an HOA would incorporate, it would last for all times, but the activity of the HOA seems to wane. Mr. Patrick again said that if the HOA goes away, there is no policing and no one to call if there is a failure. Mr. Hergenroeder said if the system fails because of lack of maintenance, there is someone to call; if it fails because of lack of design, then Mr. Patrick is right. Mr. Mitall said this issue is not going to be resolved tonight but he believes the legal minds with the Municipality, staff and applicant's legal representative will be able to come up with some sort of solution as to how the issue needs to be addressed.

Mr. Mitall noted that the Parks Commission recommended that this be a fee-in-lieu by dedicating parkland and asked if Mr. Hergenroeder was aware of that. Both Mr. Hergenroeder and the representative indicated that is fine. Mr. Mitall also said that the EAC recommended that the Municipality not take ownership of the off-road right-of-way storm water facilities. Mr. Morrison noted that the EAC also recommended that there be some sort of annual inspection schedule on the facilities. The representative

said he thought the Conservation District did yearly inspections. He asked how it would be handled if the DEP found a problem and there was no HOA and expressed some thoughts on that issue. Mr. Hergenroeder said a lien could be created for common areas; the problem is collecting it from 21 people. From a legal standpoint, an obligation could be created to fund an HOA. Mr. Morrison said the bottom line of the issue is that if that circumstance occurs, it will take years to resolve and the homeowners will call the Municipality, which results in having to deal with 23 dissatisfied customers. Mr. Patrick asked if this would be clearly spelled out to potential home buyers. Mr. Hergenroeder said it would be and would have a note on the plan, as well as on the deed (together with and subject to clause). Mr. Morrison asked if the closing attorney has an obligation to state this at time of closing. Mr. Hergenroeder said he would and that it is, in effect, part of the title to the property (the ownership of the swale and obligation of maintenance of the swale). There was additional discussion on the responsibility of maintenance of the detention facility; Mr. Mitall called an end to the discussion and advised Mr. Hergenroeder and his client to work this out. Mr. Hergenroeder suggested tabling this until all issues have been resolved.

Mr. Olszewski asked who has final approval on the storm water plan, from an engineering perspective. Mr. Mitall said the Westmoreland County Conservation District will have input, but it's ultimately the Municipality. Mr. Morrison advised that the Municipality has a storm water management ordinance. The Municipality has a partnership with the Conservation District, which does a review and makes recommendations. He stated that, at times, there is conflict because the Conservation District prefers infiltration and on-lot maintenance and retention of storm water, versus managing storm water into a detention pond.

Mr. Patrick moved to table this to the next meeting; seconded by Ms. Hoy. All present voted aye. Motion approved.

The next meeting date will be the first Tuesday of May (5th).

Adjournment:

Ms. Hoy: Moved to adjourn at 9:09 p.m.

Mr. Patrick: Seconded

Motion Approved: 5-0