

**Pledge of Allegiance**

**Present:**

Present at the meeting: Bill Yant, Robert Mitall, Ed Patrick, Jayne Hoy, Frank Muzika and Tony Spadaro, Council Liaison. Also in attendance was Chief Administrator Jim Morrison.

**Absent:** Zack Kansler and John Bosetti

**MURRYSVILLE TRANSPORTATION IMPACT MEETING**

Mike Mudry, of Transportation Planning and Design, explained that it's time to do a "tune-up" on the impact fee ordinance and said that they want to add two projects to the Transportation Capital Improvement Program with the impact fees directly related to a development presently occurring. He then presented the members with some hand-outs which he will be referring to in his presentation. Referencing Exhibit 3, the Project List, Mr. Mudry explained that the yellow highlighted projects are those recommended to be updated. He further noted that there are years assigned to projects for the impact fee program and there are so many years after the construction year to construct it or refunds must be calculated and money returned. One of the provisions in the MPC that is permitted is that the plan can be updated at least once a year based on the amount of money being brought in and the pace of development and projects can be pushed out further. He recommended moving the Sardis/Logan Ferry Road relocation project (#6) to 2021 and the Old Wm. Penn/Sardis/Vincent Hall Road project (#3) to 2024. He said the dates are not set in stone and can be refreshed every year if necessary.

Mr. Mudry continued by addressing the Manor/Wilson Road and the Rt. 22/Manor Road projects, both of which are directly related to the proposed Fusting development. These projects are directly driven by the development and are appropriate for having money spent from the impact fee on some of the improvements. He said that turn lanes and traffic signals are warranted at the Manor/Wilson Road intersection, while a right turn lane at the Rt. 22/Manor Road (westbound) intersection is also needed. All of these improvements are directly related to the proposed project/development. Mr. Mitall asked what 50% state highway means as noted on the project list. Mr. Mudry explained that when the law regarding impact fees was written, the MPC stated that any project on a state highway can only have 50% of its funding come from the impact fee program. The other 50% can come from anywhere – just not impact fees. He said there are other PennDOT programs and grants available, as well as federal money and economic development money (both state and county).

Mr. Mudry then discussed the cost estimates related to the Manor/Wilson Road and Rt. 22/Manor Road projects. He reviewed the estimates provided by the developer's engineer and then standardized that information in accordance with the other projects on the list. The Manor/Wilson Road estimate (in today's dollars) is \$1,047,513 and the Rt. 22/Manor Road estimate is \$659,000. Based on the construction year, some money will be added for inflation. Assuming the Manor/Wilson Rd. project will proceed in 2020, the price increases

to \$1,190,000; the 2025 cost for the Rt. 22/Manor Road improvement would be \$868,000. Adding additional miscellaneous costs, Manor/Wilson Road increases to \$1,770,000 and Rt. 22/Manor Road increases to \$1,160,000. He reiterated that, since both projects are on a state road, only ½ of the cost is eligible for impact fees

Mr. Muzika wondered why the Manor/Wilson/Rt. 22 projects were not on the list last year but now have moved to the forefront. Mr. Mudry said the developer is going to build the project – no matter what; the reason it is on the project list is so that the developer can get the full credit for his impact fee. He further explained that if the project is not on the list, PennDOT is going to make him do it anyway and then the Municipality is going to charge him the impact fee on top of that (around \$640,000). In other words, not only will Mr. Fusting have to pay \$1,000,000+ for the project, he would also have to pay the Municipality over \$600,000 for the impact fee. No impact fee money collected will go towards the project, but rather, the developer will build the project and get a credit because the overall project cost will be more than the impact fee. Mr. Fusting is agreeing not only to build the project and get a credit, but will be paying extra over the impact fee to build the project.

Mr. Patrick asked why the Sardis/OWP/Vincent Hall and Sardis/Logan Ferry Rd. projects are being pushed back if the existing impact fee moneys are there. Mr. Mudry said that the two projects total over \$2,700,000. There is not that much money in the impact fee fund, so a decision needs to be made to wait until the funds to pay for both projects are gathered or build one now and push one back until the fund is built up again. Ms. Hoy noted that the chart references an amount in excess of \$8,000,000 “impact fee eligible” and asked if that amount has been collected. When told it has not, she asked how much has actually been collected and said she wanted to see a column indicating actual funds collected. Mr. Yant explained that if that much money had been collected, all of the projects could be accomplished. Mr. Morrison said to keep in mind that this is a planning tool and the Municipality is building towards it. Mr. Patrick asked why the “funds collected” are for the 2006 impact fee program. Mr. Mudry explained that they went back and re-did the plan from scratch. There was additional discussion about why the projects were numbered in a certain way, the amount of money collected since 2006, projects that had been eliminated, etc. Mr. Mitall said he would like to see projects 3 and 6 reversed as far as the opening date. Mr. Yant agreed and stated that in order to get the benefit of #6. No. 3 must be done.

Mr. Mitall summarized by stating that projects 11 and 12 are being added to the list and the opening years for projects 3 and 6 are being flipped. Mr. Yant said he believes the Trafford/Pleasant Valley Road area is a priority. Mr. Patrick had no problem with flipping the dates for projects 3 and 6, but asked if all the money had to be available before the project could begin. Mr. Mudry said it wasn't necessary to have all the money; it's just the year that the project will be built and the year impact fee money will be spent. Also, all the money doesn't have to come from impact fees. Mr. Mudry reminded the members that the project list is only a planning tool. Mr. Yant moved to reverse projects 3 and 6 and add projects 11 and 12 to the list. Mr. Patrick seconded. All present voted aye. Motion approved.

**Minutes:** Mr. Patrick moved to accept the August 27, 2019 minutes. There was no second but all in attendance voted aye. Motion approved.

**Public Comment:** None.

**New Business: CU-2-19, Crown Castle application for the installation of a small wireless facility in the public right of way at 5270 Logan Ferry Road**

Mr. Morrison explained that Crown Castle had submitted an application for the installation of a small cell tower on Logan Ferry Road near Respironics. Because the Municipality had no regulations for a permitting process, staff believed that the application would fall under the conditional use process. Crown Castle subsequently submitted a conditional use application and has now withdrawn that CU application. Planning Commission members asked Mr. Morrison to invite Crown Castle representatives to tonight's meeting to talk about the technical and legal aspects of small cell towers.

Mr. Mitall asked the representative why the conditional use application was withdrawn. Mr. Robert Ritter advised that a conditional use application had not been submitted; Mr. Morrison said a C-U had been submitted (he had the application in hand) and noted that Mr. Ritter had been advised of that fact. Mr. Ritter said that a recent Supreme Court ruling stated that regulation of utilities in the right-of-way should be the purview of the PUC and, therefore, they felt that going through the conditional use process was not appropriate.

Mr. Duncan Ackerman then shared some information about Crown Castle, its purpose, technology, how the cell will look and how it fits into the wireless network. He explained that when referring to "small cell," it usually refers to a small wireless antennae radio box mounted to a wooden utility pole within the right-of-way. He said the purpose of the small cells is to primarily address issues of capacity so they are installed in locations where there is a high concentration of cell phone users and serve as spot solutions to areas where the network needs improvement. Mr. Patrick asked what the radius of coverage is with a small cell. Mr. Ackerman said it varies depending on topography and surrounding structures, but ideally, it's about 1,000 feet. Mr. Patrick asked how Crown Castle gets remuneration for the capital expended to install the towers. Mr. Ackerman explained that the company builds the towers to fit the needs of customers and is commissioned by the major wireless carriers (Sprint, AT&T, Verizon) who pay Castle to use the infrastructure to get their signals to the public. Mr. Ritter further explained that Castle is a certificated utility by the PUC as a telecommunications provider and is being paid as an end-to-end telecommunications transport service. There was a question of different frequency bands and an explanation given by Mr. Ritter. Mr. Ritter presented a photo of a pole with an equipment cage (shroud) installed, which holds the radio(s).

Mr. Morrison asked how the equipment is powered. Mr. Ackerman said they are hooked up to a conventional power source. Mr. Morrison asked if all the poles are metered and was told it depends on who the electric provider is. He also said there are two cables that connect to each of the sites – one is the fiber-optic cable and the other is the power. Mr. Patrick asked about running fiber over a right-of-way. Mr. Ritter said it's just like other utilities. They have pole attachment agreements in place with major telecommunications providers, power companies, etc., so the equipment would be attached to existing poles. If it's in an area where utilities are underground, Crown would build its utilities underground running through that area and either place conduit or lease existing conduit to run the cable. Ms. Hoy asked who

owns the right-of-way where Crown wants to put the tower and was told it is a Municipal right-of-way.

Mr. Mitall asked how, since the Supreme Court ruling that this is a PUC matter, issues such as sight distance, location with other utilities already in place, etc., would be addressed. Mr. Ritter said the FCC spoke to this issue and said some people feel that the FCC is taking away the Municipality's power. However, Municipalities, under Federal law and FCC rules, have all the authority they did before [the ruling] over their right-of-way. Regarding rules regulating placement in a right-of-way, the FCC ruling states that they have to be objective, reasonable and comparatively neutral. Crown's biggest concern from a legal perspective and going through zoning is that they are being asked to go through a different process than any other utility would be putting up a utility pole in a right-of-way. Crown's opinion is not that the Municipality cannot regulate this technology, but that it should be regulated in the same way as everything else. Mr. Mitall asked if it is Crown's opinion that there are issues that are within local control, but it is not a zoning issue but, rather, a use in right-of-way. Mr. Ritter agreed. Mr. Ritter said it is Crown's opinion that there should not be a small cell ordinance but rather, there should be a utility or object in the right-of-way ordinance. Mr. Morrison said there are regulations and permitting processes already in place and he doesn't think it's the community's intent to stymie the development or create a hard time. Of utmost concern is to protect the health, safety and welfare of the community.

Mr. Mitall asked how Crown would address the issue of putting a tower in a development where all the utilities are underground. Mr. Ritter said that is the toughest challenge Crown faces. If there is an area with overhead utilities and poles, they would expect to place a wood utility pole – the same as already existing poles. If they are in a streetscape area where there are underground utilities but might be street lights or decorative signs, they would look at putting in a decorative pole that matches existing poles as closely as possible so it would fit within the context of the area. If it is in a residential area with no street lights, that becomes a challenge and they would try to design something that is as streamlined and unobtrusive as possible. He said the FCC says that it's reasonable to have those kinds of restrictions, as long as there is some kind of exception or variance process. To outright ban any installations in those areas could be considered as prohibition of services if there is a need in the community. Mr. Mitall suggested a scenario wherein the right-of-way is already filled up with utility, cable and phone lines and a resident agrees to let Crown put the pole on his property – does that now become a zoning issue? Mr. Ritter said yes; if they are outside of the public right-of-way, it is then a zoning matter. Mr. Mitall confirmed that the discussion tonight pertains only to public right-of-way. Mr. Ritter discussed the FCC ruling as it pertains to zoning and parameters for the process. Mr. Morrison said there are two parts to the zoning process: the application/approval process and that he was referring to the land use of the zoning matter. Mr. Ritter said the FCC specifically addressed right-of-way --- not zoning or putting it on private property. Mr. Patrick said he understands the need for this equipment in a high density area but can't understand why Crown would go to the expense of putting something in an area (i.e. subdivision) where the number of clients/patrons is very small. Mr. Ritter said residential areas, in general, are a big source of use and somewhat underserved. Mr. Ritter gave a long explanation of 5G/6G, wired networks in homes, more use of fixed wireless, etc. Mr. Patrick asked if the small cell, installed now, could be seamlessly upgraded in the future

if needed. Mr. Ritter said it could; it's connected to the fiber network, so swapping out equipment would be easily done.

Mr. Patrick then asked what keeps Crown from putting larger equipment on the poles. Mr. Ackerman said that the FCC has a definition of how big a small cell is in order to be regulated as a small cell. After reaching a certain threshold, Crown can no longer call itself a small cell and no longer has the protection it once had. Mr. Ritter explained the size restrictions in detail. Mr. Morrison asked if Crown has any maintenance responsibilities for the facilities under State or Federal regulations. Mr. Ritter said they have operating responsibilities set by the PUC to keep the network in good operation and repair. He believes it is within the Municipality's authority to require that as well. Mr. Mitall asked if Crown has come across any other Municipality that has what they would consider a fair and reasonable ordinance from a Municipal standpoint. Mr. Ritter said Crown has a model ordinance and model set of design standards for communities in Pennsylvania to provide as a reference. Mr. Mitall asked Mr. Morrison if Murrysville has an ordinance dealing with utilities in the right-of-way. Mr. Morrison said there are regulations in the Land Development Ordinance. Mr. Ritter said there are also specific construction standards that apply to utilities in the right-of-way. Mr. Mitall said he would be interested in seeing the model documents prepared by Crown. Mr. Morrison asked if Crown does a survey of the community to determine where the most service or minimum service areas are. Mr. Ritter said the locations and areas are provided by their customers but, in doing that, they are constantly monitoring their networks by looking at all the traffic on the networks, how busy it is, when it is busy, etc. That data is then prioritized as to locations that are most congested.

Mr. Mitall said that, based on the court ruling and the FCC regulations, he believes that all of that pre-empts the zoning regulations. Mr. Morrison said, in his opinion, based on the information he has read, that's not necessarily so and the Municipality has the ability to regulate through zoning to a certain extent. He said that if Crown wants to look at the community to ensure service throughout the community and identify those areas, and if there isn't a service that can be provided, it's no different than any other zoning variance. They can appeal to the ZHB, go through the process, and prove that that's the only place they can put it. Mr. Patrick said it's moot because, in looking at the road network throughout the community, he can't think of any place where there is an existing pole that wouldn't service everything for 1,000 feet. Mr. Ritter said he believes it's within the Municipality's authority, whether it's an overhead or underground utility district, to ask for some explanation as to why the nearby existing pole can't be used before replacing with a new pole. Mr. Ritter said an existing pole could be ruled out for use because there is already too much on it. Mr. Morrison asked why Crown wants to put a new pole at the Logan Ferry Road location. Mr. Ritter said it's usually because the existing poles have been ruled out by the utility companies.

The Commission members and Mr. Morrison thanked the Crown representatives for attending and providing the information requested.

**Old Business: Z-1-19, a rezoning request by MAGAM Investment Associates, LP, file number Z-1-19, Route 22, at the intersection of Kistler Road and Route 22, one parcel, 3.56 acres, tax map number 49-15-00-0-027, present zoning B (Commercial), proposed M-U (Mixed Use)**

Mr. Morrison provided the Commission members with background information on the zoning ordinance, maps identifying the area and an article explaining spot zoning and re-zoning. He said the only thing holding the property from developing as a B district now for the proposed use area is the size of the lot. He continued by saying that there is a provision in the zoning ordinance for mixed use development as a use within a B district which is a minimum of 5 acres. Mr. Hoy noted that the property in question is 3.56 acres. Mr. Morrison said that, after reading the article, he is comfortable being able to support what could be challenges to the spot zoning issue. If one of the tests is the relationship to another mixed use district, that's a problem. If the relationship is to similar uses, that's not such a bad problem. The size of the lot, as was suggested in the article, seems to generate less objection to re-zoning than larger lots and lots in residential areas seem to generate more than commercial areas. Ms. Hoy noted that, under mixed use development, it states that all development shall comply with the performance standards of the business district, so the only change in making it mixed use is the fact that you would be allowed to have residential included (am I correct?). Mr. Morrison said it is permitted to have residential in mixed use also and there is a provision in business for residential. Ms. Hoy asked why the developer is asking for a zoning change if they can do what they want to do in business. Mr. Morrison said it's because they don't have the 5 acres. Ms. Hoy said they don't have the 5 acres for mixed use either. Mr. Morrison explained that there are provisions made in the B district for mixed uses and one of the developer's arguments was that he wanted to go to a mixed use zone because of the permitted mixed uses in the MU district. Mr. Mitall said the question still remains – why can't he do what he wants to do in the Business district? Mr. Morrison again stated it's because he doesn't have the 5 acres. Mr. Mitall asked why the developer just wouldn't go to the Zoning Hearing Board and ask for a variance. Mr. Morrison said there are other alternatives that could be explored other than re-zoning, one of which is to buy the piece of the scrap land that has to use at all, which would then give him more than 5 acres.

Mr. Mitall asked Mr. Morrison what his concern was, other than spot zoning, with changing it to MU. Mr. Morrison said he had none-other than there were no other MUs nearby and, to a lesser degree, that the developer had other alternatives (variance or buy more land). Mr. Morrison said to keep in mind that property is not being re-zoned for a particular development and if the development falls through, there is a piece of MU sticking there like a sore thumb. Mr. Mitall asked what was the worst that could happen if it is re-zoned MU and no one challenged it; what could be built there that would be objectionable because the MU district is pretty restricted. Mr. Patrick commented that no one might challenge the re-zoning now, but what happens in the future if someone says, "You did it for this guy, why not me?" Mr. Morrison said that's always a possibility. Mr. Patrick asked what the cost difference would be

in acquiring the land versus going before the ZHB. Mr. Morrison said he thinks the ZHB would be a tougher hill to climb. Ms. Hoy said the developer has options with the piece of property in the B zone and that's what the ZHB looks at. There was discussion about the "scrap" piece of property and its availability/size/cost. Mr. Mitall asked if the options had been enumerated to the applicant. Mr. Morrison said he wasn't sure because this was being managed before he got involved. Ms. Hoy asked if the developer already owns the property or is the purchase subject to re-zoning. Mr. Morrison said he believes they own it. There was also some discussion about the soil and a geotechnical study. No further discussion was held.

**Other Business:** None.

**Adjournment:**

Mr. Muzika: Moved to adjourn at 8:45 p.m.

Mr. Patrick: Seconded

Motion Approved: 4-0