

A regular meeting of the **BUILDING AND ZONING COMMITTEE** was held tonight, Chairman Morton J. Simon, Jr. presiding. Members present were Commissioners Brockington, Holland, Norris, Pransky, Sharkey and Rappoport.

Staff present were Alyson Elliott, Assistant Township Manager; Henry Sekawungu, Director of Planning/Zoning Officer; and Bryan T. Havir, Township Manager. Also present was Joseph Bagley, Esq., Solicitor. A Public Attendance List is attached.

Mr. Simon called the meeting to order at 8:30 p.m.

1. The Committee reviewed and took action on the following Zoning Hearing Board agenda items for May 9, 2016:

APPEAL NO. 16-3545: Appeal of Marc Daniels, owner of the premises known as 1031 Rock Creek Drive, Wyncote, PA 19095 from the Decision of the Zoning Officer for a variance from Section 295-39.A.(1), yard regulations, to allow for a front yard setback of 20' in place of the required 40' and a variance from Section 295-220.a., yard regulations to allow for the installation of a 12' x 16' structure (shed) to be erected within the front yard, in the R-4 Residential Zoning District.

Mr. Daniels, applicant, was present to represent the appeal and answer any questions of the Committee.

Upon motion of Mr. Norris, the Committee unanimously recommended approval.

APPEAL NO. 16-3546: Appeal of Samuel Lee Saltzman, owner of the premises known as 417 Carlton Avenue, Wyncote, PA 19095 from the Decision of the Zoning Officer for a variance from Section 295-46.B.(1), yard regulations, to allow for a side yard setback of zero (0) feet in place of the required 8' and a variance from Section 295-220.B., yard regulations, to allow for the installation of an 8' x 8' structure (shed) to be erected within the side yard, in the R-5 Residential Zoning District.

Mr. Saltzman, applicant, was present to represent the appeal and answer any questions of the Committee.

Upon motion of Mr. Holland, the Committee unanimously recommended approval.

2. Upon motion of Mr. Holland, the Committee unanimously received the Planning Commission Regular Meeting Minutes dated April 27, 2016.

3. Discussion of the Proposed Draft Zoning Ordinance. Mr. Simon stated the upcoming meeting to review the Proposed Draft Zoning Ordinance is scheduled for Thursday, May 12, 2016, at the Township Building from 6:00-9:00 p.m. Additional meetings are scheduled for Thursday, May 19, 2016 and Thursday, June 9, 2016.

4. Review of Zoning Hearing Board Decisions. None.

5. Consideration of the Township's participation in a local government filing before the Public Utilities Commission (PUC). Mr. Sharkey noted that local zoning laws apply without having to notify residents and he made motion to support the Township's filing of Public comment. The Committee unanimously agreed to authorize the Township Manager and the President of the Board of Commissioners to provide a letter for public comment (see attached) which is due by May 13, 2016 to the PUC.

6. Report of the Building Inspector for April, 2016. Upon motion, the Committee unanimously received the Report of the Building Inspector for April, 2016.

7. Old Business – None.

8. New Business:

Mr. Sharkey mentioned that in his capacity as president of the Pennsylvania State Association of Township Commissioners (PSATC), he is aware of zoning issues relating to marijuana growing facilities that the Committee may want to consider this issue when redrafting the Township's Zoning Code.

9. Citizens' Forum:

Mr. Earl Stamm, 209 Gribbel Road in Wyncote, shared information on tax exempt properties in the Township noting that there are 159 exempt properties in the Township that are non-governmental. The Committee asked Mr. Stamm to provide the information with Mr. Havir. Mr. Havir will share the information with Committee members. Mr. Stamm also suggested that the new zoning ordinance should not encourage exempt uses.

Upon motion of Mr. Simon, unanimously approved by the Committee, the meeting was adjourned at 8:54 p.m.

  
Bryan T. Havir  
Township Manager

as per Vicky Sykes



# Township of Cheltenham

Montgomery County, Pennsylvania

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**Township Manager**  
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May 9, 2016

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utilities Commission  
Keystone Building  
400 North Street  
Harrisburg, PA 17120

**RE: Comments by Cheltenham Township in PUC Proceeding Related to Certification of DAS Providers, Doc. No. M-2016-2517831**

Dear Ms. Chiavetta:

The Pennsylvania Public Utilities Commission ("Commission") is seeking comments on whether it should continue to grant utility status, through the issuance of Certificates of Public Convenience ("CPC's"), to providers of distributed antenna systems ("DAS"). Appendix A of the Order includes multiple questions designed to elicit pertinent comments on this issue. Our understanding is that the statewide municipal associations are submitting comments on behalf of all Pennsylvania municipalities that address each of these questions; however, Cheltenham Township would also like to add its own general comments on this important issue.

We respectfully request that the Commission discontinue the practice of granting CPC's to DAS providers for the following reasons. First, DAS is not a "public utility" as defined in 66 Pa.C.S. §102 the PA Public Utilities Code. In fact, the definition of "public utility" specifically exempts any company that furnishes "mobile domestic cellular radio telecommunications." Second, DAS is an interstate service in which wireless signals cross state and even national boundaries. As an interstate service, DAS is, and rightfully ought to be, regulated by the Federal Communications Commission ("FCC"), not individual state public utility agencies.

Third, a distributed antenna system is merely a component of a much larger wireless network that includes cell towers, antennae, fiber optic wires, hub sites, and other components. DAS providers build infrastructure to complement a larger system. They do not provide the telecommunications and broadband services and they do not manage the operations of the larger network. It is neither the responsibility nor the practice of the Commission to grant utility status to every contractor that constructs a component of a network. As such, DAS contractors are not entitled to be designated as public utilities.

Rosemary Chiavetta, Pennsylvania Public Utilities Commission  
May 9, 2016  
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This is especially true given the tremendous power inherent in the receipt of "public utility" status. In Pennsylvania, in addition to their other powers, public utilities are granted the power of eminent domain. Public utilities can legally take ownership of virtually any public or private property so long as they provide the property owner with just compensation. This is one of the most intrusive powers that could ever be conferred upon a governmental entity, let alone a private company. In our judgment, such power should not be granted lightly to a wireless contractor without having a strong, compelling, public interest reason for doing so.

Finally, pursuant to federal law, wireless facilities siting is regulated through local zoning. Municipalities have decades of experience in administering zoning requirements in a lawful manner. They know how to balance the rights of wireless carriers with the character of their communities. Moreover, there are ample federal and state zoning laws and regulations that protect wireless providers, including DAS contractors. These include, but are not limited to, the 1996 Telecommunications Act, the FCC's 2014 *Wireless Infrastructure Order*, the FCC's 2009 *"Shot Clock" Order*, and the PA Wireless Broadband Colocation Act of 2012. In short, DAS contractors are strongly protected under federal and state law without having to grant them utility status.

In light of these reasons, Cheltenham Township strongly recommends that the Commission decide, after receiving and reviewing comments in this proceeding, it is not the practice of the Commission to grant utility status to every contractor that constructs every component of a network and to end its practice of granting CPC's to DAS providers.

Please feel free to contact the Township Manager's office at 215-887-6200 extension 112 or via e-mail at [bhavir@cheltenham-township.org](mailto:bhavir@cheltenham-township.org) if you have any questions.

Sincerely yours,



Bryan T. Havir  
Township Manager



Morton J. Simon, Jr.  
President, Board of Commissioners

BTH/vms

cc: Board of Commissioners  
Joseph E. Bagley, Township Solicitor  
Henry Sekawungu, Director of Planning & Zoning